**AGREEMENT FOR COORDINATING CENTER SERVICES**

**BETWEEN**

**THE REGENTS OF THE UNIVERSITY OF MICHIGAN**

**AND**

**XYZ**

This AGREEMENT FOR COORDINATING CENTER SERVICES (“Agreement”) is made between THE REGENTS OF THE UNIVERSITY OF MICHIGAN, a Michigan Constitutional Corporation, Ann Arbor, Michigan (“University”), and XX , a (“Participant”).

The following terms and conditions shall be observed.

1. Description of Services. University hereby agrees to provide coordinating center services, as further defined in Exhibit A (the “Services”).
2. Term. The initial term of this Agreement will begin on \_\_\_\_\_\_\_\_\_\_\_\_ and subject to other terms set forth in this Agreement, shall continue for a term of five (5) years.
3. Performance Standard. University agrees to perform the Services described in this Agreement to the reasonable satisfaction of Participant and with a reasonable standard of care, and in conformance with all applicable federal and state laws, rules, and regulations.
4. Warranties and Representations of University. University acknowledges that Participant is relying upon these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which Participant would not have entered into this Agreement.
   1. Qualifications. University warrants that it, as well as its employees, agents and subcontractors engaged to provide Services under this Agreement (collectively “University Personnel”), has and will maintain all the skills, experience, and qualifications necessary to provide the Services contemplated by this Agreement, including any required training, registration, certification or licensure.

* 1. Conflict of Interest. University warrants that to the best of University’s knowledge, there exists no actual or potential conflict between Participant and University, and University’s performance of Services under this Agreement, and in the event of any change to the foregoing, University will inform Participant regarding any possible conflict of interest which may arise as a result of the change.
  2. Nondiscrimination. University warrants that it is an equal opportunity employer and that, during the performance of this Agreement, it will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.
  3. Noninfringement. University warrants that the Services provided by University or developed by University shall not infringe upon the copyright, patent or other proprietary rights of others.
  4. Not Excluded. University warrants that neither University, nor, to the best of University’s knowledge, University Personnel and/or any of its Principals, is excluded from participating in the Medicare or Medicaid program nor currently debarred, suspended, proposed for debarment, declared ineligible for the award of contracts by any U.S. Federal Agency or listed in the U.S. Government System for Award Management (“SAM”). University shall immediately notify Participant if it or University Personnel and/or any of its Principals becomes debarred or suspended during the term of this Agreement.

University further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against University or its affiliates, or to its reasonable knowledge, against any University Personnel. University agrees that it shall not perform any act that shall cause University to be excluded from a federal health care program or debarred, suspended or listed in the SAM as excluded from participating in federal procurement or nonprocurement programs during the term of this Agreement.

“Principals” for the purposes of this certification, means officers; directors; owners; partners; principal investigators; and persons having primary management or supervisory responsibilities with a business entity (e.g., general manager; plant manager; head of a subsidiary, division or business segment, and similar positions).

1. Financial Arrangement. The detailed financial arrangement is in Exhibit A.
2. Termination.
   1. Termination for Breach. Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided the breach continues for thirty (30) calendar days (“Cure Period”) after receipt by the breaching party of written notice of the breach from the non-breaching party. Cure of the breach within the Cure Period shall continue the Agreement in full force and effect, provided however three (3) breaches of a material provision are an independent material breach not subject to cure.
   2. Immediate Termination. Participant shall have the right to terminate this Agreement immediately upon notice to University should any of the following situations occur:
      1. University or any University Personnel is excluded from a federal health care program;
      2. If any warranty or representation of University in this Agreement is or becomes false or untrue;
      3. A person’s health or safety is or may be in imminent and serious danger due to the actions or inaction of University or University Personnel; or
      4. Participant reasonably determines University has violated a law in providing the Services.
   3. Effect of Termination. Upon notice of termination for any reason, University shall cease all activity and shall promptly provide to the Participant, without cost, all work product and files developed by University under this Agreement and all materials provided by Participant in connection with this Agreement. Any amounts outstanding shall be immediately due and payable in accordance with Exhibit A.
   4. Without Cause Termination. Either party may terminate this Agreement, with or without cause, for any reason whatsoever by providing the other party with sixty (60) days’ advance written notice of the termination date.
   5. Change in Law. If, subsequent to the execution of this Agreement, it is determined by either party’s legal counsel that this Agreement or any of its provisions may violate or does violate any law, rule, or regulation, the parties agree to renegotiate the provision(s) so that it (they), as well as this entire Agreement, complies with the law, rule or regulation. If the parties are unable to come to an agreement within thirty (30) calendar days (or sooner if required by law), either party may, without further notice, immediately terminate this Agreement.
3. Compliance with Laws.
   1. Participant is advised that University has established a compliance program to assure compliance with applicable laws and University policies, including, but not limited to, those designed to prevent and detect fraud, waste, and abuse. If Participant identifies potential non-compliance with any applicable laws, regulations or policies in connection with the provision of the Services, Participant shall promptly contact the University of Michigan Compliance Hotline at 866-990-0111 and provide details concerning the suspected wrongdoing sufficient to facilitate an investigation by University.

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1. Insurance Coverage and Levels. Unless more specific insurance provisions are attached, Participant shall, at Participant’s expense, obtain and maintain the following coverages:
   1. Commercial General Liability Insurance ($1 million per occurrence/$3 million annual aggregate).
   2. Professional Liability/Errors and Omissions Insurance with limits not less than $1 million per occurrence and $2 million annual aggregate.
   3. Workers’ Compensation at statutory limits in accordance with the appropriate State of jurisdiction including Employer’s liability (with minimum $500,000).
   4. Automobile liability for owned, non-owned and hired vehicles minimum limit ($1 million each accident).
   5. Participant agrees to have the Regents of the University of Michigan added as additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and any personal or property damages arising out of Agreement.
   6. Participant agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
   7. If any of the required insurance is on a “claims made” basis and is cancelled during the term of this agreement, Participant agrees to purchase **tail coverage** or **prior acts** **coverage** so that such insurance is in effect from the date the Agreement is executed to three (3) years after its termination.
   8. Participant shall provide the University with a certificate of the above insurance coverages and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Participant of its liabilities and obligations under this Agreement.
2. Indemnity. To the extent permitted by law, each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, agents and students (if the University) from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees, which may arise out of the indemnifying party’s acts or omissions under this Agreement for which the indemnifying party would be liable in law or equity.

The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party at its expense, to participate in the defense or settlement of the claim. When a claim is resolved by the indemnifying party’s payment of money, it shall have final authority regarding defense and settlement. When a claim resolution requires equitable relief against the non-indemnifying party or the indemnifying party has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

Notwithstanding anything to the contrary contained in this Section 9.0, Participant acknowledges and agrees that any indemnification afforded to Participant under this Section shall be subject to the limitation of liability provision set forth in this Agreement.

This Section 9.0 shall survive expiration or termination of this Agreement.

1. Confidentiality. Participant shall keep confidential and not disclose to third parties any information developed or created under this Agreement or provided by the University or by private individuals, organizations or public agencies pursuant to this Agreement, including protected customer information regarding customers of the University, unless Participant has received the prior written consent of the University to make the disclosure or unless required by law or legal process. Only Participant Personnel with a need to know may have access to or use University information.

This obligation of confidentiality does not extend to information that is or shall become through no fault of Participant available to the general public. The parties acknowledge and agree that University is subject to state laws governing confidentiality, including, without limitation the Michigan Freedom of Information Act.

1. Operational Matters.
   1. Quality Assurance. Participant agrees to timely cooperate and assist with any applicable performance improvement and quality assurance activities of the University as they may relate to the Services.
   2. Access to Books and Records. The parties agree that if this Agreement is subject to the Medicare statutes and regulations governing access to books and records of subcontractors (Section 952 of the Medicare and Medicaid provisions of the Omnibus Reconciliation Act of 1980, which amends section 1861(V) (1) of the Social Security Act), University shall retain and, for four (4) years after Services are furnished by University, shall allow the authorized representatives of the Comptroller General and the Department of Health and Human Services access to this Agreement and to the books, records, and other documents of University that are necessary to verify the nature and extent of the costs of the Services. This Agreement to provide access shall continue for four (4) years after the Services are terminated.

If University carries out any responsibilities under this Agreement through the use of a subcontractor, including any organization related by ownership or control with University, when the subcontract is worth or costs $10,000 or more over a twelve (12) month period, University shall obtain and forward to the Participant the subcontractor’s written promise to be bound as University is under this same access Agreement.

1. Limitation of Liability. University hereby agrees to provide the Services in a professional manner in accordance with any statutes, regulations, ordinances, or contracts applicable to the Services covered hereunder. Subject to the terms and conditions set forth in this Section 12.0, Participant agrees that neither University nor any of its respective subcontractors, partners, successors, or assigns (each of the foregoing a “University Affiliate”) nor any officer, affiliate, director, agent, or employee of University or any University Affiliate will be liable to Participant or its respective subcontractors, partners, successors, or assigns (each of the foregoing a “Participant Affiliate”) for any indirect, incidental, special, punitive, or consequential loss of profits, loss of earnings, loss of business opportunities, damages, expense, or costs, resulting directly or indirectly from, or otherwise arising in connection with, the work performed by University hereunder. For any inability of University (and/or any University Affiliate) to timely or properly perform the Services, University shall be liable to Participant for the following amounts: an amount equal to the amount of fees Participant paid to University for the Services during the applicable performance year. The parties agree that the limits set forth in this Section 12.0 shall apply notwithstanding any indemnification afforded to Participant under Section 9.0 of this Agreement. This Section 12.0 shall survive expiration or termination of this Agreement.
2. Miscellaneous
   1. Use of the University Name and Marks. The University acknowledges Participant’s right to make, without the consent of the University, public statements regarding the existence of the contract and its terms and conditions to accurately identify the products or services being supplied. However, except as permitted by the previous sentence, Participant may not, without the prior written consent of the University’s Office of Global Communications, make any public statement (for example through a press release or any form of advertisement) characterizing the University’s relationship with Participant or implying or stating the University’s endorsement of Participant. The University may withhold its consent in its absolute discretion. Participant acknowledges that the University will require ten (10) business days to consider any request for consent. Participant may not under any circumstances use any University Trademark.
   2. Independent Contractor Status of Parties. It is expressly understood that University is an independent contractor and not the agent, partner, or employee of Participant. University and its employees are not employees of Participant and are not entitled to tax withholding, Workers’ Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. University shall not have any authority to enter into any contract or agreement to bind Participant and shall not represent to anyone that University has such authority.
   3. Assignment. University may not subcontract, assign or transfer this Agreement or any interest or claim under this Agreement without prior written approval of Participant. Notwithstanding any consent by Participant to any assignment, University shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by Participant.
   4. Notices. Any notice to either party must be in writing, specifically reference this Agreement and be signed by the party giving it. Service upon the University shall be addressed to: MPOG, Attention: Membership, 4251 Plymouth Road, Arbor Lake, B1F2, Suite 2200, Ann Arbor, MI 48105. Service upon the Participant shall be served to the address indicated on this Agreement for Participant (or to such other address as may be later designated by written notice). Notice shall be by personal delivery, recognized overnight courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no event later than three (3) days after being placed in the hands of the United States Post Office or private courier service.
   5. Entire Agreement, Amendment. This Agreement and its Exhibits constitute the entire understanding between the parties with respect to the subject matter and may not be amended except by an Agreement signed by Participant and an authorized representative of the University. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.
   6. Severability. The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
   7. Governing Law, Construction and Venue. This Agreement shall be governed by and construed under the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions asserted against the University shall be brought in the Michigan Court of Claims. Participant, its successors and assigns, consent to the jurisdiction of a court with applicable subject matter jurisdiction sitting in the state of Michigan with respect to any claims arising under this Agreement.
   8. Headings. The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.
   9. Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
   10. Survivability. Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty and choice of law and venue.
   11. Execution. This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed, negotiated, and drafted by the parties.
   12. No Third Party Rights. Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
   13. Force Majeure. Neither Participant nor the University shall be liable for failure to perform its respective obligations under the Agreement when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party (“Force Majeure Event”). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party’s performance for more than thirty (30) calendar days following notice by the delaying party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice.
   14. Tax Exempt Status. Participant acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933. Section 4 as amended).
   15. Dispute Resolution. Participant and the University will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary.
   16. Freedom of Information Act. Nothing in this Agreement shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the University are subject to the State of Michigan Freedom of Information Act (“Act”) and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement.
3. Confidentiality of Health Information. The parties acknowledge that University has previously executed a Business Associate Agreement with the Participant (“BA Agreement”). The terms and conditions and obligations of Participant under that BA Agreement are incorporated into this Agreement where University acts in the capacity as the Participant’s “Business Associate” as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (which act and regulations as amended, restated and superseded from time to time, are collectively referred to as “HIPAA”).

It is so agreed.

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| **PARTICIPANT** | **REGENTS OF THE UNIVERSITY OF MICHIGAN** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Printed Name: Marschall S. Runge, MD, PhD |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: Dean, University of Michigan Medical School, Executive Vice President for Medical Affairs, and Chief Executive Officer, Michigan Medicine |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: |
| Address (for notices): | Address (for notices):  Multicenter Perioperative Outcomes Group (MPOG) Attention: Tory Lacca  Arbor Lakes, B1F2, Suite 2200 4251 Plymouth Rd. Ann Arbor, MI 48105 |

**EXHIBIT A**

**SCOPE OF SERVICES AND FEES**

1. Scope of Services to be Provided. Prior to the Effective Date of the Agreement, Participant shall elect which “Tier” and MOCA Services to purchase pursuant to the terms and conditions set forth in this Agreement. The available Tiers and corresponding prices, are as follow:

|  |  |  |
| --- | --- | --- |
| **Tier** | **Services Included** | **Price** |
| Tier A: Research + Departmental Quality Improvement | Technical infrastructure to submit data to MPOG; participation in MPOG scholarly activities; access to DataDirect, and MPOG QI Reporting Tool; participation in MPOG quality improvement activities. | $15,000/year for primary hospital plus $2,500 for each additional hospital (per American Hospital Association definition) on the same EHR instance in the health system |
| Tier B:  Research + Departmental Quality Improvement +  Provider Feedback | All Tier A services plus individual provider feedback and individual provider access to the MPOG QI Reporting Tool. | $25,000/year for the primary hospital and $2,500 for each additional hospital (per American Hospital Association definition) on the same EHR instance in the health system |
| MOCA | Enroll Anesthesiologists in Participant’s organization in MPOG’s Maintenance of Certification in Anesthesiology program | Current fees on MPOG website [www.mpog.org/moca](http://www.mpog.org/moca). |

Participant will by written notice provide written confirmation of the Tier selected by Participant prior to the Effective Date of this Agreement in a form and manner attached hereto as Exhibit B.

1. Changes, Alterations and Modifications to Services. The tier selection shall apply on a calendar year basis (January 1 through December 31). Notwithstanding the foregoing, Participant may at any time by submitting an updated version of Exhibit B to change the tier of Services covered by this Agreement. Participant shall be permitted to make adjustments to move to a higher tier at any time during the term of this Agreement; provided, however, the incremental increase in the higher tier charge amount when such change occurs during a calendar year will be reflected in the annual year invoices for the following year. If Participant elects to move down one tier, the new charge structure will become effective January 1 of the next calendar year. The date upon which the tier change shall become effective shall be mutually agreed to by the parties hereto. MOCA services may be selected at any time during contract term by submitting Exhibit C. Participant must have over fifty (50) providers to enroll in MOCA services.
2. Invoicing. University shall invoice Participant according to the amount due based upon tier selection reflected in Exhibit B at the end of the calendar year for the following year.
3. Payment Terms. Payment will be made within thirty (30) days after Participant’s receipt of an invoice from University. Amounts paid for Services to be provided for the next reporting year are nonrefundable notwithstanding termination of this Agreement for any reason whatsoever.
4. Taxes. The fees, expenses and costs payable under this Agreement include all applicable taxes.

**EXHIBIT B**

**TIER SELECTION**

As specified in the Agreement, please indicate institution and select Tier of Service:

|  |  |
| --- | --- |
| **Institution:** |  |
| **Select One** | **Tier** |
|  | Tier A: MPOG Research + Department Quality Improvement |
|  | Tier B:MPOG Research + Department Quality Improvement + Provider Feedback |

By signing below, the signatory represents and warrants he/she has the requisite legal authority to bind the organization he/she represents.

|  |  |
| --- | --- |
| Signature: |  |
| Print Name: |  |
| Title: |  |
| Date: |  |

**EXHIBIT C**

**MOCA SELECTION**

As specified in the Agreement, please indicate name of institution and whether the number of providers are ≥ 50:

|  |  |
| --- | --- |
| **Institution:** |  |
| **Number of providers** ≥**50 (Y/N)** |  |

By signing below, the signatory represents and warrants he/she has the requisite legal authority to bind the organization he/she represents.

|  |  |
| --- | --- |
| Signature: |  |
| Print Name: |  |
| Title: |  |
| Date: |  |

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