NIGHTINGALE MASTER SERVICES AGREEMENT

This Services Agreement (this “**Agreement**”) is made as the Effective Date identified above, by and between The University of Chicago (the “**UChicago**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Provider**”, and, together with UChicago, the “**Parties**”).

**RECITALS**

WHEREAS, UChicago hosts a data platform project known as Nightingale, (the “**Platform**”), including software, and other technologies, for managing, analyzing and sharing de-identified health-related data (“**Platform Data**”) provided by third parties (each such third party a “**Data Contributor**”);

WHEREAS, Provider is a research institution whose affiliated researchers desire to access and use the Nightingale platform for academic research purposes;

WHEREAS, to facilitate such access and use, UChicago desires to engage Provider to host a local instance of the Nightingale Platform, including certain Nightingale data and software tools, (the “**Local Instance**”) for the sole purpose of providing the Nightingale platform to researchers affiliated with Provider; and

WHEREAS, Provider desires to host such Local Instance for the benefit of its researchers.

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**AGREEMENT**

**NOW, THEREFORE,** in consideration of the foregoing and the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions**. Capitalized terms used in this Agreement have the meaning set forth on Exhibit A.
2. **Provider Services**.
   1. **Services**. Provider shall provide the services set forth in each statement of work (the “**Services**”) entered into hereunder and substantially in the form attached as Exhibit B (each, a “**Statement of Work**”).
3. **UChicago Responsibilities**.
   1. **UChicago’s Activities**. UChicago shall perform all tasks and provide all functions for which it is responsible as set forth in any Statement of Work (the “**UChicago Responsibilities**”).
   2. **Licenses**. UChicago hereby grants to Provider a non-exclusive world-wide license to: (i) use or otherwise exploit any of its Intellectual Property Rights to perform the Services and perform its other obligations and exercise its rights under this Agreement; and (ii) to use or process Platform Data to perform the Services and perform its other obligations and exercise its rights under this Agreement, *provided that* in each case the Services will be performed solely on Provider’s data infrastructure (“**Provider Infrastructure**”) and solely for the benefit of Provider Authorized Users.
4. **Compensation and Payment**. Each Party shall pay to the other Party the amounts set forth in each Statement of Work, if applicable.
5. **Proprietary Rights**.
   1. **Background Intellectual Property Rights**. Notwithstanding any statement to the contrary herein: (i) no right or license is granted by either party to the other party to any Intellectual Property Rights owned by such party as of the Effective Date or, if created or reduced to practice thereafter, independent of the activities set forth in this Agreement; and (ii) as between the Parties, all Intellectual Property Rights in and to the Services are owned by UChicago (“**Services IP**”).
   2. **Provider Contributions*.*** In the event that Provider makes any suggestions, recommendations, alterations, improvements, or modifications to or in relation to the Services or any Services IP (“**Provider Improvements**”), Provider hereby grants to UChicago a perpetual, irrevocable, worldwide, non-exclusive, fully-transferable, fully-sublicenseable, royalty-free, and fully paid-up right and license to copy, distribute, make derivative works of, display, make, use, sell, import, export, and otherwise exploit such Provider Improvements as part of or in connection with the Services in any media now known or hereafter developed. In no event shall UChicago have any duty to account to Provider for its use or other exploitation of any Provider Improvements.
6. **Confidentiality**. Each Party agrees that, during the Term and for five (5) years thereafter: (i) it will not disclose to any third party any Confidential Information (as defined in Exhibit A) disclosed to it by the other Party except as expressly permitted in this Agreement; (ii) it will not use any Confidential Information disclosed to it by the other Party for its own purposes (except as necessary to perform its obligations or exercise its rights under this Agreement); and (iii) it will maintain the confidentiality of all Confidential Information of the other Party that is in its possession or control, which obligation shall be satisfied by the receiving Party using the same effort it uses to protect its own Confidential Information, but in no event less than reasonable care.
   1. **Allowable Disclosures**. Notwithstanding the foregoing, each Party may disclose Confidential Information (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law, provided that such Party notifies the disclosing Party so that the disclosing Party may seek a protective order before such disclosure; or (ii) on a “need-to-know” basis under an obligation of confidentiality to its legal counsel, accountants, employees, agents, contractors and consultants.
   2. **Effect of Termination**.Upon termination of this Agreement, or at any time the disclosing Party may so request, the receiving Party will deliver promptly to the disclosing Party, or, at the disclosing Party’s option, the receiving Party will destroy, all Confidential Information of the disclosing Party obtained hereunder (and all copies thereof) that the receiving Party may then possess or have under its control. Notwithstanding the foregoing, the receiving Party may retain one (1) copy of that Confidential Information for archival purposes, solely for verification of compliance hereunder and/or in accordance with applicable laws or regulations; provided, however, that any Confidential Information so retained shall continue to be subject to the confidentiality obligations of this Agreement.
7. **Applicable Laws**.
   1. **Compliance with Laws**. Each Party will comply with all Applicable Laws in its performance of this Agreement.
   2. **Savings Clause**. Notwithstanding anything to the contrary in this Agreement, neither Party shall have any obligation to do any act, or refrain from doing any act, in violation of any Applicable Law or obligation to any Governmental Authority.
8. **Warranties and Remedies**
   1. **Warranties**.
      1. **Authority**. Each Party has the right and necessary corporate authority to enter into this Agreement.
   2. **Disclaimer of Warranties**. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
   3. **Indemnification**.
      1. **By Provider**.To the maximum extent permitted by law, Provider shall pay, defend, indemnify and hold harmless UChicago and its Affiliates and Representatives from and against any and all claims, liabilities, losses, causes of action, or other damages (collectively, “**Claims**”) based on: (i) any allegations made by any third party (including any Governmental Authority) against UChicago or any of its personnel to the extent relating to or arising from Provider’s performance of the Services; (ii) any allegations made by any third party (including any Governmental Authority) against UChicago or any of its personnel to the extent arising from access or use of the Platform through any account assigned to any Provider Authorized User; and (iii) without limiting the foregoing, any claim by any Data Contributor against UChicago to the extent arising from any actual or alleged acts of Provider or any of its personnel, students, or Provider Authorized Users.
      2. **Exceptions**. Notwithstanding the foregoing, Provider’s obligations pursuant to Section 8.c.i, will not apply to the extent the applicable Claims arise from: (i) UChicago’s gross negligence or willful misconduct; (ii) UChicago’s material breach of this Agreement or material failure to comply with any Statement of Work; or (iii) alleged infringement, misappropriation, or other violation of any third party’s Intellectual Property Rights by the Platform as operated by UChicago or as operated by Provider as directed by UChicago or in a manner substantially similar to UChicago.
      3. **Procedures**. UChicago shall give prompt written notice to Provider of any claim covered by this Article 8.c. Failure to give prompt notice shall not affect the indemnification obligations hereunder in the absence of actual prejudice to Provider. Provider shall have the right at its own expense to participate in or, if within thirty (30) days after its receipt of UChicago’s written claim notice it acknowledges in writing its indemnification responsibility for such claim and so elects, to assume control of the defense of such claim with counsel reasonably acceptable to UChicago. UChicago shall cooperate in all reasonable respects with Provider, subject to Provider’s reimbursement of UChicago’s reasonably incurred out-of-pocket expenses in so doing. Provider elects to assume control of the defense of any such claim, Provider shall not be liable to UChicago for any legal expenses incurred thereafter by UChicago, and UChicago shall have the right to participate in the defense of such claim at its own expense. Notwithstanding the foregoing, if (i) Provider does not promptly assume the defense of any such claim following notice of its election to do so, or (ii) UChicago reasonably concludes that there may be defenses available to it which are different from or additional to those available to Provider and which could reasonably be expected to result in a conflict of interest or prejudice to UChicago if both parties were represented by the same counsel, then UChicago will have the right to undertake the defense of such claim with counsel of its own choosing, with the reasonable costs thereof for the account of Provider. No settlement of a claim that involves a remedy other than the payment of money by Provider shall be entered into without the consent of UChicago, which consent will not be unreasonably withheld or delayed.
   4. **Limitation of Liability**. Except with respect to: (i) either Party’s indemnification obligations pursuant to this Agreement, and (iii) either Party’s gross negligence or willful misconduct, to the maximum extent permitted by law, (A) neither Party shall be liable hereunder for consequential, exemplary, or punitive damages (including lost profits or savings), even if it has been advised of their possible existence, and (B) neither Party’s total and cumulative aggregate liability for any claim or claims hereunder will exceed ten thousand dollars (US$10,000.00).
9. **Term and Termination**
   1. **Term**. This Agreement shall continue indefinitely until terminated in accordance with this Section.
   2. **Termination by Either Party**. Either Party may terminate this Agreement by written notice to the other Party, upon the occurrence of any of the following events:
      1. For any reason upon not less than sixty (60) days prior written notice to the other Party;
      2. The other Party becomes insolvent or subject to any proceeding under the federal bankruptcy laws or other similar laws for the protection of creditors; or
      3. The other Party materially breaches any term, provision, representation or warranty of this Agreement and such breach or default is not cured within ten (10) business days of the breaching Party’s receipt of written notice thereof.
   3. **Survival**. The terms and conditions of the following Sections will survive any termination or expiration of this Agreement: Sections 1, 5, 6, 7, 8.c, 8.d, 9.c, 10, and 11.
10. **Audits**. UChicago, at any time and from time to time, upon reasonable notice to Provider and at UChicago’ sole expense, may audit Provider to verify that Provider’s performance of the Services comply with the terms and conditions of this Agreement and the applicable Statement of Work. Provider shall at all times during the term of this Agreement, and for a period of three (3) years after the termination of this Agreement, keep and maintain records of its performance of the Services sufficient for UChicago to verify Provider’s performance hereunder. Provider shall provide UChicago and its authorized agents and representatives access to inspect Provider’s premises, and copy Provider’s books and records for purposes of such audit during normal business hours.
11. **Miscellaneous**
    1. **Amendments**. Except as otherwise expressly provided herein, this Agreement may not be modified, amended or altered in any way except by a written agreement signed by the Parties.
    2. **Assignment**. Neither Party may assign this Agreement or delegate any of its duties, in whole or in part, without the prior written consent of the other Party. If any assignee refuses to be bound by all of the terms and obligations of this Agreement or if any assignment is made in breach of the terms of this Agreement, then such assignment shall be null and void and of no force or effect.
    3. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed the same agreement.
    4. **Entire Agreement; Order of Precedence**. This Agreement, together with the Statements of Work and Exhibits constitutes the complete and exclusive statement of the agreement of the Parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written, between the Parties with respect to the subject matter hereof. In case of conflict the order of precedence of the documents constituting this Agreement is as follows, each listed document superseding in the event of any conflicting provision in a later listed document: (1) Agreement text; (2) the Exhibits to this Agreement; and (3) the Statements of Work.
    5. **Force Majeure**. Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement, or for any loss or damage resulting therefrom, due to acts of God, pandemic, epidemic, the public enemy, terrorist activities, riots, fires, and similar causes beyond such Party’s control.
    6. **Independent Contractor**. The Parties are independent contractors; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Each Party is solely responsible for payment of all compensation owed to its Representatives, as well as employment related taxes.
    7. **Governing Law**. This Agreement shall be governed by and interpreted in accordance with the internal substantive laws of the State of Illinois. The parties agree that all actions and proceedings arising out of or related to this Agreement shall be brought only in a state or federal court located in Cook County, Illinois, and the parties hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves. **EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF**.
    8. **Insurance**. Each party will maintain the types and amounts of insurance coverage that is reasonable and customary for its industry and sufficient to cover anticipated claims under this Agreement.
    9. **Notice**. Any notice or other document or communication required or permitted hereunder to the parties hereto will be deemed to have been duly given only if in writing and delivered by any of the following methods: (i) certified U.S. mail, return receipt requested, postage prepaid, to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof (for notice being transmitted entirely within the United States); (ii) overnight courier service by Federal Express or other international courier of similar standing and reputation to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof; (iii) hand delivery to the person specified below or any other person so designated according to the notice provisions hereof; or (iv) facsimile directed to the person specified below at the facsimile number listed below, or such other person or facsimile number so designated according to the notice provisions hereof; with a copy of all such notices delivered to counsel specified below or as such party may dictate in accordance with the notice provisions hereof. Notices shall be deemed delivered when received by the Party being notified.
       1. **To UChicago**. The Nightingale Project, The Center for Applied Artificial Intelligence, The University of Chicago, Booth School of Business, 5807 South Woodlawn Avenue, Chicago, IL 60637, United States of America. With a copy to: The University of Chicago, 5801 S Ellis Ave, Suite 619, Chicago, IL 60637, Attn: VP and General Counsel.
       2. **To Provider**. [**ADDRESS**]
    10. **Publicity**. Neither Party shall use any trademark, service mark, logo or other designation of origin of the other Party or any of its Affiliates without the prior written consent of the applicable Party or Affiliate.
    11. **Waivers**. No purported waiver by any Party of any default by any other Party of any term or provision contained herein (whether by omission, delay or otherwise) shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving Party. No such waiver in any event shall be deemed a waiver of any subsequent default under the same or any other term or provision contained herein.
    12. **No Third Party Beneficiaries**. There are no intended third party beneficiaries to this Agreement.

*[Signature Page Follows]*

**IN WITNESS WHEREOF,** the Parties have caused this Master Services Agreement to be executed and delivered by their respective, duly authorized representatives.

|  |  |
| --- | --- |
| **[PROVIDER NAME]** | **THE UNIVERSITY OF CHICAGO** |
| By:  Name:  Title:  Date: | By:  Name:  Title:  Date: |

**Exhibit A**

**CERTAIN DEFINITIONS**

“**Applicable Laws**” means all applicable laws, regulations, court orders, and other rules of any Governmental Authority.

“**Confidential Information**” means any information that is designated as confidential in writing by a Party. Confidential Information shall not include information that the receiving Party can demonstrate: (i) is, as of the time of its disclosure, or thereafter becomes, part of the public domain through a source other than the receiving Party; (ii) was known to the receiving Party as of the time of its disclosure; (iii) is independently developed by the receiving Party without use of the Confidential Information; or (iv) is subsequently learned from a third party that is not under a confidentiality obligation to the disclosing Party.

“**Governmental Authority**” means any transnational, domestic or foreign federal, state or local, governmental authority or any court, administrative agency or regulatory authority constituted or administered thereby, including any political subdivision thereof.

“**Intellectual Property Rights**” means all forms of intellectual property rights and protections including all: (i) patents and patent applications; (ii) copyrights, whether or not registered, mask works, and any other similar rights; (iii) trade secrets and other similar rights; (iv) trademarks, service marks, domain names, and other indications of origin and any and all goodwill associated therewith; (v) data and database rights; and (vi) any rights that are equivalent or similar to the foregoing.

“**Provider Authorized Users**” means a faculty member, student, staff member, or other person affiliated with Provider that has been authorized to access the Platform by UChicago.

**Exhibit B**

STATEMENT OF WORK

|  |  |  |
| --- | --- | --- |
| **Provider** | **Provider Name** |  |
| **Statement of Work** | **Number** |  |
| **Effective Dates** | **Services Agreement** |  |
| **Statement of Work** |  |

This Statement of Work is effective as the Statement of Work Effective Date identified above and is subject to the terms and conditions of the Services Agreement between Provider identified above and The University of Chicago (“**UChicago**”) effective as of the Master Services Agreement Effective Date identified above. Capitalized terms not specifically defined herein shall have the meaning set forth in the Agreement.

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| **UChicago Contact**:  Emily Bembeneck  caai@chicagobooth.edu | *Note: A UChicago Contact is being designated for contract administration purposes and is not authorized to execute amendments on behalf of UChicago*. |

1. **Description of Services: [ADD DESCRIPTION OF SERVICES]**
2. **Compensation and Payment:**

[**ADD PAYMENT AMOUNTS AND TERMS**]

1. **UChicago Responsibilities:**

[**ADD UCHICAGO RESPONSIBILITIES**]

|  |  |
| --- | --- |
| **PROVIDER** | **THE UNIVERSITY OF CHICAGO** |
| By:  Name:  Title:  Date: | By:  Name:  Title:  Date: |