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**From:** Rosenfeld, Barry  
**Sent:** Friday, February 17, 2017 9:56 AM  
**To:** Michael Cohen  
**Subject:** FW: Services Agreement - better copy - eom  
**Attachments:** Services Agreement.pdf

Michael –

Here is a better quality pdf. Perhaps use this version instead. –Barry

**Barry Rosenfeld**  
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General Counsel  
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**From:** [REDACTED]  
**Sent:** Friday, February 17, 2017 9:50 AM  
**To:** Rosenfeld, Barry  
**Subject:** Services Agreement - better copy - eom

## Services Agreement

This Agreement is entered into as of this 1st day of March, 2017 by and between Novartis International AG ("Novartis"), with an office at Novartis Campus, Lichtstrasse 35, CH-4056 Basel, Switzerland, and Essential Consultants, LLC ("Consultant"), with an office at 725 Fifth Avenue, New York, NY 10022.

1. Consultant hereby agrees to perform any and all services set forth in Exhibit A hereto (the "Services"), and to otherwise comply with the obligations set forth in Exhibit A. Consultant shall not perform any services beyond the scope of Exhibit A without the prior written approval of Novartis. Except as expressly agreed in Exhibit A, or as otherwise expressly agreed in advance in writing, Consultant shall provide the personal services of Michael D. Cohen to perform the Services. The personal services of this individual are of the essence of this Agreement.

2. Unless sooner terminated pursuant to Section 10 of this Agreement, this Agreement shall be deemed effective as of the date set forth above, and shall expire on February 28, 2018.

3. In consideration of the satisfactory performance of the Services, Novartis will pay Consultant a consulting fee of One Million Two Hundred Thousand (\$1,200,000.00) US dollars (the "Fee") which shall include VAT or similar taxes, if any. The Fee shall be paid to the Consultant at the end of each month, for the first time at the end of March 2017, by wire (instructions attached as Exhibit B) in the amount of One Hundred Thousand (\$100,000.00) US dollars and continuing in eleven (11) equal monthly installments thereafter. Novartis shall make payments against the invoice within thirty (30) days of its receipt. Novartis will reimburse Consultant for out-of-pocket expenses incurred by Consultant in performing this Agreement, provided that such expenses are reasonable and necessary to the performance of the work hereunder, and, to the extent any one expense exceeds \$2,500, have been approved in advance by Novartis. All such expenses shall be billed to Novartis at actual cost, and, must be supported by detailed expense statements and expense reports, receipts, vouchers or other supporting information as Novartis customarily may require. Novartis agrees that the Consultant shall be authorized to utilize "first class" travel and hotel arrangements.

4. Consultant shall not publish, disclose or use for any purpose other than as contemplated by this Agreement any and all information disclosed to or developed by Consultant in connection with this Agreement or with any Services performed hereunder (collectively "Information"). This obligation of non-disclosure shall not apply to the following: (i) Information at or after such time that it is or becomes publicly available through no fault of Consultant; (ii) Information that is already independently known to Consultant as shown by prior written or electronic records; (iii) Information at or after such time that it is disclosed to Consultant by a third party with the legal right to do so; (iv) Information required to be disclosed pursuant to judicial process, court order or administrative request, *provided that* Consultant shall so notify Novartis sufficiently prior to disclosing such Information as to permit Novartis to seek a protective order.

5. All information, data, writings, domain names, software, computer code, inventions and other work products, in any form whatsoever, both tangible and intangible, developed as a result of Consultant's performance of the Services (collectively, the "Works"), shall be considered works made for hire, and/or shall be the sole and exclusive property of Novartis. Novartis shall be the sole owner of all the rights to such Works in any form and in all fields of use known or hereafter existing. Notwithstanding the foregoing, intellectual property owned by or licensed to Consultant prior to the execution of this Agreement, and which is used by Consultant to develop any Works, shall remain the property of Consultant (the "Components"). Novartis agrees not to assert against Consultant and its licensees any

ownership interest in the Components. Notwithstanding the foregoing, to the extent any such Components are incorporated into the Works, Novartis shall have a non-exclusive, irrevocable, perpetual, non-transferable (except to affiliates and to other persons Novartis transfers or authorizes to use the Works), worldwide, royalty-free license to use such Components in conjunction with the Works. Consultant warrants that it has the authority to grant to Novartis the rights set forth herein, and that this Agreement and the rights granted herein do not violate any other party's rights or interests.

6. All information, data, writings, domain names, software, computer code, inventions and other work property, in any form whatsoever, both tangible and intangible, which is provided to Consultant by and/or on behalf of Novartis, or which is used by Consultant with respect to the performance of the Services, and which was owned by or licensed to Novartis prior to being provided to Consultant, shall remain the property of Novartis (the "Novartis Property"). Consultant shall have a license to use any Novartis Property supplied to it solely to the extent necessary to enable Consultant to perform the Services. Consultant shall acquire no other right, title or interest in the Novartis Property as a result of its entry into this Agreement or performance of the Services. Consultant shall return the Novartis Property to Novartis upon the expiration or termination of this Agreement.

7. Neither party will use, or authorize others to use, the name, symbols, or marks of the other party in any advertising or publicity material or make any form of representation or statement with regard to the Services which would constitute an express or implied endorsement by the other party of any commercial product or service without that other party's prior written approval.

8. Consultant agrees to indemnify, defend and save Novartis (including officers, directors, employees and agents of Novartis) harmless from and against any and all claims, suits, and liabilities (collectively, the "Claims"), to the extent such Claims arise out of or are attributable to (i) the willful misconduct of Consultant (including, but not limited to, Consultant's employees, subcontractors or agents) during the course of its performance of the Services pursuant to this Agreement; (ii) any material breach of this Agreement by Consultant; or (iii) any allegation that the Works or the Components infringe any trademark, copyright, or other third party proprietary interest (except to the extent the allegedly infringing material was provided to Consultant by Novartis, and Consultant did not act negligently or wrongfully in using such materials). In the defense or settlement of any claim under clause (iii) above, Consultant shall, at its expense, and subject to the prior written agreement of Novartis, either: (x) obtain the right to continue using the applicable intellectual property; or (y) replace or modify the applicable intellectual property so that the Works become non-infringing while giving equivalent performance.

9. Novartis shall have the right, upon reasonable notice, to review all records of Consultant related to the Services and any amounts invoiced to Novartis hereunder. Should such review disclose any overpayment by Novartis, then, at Novartis' option, Consultant shall either refund to Novartis the amount of such overpayment, or issue to Novartis a credit in the amount of such overpayment. Novartis shall pay all fees of any accountants or other personnel performing such verification unless it discloses any overstatement of amounts invoiced of more than two percent (2%), in which case Consultant shall bear all reasonable costs of the audit.

10. Should either party hereto commit a material breach of any of the terms and conditions of this Agreement, the other party may give to the party in default a written notice specifying the nature of such breach and calling upon the party in default to remedy the same within thirty (30) days from the date of receipt of such notice. If the party in default fails to remedy such breach within such thirty (30) day period, the party not in default may immediately terminate this Agreement by giving written notice to the party in default. In such

an event, (i) Novartis' obligations to make payments on obligations and amounts already appropriately incurred as of the effective date of any such termination, and (ii) Consultant's obligations under Sections 4, 5, 6, 7, 8, 9, 11, 13, and 14, shall survive and continue after the termination of this Agreement. Novartis shall have no obligation to pay any Fees for any services performed or activities undertaken in the period following the effective date of any such termination.

11. Consultant's Performance.

(a) Consultant shall perform the Services in a professional manner, in conformance with that level of care and skill ordinarily exercised by other professionals in Consultant's field, and with high ethical and moral business and personal integrity standards.

(b) Consultant shall keep Novartis fully informed of all significant activities undertaken in connection with this Agreement and the performance of the Services.

(c) Consultant warrants that Consultant is presently, and will remain, for the term of this Agreement and any extension thereof, free from any commitments that would create a conflict of interest which might impede the completion of Consultant's obligations hereunder.

(d) Consultant agrees to become familiar and comply in all respects with any and all applicable laws, rules and regulations regarding its conduct, including, but not limited to, all applicable laws, regulations and Novartis policies related to lobbying activities, to political contributions and gifts to public officials, and to anti-corruption. Consultant represents and warrants that there are no agreements, orders or other restrictions which would interfere or prevent Consultant from entering into this Agreement or performing the services and obligations contemplated hereunder. Consultant further agrees to familiarize itself and its personnel and comply with (to the extent applicable) Novartis' policies set forth in its Code of Conduct including, but not limited to, the safeguarding of confidential and proprietary information, the avoidance of any conflict of interest, the prohibition against payment of or receipt of gifts, meals, or entertainment that would violate gift laws, or other improper consideration, and/or the making of any investment which may compromise Consultant's obligations to Novartis; and in the Novartis Global Anti-Bribery Policy, as amended from time to time. Consultant agrees that it has read and understood the above mentioned Novartis' policies and guidelines. Consultant further agrees that in connection with its activities hereunder, it will not (i) buy or sell any security while in possession of material, non-public information about the issuer of such security or the market for such security, or (ii) disclose such information to any person. Consultant also agrees to comply with, and make the necessary filings required under, the applicable laws. Consultant shall inform Novartis if Consultant is required to make such lobbyist filings and shall also notify Novartis if such filing requirements are triggered for Novartis.

(e) Neither Consultant nor Consultant's partners, directors, officers, managers and employees (including Michael D. Cohen) shall, during the term of this Agreement, (i) make any political contributions or other payments, directly or indirectly, for the purpose of obtaining or retaining any type of business on behalf of Novartis; or (ii) enter into arrangements with third parties to share in any amounts paid hereunder without the prior written consent of Novartis. For purposes of this subparagraph (e), the term "political contribution" includes any payment, gift, subscription, loan, advance or deposit of money, as well as any contribution of services or facilities, if made in connection with any campaign for state or local office or for a state or local official running for federal office or in connection with a state or local party committee.

12. Novartis shall have the right to disapprove of any employee, subcontractor or sub-subcontractor retained or to be retained to assist Consultant in the performance of its obligations hereunder. Any such approval or disapproval shall not relieve Consultant of its

obligations under this Agreement. Consultant may not make use of the services of any employee, subcontractor or sub-subcontractor in the performance of the Services if Novartis has disapproved of that subcontractor or sub-subcontractor.

13. Any services Consultant may perform for Novartis under this Agreement are to be performed by Consultant in Consultant's capacity as an independent Contractor. Neither Consultant nor its employees, agents or representatives are employees of Novartis. Consultant retains the sole right to hire, discipline, evaluate and terminate its own employees and to set their hours, wages and terms and conditions of employment in accordance with law and Consultant's obligations herein. Novartis shall not withhold FICA or taxes of any kind from any payments which it owes Consultant. All income, employment and other similar taxes required to be withheld and/or paid with respect to all services provided hereunder will be timely paid by Consultant directly to the appropriate governmental agency. The employees, representatives or agents of Consultant are not entitled to and will not receive from Novartis in connection with the Services, any benefits normally provided by Novartis to its employees. Consultant agrees to defend, indemnify and hold Novartis harmless against any claim that Novartis is jointly or severally liable or obligated to Consultant's employees, agents, employees' representative, a benefit plan or a any governmental fund or entity on the basis of a statute, regulation or common law duty relating to employment.

14. This Agreement, including all exhibits and attachments hereto, represents the entire understanding of the parties with respect to the subject matter hereof. This Agreement shall not be modified except by a written agreement signed by the parties hereto. No waiver of any term, provision or condition of this Agreement whether by conduct or otherwise in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provision or condition, or of any other term, provision or condition of this Agreement. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision hereof. This Agreement shall be construed by and enforced in accordance with the laws of New York. Consultant may not assign, cede or transfer any of its rights or obligations under this Agreement without the written consent of Novartis.


**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

**NOVARTIS INTERNATIONAL AG**

**ESSENTIAL CONSULTANTS LLC**

  
By: Joseph Jimenez, CEO  
Date: February 17, 2017

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By: Michael D. Cohen  
Date: February 17, 2017

  
By: Felix R. Ehrat  
Group General Counsel  
Date: February 17, 2017

## Exhibit A

### **STATEMENT OF WORK**

This Statement of Work sets forth the Services to be performed pursuant to the agreement ("Agreement") between Novartis International AG ("Novartis") and Essential Consultants, LLC (the "Consultant"). The Agreement will be effective as of March 1, 2017 (the "Effective Date").

#### Scope of Work

The Consultant will provide consulting and advisory services to Novartis on matters that relate to the repeal and replacement of the Affordable Care Act in the US and any other issues mutually agreeable to the Consultant and Novartis.

#### Deliverables

Novartis and the Consultant will communicate regularly about all relevant matters within the Scope of Work.



**Exhibit B**  
**Wire Transfer Instructions**

Insert wire transfer instructions.