

PURCHASE ORDER TERMS AND CONDITIONS

The Purchase Order issued to the “Seller”, as specified on the Purchase Order, by NYU Langone Hospitals (“NYULH”), NYU Grossman School of Medicine (“NYUGSOM”), NYU Long Island School of Medicine (“NYU LISOM”), NYU Langone Health System (the “System”), or any entity controlled by any of them, as the case may be, (any of which being “Buyer”, as specified on the Purchase Order) and these Terms and Conditions (collectively, the “Purchase Order” or “Order”) are the exclusive terms and conditions with respect to the purchase and sale of goods, materials and equipment (“Goods”) and/or of labor or services (“Services”) specified in the Purchase Order.

1. Contract; Acceptance; Order of Precedence. Buyer shall not be bound by the Purchase Order until it is accepted by Seller, which shall be deemed to occur on the earlier of the following: (a) Seller does not object in writing to any of term or provision within two (2) business days after issuance of the Purchase Order, or (b) Seller commences performance of the Purchase Order. Upon acceptance, the Purchase Order shall constitute a binding contract between Buyer and Seller. The Purchase Order contains the complete and final agreement between Buyer and Seller and supersedes and replaces any and all prior discussions and agreements between Buyer and Seller. No additional or different terms, whether printed or otherwise, in Seller’s quotation, document or any other communication from Seller to Buyer (including the provisions of any click-wrap agreement, or similar form of agreement which may have been affirmatively accepted by Buyer’s authorized users) shall be binding on Buyer unless specifically agreed to in writing by an authorized representative from Buyer’s Supply Chain Management Department. No acceptance shall be effective which varies the terms of the Purchase Order or proposes additional terms. Any such proposals are deemed rejected.

2. Changes. Buyer may from time to time by written notice to Seller make changes in specifications, design, delivery schedules (postponements only), testing, packing or designation. If any such change causes an increase or decrease in the cost and/or time required for performance, an equitable adjustment shall be made and the Purchase Order modified accordingly. Price increases or extensions of time for delivery shall not be binding on Buyer unless approved by Buyer.

3. Termination. Buyer, in its sole discretion and with or without cause, may cancel the Purchase Order, in whole or in part, at any time upon notice to Seller without incurring liability to Seller for lost or anticipated profits, or any other costs or damages, other than the proportionate value of the purchase price for the Goods and/or Services performed or delivered prior to the effective date of termination. In addition to any other remedy provided herein, at law or equity, Buyer shall have the right to terminate or cancel an Order, and any obligation to purchase a product or service by giving thirty (30) days written notice to Seller, in the event Seller: (a) fails to comply with any condition of the Order or any related agreement, and such failure is not remedied within thirty (30) days after written notice thereof has been given to Seller; (b) becomes insolvent, makes an assignment for the benefit of creditors, suffers or permits the appointment of a receiver, trustee in bankruptcy or similar officer for all or parts of its business or assets; or (c) avails itself of or becomes subject to any bankruptcy proceeding under the laws or any jurisdiction relating to insolvency or the protection of rights of creditors. Upon receipt of a notice of termination, unless instructed otherwise by Buyer, Seller shall stop all work as directed in the notice, including placing further orders for materials, services, subcontracts, except as necessary to continue performance under any other terms of the Order (if not affected by the termination notice). Unless Buyer has requested and received a refund in respect of any undelivered product(s) or terminated Services, it shall be entitled to the delivery of all Goods and completion of all Services for which it has paid prior to the effective date of the termination. To the extent the Purchase Order covers stock Goods, Buyer’s only obligation is to pay for Goods accepted by Buyer prior to such termination. To the extent the Purchase Order covers Goods manufactured or fabricated to Buyer’s specifications, Seller shall immediately cease all performance upon receipt of the notice of termination and any claim of Seller shall be settled on the basis of reasonable costs it has incurred in the performance of the Order.

4. Essential Term; Performance Delays; Force Majeure.

(a) Time is of the essence in Seller’s performance of the Purchase Order. If Goods are not delivered or Services rendered within the time periods specified in the Purchase Order, Buyer may without any liability, agree on a new delivery date in writing or terminate all of part of the Purchase Order and/or relevant agreement for the then remaining balance thereof by notice effective upon receipt by Seller, or purchase substitute Goods or Services elsewhere and charge Seller with any loss incurred. Seller shall refund Buyer any deposit and any prepaid and unused amounts paid by Buyer for all the Goods and/or Services covered by the terminated Purchase Order and/or relevant agreement.

(b) A Force Majeure event shall not constitute default hereunder. The term “Force Majeure” shall mean any unforeseen event affecting a party’s performance without such party’s fault or negligence and which is due to causes beyond such party’s control, including, without limitation, acts of God or of public enemy, any act of government, court orders, shelter in place orders, fires, hurricane, earthquake, floods, freight embargoes, unusually severe weather, riots, civil commotion, war, insurrection, typhoon, pandemic, tidal wave, plague, quarantine, epidemic, or any act of terrorism. The party affected by the Force Majeure shall provide the other party with written notice of a delay and cause thereof and use its best efforts to continue or resume performance as soon as reasonably practicable. Notwithstanding the foregoing, in case a Force Majeure affects either party or both and lasts for more

than ten (10) days, Buyer may in its discretion, upon notice to Seller, (i) extend the time for performance of the Services or any obligations by at least a period of time equal to the duration of the Force Majeure or (ii) terminate all or part of the Purchase Order and/or the relevant agreement (effective upon Seller's receipt of the notice), without being held in breach and, in case of Seller's Force Majeure, source the relevant Goods and/or Services from another third party. In the event of termination under this section, Seller shall refund Buyer any deposit and any prepaid and unused amounts paid by Buyer for all the Good and/or Services covered by the terminated Purchase Order and/or relevant agreement (if any).

5. Inspection and Rejection. Payment for Goods and/or Services shall not constitute acceptance thereof. All Goods are subject to Buyer's inspection, at the source if deemed necessary by Buyer. Final inspection shall be at Buyer's premises unless otherwise agreed in writing. If any of the Goods and/or Services are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements of an Order, including any drawings and specifications, Buyer shall have the right, in addition to any other rights which Buyer may have under warranties or otherwise, to reject and return such goods at Seller's expense, and such goods shall not be replaced without written authorization from Buyer. Supplies in excess of quantities ordered may be returned to Seller at its expense. Failure by Buyer to inspect and/or test the Goods shall not be deemed acceptance by Buyer. Buyer's remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity.

6. Shipment; Risk of Loss. Goods shall be packed and shipped by Seller in accordance with Buyer's instructions and good commercial practice. Seller shall indicate on each package shipped, including drop ships packages, and on the packing slip the applicable Buyer's Purchase Order Number, with each packing slip listing the contents on the package. If Goods are not shipped in accordance with Buyer's direction and the instructions set forth in the Purchase Order, Seller shall grant to Buyer the right to setoff for any excess cost incurred by Buyer as a result. Shipments must be labeled appropriately for handling of fragile, electrical, chemicals, temperature sensitive, perishable, biological, radioactive or otherwise hazardous equipment or materials as required by applicable laws. Seller shall pay all related freight costs. Seller shall bear all risk of loss of or damage until the Goods are delivered as specified in the Order, inspected (without being rejected) by Buyer, and, where applicable, assembled, calibrated and/or installed by Seller.

7. Pricing. Buyer will pay Seller only for the Goods and Services and at such prices as stated in the Purchase Order. No charge for packing, insurance, handling costs or transportation will be allowed except as stated in the Purchase Order. Prices charged Buyer will not exceed Seller's lowest price and sale terms relating thereto will not be less favorable than those, in effect at the date of shipment or performance for Goods of substantially same kind, except as otherwise agreed in writing by Buyer. In the event Buyer becomes entitled to such lower prices, but has already made payment at the higher price, Seller shall promptly refund the difference in price to Buyer. Discount terms begin with the receipt of the invoice or the Goods, whichever is later. Buyer may withhold charges that are under dispute until the matter is resolved. In the event Seller requests a change to its bank account information for payments, Buyer may delay payment for any invoice up to forty-five (45) days to allow Buyer to validate the bank account information prior to the disbursement of payment. During such time Seller shall not suspend its services nor put Buyer on credit hold. If the Purchase Order involves drugs or other pharmaceutical products, Seller acknowledges that federal law constrains the prices that may be charged by suppliers for Medicaid reimbursement under 42 U.S.C. §1396r-8 or any successor statute.

8. Warranties. In addition to this and other warranties which may be prescribed by law, Seller warrants that the Goods to be delivered pursuant to the Purchase Order: (a) will at all times conform to the specifications, drawings, samples or other descriptions, oral or written, furnished to or specified by Buyer; (b) will be merchantable, of good quality, material and workmanship and free from defects of design, material or workmanship; (c) will be fit for the purposes for which intended; (d) do not infringe or misappropriate the rights of any third party or violate any law; and (e) were not produced, manufactured, priced or sold in violation of any law, including, without limitation, the Fair Labor Standards Act. Seller further warrants that Services under the Purchase Order will be performed in a diligent, workmanlike and professional manner, in accordance with applicable law and industry standards. All warranties, both express and implied, will survive delivery, inspection, acceptance and payment. In addition, Seller warrants that Seller has free, clear title to any and all Goods, free of all liens, security interests and encumbrances. Upon Buyer's notice, Seller, at its own expense, shall promptly replace or correct defects of any goods or services not conforming to the foregoing warranty. If Seller fails to promptly correct defects or replace non-conforming goods or services, Buyer may, upon notice to Seller, make such corrections at Seller's expense or cancel the Order and/or the then remaining balance without any penalty or damages.

9. Manufacturer Warranty. Seller agrees that all warranties and representations made by the manufacturer are intended to be and shall pass through to Buyer. Seller shall take all necessary steps to ensure that such warranties and representations flow through, to and for the benefit of Buyer, and that the effective date of such warranties starts the first day of use. Seller further represents that it has not and will not enter into any agreements with the manufacturer providing that the sale or use of Goods as contemplated by the Purchase Order shall in any way limit, negate or nullify such manufacturer's warranty.

10. Proprietary Rights. To the extent not automatically vested in Buyer, Seller hereby assigns to Buyer ownership of all Goods to be provided hereunder. In addition, unless otherwise specifically agreed in the Purchase Order, works to be created and/or developed and produced for Buyer and any documentation or other products and/or results of the Services to be rendered by Seller (including any associated invention, improvement, discovery or innovation made, conceived or actually reduced to practice by Seller as a result of performing the Services) (the "Work") shall be deemed "work made for hire" as that phrase is understood under

the copyright laws of the United States and shall be owned exclusively by Buyer, including all copyright, patent and other proprietary and intellectual property rights therein, and such rights are hereby conveyed to Buyer. Seller agrees that its assigns, agents, successors, and representatives will not have the right to make any claims in any way or with regard to any aspect of, the Work. Should the Work not be considered “work made for hire” under applicable law, Seller hereby sells, assigns, and transfers to Buyer, its successors and assigns, its right, title and interest in the Work, and any related registrations and copyright applications, and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and, in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all corresponding rights throughout the world. Seller agrees to execute all documents and to perform such other acts as Buyer may deem necessary to secure for it or its designee the rights herein assigned. In addition, if the Services performed by Seller result in an invention, improvement, discovery or innovation, Seller shall promptly disclose the same to Buyer in writing. Such invention, improvement, discovery or innovation and any resulting patent rights shall become the exclusive property of Buyer, and Buyer shall be the sole party entitled to the rights, title and interest in and to the invention. At Buyer’s request, Seller shall promptly deliver, execute, file and record all documentation evidencing such assignment.

11. Record Retention and Access. In the event the Purchase Order involves or relates to (a) the provision of services under Medicare and (b) Goods or Services exceeding the aggregate purchase price of \$10,000 during any 12-month period, Seller shall, in accordance with Section 952 of the Omnibus Reconciliation Act of 1980 and all amendments thereto, make available to the United States Department of Health and Human Services, the Comptroller General and their representatives (“HHS”) the Purchase Order and all other books, documents and records of Seller as are necessary to certify the nature and extent of the costs incurred by Buyer for at least four (4) years after Seller furnishes the Goods or Services specified in the Order. In addition, this provision will be contained in any agreement between Seller and any subcontractor of Goods or Services under the Purchase Order. Seller will give Buyer notice of any request made directly by HHS upon Seller.

12. Insurance. Seller will procure and maintain the following types and amounts of insurance: (a) commercial general liability insurance, written on an occurrence basis in amounts of not less than \$2,000,000 per occurrence/\$4,000,000 in the aggregate, including coverage for contractual liability, products and completed operations, personal injury, bodily injury, broad form property damage and liquor liability if the Purchase Order includes service of alcohol; (b) if Seller provides computer services in which Seller accesses the databases or networks of Buyer, cyber insurance for a minimum of \$1 million; (c) if the Purchase Order requires Seller to be on-site at Buyer’s facilities, (i) statutory worker’s compensation insurance and employer’s liability insurance in amounts of not less than \$1,000,000 for each accident (unless Seller is a sole proprietorship, in which event such insurance shall not be required), and (ii) automobile liability insurance covering all owned, non-owned and hired vehicles for not less than \$2,000,000 per occurrence; and (d) professional liability (errors and omissions) insurance with limits of not less than \$2 million if the Purchase Order covers the provision of professional services. Seller shall submit certificates of insurance evidencing general liability coverage (and, to the extent applicable, automobile liability) naming the Buyer as an additional insured, to (1) Buyer’s Director of Insurance at One Park Avenue, 4th floor, New York, NY 10016 if Buyer is NYULH, the System, or another entity (other than NYUGSOM), or (2) Buyer’s Director of Insurance at 105 East 17th Street, 4th Floor New York, NY 10003, insurance.vendor.cert@nyu.edu if Buyer is NYUGSOM or (3) to redfinsurance@nyulangone.org if the Order is issued by Buyer’s Real Estate Development & Facilities (RED+F). The policies shall provide that Buyer is not responsible for payment of premium for additional insured status. To the extent permitted by applicable law, such coverage shall: (A) be primary and non-contributory to any other insurance carried by Buyer; (B) contain standard cross-liability provisions as to separation of insureds; and (C) not require contribution before any excess or umbrella liability coverage will apply. All insurance policies specified herein will be issued by insurers with a minimum rating from A.M. Best of A-, and a minimum financial rating of VII. If any required insurance is covered by a claims-made policy, Seller will either maintain the policy for at least three (3) years following completion of performance of the Order or purchase tail coverage for the remaining period. Seller will endeavor to give Buyer at least 30 days’ notice of cancellation or any material change to such insurance. If the Order is issued by Buyer’s Real Estate Development & Facilities (RED+F), each year Seller will be required to submit a renewal certificate evidencing the required insurance coverage. Seller will receive a request from a third-party vendor on behalf of NYULH for a renewal certificate with instructions on how to submit the updated information. Where work is to be performed in a property not owned by the Buyer or one of the Buyer’s affiliates, the Seller shall obtain a copy of and fully comply with the property owner’s insurance requirements and name the property owner and others as specified by the property owner as additional insureds in connection with the performance of the Purchase Order.

13. Indemnification. To the fullest extent permitted by law, Seller will defend, indemnify, and hold harmless Buyer, its affiliated entities, trustees, directors, officers, employees, agents, representatives, successors and assigns (each, an “Indemnified Party”) from and against any and all inter-party and/or third party losses, claims, allegations, demands, suits, proceedings, investigations, prosecutions, actions, causes of action, liabilities, obligations, costs, expenses, assessments, settlements, judgments, interest and penalties (including legal expenses and reasonable attorneys’ fees), damages or injuries of any kind or nature whatsoever (including, without limitation, damage, loss or destruction of real or personal property, personal or bodily injury or death to Buyer and all other persons) caused by, resulting from, arising out of, occurring in connection with, or relating to, directly or indirectly to, (a) any act or omission of Seller, its employees, subcontractors, agents or representatives, in the performance of the Purchase Order, (b) the allegation that the Goods or Services provided by Seller or Buyer’s use thereof infringes or misappropriates the copyright, patent

or other proprietary or intellectual property right of any third party, or that Seller has violated any applicable law or its agreements with any third party, (c) any breach or alleged breach of any provision of the Order or the Terms and Conditions of the Purchase Order, including a breach of any representations or warranties of Seller made herein, and (d) a claim, that the Goods or Services provided by Seller are defective or that Seller failed to comply with applicable regulatory requirements. Buyer will notify Seller in writing of a claim for indemnification and at Seller's request shall give Seller control of the defense of such suit, insofar as Buyer has the authority to do so, and information and assistance for the same, all at Seller's expense. In the event Seller fails to prosecute and conduct the defense diligently and in good faith, Buyer may take any and all actions at Seller's expense that it deems necessary or desirable to preserve its rights with respect to such claim, including the right (but not the obligation) to engage counsel and defend, compromise or settle such claim, without waiving or otherwise limiting its rights under this section. Seller will consult with Buyer and at all times keep Buyer informed of all material matters relating to its indemnification of Buyer, including compromise or settlement of any claim. Buyer will be entitled to participate in any litigation and/or negotiation relating to any compromise or settlement with counsel of its own choice. Seller will not agree to any compromise or settlement of any third-party claim, or permit a default or consent to entry of any judgment in respect of such claim, without Buyer's prior written consent. For purposes of this section, "Seller" means each of Seller and any subcontractor engaged by Seller in connection with the Goods and Services, and their respective employees, officers, directors, agents, servants and representatives. References to "Buyer" in this section includes NYULH, NYUGSOM, NYU LISOM, the System, and any other entity listed as the "Buyer" on the Purchase Order. The provisions of this section will survive termination of the Purchase Order.

14. Limitation of Liability: In no event will Buyer be liable to Seller or any third party, in contract, tort or otherwise, for any loss of profits or business, or any special, incidental, indirect, exemplary, punitive or consequential damages, arising from or as a result of the Order or any agreement between the parties relating to the products, services or deliverables Seller provides, even if Buyer has been advised of the possibility of such damages.

15. Compliance with Laws. Seller will comply with all applicable international, foreign, federal, state and local laws, rules and regulations, including without limitation, those pertaining to privacy, sexual harassment (including any required employees sexual harassment training), and confidentiality and prohibition of discrimination based upon gender, gender identity, religion, race, creed, color, national origin, ancestry, military status, veteran's status, sexual orientation, marital status, age, genetic information, disability or status as a victim of domestic violence.

Furthermore, Seller represents and warrants that (i) Seller is not currently in violation of and will not violate U.S. export control and economic sanctions laws, including , but not limited to, the U.S. Department of Commerce's Export Administration Regulations ("EAR"), the economic sanctions programs administered by the U.S. Department of Treasury, the International Traffic in Arms Regulation ("ITAR") administered by the U.S. Department of State, nor take any other action that would cause Buyer to be in violation of US export control and economic sanctions laws; nor take any other action that would cause Buyer to be in violation of U.S. export control and economic sanctions laws. Seller will obtain and maintain, and furnish to Buyer upon request, any and all permits, licenses, approvals, certificate and other documents required by Buyer or otherwise required by applicable law. Seller is not an entity organized under the laws of Cuba, Iran, North Korea, Syria, or Sudan, and is not an agency or representative of the government of Cuba, Iran, North Korea, Syria, or Sudan, and none of Seller's officers, directors, managers, supervisory board members, partners or shareholders is an agent or representative of the government of Cuba, Iran, North Korea, Syria, or Sudan or a person who is ordinarily resident in Cuba, Iran, North Korea, Syria or Sudan. No Goods provided hereunder shall be of Cuban, Iranian, North Korean, Syrian, or Sudanese origin, and no Services will be provided by any person who is an agent or representative of the government of Cuba, Iran, North Korea, Syria, or Sudan or ordinarily a resident of Cuba, North Korea, Iran, Syria or Sudan. Seller will not deposit funds it receives from Buyer into a Cuban, Iranian, North Korean, Syrian, or Sudanese bank and acknowledges that Buyer shall not be responsible for the loss of any funds deposited in violation of this provision. Neither Seller, Seller's officers, directors, managers, supervisory board members, partners or shareholders, or any party providing any Goods and/or Services to Seller for provision to Buyer under this Purchase Order are identified on any list of restricted parties maintained by the United States government or other applicable government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), the Denied Persons List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS") or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls, unless expressly authorized in writing by Buyer; (vii) all items (hardware, software, or technology) to be provided to Buyer under this Purchase Order are not controlled under the ITAR, listed in an Export Control Classification Number ("ECCN") entry on the EAR, or controlled under a foreign equivalent law or regulation, or if the foregoing is not correct, Seller will provide in writing to Buyer the export classification of such item(s) (i.e., the proper ECCN if the item is controlled under the EAR, the proper United States Munitions List Category if the item is controlled under the ITAR, or the foreign equivalent) before this Purchase Order is deemed finalized and will notify Buyer in writing of any future changes to the export classification information of the item(s).

Seller is subject to all U.S. Executive Orders and laws prohibiting transactions with, and the provision of resources, and support to, individuals and organizations associated with terrorism. Hiring individuals or contracting with organizations associated with terrorism as identified by the federal government is strictly prohibited under the terms of the Purchase Order. Seller may not charge under this Order any Goods which have a source/origin from any restricted countries, as designated by the US State Department.

If Buyer is NYULH, Buyer remains responsible for ensuring that any health care service provided in connection with the Purchase Order comply with all applicable federal, state and local laws, statutes, rules and regulations, provided, however, that nothing in this provision shall relieve Seller from its duties and obligations hereunder.

16. Anti-Bribery and Corruption. Seller, including any of its principals, owners, directors, officers, employees, consultants, affiliates, suppliers, agents, and subcontractors, in connection with any Goods and/or Services (a) will comply with all laws applicable to the parties under the Agreement relating to bribery and/or corruption (“Anti-Corruption Laws”); (b) will not directly or indirectly offer, give, authorize, solicit, or accept the giving of money or anything else of value to or from any person, whether a government official or private party, to obtain an improper advantage for Buyer, Seller, or any third party, or secure the improper performance of that person’s function or misuse of that person’s position; (c) will not directly or indirectly offer, give or authorize the giving of money or anything else of value to any government official in his or her personal capacity, to facilitate or expedite government action or approvals; (d) will not do, or omit to do, any act that will cause Buyer to be in breach of the Anti-Corruption Laws; (e) will not directly or indirectly offer or give to any Buyer’s employee or contractor any gift, gratuity, service, favor, or anything else of value to influence or reward that employee or contractor in connection with this Purchase Order; (f) will not accept, and will promptly report to Buyer, any request or demand for any undue financial or other advantage of any kind received by Seller in connection with the performance of this Purchase Order.

Furthermore, Seller represents and warrants that it, and its principals, owners, directors, or officers: (i) have, with regard to any past action or omission related to this Purchase Order, acted consistently with each requirement set forth above, (ii) have not been convicted of any offense involving bribery, corruption, fraud, or dishonesty; (iii) have not been or are not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative, or regulatory body regarding any offense or alleged offense under the Anti-Corruption Laws; and (iv) have not been, or are not listed by any government agency as being, debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programs or government contracts. Seller will promptly notify Buyer if it or any of its principals owners, directors, or officers become subject to (i), (ii), (iii) or (iv) above during the course of Buyer performance under this Purchase Order.

17. Buyer’s Policies and On-Site Services. If Seller provides services at one of Buyer’s sites, Seller shall comply, and cause its employees, agents and subcontractors to comply, with all of Buyer’s policies that are brought to Seller’s attention from time to time, including Buyer’s policies relating to health and safety, no smoking laws and those which can be found at: <http://nyulangone.org/vendor-supplier-information/information-for-prospective-existing-suppliers>. In addition, Seller must register with Vendormate to conduct business on the Buyer’s campuses at <https://hs1060.vendormate.com> and cause its personnel and representatives comply with the health screening prerequisites set forth therein. Seller agrees to employ only competent and skilled personnel legally authorized to work in the United States, with satisfactory work records, who have been adequately trained in applicable safety procedures and provided with all necessary safety equipment to perform the Services and to compensate them in accordance with legally required wages and applicable overtime. Seller will immediately remove from all facilities and replace any personnel who are unsatisfactory to Buyer for any reason

18. No Exclusion from Healthcare Programs. Seller represents that neither Seller nor any parent or affiliate of Seller has been suspended, disqualified, debarred or otherwise excluded from or declared ineligible to bid or perform work for any governmental agency or otherwise prohibited from participating in Medicare, Medicaid or any other federal or state program (collectively, “Program”), and to the best of its knowledge, there are no pending civil anti-trust or criminal investigations or pending or threatened debarments or exclusions of Seller from any Program. Seller covenants to notify Buyer as soon as practicable if Seller is suspended, disqualified, debarred, excluded or declared ineligible from participation in a Program, and to refrain from employing or contracting for purposes of providing goods or services to Buyer with any individual or entity known by Seller to be sanctioned, suspended, disqualified, debarred, excluded or declared ineligible from participation in any Program. Seller shall defend, indemnify and hold Buyer harmless from any loss, cost, fine, penalty or expense incurred by Buyer as a result of or arising from a breach of this Section.

19. Discount and Price Reduction Reporting Obligations. To the extent the Order includes any discount or reduction in price: (a) Seller shall fully and accurately report such discount or reduction in price to Buyer on its invoice; provided, however, that where the value of the discount or reduction in price is not known at the time of sale, Seller shall report the existence of a discount program on its invoice and, when the value of the discount becomes known, provide Buyer with documentation of the calculation of the discount, including a description of the Goods and Services to which the discount is applied; and (b) Buyer will fully and accurately report the discount on the appropriate cost reports. This provision is intended to implement the requirements of 42 CFR §1001.952(h), as amended from time to time.

20. Minority and Women Owned Business Enterprises. Seller shall comply with all policies and programs Buyer may institute from time to time with respect to small businesses and certified minority and women owned businesses (MWBs), including taking affirmative steps to encourage, promote and utilize MWBs whenever possible. Buyer, in its discretion, may make an award and/or negotiate another agreement with a MWBE in addition to any sole- or multi-source award.

21. Product Recall Notification. If there is a product recall affecting any Goods or Seller believes it may be necessary to conduct a recall or other similar action with respect to the Goods (a “Recall”), Seller shall promptly send a written notification to the

National Recall Alert Center (“NRAC”) and contact the applicable department of the Buyer using such Goods of such Recall. In addition, Seller shall: (a) consult with Buyer of how best to: (i) proceed, including without limitation, provide instructions for disposal and replacement of the affected Good(s), and (ii) comply with any additional requirements set forth by the U.S. Food & Drug Administration (“FDA”); (b) provide every assistance possible to retrieve/locate any used and or un-used affected Recall Goods and if available, provide recommended substitution or replacement goods to Buyer at no additional charge; and (c) reimburse Buyer for its reasonable and actual costs incurred in connection with any action taken in response to a Recall, as long as its actions are consistent with the recommendations issued by Seller and the FDA as part of the Recall.

22. Buyer Tax-Exempt. No New York sales and use tax or federal excise tax shall be included in any invoice. The Goods and Services covered by the Purchase Order are exempt from such taxes. Seller will not charge Buyer for any taxes in connection with the Purchase Order to the extent permitted by law. Buyer will supply its tax exempt number and/or a copy of its exemption certificate(s) to Seller upon request from Seller.

23. Governing Law. The laws of the State of New York govern all matters arising under or relating to the Purchase Order without regard to principles of conflicts of law or choice of law that would cause the laws of any other jurisdiction to be applied. The parties consent to the exclusive jurisdiction of the courts of New York or the federal district court sitting in New York City to resolve any controversy or claim arising out of or relating to the Purchase Order, and waive the right to a trial by jury.

24. Assignment; Subcontractors. Neither the Purchase Order nor any interest under it, except the claims for monies due or to become due under the Purchase Order, shall be assigned by Seller without Buyer’s express prior written consent. Any assignment without such consent will be null and void. Buyer reserves the right to make direct settlements and/or adjustments in price(s) with Seller, notwithstanding any assignment of claims for monies due or to become due hereunder. Seller hereby assigns to Buyer any and all of Seller’s state and federal antitrust claims and causes of action that relate to the Goods or Services specified in the Purchase Order. In the event Seller uses lower-tier subcontractors for any part of the Purchase Order, Seller will remain primarily responsible and Seller shall flow down all applicable clauses of this Purchase Order to such lower-tier subcontractors.

25. United States Government Funding. If the Order involves the use of funds from a Federal government grant, contract, or subcontract, Seller is required to comply with all applicable Federal funding requirements as if fully set forth herein, including but not limited to clauses 26 through 33 below from the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”) at 2 CFR §200.326, Appendix II, and 2 CFR §200 (such clauses in the Uniform Guidance are incorporated into and form a part of the terms and conditions of this order) and, when funds are used from Federal government contracts, the provisions of **Attachment A** and incorporated as if set forth fully herein. Seller shall comply with the Public Policy Requirements applicable to contractors providing routine goods and/or services set forth in HHS Grants Policy Statement, available at <https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>, and the NIH Grants Policy Statement, available at <http://grants.nih.gov/grants/policy/nihgps/index.htm>. Pursuant to 41 U.S.C. §4712, if the Order exceeds \$150,000, Seller agrees that (a) the Order and Seller’s employees working on the Order will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. §4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908, (b) Seller shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. §4712, as described in section 3.908 of the Federal Acquisition Regulation, and (c) Seller shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

26. Non-Discrimination. In the provision of the Order, Seller shall comply with all applicable laws prohibiting discrimination against any person because of race, color, national origin, age, disability, or other class protected by applicable laws and regulations. If the Order involves the use of funds from a Federal government grant, contract, or subcontract, Seller shall comply with the provisions of 41 CFR §60-1.4(a) (“Equal Opportunity Clause,” Section 202 of Executive Order 11246 [1965], as amended by E.O. 11375 (1967); (b) 41 CFR §60-250.5(a) (“Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, Recently Separated Veterans, and Other Protected Veterans”), 41 CFR §60-741.5(a) (“Equal Opportunity for Workers with Disabilities”) and 29 CFR, Part 470 (Department of Labor, “Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees”).

27. Copeland “Anti-Kickback” Act (18 U.S.C. §874 and 40 U.S.C. §3145). If the Order involves the use of funds from a Federal government grant, contract, or subcontract, and is in excess of \$2,000 and pertains to construction or repair, Seller shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. §874 and 40 U.S.C. §3145) as supplemented in Department of Labor regulations (29 CFR Part 3 – “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part By Loans or Grants from the United States”). The Act provides in part that Seller shall be prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which it is otherwise entitled.

28. Davis-Bacon Act. If the Order involves the use of funds from a Federal government grant, contract, or subcontract, and entails prime construction contracts in excess of \$2,000, and further, if required by Federal program legislation, Seller shall comply with the Davis-Bacon Act (40 U.S.C. §§3141-314-3148) as supplemented by Department of Labor regulations (29 CFR Part 5 – “Labor

Standards Provisions Applicable to Contracts Covering Financed and Assisted Construction”). Under this Act, Seller is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Seller shall be required to pay wages not less than once a week.

29. Contract Work Hours and Safety Standards Act (40 U.S.C. §3701-3708). If the Order involves the use of funds from a Federal government grant, contract, or subcontract, and entails a contract in excess of \$100,000 that involve the employment of mechanics or laborers, Seller shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §3702 [Work Hours] and §3704 [Health and Safety Standards in Building Trades and Construction Agency]), as supplemented by Department of Labor regulations (29 CFR Part 5- “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

30. Clean Air Act (42 U.S.C §7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.) as amended. If the Order involves the use of funds from a Federal government grant, contract, or subcontract, and entails a contract or grant in excess of \$150,000, Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC §7401-7671q.) and the Federal Water Pollution Control Act as amended (33 USC §1251 - 1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

31. Energy Policy and Conservation Act (42 U.S.C. §6201). If the Order involves the use of funds from a Federal government grant, contract, or subcontract, Seller shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).

32. Byrd Anti-Lobbying Amendment (31 U.S.C. §1352). If the Order involves the use of funds from a Federal government grant, contract, or subcontract, and entails a contract in excess of \$100,000. Seller shall comply the provisions of 31 U.S.C. §1352 (“Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions”). If applicable, Seller must sign and submit to Buyer the certification found at 44 CFR Part 18, Appendix A, “Certification Regarding Lobbying.”

33. Federal Emergency Management Agency (FEMA) Funding. If the Order is funded in part or in whole by FEMA financial assistance, Seller will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives. For any Order funded by FEMA, the Federal Government is not a party to the Purchase Order and is not subject to any obligations or liabilities to the Buyer, Seller, or any other party pertaining to any matter resulting from the contract.

34. HIPAA. In the event the Purchase Order involves a Service or Goods whereby Seller will or might receive Protected Health Information (as defined under the Health Insurance Portability and Accountability Act of 1996 and the regulations and official guidance promulgated thereunder), Seller will, at Buyer’s request, execute a Business Associate Agreement in the form provided by Buyer. In addition, Seller agrees to immediately notify Buyer if Seller anticipates it will have access to Protected Health Information and, at Buyer’s request, enter into such Business Associate Agreement.

35. Data Protection.

(a) Processing of Personal Data. For the purposes of the Purchase Order, “Personal Data” shall mean any information relating to a specific natural person who can be identified, directly or indirectly, such as by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. Buyer and Seller shall each comply with the Data Protection Laws, as modified from time to time. To the extent that Seller is processing Personal Data on behalf of Buyer, Seller shall: (i) implement and document appropriate physical, technical and organizational measures that are no less rigorous than accepted industry practices to protect Personal Data against accidental or unlawful destruction, alteration, and unauthorized disclosure or access; (ii) maintain and materially comply with a comprehensive written privacy and information security program designed to protect Personal Data against reasonably foreseeable risks of unauthorized processing, including policies and procedures demonstrating that Personal Data will be used and disclosed only as provided in this Purchase Order; (iii) use and process the Personal Data solely for the purpose of performing its obligations under the Purchase Order; (iv) process the Personal Data in accordance with any instructions which may be provided by Buyer; (v) notify Buyer promptly, and in all cases within seventy-two (72) hours, of any actual or suspected accidental or unlawful destruction, loss, alteration, unauthorized disclosure or acquisition of, or access to, Personal Data (each, a “Security Incident”); (vi) not transfer or permit the transfer of any of the Personal Data across international borders without explicit written consent of Buyer and, where applicable, a legally complaint transfer mechanism and (vii) make arrangements to ensure that back-up records of the current Personal Data are maintained such that Personal Data can be accessed if there is any corruption or loss of the Personal Data. Should the Seller no longer need any of the Personal Data for the performance of the Services it shall return that Personal Data (and any copies of it) to Buyer or at the request of Buyer shall destroy the Personal Data.

(b) Seller agrees that the technical, organizational, and physical controls to protect Personal Data will include, where appropriate: (i) the pseudonymization and encryption of Personal Data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability and access to Personal Data in a timely

manner in the event of a physical or technical incident; (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing. In assessing the appropriate level of security, Seller shall take account of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

(c) Seller shall assist Buyer in taking any steps necessary to ensure that Buyer is able to comply with its obligations under applicable Data Protection Laws with respect to Seller's processing activities.

(d) In the event of a Security Incident, Buyer will decide on the basis of all available information if the Security Incident will require notification to affected individuals or government authorities as a matter of legal obligation or prudence. Seller shall reimburse Buyer for all reasonable costs associated therewith. Seller agrees to assist and fully cooperate with any internal investigation or external investigation by third parties. Seller shall not disclose any information related to a suspected Security Incident to any third party without Buyer's prior written approval, except that Seller may retain a third party subject to obligations of confidentiality and non-disclosure to investigate or mitigate such Security Incident.

(e) In the event Seller receives a request from a data subject to access, amend, delete, or otherwise exercise data subject rights under Data Protection Laws with respect to Personal Data processed in connection with this Agreement, Seller agrees to promptly, and in no event later than three (3) days, notify Buyer and follow instructions by Buyer, subject to requirements of Data Protection Laws.

(f) Seller agrees that any sub-processing agreements shall be in writing and shall require the prior written approval of Buyer, and all such agreements shall require sub-processors to: (i) comply with the terms of this Purchase Order as if such sub-processor were a party hereto; (ii) be properly trained on how to handle Personal Data; and (iii) comply with applicable Buyer policies and procedures.

(g) Seller shall be responsible for any noncompliance with the terms of this Agreement by any sub-processor, which noncompliance will constitute a breach as if committed directly by Seller.

(h) Seller agrees that its obligations under clause 38 below fully apply with respect to Personal Data.

(i) Throughout the term of this Purchase Order and for a period of three (3) years after final payment, or longer if required by law, Buyer, at its own expense, shall be entitled to perform directly or by an auditor of its choosing, during normal business hours and upon reasonable notice, an on-site audit of all records of Seller necessary to permit Buyer to verify Seller's compliance with the terms of Data Protection Laws and this Purchase Order. Seller grants Buyer permission to view and/or copy any documents, records, and other information of Seller which relate to this Purchase Order and to interview Seller's staff and agents in connection with the audit. Seller agrees to provide Buyer with adequate and appropriate workspace for conducting the audit. Seller shall provide any other information as required to demonstrate Buyer's compliance with Data Protection Laws. If Buyer, in its sole discretion, determines that an on-site audit is not necessary, Seller agrees to complete, within thirty (30) days of receipt, an audit questionnaire provided by Buyer. Any overcharges discovered during the audit shall be paid within thirty (30) days of Seller's receipt of Buyer's written notification of audit findings.

36. Payment Card Industry Data Security Standards. If Seller will be providing credit card processing services for or on behalf of Buyer, Seller agrees to be bound by the provisions of Attachment B attached hereto and incorporated herein as if set forth fully herein.

37. Student Records. To the extent that Seller receives or otherwise has access to student-related records of Buyer and personally identifiable information contained in such records (collectively, "Student Records"), Seller agrees to maintain such Student Records in accordance with the requirements of the Family Educational Rights and Privacy Act, 20 USC 1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (collectively "FERPA") and other applicable laws and accreditation standards applicable to Student Records. Without limiting the foregoing, Seller agrees that (i) it is subject to the requirements of 34 CFR pt. 99.33(a) governing the use and redisclosure of Student Records; (ii) it shall not maintain, use, disclose, or allow access to Student Records except as permitted by this Purchaser Order or as otherwise authorized by Seller; and (iii) to the extent that Buyer discloses Student Records to Seller under this Purchase Order, Seller shall use and shall have access to the information only for the purposes for which disclosure is made. Further, Seller agrees that to the extent it rediscloses any Student Records to a subcontractor or other party (which it shall do only if permitted by law and this Agreement), it shall require such subcontractor or third party to comply with Seller's obligations under this Section and Seller shall at all times remain primarily liable for performance of all such obligations. Seller acknowledges that it has reviewed Buyer's FERPA Guidelines, which are available at www.nyu.edu/apr/ferpa.htm.

38. Publicity. Seller shall not use the name, logo, insignia, symbol or trademark of NYU Langone Hospitals, NYU Langone Health, New York University (or NYU), NYU Grossman School of Medicine, NYU Winthrop Hospital, NYU Long Island School of Medicine, or NYU Langone Medical Center, its faculties or departments or any variations or combinations thereto or the name

of any Buyer personnel in any advertising or for any commercial or promotional purpose, without the prior written consent of Buyer, provided, Seller may include NYU Langone Health on its standard client list.

39. Remedies and Severability. No remedy herein provided shall be deemed exclusive of any other remedy allowed by law. No waiver of a breach of any provision of the Purchase Order shall constitute a waiver of any other breach, or of such provision. If any provision of the Order is for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of the Order; and the Order will be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Order.

40. Confidential Information. Seller understands that all information concerning Buyer, whether written or oral, which is communicated to Seller by any person working for Buyer in connection with the work specified in the Order, and all information which Seller generates as a result of Services performed for Buyer, is proprietary and confidential to Buyer (“Confidential Information”). Seller shall not, without the prior written consent of Buyer, use Buyer’s Confidential Information for any purpose other than carrying out the scope of Services under the Order or disclose Buyer’s Confidential Information except as necessary to fulfill Seller’s obligations under the Order. Seller shall return any and all of Buyer’s Confidential Information to Buyer upon its request or upon any termination or expiration of the Order.

41. Deficit Reduction Act. Seller shall comply with Buyer’s policies and procedures related to detection and prevention of fraud, waste and abuse, including but not limited to those policies required by the Federal Deficit Reduction Act of 2005, such as those posted and periodically updated at <http://nyulangone.org/policies-disclaimers/general-compliance>. These policies provide information about state and federal False Claims Acts and other applicable laws, associated penalties, and the whistleblower protections under such laws and policies. Seller will report any compliance concerns to Buyer’s Office of Internal Audit, Compliance and Enterprise Risk Management using one of the contact methods at the same website, which permits anonymous reporting.

ATTACHMENT A: FEDERAL GOVERNMENT CONTRACT PROVISIONS

“Flow-Down” Clauses Applicable to Purchase Orders Involving Funds from a Federal Government Contract. If the Purchase Order involves funds from a Federal government contract, or funds from a subcontract at any tier relating to a Federal government contract, the following clauses from the Federal Acquisition Regulation (“FAR”) and the Defense Federal Acquisition Regulation Supplement (“DFARS”) are incorporated into the Order by reference where applicable and form a part of the terms and conditions of the Order. The full text of the FAR clauses may be found at <https://www.acquisition.gov/browse/index/far> and the full text of DFARS clauses may be found at <https://www.acquisition.gov/dfars>. Seller agrees to flow down all applicable FAR and DFARS clauses to lower-tier subcontractors.

Where necessary to make the language of the FAR and DFARS clauses applicable to the Order, the term “contractor” shall mean “Seller,” the term “contract” or “subcontract” shall mean “Order” and the terms, “government,” “contracting officer,” and equivalent terms and phrases shall mean “Buyer.”

a. Clauses Applicable to Purchases of Commercial Items.

The following clauses apply to an Order involving use of funds from a Federal government contract, or funds from a subcontract at any tier relating to a Federal government contract, to purchase “commercial items,” a term defined at FAR 52.202-1. In general, a “commercial item” is a product or service that is available to the public in the commercial marketplace. Only the following clauses are required for purchases of “commercial items;” however, Buyer may choose to flow down a minimum number of additional clauses when necessary to satisfy Buyer’s contractual obligations.

Clauses Applicable Regardless of Dollar Value:

- FAR 52.202-1 Definitions (Nov 2013)
- FAR 52.222-21 Prohibition of Segregated Facilities (Apr 2015)
- FAR 52-222-26 Equal Opportunity (Sept 2016)
- FAR 52.222-37 Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212)
- FAR 52.222-50 Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627) FAR 52.244-6 Subcontracts for Commercial Items (Nov 2017)
- DFARS 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (Jun 2013)

Clauses Applicable Under Certain Conditions:

- FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)(applies only if subcontract exceeds \$5,500,000 and has a performance period of more than 120 days; all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer).
- FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (if the subcontract is funded under the American Recovery and Investment Act)
- FAR 52.219-8 Utilization of Small Business Concerns (Nov 2016) ((15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.)
- FAR 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17.
- FAR 52.222-35 Equal Opportunity for Veterans (Oct 2015)(contracts of \$150,000 or more)
- FAR 52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014) (contracts of \$15,000 or more)
- FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40
- FAR 52.222-41 Service Contract Labor Standards (May 2014)(41 U.S.C. chapter 67)(applicable if subject to the Service Contract Labor Standards statute)
- FAR 52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (May 2014)
- FAR 52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services- Requirements (May 2014)
- FAR 52.222-55 Minimum Wages Under Executive Order 13658 (Dec 2015)(E.O. 13658)(applicable if subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States)
- FAR 52.222-54 Employment Eligibility Verification (Oct 2015)(Executive Order 12989) (applies to subcontracts for commercial or noncommercial services (except for commercial services that are part of the purchase of a commercially available off-the-shelf (“COTS”)) item (or an item that would be a COTS item, but for minor

ATTACHMENT A: FEDERAL GOVERNMENT CONTRACT PROVISIONS

- modifications), performed by the COTS provider, and are normally provided for that COTS item) or subcontracts for construction; and that have a value of over \$3,500 and includes work performed in the United States)
- FAR 52.225-26 Contractors Performing Private Security Functions Outside the United States (Oct 201) (applies only to subcontracts performed in contingency operations (DoD only), combat operations or other significant military operations upon agreement by the Secretary of State)
 - FAR 52.226-6 Promoting Excess Food Donation to Nonprofit Organizations (May 2014)(applies only to contracts, task orders, delivery orders, purchase orders, and other similar instruments greater than \$25,000 with its subcontractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States)
 - FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Dec 2013) (applies only to subcontracts with small business concerns)
 - FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64
 - DFARS 252.211-7003 Item Identification and Valuation (Mar 2016) (applies when subcontractor provides items for which a unique item identification is required)
 - DFARS 252.219-7004 Small Business Subcontracting Plan (Test Program) (Apr 2018) (applies to contracts that offer subcontracting possibilities, that are expected to exceed \$700,000 (\$1.5 million for construction of any public facility), and are required to include FAR 52.219-8, Utilization of Small Business Concerns)
 - DFARS 252.223-7008 Prohibition on Hexavalent Chromium (Jun 2013) (applies to all subcontracts, including subcontracts for commercial items, that are for supplies, maintenance and repair services, or construction materials)
 - DFARS 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (Oct 2014) (applies to all subcontracts for items containing specialty metals to the extent necessary to ensure compliance of end products)
 - DFARS 252.225-7013 Duty-Free Entry (May 2016) (applies to subcontracts for items from a qualifying country supplied to the Government as part of an end product or of another component, or to subcontracts for nonqualifying country components for which the duty is expected to exceed \$200 per unit)
 - DFARS 252.227-7015 Technical Data – Commercial Items (Feb 2014) (applies when any technical data related to commercial items developed in any part at private expense will be obtained from the subcontractor for delivery to the Government)
 - DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (Sep 2016) (applies to subcontracts requiring the delivery of technical data)
 - DFARS 252.229-7011 Reporting of Foreign Taxes – U.S. Assistance Programs (Sep 2005) (applies to subcontracts for supplies exceeding \$500)
 - DFARS 252.235-7002 Animal Welfare (Dec 2014) (applies to subcontracts involving research of live vertebrate animals) DFARS 252.235-7004 Protection of Human Subjects (Jul 2009) (applies to subcontracts involving human subject research, but does not apply to the use of cadaver materials)
 - DFARS 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (Jun 2013) (applies to any subcontract that involves the acquisition of steel as a construction material)
 - DFARS 252.246-7003 Notification of Potential Safety Issues (Jun 2013) (applies to subcontracts for critical safety item parts; systems and subsystems, assemblies, and subassemblies integral to a system; or repair, maintenance, logistics support or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system)
 - DFARS 252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (Jun 2013) (applies to all subcontracts for commercial items, with motor carriers, brokers, or freight forwarders)
 - DFARS 252.247-7023 Transportation of Supplies by Sea (Apr 2014) (applies to commercial item contracts where the supplier has not added value to the goods, or is shipping items in support of U.S. military contingency operations, or is providing commissary or exchange cargoes)
 - DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (Mar 2000) (applies to commercial item contracts where the Supplier has not added value to the goods, or is shipping items in support of U.S. military contingency operations, or is providing commissary or exchange cargoes)

b. Clauses Applicable to Purchases of Noncommercial Items

The following clauses apply to an Order involving use of funds from a Federal government contract, or funds from a subcontract at any tier relating to a Federal government contract, to purchase items that are not “commercial items” as defined above. In general, a “commercial item” is a product or service that is available to the public in the commercial marketplace. Only the following clauses are required for purchases of “commercial items”; however, Buyer may choose to flow down a minimum number of additional clauses when necessary to satisfy Buyer’s contractual obligations.

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Clauses Applicable Regardless of Dollar Value:

- FAR 52.202-1 Definitions (Nov 2013)
- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006)
- FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sep 2007)
- FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014)
- FAR 52.204-2 Security Requirements (Aug 1996) (applies when the subcontract or Order involves access to information classified “Confidential,” “Secret, or “Top Secret”).
- FAR 52.208-8 Required Sources for Helium and Helium Usage Data (Apr 2014)
- FAR 52.215-15 Pension Adjustments and Asset Reversions (Oct 2010) (applies when it is anticipated that the subcontract or Order will require either the submission of cost or pricing data OR preaward or postaward cost determinations subject to FAR Part 31)
- FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (July 2005) (applies when it is anticipated that the subcontract or Order will require either the submission of cost or pricing data OR preaward or postaward cost determinations subject to FAR Part 31)
- FAR 52.215-19 Notification of Ownership Changes (Oct 1997) (applies when it is anticipated that the subcontract or Order will require either the submission of cost or pricing data OR preaward or postaward cost determinations subject to FAR subpart 31)
- FAR 52.222-21 Prohibition of Segregated Facilities (Apr 2015)
- FAR 52.222-26 Equal Opportunity (Sept 2016)
- FAR 52.222-41 Service Contract Labor Standards (May 2014)
- FAR 52.223-7 Notice of Radioactive Materials (Jan 1997) (applies when radioactive material is involved)
- FAR 52.224-2 Privacy Act (Apr. 1984) (applies when the design, development or operation of any system of records on individuals is required to accomplish an agency function)
- FAR 52.225-8 Duty-Free Entry (Oct 2010) (applies when supplies entitled to duty-free entry will be imported into the customs territory of the United States OR when other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (June 2008)
- FAR 52.227-9 Refund of Royalties (Apr 1984) (applies when the amount of royalties reported during the negotiation of the subcontract or Order exceeds \$250)
- FAR 52.227-10 Filing of Patent Applications – Classified Subject Matter (Dec 2007) (applies when the subcontract or Order is likely to involved classified subject matter)
- FAR 52.227-11 Patent Rights – Ownership by the Contractor (May 2014) (applies when the subcontract or Order involves experimental, developmental, or research work to be performed by a small business concern or non-profit organization)
- FAR 52.227-13 Patent Rights – Ownership by the Government (Dec 2007) (applies when the subcontract or Order involves experimental, developmental, or research work)
- FAR 52-228-3 Workers’ Compensation Insurance (Defense Base Act) (Jul 2014)
- FAR 52.228-4 Workers’ Compensation and War-Hazard Insurance Overseas (Apr 1984)
- FAR 52.228-5 Insurance – Work on a Government Installation (Jan 1997) (applies when the subcontract or Order requires work on a Federal government installation)
- FAR 52.234-1 Industrial Resources Developed Under Title III, Defense Production Act (Sept 2016)
- FAR 52.237-7 Indemnification and Medical Liability Insurance (Jan. 1997)
- FAR 52.244-6 Subcontracts for Commercial Items (Nov 2017) (applies when the subcontract or Order involves the acquisition of “commercial items” as that term is defined in FAR 52.202-1)
- FAR 52.247-63 Preferences for U.S.-Flag Air Carriers (June 2003) (applies when the subcontract or Order may involve international air transportation)
- FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (excluding (e)(4)) (applies when the subcontract or Order involves the transport of equipment, materials or commodities in ocean vessels)
- DFARS 252.204-7000 Disclosure of Information (Oct 2016)
- DFARS 252.223-7006 Prohibition on Storage, Treatment and Disposal of Toxic and Hazardous Materials (Sep 2014) OR Alternate I (Nov. 1995) (applies when the subcontract or Order requires, may require, or permits the subcontractor to treat or dispose of non-DOD-owned toxic or hazardous materials)
- DFARS 252.225-7014 Preference for Domestic Specialty Metals (Apr. 2003) (applies to subcontracts or Orders involving “specialty metal” as defined in the clause)
- DFARS 252.227-7013 Rights in Technical Data – Noncommercial Items (Feb 2014) (applies when the subcontract or Order involves technical data for noncommercial items that is to be delivered to the government)

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- DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Feb 2014) (applies when the subcontract or Order involves noncommercial computer software or computer software documentation that is to be delivered to the government)
- DFARS 252.227-7016 Rights in Bid or Proposal Information (Jan 2011)
- DFARS 252.227-7019 Validation of Asserted Restrictions – Computer Software (Sep 2016) (applies only when the subcontract or Order involves furnishing computer software to the government)
- DFARS 252.227-7034 Patents – Subcontracts (Apr. 1984) (applies when the subcontract or Order involves experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization)
- DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (Sep 2016) (applies when the subcontract or Order involves the delivery of technical data, except when the purchase relates to “commercial items” as defined in FAR 52.202-1)
- DFARS 252.235-7003 Frequency Authorization (Mar 2014) (applies when the subcontract or Order involves the development, production, construction, testing or operation of a device for which a radio frequency authorization is required)
- DFARS 252.247-7023 Transportation of Supplies by Sea (Apr 2014) (paragraphs (a) through (e) and (h))
- DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (March 2000)

Clauses Applicable to Purchases of Noncommercial Items Exceeding \$15,000

- FAR 52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014)

Clauses Applicable to Purchases of Noncommercial Items Exceeding \$35,000

- FAR 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment (Oct 2015)

Clauses Applicable to Purchases of Noncommercial Items Exceeding \$150,000

- FAR 52.203-7 Anti-Kickback Procedures (May 2014)
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)
- FAR 52.203-16 Preventing Personal Conflicts of Interest (Dec 2011)
- FAR 52.215-2 Audit and Records – Negotiation (Oct 2010)
- FAR 52.215-14 Integrity of Unit Prices (Oct 2010) (excluding paragraph (b))
- FAR 52.219-9 Small Business Subcontracting Plan (Jan 2017)
- FAR 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (May 2018) (paragraphs (a) through (d))
- FAR 52.222-35 Equal Opportunity for Veterans (Oct 2015)
- FAR 52.222-37 Employment Reports on Veterans (Feb 2016)
- FAR 52.227-1 Authorization and Consent (Dec 2007)
- FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)
- FAR 52.248-1 Value Engineering (Oct 2010)
- DFARS 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Dec 2008)
- DFARS 252.209-7000 Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (Nov. 1995)
- DFARS 252.247-7023 Transportation of Supplies by Sea (Apr 2014)

Clauses Applicable to Purchases of Noncommercial Items Exceeding \$750,000

- FAR 52.230-2 Cost Accounting standards (Oct 2015)
- FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices (Oct 2015)
- FAR 52.230-5 Cost Accounting Standards – Educational Institutions (Aug 2016)
- FAR 52.230-6 Administration of Cost Accounting Standards (Jun 2010)
- DFARS 252.249-7002 Notification of Proposed Program Termination or Reduction (Oct 2015)
- FAR 52.214-26 Audit and Records – Sealed Bidding (Oct 2010) (applies only if the Federal government contract was awarded by sealed bidding and the subcontract is expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data, currently set at \$750,000)
- FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (Oct 2010)
- FAR 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications (Oct 2010)

Clauses Applicable to Purchases of Noncommercial Items Exceeding \$1.5 Million

- DFARS 252.211-7000 Acquisition Streamlining (Oct 2010)

ATTACHMENT A: FEDERAL GOVERNMENT CONTRACT PROVISIONS

Additional Clauses that may be Applicable to the Order

- FAR 52.202-1 Definitions (Nov 2013)
- FAR 52.211-5 Material Requirements (Aug 2000)
- FAR 52.211-15 Defense Priority and Allocation Requirements (Apr 2008)
- FAR 52.214-27 Price Reduction for Defective Cost or Pricing Data- Modifications- Sealed Bidding (Aug 2011)
- FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (Aug 2011)
- FAR 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications (Aug 2011)
- FAR 52-219.8 Utilization of Small Business Concerns (Nov 2016)
- FAR 52.225-1 Buy American – Supplies (May 2014)
- FAR 52.225-3 Buy American – Free Trade Agreement – Israeli Trade Act (May 2014)
- FAR 52.225-5 Trade Agreements (Oct 2016)
- FAR 52.225-9 Buy American-Construction Materials (May 2014)
- FAR 52.225-11 Buy American – Construction Materials Under Trade Agreements (Oct 2016)
- FAR 52-227-14 Rights in Data – General (May 2014)
- DFARS 252.219-7003 Small Business Subcontracting Plan (DOD Contracts) (Apr 2018)
- DFARS 252.225-7001 Buy American and Balance of Payments Program (Dec 2017)
- DFARS 252.225-7036 Buy American –Free Trade Agreement – Balance of Payments Program (Dec 2017)

Conflicts between Clauses Applicable to the Purchase Order. In the event of any conflict among the clauses applicable to the Purchase Order, including those not applicable solely to federal grants and/or contracts, the most stringent clause will apply.

ATTACHMENT B: PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS

If Seller possesses, stores, processes or transmits cardholder data on behalf of Buyer, or has ability to impact the security of Buyer cardholder data, Seller agrees, represents and warrants that Seller:

A. Is responsible for the security of the cardholder data that it possesses, including the functions relating to storing, processing, and transmitting cardholder data, in accordance with the Payment Card Industry Data Security Standards (“PCI DSS”) as are in effect.

B. Complies, and will continue to comply throughout the period that the Purchase Order is effective, with all applicable PCI DSS requirements and produce is PCI DSS validated and approved.

C. Has taken all necessary steps to validate, and hereby validates its compliance and the compliance of any third parties who are storing, processing or transmitting credit card data on its behalf, with the PCI DSS.

D. On an annual basis, Seller will provide Buyer with evidence that Seller has validated its compliance with the PCI DSS by a qualified security assessor, including the date of such validation. In addition, upon reasonable request by Buyer, Seller must supply to Buyer information regarding the status of its compliance with the PCI DSS.

E. Limits access of Personal Data and Cardholder Data to authorized employees/persons.

F. Secures business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability.

G. Implements network, network segmentation, device application, database and platform security.

H. Secures information transmission, storage and disposal.

I. Implements authentication and access controls within media, applications, operating systems and equipment.

J. Encrypts Highly-Sensitive Personal Data stored on any mobile media.

K. Encrypts Highly-Sensitive Personal Data transmitted over public or wireless networks.

L. Segregates Personal Data from information of Seller or its other customers so that Personal Data is not commingled with any other types of information.

M. Implements appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law.

N. Provides appropriate privacy and information security training to Seller employees.

O. At a minimum of once per year, Seller shall conduct site audits of the information technology and information security controls for all facilities used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on the recognized industry best practices. Upon Buyer’s written request, Seller shall make available to Buyer for review all of the following, as applicable: Seller’s latest Payment Card Industry (PCI) Compliance Report, WebTrust, Systrust, and Statement on Standards for Attestation Engagements (SSAE) No. 16 audit reports for Reporting on Controls at a Service Organization and any reports relating to its ISO/ICE 27001 certification. Buyer shall treat such audit reports as Seller’s Confidential Information under this Agreement. Any exceptions noted on the SSAE report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by Seller’s management.

P. In the event of a breach by Seller of its obligations under the PCI DSS, Seller must:

- Notify Buyer personnel at mcitsecurity@nyulangone.org of a Security Breach as soon as practicable, but no later than twenty-four (24) hours after Seller becomes aware of it. Immediately following Seller’s notification to Buyer personnel of a Security Breach, the parties may coordinate with each other to investigate the Security Breach. Seller agrees to fully/reasonably cooperate with Buyer personnel in Buyer’s handling of the matter, including, without limitation to: (i) assisting with any investigation; (ii) providing Buyer personnel with physical access to the facilities and operations affected; (iii) facilitating interviews with Seller’s employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise reasonably required by Buyer personnel.
- Provide Buyer personnel with report regarding the breach within 48 hours of breach notification. Report at minimum will identify: the nature of the unauthorized use or disclosure; any Buyer protected data used or disclosed; who made the

ATTACHMENT B: PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS

unauthorized use or received the unauthorized disclosure; what has been done or will be done to mitigate any harmful effect of the unauthorized use or disclosure; what corrective action has been taken or will be taken to prevent future similar unauthorized uses or disclosures; other information, as reasonably requested by Buyer.

- Provide Buyer personnel at mcitsecurity@nyulangone.org with the name and contact information for an employee of Seller who shall serve as Buyer's primary security contact and shall be available to assist Customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach through the duration of the breach and until the breach is cured.
- If Seller does not cure such breach within a reasonable time, but in no event more than thirty (30) days from the date of the breach, then Buyer will have the right to immediately terminate this Purchase Order.

Q. Seller shall and hereby does indemnify and hold Buyer harmless from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Seller in connection with the representations, duties and obligations of Seller under this Attachment B, including any breach by Seller of the PCI DSS.