



NEW YORK UNIVERSITY
PURCHASING SERVICES DIVISION
726 BROADWAY, 2ND FLOOR
NEW YORK, NY 10003-1529

TERMS AND CONDITIONS

NOTE: Wherever the word Buyer appears it shall mean New York University

1. **WARRANTY** - Seller expressly warrants that all articles, material and work covered by this agreement will conform exactly to any specifications, patterns, drawings, samples or other description(s) furnished or adopted by Buyer, and will be of good material and workmanship free from latent or patent defects. All such patterns, samples, specifications and drawings shall be confidential, shall remain Buyer's property and must be returned immediately upon Buyer's request. Seller warrants that the product sold or service rendered to Buyer shall conform to the standards and/or regulations promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970 (29 USC 651, PH 91-596). All warranties herein shall be construed as conditions as well as warranties.
2. **TIME** - Time is of the essence regarding this Agreement. A waiver of Buyer's right to cancel, by acceptance of any items after delivery date or otherwise, shall not constitute a waiver of such right with respect to any subsequent defaults.
3. **GOVERNMENT CONTRACT PROVISIONS** - If the material or service purchased hereunder is for use on a contract of Buyer with the United States Government, this Agreement when accepted, will constitute a subcontract under a prime contract awarded by the United States Government. Buyer's prime contract contains provisions to the following effect:
 - A. The Government has reserved the right—
 - to change the prescribed drawings and specifications, but in any event to make an equitable adjustment;
 - to inspect all material and workmanship and to reject work and materials not in conformity with specification requirements;
 - to have disputes concerning questions of fact, not disposed of by mutual agreement, decided by the Contracting Officer, subject to an appeal to the United States Government;
 - to cancel the contract in whole or in part and in the event;
 - to make certain adjustments and settlements upon terms stated in the contract;
 - upon demand of the United States Government and on certain conditions, to renegotiate prices stated in purchase orders and to require deductions or repayment of excessive profits in subcontracts.
 - B. The Government requires, among other things:
 - (a) If applicable, strict compliance with the Walsh-Healy Public Contracts Act (Act of June 30, 1936, 49 Stat. 2036; 41 USC 34-45) as amended, regulating hours of work, minimum wages and working conditions.
 - (b) Exclusion of convict labor.
 - (c) No discrimination against any employee or applicant for employment because of race, color, creed, sex, age or national origin, physical or mental handicap or disabled veteran or veteran of the Vietnam era status.
 - (d) No member of or delegate to Congress or resident commissioner shall be admitted to any benefit arising from the contract.
 - (e) A warranty by Buyer that it has not employed any person to solicit or secure the contract upon any agreement for a commission, percentage, brokerage, or contingent fee.
 - (f) Compliance with Federal Acquisition Regulations
If this Purchase Order is issued under a contract with the Federal Government the required flow down clauses contained in the Federal Acquisition Regulations (FAR) in effect as of the date of this agreement are included herein by reference. Copies of these clauses can be obtained by contacting the NYU Purchasing Services Division.
 - C. The Government requires strict compliance with the Act of March 8, 1946 (41 USC 51-54) which among other provisions prohibits fees or kickbacks by subcontractor, under a Government contract on a cost-plus-a-fixed-fee or cost reimbursable basis.
4. **ACCESS TO SELLER'S BOOKS, RECORDS AND DOCUMENTS** - Provided that Section 952 of the Omnibus Budget Reconciliation Act of 1980 and regulations promulgated thereunder are applicable to this Agreement, Seller and organizations related to Seller providing services hereunder valued at \$10,000 or more in a 12-month period shall, until four years after the completion of the services hereby contracted for, comply with request by the Comptroller General of the United States, the Secretary of HHS, and their duly authorized representatives for access in accordance with Section 952 to this Agreement and to Seller's books, documents and records to the degree necessary to verify the cost of the services.
5. **SELLER'S PROPERTY OR EQUIPMENT** - Buyer shall not be responsible for any damage to or loss of the property of Seller that results from, arises out of or occurs in connection with the work performed by Seller pursuant to this Agreement.
6. **WARRANTY OF PROPRIETARY RIGHTS** - Seller warrants that it has all rights needed to enter into and complete this transaction. Seller will defend, at its own expense, any action or proceeding brought against Buyer based on a claim that the work performed or any product supplied by the Seller pursuant to this Agreement, infringes or violates a patent, copyright, trade secret, trademark, tradename, right of privacy or any other proprietary, personal, or statutory right of a third party. Seller will pay all costs and damages awarded against Buyer in any such action and any expenses incurred by Buyer as a result of such action. Buyer reserves the right to cancel this order forthwith in the event of any such claim. Seller agrees that Buyer shall receive a perpetual, irrevocable non-exclusive, royalty-free license to make, have made, sell and use any inventions first reduced to practice through development work performed by Seller under this Agreement. Seller further agrees that Buyer shall receive a perpetual, irrevocable non-exclusive royalty-free license to use, reproduce and revise for its own use any copyrightable materials produced by Seller pursuant to this Agreement.
7. **INSURANCE REQUIREMENTS** - Seller shall not commence work under this Agreement until it has obtained, at its own expense, all the insurance required under this Agreement and such insurance has been approved by Buyer's Director of Insurance and Risk Management. All insurance policies required under this Agreement shall be issued by insurers with a minimum rating from A.M. Best of A-, and a minimum financial rating of VII. Seller shall not allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has also been obtained and so approved. Seller warrants that all required insurance shall be maintained until its work under this Agreement is complete and has been accepted by Buyer, provided that if Seller fulfills any of the insurance requirements set forth herein by the use of claims-made policies, Seller warrants that these policies shall be kept in effect for at least

three years following completion of its work under this Agreement, and, if its claims-made policies are cancelled during that three year period, Seller will purchase tail coverage for the remainder thereof.

- A. Workers' Compensation Insurance as required by the New York State Workers' Compensation Law, and any other applicable law, for all employees engaged in work under this Agreement. Employers' Liability Insurance shall also be provided with a limit of at least \$1,000,000 for each occurrence for all such employees not otherwise protected by Workers' Compensation Insurance.
- B. Commercial General Liability Insurance with a combined personal injury, bodily injury (including death) and property damage limit of at least \$2,000,000 for each occurrence, including at least the following coverages:
 - 1. Broad Form Blanket Contractual Liability for all the liability assumed by the Seller and/or its subcontractors under this Agreement;
 - 2. Broad Form Property Damage;
 - 3. Personal Injury Liability (with the employee's exclusion void); and
 - 4. Products Liability and Completed Operations.
 - 5. Liquor Liability, if alcohol is to be served.
- C. Automobile Liability Insurance (if Seller will utilize any vehicles under this agreement) in an amount not less than \$1,000,000 for bodily injuries or death resulting therefrom to each person and for each occurrence and property damage in an amount of not less than \$1,000,000 for each occurrence. This insurance shall apply to all owned, non-owned, leased or hired vehicles to be used by Seller or any subcontractor in furtherance of Seller's work under this Agreement; and
- D. Professional Liability Insurance - If Seller or any subcontractor is providing professional services under this Agreement, Professional Liability (Errors and Omissions) in an amount not less than \$2,000,000 for each wrongful act.

Seller shall have the above Commercial General Liability insurance policy endorsed as follows:

- * To include Buyer as an additional insured in connection with any work to be performed under this Agreement and to state that Buyer is not to be responsible for payment of any premium for such additional insured status; and
- * To state that bodily injury to any person, including employees, occurring at any work site in connection with the work to be performed under this Agreement shall be deemed to be bodily injury arising out of or occurring in connection with the aforesaid work; and
- * To provide that any notice Seller or a subcontractor gives to its insurers of a claim, suit, proceeding or occurrence, resulting from, arising out of, or occurring in connection with the work performed under this Agreement shall also be deemed by that insurer as notice by Buyer as additional insured.

Certificates evidencing the procurement of such insurance shall be delivered to Buyer's Director of Insurance and Risk Management prior to the commencement of work and upon the cancellation or replacement of any Insurance. These certificates shall show the type, amount and class of operations covered, and the effective dates and expiration dates of the policies. Each certificate shall also contain substantially the following statement:

The insurance described in this certificate will not be cancelled without at least thirty (30) days prior written notice thereof to Buyer's Director of Insurance and Risk Management. This insurance shall be primary of any similar insurance carried by Buyer. Seller's insurer shall, upon demand of Buyer, deliver to Buyer a certified copy to the insurance policies herein described.

The procuring of the insurance hereby required shall not relieve Seller of any obligation or liability assumed hereunder exclusively including specifically the following Hold Harmless Agreement.

- 8. **HOLD HARMLESS AGREEMENT:** Seller shall assume entire responsibility and liability for any and all losses, damages or injuries of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of Seller or Buyer or otherwise, and to all property, including, without being limited to, property of Buyer, or loss of use thereof, caused by, resulting from, arising out of, or occurring in connection with the products purchased from Seller, the work and services provided by Seller pursuant to this Agreement, or a breach of an agreement between Seller and a third party. If any person shall make a claim for any loss, damage, or injury (including death resulting therefrom) as hereinabove described, whether such claim is based upon Seller's alleged sole active or passive negligence or willful misconduct, or upon a wrong in which Buyer is alleged to have participated, or otherwise (unless the claim is based exclusively upon Buyer's alleged sole negligence or willful misconduct), Seller agrees to indemnify Buyer and hold it safe and harmless from and against any and all loss, expense, liability, damage or injury, including attorneys' fees, that Buyer may incur or sustain as the result of any such claim. Seller also agrees to assume, on behalf of Buyer, the defense of any action or proceeding at law or equity that may be brought against Buyer upon such claim, and to pay all costs and expenses of whatever nature, including attorneys' fees, resulting therefrom or in connection therewith, and to pay on behalf of Buyer, upon demand, the amount of any judgment that may be entered against Buyer in any such action or proceeding. All references to "Buyer" shall include, and all provisions of this Hold Harmless Agreement shall inure to the benefit of, New York University and its officers, employees, agents, representatives and students.
- 9. **EQUAL OPPORTUNITY/AFFIRMATIVE ACTION CLAUSE.** During the performance of the Agreement, Seller agrees as follows:
 - A. Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin, physical or mental handicap or disabled Veteran or veteran of the Vietnam era status. Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sexual orientation, marital or parental status, age, national origin, physical or mental handicap or disabled Veteran or veteran of the Vietnam era status. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - B. Seller will, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sexual orientation, marital or parental status, age, national origin, physical or mental handicap or disabled Veteran or veteran of the Vietnam era status.
 - C. Seller will send to each labor union or representative of workers with which Seller has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of Seller's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and Section 503 of the Rehabilitation Act of 1973, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - D. Seller will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and Section 503 of the Rehabilitation Act of 1973, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and of the rules, regulations, and relevant orders of the Secretary of Labor.

- E. Seller will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and Section 503 of the Rehabilitation Act of 1973, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Seller's books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - F. In the event of Seller's noncompliance with the nondiscrimination clauses of this Agreement, or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and Seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and Section 503 of the Rehabilitation Act of 1973, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, and Section 503 of the Rehabilitation Act of 1973, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - G. Seller will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, and Section 503 of the Rehabilitation Act of 1973, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 so that such provisions will be binding upon each subcontractor or vendor. Seller will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Seller becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, Seller may request the United States to enter into such litigation to protect the interests of the United States.
10. CONFIDENTIALITY - Seller and its employees, agents and subcontractors shall hold in confidence and shall not disclose, distribute, sell, copy, share or otherwise use in any manner any information, records or other documents obtained by the Seller while performing this Agreement which relate to Buyers, students, employees, research, development or business affairs, whether past, present or future, except as may be contemplated by this Agreement or authorized by Buyer in writing. Upon completion of its work under this Agreement, Seller and its employees, agents and subcontractors shall return to Buyer all information and all records or documents received from Buyer, including, without being limited to, any and all copies thereof which may have been made. Seller shall defend and indemnify Buyer against all claims, suits, proceedings or prosecutions and any resulting loss, liability, cost or expense that may arise out of the breach of this provision by Seller, its employees, agents or subcontractors.
11. FORCE MAJEURE- If either party is rendered unable, wholly or in part by a force outside the control of such party including, but not limited to, and act of God, war, terrorism, fire, flood, explosion, act of governmental authority, strike, civil disturbance or failure of power to carry out its obligations under this agreement or if NYU is notified by a state or federal regulatory body that any aspect of this agreement does not comply with applicable law, regulation, rule, policy, or order applicable to NYU, the affected party shall give the other party prompt written notice to that effect. Thereafter, the affected obligations shall not be deemed a breach or a default under this agreement so long as the affected party is unable to perform for such a reason.
12. USE OF NAMES - Seller shall not use the names of New York University, or any college, school, division, unit, employee or student thereof in advertising or other promotional materials or in any other manner without the prior written consent of an executive officer of New York University.
13. SURVIVAL CLAUSE - The provisions of this Agreement pertaining to Warranty, Confidentiality, Hold Harmless, Proprietary Rights and Use of Name shall continue in full force and effect notwithstanding the fact that the Buyer has accepted and paid for any work or services provided, or products purchased, hereunder.
14. GOVERNING LAW - This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York and the parties hereto shall submit to the jurisdiction of the federal and state courts located in New York County, New York State, for the resolution of any dispute arising hereunder, regardless of the place of execution or performance of this Agreement.
15. COMPLIANCE WITH RULES AND REGULATIONS - Seller and its employees, agents and subcontractors agree to comply with all pertinent rules and regulations of Buyer that are brought to their attention and with the directions and instructions given by Buyer's authorized personnel.
16. MISCELLANEOUS - This Agreement contains the entire agreement between the parties concerning this transaction. This Agreement may not be amended, nor may this Agreement or any of its rights or duties hereunder be assigned or transferred by Seller, unless the Buyer has consented to such amendment, assignment, or transfer, in writing. Any purported amendment, assignment, or transfer without Buyer's consent shall be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No waiver of any term, provision, or condition of this Agreement by Buyer in any one or more instances will be deemed to be or construed as a further or continuing waiver of any such term, provision, or condition, or a waiver of any other term, provision or condition. This Agreement is not for the benefit of any third party. If any provision of this Agreement shall be found to be unenforceable or invalid, the remaining provisions shall continue in full force and effect. If there is any conflict between the terms and conditions of this Agreement and those of any invoice, bill, purchase order, letter or other document issued by Seller, the terms of this agreement shall govern.

BUSINESS ASSOCIATE TERMS

1. DEFINITIONS

- A. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- B. "HIPAA Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, the Standards for Privacy of Individually Identifiable Health Information and the Security Standard, 45 CFR Parts 160, 162 and 164, as in effect or as amended from time to time.
- C. "Business Associate" shall have the meaning set forth in the HIPAA Regulations and shall be used herein to refer to Vendor.
- D. Any terms used, but not otherwise defined, pursuant to these Business Associate Terms ("BA Terms") shall have the same meaning as those terms have under HIPAA and the HIPAA Regulations.

2. STATUS OF PARTIES

Business Associate hereby acknowledges and agrees that NYU is a covered entity and that Business Associate is a business associate of NYU under HIPAA and the HIPAA Regulations.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- A. Use or Disclosure. Business Associate agrees to not use or further disclose protected health information created or received by Business Associate from, or on behalf of, NYU ("Protected Health Information") other than as expressly permitted or required pursuant to the BA Terms or as required by law.
- B. Safeguards. Business Associate agrees to use appropriate safeguards to prevent any use or disclosure of the PHI other than uses and disclosures expressly provided for by this BA Agreement. In addition, Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the HIPAA Regulations.
- C. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements pursuant to these BA Terms.
- D. Reporting. Business Associate agrees to report to Covered Entity any use or disclosure of PHI in violation of this BA Agreement of which it becomes aware as soon as reasonably practicable. In addition, Business Associate shall report to Covered Entity and Security Incident of which it becomes aware.
- E. Subcontractors and Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions, including but not limited to the implementation of reasonable and appropriate safeguards to protect EPHI, that apply through this BA Agreement to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this BA Agreement.
- F. Access. When requested by NYU, Business Associate agrees to provide access to Protected Health Information in a designated record set to NYU or to an individual in order to comply with the requirements under 45 CFR 164.524 and the policies of NYU. Such access shall be provided by the Business Associate in the time and manner designated by NYU.
- G. Amendment. When requested by NYU or an individual, Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set that NYU directs or agrees to pursuant to 45 CFR 164.526 and the policies of NYU. Such amendments shall be made by Business Associate in the time and manner designated by NYU.
- H. Audit and Inspection. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information available to NYU, or, at the request of NYU, to the Secretary of Health and Human Services ("Secretary of HHS") or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority for the purposes of the Secretary determining NYU's compliance with the Privacy Rule. Such information shall be made available in a time and manner designated by NYU or the Secretary.
- I. Documentation of Disclosures. Business Associate agrees to document such disclosures of Protected Health Information and any information related to such disclosures as would be required for NYU to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 and the policies of NYU.
- J. Accounting. Business Associate agrees to provide to NYU or an individual information collected in accordance with Section 3.i. of these BA Terms, to permit NYU to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 and the policies of NYU. Such information shall be provided in a time and manner designated by NYU.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- A. General Use and Disclosure Provisions. Except as otherwise limited pursuant to these BA Terms, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, NYU in connection with the performance of services by Business Associate for or on behalf of NYU if such use or disclosure of Protected Health Information would not violate HIPAA or the HIPAA Regulations if done by NYU or such use or disclosure is expressly permitted under Section 3.b. of these BA Terms.
- B. Specific Use and Disclosure Provisions.
 - (1) Except as otherwise limited pursuant to these BA Terms, Business Associate may use and disclose Protected Health Information for the proper management and administration of the Business Associate or to meet its legal responsibilities. Such Protected Health Information may only be disclosed for such purposes if the disclosures are required by law, or the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are that:
 - (a) the information will remain confidential,
 - (b) the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person, and
 - (c) the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (2) Except as otherwise limited pursuant to these BA Terms, Business Associate may use Protected Health Information to provide data aggregation services to NYU as permitted by 42 CFR 164.504(e)(2)(i)(B). Data aggregation services involve the combining by the Business Associate of (a) Protected Health Information created or received by a Business Associate in its capacity as the Business Associate of a NYU with (b) Protected Health Information received by the Business Associate in its capacity as a

Business Associate of another NYU, to permit data analyses that relate to the health care operations of the respective Covered Entities.

5. OBLIGATIONS OF NYU

NYU shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by NYU or that is not otherwise expressly permitted under Section 3.a. of these BA Terms.

6. TERM AND TERMINATION

A. Term. These BA Terms shall be effective so long as Business Associate performs services by or on behalf of NYU in connection with the Purchase Order into which these BA Terms are incorporated or until the BA Terms are terminated in accordance with the provisions of Section 6.b. or 7.b.

B. Termination for Cause. Upon NYU's knowledge of a material breach by Business Associate, NYU may, in its sole discretion, either (1) provide Business Associate with an opportunity to cure the breach and then terminate these BA Terms and NYU's relationship with Business Associate if Business Associate does not cure the breach within time period specified by NYU or (2) terminate these BA Terms and NYU's relationship with Business Associate immediately. If neither termination nor cure is feasible, Buyer shall report the violation to the Secretary.

C. Effect of Termination.

(1) Upon termination of these BA Terms, for any reason, Business Associate shall return or destroy all Protected Health Information received from NYU, or created or received by Business Associate on behalf of NYU. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to NYU notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of these BA Terms to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. MISCELLANEOUS

A. Regulatory References. A reference in these BA Terms to a section in HIPAA or the HIPAA Regulations means the section as in effect or as amended, and for which compliance is required.

B. Amendment. NYU and Business Associate agree that amendment of these BA Terms may be required to ensure that NYU and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of Protected Health Information. NYU may terminate these BA Terms and NYU's relationship with Business Associate upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that NYU, in its sole discretion, deems sufficient to ensure that NYU will be able to comply with such laws and regulations. No waiver by either party of any breach of this BA Agreement shall be deemed a waiver of any subsequent breach thereof, nor is any delay or omission on the part of either party to exercise or insist on any right, power or privilege hereunder a waiver of such right, power or privilege.

C. Survival. The respective rights and obligations of Business Associate under Section 6.c., 7.e., 7.f., and 7.g. of these BA Terms shall survive the termination of these BA Terms.

D. Interpretation. Any ambiguity in these BA Terms shall be resolved in favor of a meaning that permits NYU to comply with applicable law protecting the privacy, security and confidentiality of Protected Health Information, including, but not limited to, HIPAA and the HIPAA Regulations.

E. State Law. Nothing in these BA Terms shall be construed to require Business Associate to use or disclose Protected Health Information without a written authorization from an individual who is a subject of the Protected Health Information, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

F. Injunctions. NYU and Business Associate agree that any violation of the provisions of these BA Terms may cause irreparable harm to NYU. Accordingly, in addition to any other remedies available to NYU at law or in equity, NYU shall be entitled to an injunction or other decree of specific performance with respect to any violation of these BA Terms or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

G. Indemnification. Business Associate shall indemnify, hold harmless and defend NYU from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under these BA Terms.

H. No Third Party Beneficiaries. Nothing express or implied in these BA Terms is intended or shall be deemed to confer upon any person other than NYU, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

I. Primacy. To the extent that any provisions of these BA Terms conflict with the provisions of any other agreement or understanding between the parties, these BA Terms shall control.