

PURCHASE ORDER TERMS AND CONDITIONS

The Purchase Order Form, these Purchase Order Terms and Conditions, and any attachments hereto (collectively, this “Purchase Order”) are the exclusive terms and conditions for the delivery of the specified goods or materials (“Goods”) and/or performance of the specified services and/or work (“Services”) by the seller named in the Purchase Order Form (“Seller”) for the benefit of New York University (“NYU”). NYU and Seller are each a “Party” and together are the “Parties”.

1. **Acceptance of Purchase Order by Seller.** Upon acceptance of this Purchase Order by the Seller as set forth herein, this Purchase Order is a valid and binding contract between NYU and Seller. This Purchase Order is deemed accepted by Seller upon the earlier to occur of the following: (a) Seller indicates its acceptance of this Purchase Order in a written communication including any electronic communication; (b) this Purchase Order is sent to Seller and Seller does not object in writing to any of its terms or provisions within two (2) business days; or (c) Seller at any time otherwise delivers or performs all or any part of the Goods and/or Services. No change or alteration may be made to any term of this Purchase Order without the prior written consent of NYU. This Purchase Order constitutes the entire agreement between Seller and NYU regarding the subject matter of this Purchase Order and supersedes all other documents, writings, representations, agreements, proposals, promises, or other understandings, oral or otherwise, between Seller and NYU with respect to the matters contained herein, including any prior or subsequent price quotation, invoice, confirmation, terms and conditions, or other document furnished by Seller. Acceptance of this Purchase Order is expressly limited to the terms set forth herein and NYU gives notice of objection to any different or additional terms in any response to this offer. If this Purchase Order is construed to be acceptance of an offer, this acceptance is expressly conditioned upon Seller’s assent to any different or additional terms contained in this Purchase Order.
2. **Acceptance by NYU.** Delivery and/or performance of the Goods and/or Services will be deemed to be complete only when delivered and/or performed pursuant to a validly issued Purchase Order Form and actually received by NYU. All Goods and/or Services are subject to NYU’s right of inspection following delivery and/or performance by Seller; and NYU shall not be deemed to have accepted the Goods and/or Services until it has had a reasonable period of time to inspect the Goods and/or Services following delivery and/or performance, or, in the case of a latent defect in the Goods and/or Services, until a reasonable time after the latent defect has become apparent; payment for Goods and/or Services under this Purchase Order prior to inspection by NYU will not constitute acceptance by NYU. NYU may, at its option, reject all or any portion of the Goods and/or Services that do not, in NYU’s discretion, comply with the terms and conditions of this Purchase Order or NYU’s requirements. NYU may elect to reject all of the Goods and/or Services even if only a portion is nonconforming. In any case, acceptance of all or any part of the Goods and/or Services will not be deemed to be a waiver by NYU of its right to (a) cancel, reject or return all or any portion of the Goods and/or Services, or (b) make a claim for damages, for reasons including defect, breach of warranty, late delivery and/or performance, or breach or non-compliance with any of the terms or provisions of this Purchase Order.
3. **Time for Delivery and/or Performance.** Delivery and/or performance will be strictly in accordance with NYU’s delivery and/or performance schedule. If Seller’s delivery and/or performance fails to meet such schedule, NYU may, without limiting any of its other rights or remedies, direct expedited routing or secure replacement delivery and/or performance by one or more third parties, and the difference between the cost of expedited routing or the replacement delivery and/or performance and this Purchase Order’s delivery and/or performance costs will be paid by Seller upon NYU’s demand. Time is of the essence with respect to Seller’s delivery and/or performance under this Purchase Order.
4. **Risk of Loss.** Until delivered to NYU in accordance with Section 2, Seller will bear all risk of loss or damage to Goods. Shipment of Goods is D.D.P. (i.e., Seller bears all risks and costs associated with delivering the Goods to the named place of destination ready for unloading and cleared for import) unless the Purchase Order Form states otherwise. The Seller shall deliver the Goods to such destination identified in the Purchase Order Form. At the time when risk of loss passes to NYU, the Seller will pass to NYU good and marketable title to any Goods, free and clear of all liens, claims, security interests, pledges, charges, mortgages, deeds of trusts, options, or other encumbrances of any kind.
5. **Cancellation for Breach by Seller.** NYU may terminate this Purchase Order immediately, in whole or in part, for Seller’s breach of this Purchase Order, including the failure to deliver and/or perform the Goods and/or Services in accordance with this Purchase Order. If NYU terminates this Purchase Order for Seller’s breach, Seller will be liable to NYU for all damages, including the cost of securing replacement Goods and/or Services, shipping charges for returned Goods, and any amounts previously paid by NYU to Seller. Cure of any non-conforming tender by Seller may only be made with the prior written consent of NYU. This right of termination is in addition to and not in place of any other rights or remedies that NYU may have at law or in equity.
6. **Cancellation for Convenience.** NYU, in its sole discretion and without cause, may terminate this Purchase Order immediately, in whole or in part, at any time without incurring liability to Seller for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for Goods and/or Services performed and/or delivered. Payment due will be a percentage of the purchase price equal to the percentage of the total amount of Goods actually delivered and/or the percentage of the Services actually completed in accordance with this Purchase Order, as determined in NYU’s sole discretion.
7. **Cancellation due to Bankruptcy of Seller.** NYU may terminate this Purchase Order immediately by notifying the Seller in writing if the Seller: (a) is unable to pay its debts or becomes insolvent or bankrupt; (b) is the subject of an order made or a resolution passed for its administration, winding-up or dissolution; (c) is subject to any proceedings for the appointment of an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer over all or any substantial part of its assets; (d) proposes or enters into any composition or arrangement with its creditors generally; or (e) is subject to an analogous event to any of the foregoing in any jurisdiction.
8. **Pricing.** NYU will pay Seller only for such Goods and/or Services and at such prices as agreed upon pursuant to this Purchase Order. Prices shall include all amounts payable by NYU and no additional charges of any kind (including charges for transportation, delivery, boxing, packing or other extras) will be payable by NYU unless specifically set forth in this Purchase Order or otherwise specifically agreed to in writing by NYU. Seller will submit all invoices to NYU under this Purchase Order as set forth in the Purchase Order Form or as may be otherwise designated by NYU. If any of the Goods and/or Services consist of 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.

9. **Representations and Warranties.** In addition to, and without limiting any of Seller's other representations and warranties, express or implied, Seller expressly represents and warrants to NYU that: (a) all Goods and/or Services conform and will continue to conform to the highest applicable industry standards and to any description, sample, specifications or other documentation related to the Goods and/or Services that is included in this Purchase Order or otherwise requested or approved by NYU, and that any Services will be provided in a diligent and highly professional manner by appropriately qualified and trained individuals; (b) the Goods and/or Services are and will be fit for the purposes for which purchased, free from defects in materials and workmanship, and safe for their intended use; (c) Seller has all right, title and interest in and to the Goods and/or Services necessary to fulfill its obligations hereunder; (d) the Goods and/or Services are free from any liens, claims and encumbrances of any nature; (e) all Goods and/or Services will comply with all applicable foreign, international, federal, state, and local laws, rules and regulations, including those relating to fair labor (including the Fair Labor Standards Act of 1938, as amended), health and safety, and environmental standards; and (f) neither Seller nor any of its affiliates have 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. All of Seller's representations and warranties, both express and implied, also constitute conditions of this Purchase Order and will survive inspection, acceptance and payment by NYU.
10. **Proprietary Rights.** With respect to any Goods and/or Services developed specifically for NYU under this Purchase Order, the Seller acknowledges and agrees that such Goods and/or the results and proceeds of such Services, including any deliverables to be provided to NYU (collectively, the "Work Product"), including all U.S. and foreign copyright, patent, trademark, trade secret and all other intellectual property or proprietary rights therein (the "Intellectual Property Rights"), will be the sole and exclusive property of NYU. All elements of the Work Product that are protectable by copyright will be considered "works made for hire" under the United States Copyright Act, 17 U.S.C. § 101 et seq. To the extent that any Work Product does not constitute a work made for hire, or to the extent that ownership of any rights therein do not otherwise automatically vest in NYU, Seller hereby assigns to NYU all right, title and interest that the Seller may have or may hereafter acquire in all Work Product, including all Intellectual Property Rights, and any registrations or applications relating thereto. Upon NYU's request, Seller will provide such cooperation as NYU may reasonably request to confirm, obtain, register, transfer, and/or preserve in the name of NYU (or its designee) the Work Product and to assist in any proceeding or litigation relating to the Work Product.
11. **Non-infringement.** The Goods and/or Services are original to Seller and do not and will not infringe or otherwise violate or misappropriate any copyright, patent, trademark, trade secret, or other proprietary right or privacy or publicity right of any third party. If any of the Goods and/or Services are infringing or alleged to be infringing, in addition and not in limitation of any other rights or remedies, Seller shall, at its expense and at NYU's sole option, either (a) procure the right for NYU to continue using such infringing Goods and/or Services, (b) replace the Goods and/or Services with a non-infringing product, (c) modify the Goods and/or Services to make them non-infringing, or (d) refund to NYU all fees paid for the infringing Goods and/or Services.
12. **Compliance with Laws and NYU Policies.** Seller will comply with all applicable international, foreign, and U.S. federal, state and local laws, rules and regulations, including, but not limited to, all applicable laws and regulations pertaining to privacy and confidentiality, including the EU General Data Protection Regulation ("GDPR"), the Family Educational Rights and Privacy Act of 1974, and any other applicable data protection laws, enactments, directives, regulations, guidelines, orders or industry codes applicable to any part of the Goods and/or Services and/or any party relating to the processing, privacy or use of "Personal Data" as defined below (collectively, "Data Protection Laws"); and Seller will comply with all applicable NYU policies, procedures, and instructions in connection with this Purchase Order.
13. **Export and Sanctions Laws.** Seller represents and warrants that (i) Seller is not currently in violation of and will not violate US export control and economic sanctions laws, including the US Department of Commerce's Export Administration Regulations ("EAR"), the economic sanctions programs administered by the US 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 NYU to be in violation of US export control and economic sanctions laws; (ii) Seller will obtain and maintain, and furnish to NYU upon request, any and all permits, licenses, approvals, certificates and other documents required by NYU or otherwise required by applicable law; (iii) 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; (iv) 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; (v) Seller will not deposit funds it receives from NYU into a Cuban, Iranian, North Korean, Syrian, or Sudanese bank and acknowledges that NYU shall not be responsible for the loss of any funds deposited in violation of this provision; (vi) 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 NYU 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 NYU; (vii) all items (hardware, software, or technology) to be provided to NYU 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 NYU 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 NYU in writing of any future changes to the export classification information of the item(s).

14. **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 NYU, 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 NYU to be in breach of the Anti-Corruption Laws; (e) will not directly or indirectly offer, give or authorize to any NYU 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 NYU, 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; (g) represents and warrants that it has, with regard to any past action or omission related to this Purchase Order, acted consistently with each requirement set forth above. Seller further represents and warrants that neither Seller nor any of its principals, owners, directors, or officers: (a) has been convicted of any offense involving bribery, corruption, fraud, or dishonesty; (b) has been or is 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; or (c) has been, or is 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 NYU if it or any of its principals owners, directors, or officers become subject to (a), (b), or (c) above during the course of NYU performance under this Purchase Order. Seller will keep accurate books, records, and accounts in connection with the services to be performed under the Agreement.
15. **Non-Discrimination.** The University is an equal opportunity employer and federal contractor or subcontractor. Consequently, the University and Seller agree that, as applicable, they will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which (i) prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities; (ii) prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin; and (iii) require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The University and Seller also will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), as applicable, relating to the notice of employee rights under federal labor laws.
16. **Indemnification.** To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless NYU and its affiliates, and their respective employees, students, trustees, directors, officers, contractors, agents, and representatives (the “Indemnified Parties”) from and against any and all losses, claims, allegations, demands, suits, proceedings, investigations, prosecutions, actions, causes of action, liabilities, obligations, costs, expenses, assessments, settlements, judgments, interest, penalties (including legal expenses and reasonable attorneys’ fees), damages or injuries of any kind or nature whatsoever (including damage, loss or destruction of real or personal property, personal or bodily injury or death) to the Indemnified Parties caused by, resulting from, arising out of, or occurring in connection with any of the following by Seller or its employees, trustees, directors, officers, contractors, or any other party acting on its behalf: (i) breach of any term or provision of this Purchase Order including the representations and warranties; (ii) violation of applicable laws, rules, or regulations; (iii) actual or alleged infringement or other violation or misappropriation of any intellectual or other proprietary right or privacy or publicity right of any third party; (v) experiencing of any Security Incident (as defined in Section 22 below); or (vi) any other acts or omissions or intentional misconduct in connection with this Purchase Order. NYU will provide Seller with notice of any claim subject to indemnification under this section. In the event Seller fails to prosecute and conduct the defense of such claim diligently and in good faith, NYU 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 NYU and at all times keep NYU informed of all material matters relating to its indemnification of NYU, including compromise or settlement of any claim. NYU will be entitled to participate in any litigation and/or negotiations relating to any compromise or settlement with counsel of its own choice. Seller will not agree to any compromise or settlement of such claim, or permit a default or consent to entry of any judgment in respect of such claim, without NYU’s prior written consent.
17. **Insurance.** Seller will maintain: (a) Commercial General Liability Insurance, written on an occurrence basis in amounts of not less than US\$2,000,000 per occurrence, which will include in its coverage liquor liability if this Purchase Order includes service of alcohol; (b) Workers’ Compensation Insurance as required by applicable law and Employer’s Liability Insurance in an amount not less than US\$1,000,000 for each accident; (c) Professional Liability Insurance (Errors and Omissions) in an amount not less than US\$2,000,000 for each wrongful act if this Purchase Order covers the provision of professional services; and (d) Automobile Liability Insurance for a combined single limit of not less than US\$1,000,000 if Seller will own, hire or lease any automobile in connection with this Purchase Order. Each year, seller will be notified 30 to 45 days prior to the expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file) that they must submit an updated insurance certificate with the insurance certificate monitoring company. Insurance certificate submissions are required to be made online at the dedicated website established by the certificate monitoring company identified below. Questions on submissions should be directed to the certificate monitoring company: Ebix RCS P.O. Box 100085-U2, Duluth, GA 30096 Phone – (951) 925-2854 Email – nyu@ebix.com. 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 years following completion of its work under this Purchase Order or purchase tail coverage for the remaining period. Said policies will also provide that the insurer will give NYU at least thirty (30) days’ prior written notice of cancellation, modification or material alteration of said policy. Seller’s procurement of the insurance hereunder will not relieve Seller of any obligation or liability assumed under this Purchase Order.

18. **Governing Law.** This Purchase Order and all matters arising out of or relating to this Purchase Order will be governed by and construed according to the laws of the State of New York without regard to principles of conflicts of law. The courts of the State of New York in New York County and the United States District Court for the Southern District of New York will have exclusive jurisdiction over the Parties with respect to any dispute, controversy, or claim between them arising out of or relating to this Purchase Order. NYU may serve any summons or process in any such proceeding on Seller in the manner for giving notices under this Purchase Order. The Parties waive the right to a trial by jury in any action or proceeding arising out of or relating to this Purchase Order.
19. **NYU Tax-Exempt.** NYU, a not-for-profit education corporation, is generally exempt from federal excise taxes and state and local sales and use taxes. Seller will not charge NYU for any taxes in connection with this Purchase Order to the maximum extent permitted by law. NYU will supply its tax exempt number and/or copies of its exemption certificates to Seller upon request.
20. **Confidential Information.** Seller will hold in confidence and will not directly or indirectly disclose to any person or use for its own benefit any information provided by NYU or its affiliates or otherwise obtained or developed by Seller as a result of this Purchase Order that is confidential or proprietary in nature, whether written, verbal or in any other form, including any information that relates to the employees, students, research and development, plans, business affairs, finances, fundraising, marketing, property, records, contracts, processes, techniques, inventions, trade secrets or know-how of NYU, including any education records as defined under the Family Educational Rights and Privacy Act and any information provided by NYU students to Seller (“Confidential Information”). Seller will only disclose the Confidential Information to those of its employees, accountants and legal advisors who need to know such Confidential Information in order for Seller to carry out its obligations hereunder, provided that such employees have agreed in writing to be bound by the confidentiality obligations set forth herein or are bound by an agreement with Seller on terms no less stringent than those set forth herein and have been informed of their confidentiality obligations hereunder. Seller acknowledges that all right, title and interest in the Confidential Information remains the sole property of NYU, and that Seller will not obtain any such right, title and interest by virtue of this Purchase Order or otherwise. Upon expiration or termination of this Purchase Order, Seller will, at NYU’s option, either return to NYU any and all Confidential Information and any copies thereof or will destroy such Confidential Information and certify such destruction in writing to NYU. Seller agrees that the loss arising from a breach of the foregoing confidentiality obligations cannot adequately be compensated solely by money damages and will cause NYU to suffer irreparable harm, that a remedy at law for such breach would not be adequate and that NYU will be entitled to injunctive relief for such breach in addition to all other remedies that might be available to it.
21. **Protected Health Information.** If the provision of Goods and/or Services by Seller would qualify Seller as a “Business Associate” of NYU as defined under the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and any regulations promulgated from time to time thereunder including the Final Omnibus Rule, Seller represents and warrants that it has executed and delivered, or will promptly execute and deliver, NYU’s Business Associate Agreement template, the current version of which can be found at <http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/hipaa-policies.html> (the “BAA”), and will fully comply with the terms of the BAA, which is incorporated by reference into this Purchase Order. In the event of any conflict between the terms of the BAA and this Purchase Order, the terms of the BAA will control.
22. **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. NYU and the Seller shall each comply with the Data Protection Laws. To the extent that the Seller is processing Personal Data on behalf of NYU, the 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 the Personal Data solely for the purpose of performing its obligations under the Purchase Order; (iv) process the Personal Data only in accordance with the instructions of NYU; (v) notify NYU 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 NYU and, where applicable, a legally compliant 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 NYU or at the request of NYU 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 NYU in taking any steps necessary to ensure that NYU 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, NYU 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 NYU 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 NYU'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 NYU and follow instructions by NYU, 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 NYU, 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 NYU 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 Section 20 fully apply with respect to Personal Data.
 - i. Throughout the term of this Purchase Order and for a period of three years after final payment, or longer if required by law, NYU, 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 NYU to verify Seller's compliance with the terms of Data Protection Laws and this Purchase Order. Seller grants NYU 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 NYU with adequate and appropriate workspace for conducting the audit. Seller shall provide any other information as required to demonstrate NYU's compliance with Data Protection Laws. If NYU, in its sole discretion, determines that an on-site audit is not necessary, Seller agrees to complete, within 30 days of receipt, an audit questionnaire provided by NYU. Any overcharges discovered during the audit shall be paid within 30 days of Seller's receipt of NYU's written notification of audit findings.
23. **Student Records.** To the extent that Seller receives or otherwise has access to student-related records of NYU 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 § 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 Purchase Order or as otherwise authorized by Seller; and (iii) to the extent that NYU 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 NYU's FERPA Guidelines, which are available at www.nyu.edu/apr/ferpa.htm.
24. **Payment Card Industry Data Security Standards.** If Seller will be providing credit card processing services for or on behalf of NYU, Seller agrees to be bound by the provisions of [Attachment A](#) attached hereto and incorporated as if set forth fully herein.
25. **Medicare-Related Document Retention.** In the event this Purchase Order involves or relates to (a) the provision of services under Medicare and (b) Goods and/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") this 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 NYU under this Purchase Order. Access to such items will be made available by Seller for at least four (4) years after Seller furnishes Goods and/or Services under this Purchase Order. Seller will give NYU notice of any request made by HHS to Seller for such access. In addition, this provision will be contained in any agreement between Seller and any subcontractor for Goods and/or Services under this Purchase Order.
26. **Use of Name; Publicity.** Seller will not use any name, logo, trademark or other designation of NYU or its affiliates, or any of their respective schools, colleges, divisions, departments or other units, for any purpose, including in any marketing, advertising or publicity materials, without NYU's prior written consent.
27. **Notices.** All notices to be given hereunder will be in writing and will be delivered by personal delivery or overnight carrier (such as UPS or FedEx) or by certified or registered United States Mail, return receipt requested (or foreign equivalent) (if to NYU, addressed to Attn. Senior Director Procurement, New York University, 105 East 17th Street, New York, NY 10003; With a required copy to New York University, Office of the General Counsel, 70 Washington Square South, 11th Floor New York, NY 10012). The effective date of any such notice or communication will be: (i) if personally delivered or delivered by delivery service, the date of such delivery, or (ii) if delivered by certified or registered mail, seven (7) days after the date on which such notice or communication is deposited with the relevant postal service.
28. **Right to Audit.** Throughout the term of this Purchase Order and for a period of three years after final payment, or longer if required by law, NYU, 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 NYU to verify Seller's compliance with the terms of this Purchase Order. Seller grants NYU 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 NYU with adequate and appropriate workspace for conducting the audit. If NYU, in its sole discretion, determines that an on-site audit is not necessary, Seller agrees to complete, within 30 days of receipt, an audit questionnaire provided by NYU. Any overcharges discovered during the audit shall be paid within 30 days of Seller's receipt of NYU's written notification of audit findings.



NEW YORK UNIVERSITY
Purchase Order Terms and Conditions

29. **Miscellaneous.** This Purchase Order will be binding on the Parties and their respective successors and permitted assigns. Seller may not assign this Purchase Order or any of its rights and obligations hereunder without NYU's prior written consent. Any attempted assignment by Seller without such consent will be null and void for all purposes. If NYU consents to an assignment, Seller will remain primarily responsible for any and all Goods and/or Services delivered and/or performed by such assignee or subcontractor as if performed and/or delivered by Seller. Seller may not modify, waive or supplement this Purchase Order or any term or condition thereof without the written agreement of NYU. This Purchase Order may be changed or modified by NYU by a written instrument signed by NYU. The failure of NYU to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Purchase Order, or to otherwise exercise any right or remedy under this Purchase Order or otherwise, will not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition, or of the future exercise of such right or remedy, but rather the obligation of Seller with respect to that future performance will continue in full force and effect. If any provision of this Purchase Order is determined to be invalid, void or unenforceable in any respect, the remaining provisions hereof will continue in full force and effect. This Purchase Order is not for the benefit of any third parties. Nothing contained herein will create any agency, partnership, association, or joint venture between the Parties. The relationship of Seller to NYU is that of independent contractor solely and Seller is directly responsible for the mode, method, and manner of its activities. Under no circumstances, as a result of this Purchase Order or otherwise, will Seller or any of its employees, agents, or representatives be considered an employee, agent, or representative of NYU. All provisions that expressly or by their nature should survive termination of this Purchase Order shall survive, including all representations and warranties, indemnification obligations, and confidentiality obligations. Use of the word "including" throughout this Purchase Order is intended to introduce a nonexhaustive list and will be deemed to include the phrase "but not limited to" in each instance. Any affiliate of NYU shall have the right to use the Goods and/or Services and/or to exercise any of NYU's rights under this Agreement.

Attachment A: Payment Card Industry Data Security Standards

If Seller possesses, stores, processes or transmits cardholder data on behalf of NYU, or has ability to impact the security of NYU 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 NYU 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 NYU, Seller must supply to NYU 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 NYU’s written request, Seller shall make available to NYU 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. NYU 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 NYU personnel at security@nyu.edu 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 NYU personnel of a Security Breach, the parties may coordinate with each other to investigate the Security Breach. Seller agrees to fully/reasonably cooperate with NYU personnel in NYU’s handling of the matter, including, without limitation to: (i) assisting with any investigation; (ii) providing NYU 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 NYU personnel.
 - Provide NYU 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 NYU protected data used or disclosed; who made the 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 NYU.
 - Provide NYU personnel at security@nyu.edu with the name and contact information for an employee of Seller who shall serve as NYU’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 NYU will have the right to immediately terminate this Purchase Order.
- Q. Seller shall and hereby does indemnify and hold NYU 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 C, including any breach by Seller of the PCI DSS.