Purchasing Order Terms and Conditions

The Purchase Order Form, these Purchase Order Terms and Conditions, and any attachments hereto (collectively, the “Purchase Order”) are the exclusive terms and conditions for the delivery of the specified goods or materials and/or performance of the specified services and/or work (collectively, “Goods and Services”) by the named seller (“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) the 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 (b) Seller at any time otherwise delivers or performs all or any part of the Goods and Services. No change or alteration may be made to any term of this Purchase Order without the prior written consent of NYU.

2. Acceptance by NYU. Delivery of the Goods and Services will be deemed to be complete only when delivered pursuant to a valid Purchase Order and when actually received by NYU. All Goods and Services are subject to NYU’s right of inspection following delivery and/or performance by Seller; payment for Goods and 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 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 Services even if only a portion is nonconforming. In any case, acceptance of all or any part of the Goods and 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 Services, or (b) make a claim for damages, for reasons including defect, breach of warranty, late delivery, or breach or non-compliance with any of the terms or provisions of this Purchase Order.

3. Time for Delivery. Delivery or performance will be strictly in accordance with NYU’s delivery or performance schedule. If Seller’s delivery or performance fails to meet such schedule, NYU may, without limiting any of its other rights or remedies, direct expedited routing or performance by one or more third parties, and the difference between the cost of that expedited routing or performance and this Purchase Order’s routing 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. Shipment of goods or materials is F.O.B. Destination unless Purchase Order states otherwise.

5. Cancellation for Breach by Seller. NYU may terminate this Purchase Order, in whole or in part, for Seller’s breach of this Purchase Order, including but not limited to, the failure to deliver the Goods and Services as and when specified. If NYU terminates this Purchase Order for Seller’s breach, in addition to all of NYU’s other rights and remedies under law, Seller will be liable to NYU for all damages, including but not limited to, the cost of securing replacement Goods and Services, shipping charges for returned Goods and Services, 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, 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 Services performed or delivered. Payment due will be a percentage of the purchase price equal to the percentage of the work completed and/or any unit prices in the purchase price specified for goods delivered.

7. Pricing. NYU will pay Seller only for such Goods and Services and at such prices as agreed upon pursuant to this Purchase Order. Prices include all amounts payable by NYU and no additional charges of any kind (including, without limitation, 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 an authorized purchasing agent of NYU. Seller will submit all invoice(s) to NYU under this Purchase Order as set forth herein or as may be designated by NYU. If any of the Goods and 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.

8. 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 Services conform and will continue to conform to professional industry standards and to any description, sample, specifications or other documentation related to the Goods and Services made available to NYU; (b) the Goods and 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 Services necessary to fulfill its obligations hereunder; (d) the Goods and Services are free from any liens, claims and encumbrances of any nature and do not and will not infringe the intellectual property rights of any third party; (e) all Goods and Services will have been produced or manufactured in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended, and all other applicable federal, state and municipal laws, rules and regulations; and (f) Seller has not been excluded from participation in, nor is aware of any pending or threatened debarments or exclusions from, any federally or state-funded healthcare 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.

9. Proprietary Rights. The Goods and Services will be deemed to be work made for hire and NYU will own all right, title, and interest in and to the Goods and Services and each part and component thereof, whether or not patentable or copyrightable, and any copyright therein and patent application or patent thereon. Seller agrees that all right, title and interest in and to the Goods and Services has been transferred and assigned to NYU. To the extent any background intellectual property rights of Seller are necessary for NYU to fully exploit the Goods and Services, Seller agrees they must be disclosed to NYU prior to Seller’s commencement of work hereunder, and Seller agrees to grant NYU non-exclusive license rights thereto, sufficient for it to fully exploit the Goods and Services, without additional consideration. At NYU’s request, Seller will promptly give, execute, deliver, file, and record any and all applications, assignments or other instruments, and will do such other acts and things, as NYU may deem necessary in order to confirm transfer, assignment, conveyance, and vesting in and to NYU all right, title, and interest in and to the Goods and Services, each part and component thereof, all copyrights therein, and all patent applications and patents thereon; in order to assist NYU in prosecuting or defending any litigation and proceedings relating to the Goods and Services, any part or component thereof, any copyright therein, or any patent application or patent thereon; or in order to evidence or preserve NYU’s
PURCHASE ORDER TERMS AND CONDITIONS

ownership of the right, title, and interest in and to the Goods and Services, each part and component thereof, all copyrights therein, and all patent applications and patents thereon. This Section will survive termination of this Purchase Order.

10. **Force Majeure.** Neither Party will have responsibility to the other due to circumstances beyond that Party’s reasonable control, including (without limitation) any act of God, war or public enemy, or any act of government or any agency thereof, or any fire, flood, explosion or other catastrophe, or any epidemic or quarantine restriction, or any act of sabotage or terrorism, or any strike, lockout or other work stoppage, slowdown or dispute.

11. **Compliance with Laws and NYU Policies.**

   a. 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 Family Educational Rights and Privacy Act of 1974, and Seller will comply with all applicable NYU policies and instructions. Seller 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 and the economic sanctions programs administered by the U.S. Department of Treasury, nor take any other action that would cause NYU to be in violation of U.S. export control and economic sanctions laws. 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.

   b. **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, but not limited to, the U.S 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, and the Foreign Corrupt Practices Act, 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 that 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 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 – 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 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, but not limited to, 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 the Purchase Order is deemed finalized and will notify NYU in writing of any future changes to the export classification information of the item(s).

12. **Indemnification.** To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless NYU 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, without limitation, damage, loss or destruction or real or personal property, personal or bodily injury or death) to NYU and all other persons caused by, resulting from, arising out of, or occurring in connection with Seller’s: (i) breach of any term or provision of this Purchase Order including the representations and warranties; (ii) violation of applicable law; (iii) performance or non-performance by Seller in connection with this Purchase Order; (iv) infringement of any intellectual or other property right of any third party; or (v) negligent acts or omissions or intentional misconduct. NYU will provide Seller with notice of a claim for indemnification under this section. In the event Seller fails to prosecute and conduct the defense 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 any third-party claim, or permit a default or consent to entry of any judgment in respect of such claim, without NYU’s prior written consent. For purposes of this section and the previous section, “Seller” means each of Seller, any subcontractor engaged by Seller in connection with Goods and Services, and their respective employees, officers, directors, agents, servants and representatives. References to “NYU” in this section include, and provisions of this section will inure to the benefit of, NYU, its affiliated entities, and their respective employees, trustees, directors, officers, agents, servants, successors and assigns. The provisions of this section will survive termination of this Purchase Order.

13. **Insurance.** Seller agrees to maintain insurance, based on NYU’s assessment of the liability, risk and exposures to the University. Seller will submit Certificate of Insurance showing the required coverage via email to insurance vendor.cert@nyu.edu to NYU’s Director of Insurance and Enterprise Risk Management at 105 East 17th Street, 4th Floor, New York, NY 10003 evidencing the coverage required, pursuant to the risk category, to the extent applicable, and the additional insured endorsement; such endorsement will name NYU as an additional insured. All insurance policies specified herein will be issued by insurers with a minimum rating from A.M. Best of A-, and a
PURCHASE ORDER TERMS AND CONDITIONS

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.

Seller waives the right to a trial by jury in any action or proceeding relating to this Purchase Order. The Parties waive the right to a trial by jury in any action or proceeding relating to this Purchase Order.

NYU Tax-Exempt. NYU, a not-for-profit education corporation, is generally exempt from federal, state and local taxes for purchases made in furtherance of exempt mission, including New York sales and use tax and federal excise tax. Seller will not charge NYU for any taxes in connection with the Purchase Order to the extent permitted by law. NYU will supply its tax exempt number and/or copies of its exemption certificates to Seller upon request from Seller.

Confidential Information. Seller and its employees, agents and subcontractors will hold in confidence and not disclose, distribute, sell, copy, share or otherwise use NYU’s “Confidential Information,” which includes (i) any information about or relating to the Goods and Services, and (ii) any information obtained, learned, received, or developed by Seller that relates to the employees, students, research, development, plans, business affairs, property, records, processes, techniques, or equipment of NYU. Upon completion of its performance under or termination of this Purchase Order, Seller will return to NYU all Confidential Information, and any copies thereof.

Protected Health Information. Business Associate. If the provision of Goods and 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/purchasing/services/register.html, 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.

United States Government Funding. If the Purchase Order involves funds from the United States Government pursuant to a contract with or grant from the United States Government, Seller will comply with the United States Government Funding Provisions attached hereto as Attachment B and incorporated as if set forth fully herein.

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 C attached hereto and incorporated as if set forth fully herein.

Medicare-Related Document Retention. In the event the Purchase Order involves or relates to (a) the provision of services under Medicare and (b) Goods and Services exceeding the aggregate purchase price of $10,000 during any 12-month period, Seller agrees that, in accordance with Section 952 of the Omnibus Reconciliation Act of 1980, and all amendments thereto, the Secretary of the Department of Health and Human Services and the Comptroller General (or any of their duly authorized representatives) may review the Purchase Order and all Attachments and have access to the books, documents and records of Seller and any subcontractor that they may deem necessary to verify the nature and extent of the costs incurred by NYU under the Purchase Order. Access to such items will be made available by Seller for at least four (4) years after Seller furnishes goods, materials, services or work provided hereunder. In addition, this provision will be contained in any agreement between Seller and any subcontractor for goods, materials or work under this Purchase Order.

Publication. Seller will not use (a) the names of New York University, NYU, or any college, school, division, unit, agent, employee or student thereof or (b) any logo, trademark, service mark or trade name owned or controlled by NYU without the prior written consent of a duly authorized representative of NYU.

Notices. All notices to be hereunder will be in writing and will be delivered by facsimile (if to NYU, to the number designated on the Purchase Order Form) or overnight carrier or United States Mail (if to NYU, addressed to Attn. Assistant Vice President for Purchasing Services, New York University, 726 Broadway, 2nd Floor, New York, NY 10003).

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 (including its right to receive payment) without the prior written consent of a duly authorized representative of NYU.

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