

**MEDICAL FACULTY ASSOCIATES, INC.**  
**STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

These Terms and Conditions ("**Terms and Conditions**") and the Purchase Order or other separate written agreement provided by Supplier and accepted by the MFA (together with any and all appendices, and/or exhibits attached hereto or otherwise issued by the MFA in connection herewith, collectively, known hereunder as this "**Purchase Order**") by and between Medical Faculty Associates, Inc. ("**MFA**") and Supplier (as defined in the Purchase Order) (MFA and Supplier, collectively, the "**Parties**," and each a "**Party**"), constitute the entire agreement between MFA and Supplier and supersede and replace any and all prior documents, writings, representations, agreements, proposals, promises, or other understandings, oral or otherwise, between the Parties, including but not limited to any prior or subsequent price quote, invoice, or other document furnished by Supplier.

**1. Formation of Contract.** By performing under this Purchase Order (in full or in part), Supplier agrees to and accepts all the provisions in this Purchase Order and agrees to perform. This Purchase Order is hereby accepted on the terms set forth herein and these terms shall govern. This Purchase Order may not be modified, amended, or in any way varied with any additional or different terms unless the MFA specifically and expressly agrees in writing that such other terms are accepted.

**2. Change or Cancellation.** MFA may for any reason and at any time by written notice, change, cancel or terminate all or any part of this Purchase Order, and upon MFA's request Supplier shall deliver (to the extent reasonably possible) any goods or other deliverables that have been prepared up until the date of such termination. Termination for convenience shall not relieve Supplier or MFA of its obligations incurred prior to the date of termination. After a termination pursuant to MFA's notice, Supplier may request an equitable adjustment on a time and materials basis (but not to include standard stock) for any work then in progress. Supplier shall not be paid for any amount of lost profits on canceled orders, or for any avoidable costs incurred after the date of termination. Any request for an equitable adjustment must be made within thirty (30) days after the date of Supplier's receipt of notice of cancellation, with reasonable support for the amount requested, and shall be negotiated by the Parties in good faith on an expedited basis.

**3. Termination for Cause.** By written notice, the MFA may terminate this Purchase Order, in whole or in part, for failure of Supplier to comply with any of the terms and conditions of this Purchase Order. In the event of termination for cause, the Supplier shall be liable to MFA for any and all damages sustained (a) by reason of the default which gave rise to the termination or (b) as a result of the early termination, including without limitation any incremental cost of re-procuring similar goods or services. This right of termination is in addition to and not in place of any other rights or remedies that the MFA may have at law or in equity.

**4. Inspection.** All goods and services are subject to MFA's right of inspection for 30 days after receipt; payment for goods and services prior to inspection will not constitute acceptance by MFA. The MFA may elect to reject all or a portion of goods or services that, in MFA's sole judgment, are found to be non-conforming or inadequate. Acceptance by MFA of all or any part of the goods or services will not be deemed a waiver to make a claim for damages or a settlement.

**5. Warranties.** In addition to Supplier's standard warranties applicable to the goods or services furnished hereunder, Supplier expressly represents and warrants that the goods or services (a) comply with all applicable laws, codes and regulations, and conform to all specifications and industry standards; (b) are merchantable; (c) are fit for the particular needs or purpose of MFA as would be reasonably expected for such goods or services, or as otherwise communicated to Supplier; (d) conform in all respects to samples, advertisements and other forms of representation made by Supplier orally or in written documentation provided to, made available to, or in the possession of MFA; and (e) are not restricted in any way by

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patents, copyrights, trade or service marks, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Supplier agrees to promptly replace or correct defects and non-conformities, to be liable for all direct, indirect, consequential and other damages suffered by MFA and any other persons, and to defend and indemnify MFA from any claim asserted by any person resulting in whole or in part from such breach.

**6. Delivery.** Supplier agrees to on-time delivery based upon the date or time for the delivery of goods and services set forth in this Purchase Order. If the Purchase Order does not specify a delivery date, Supplier shall provide the goods or service as if time is of the essence. The MFA may regard the failure to deliver in a timely manner as a breach of these terms and conditions, entitling the MFA to all rights and remedies at law, in equity, and under the specific remedies of this Purchase Order. Changes, modifications or other delays resulting directly from MFA's actions and that prevent Supplier from delivering in a timely manner shall not be considered a breach. If Supplier anticipates a delay in delivery, Supplier shall notify MFA immediately and shall take all commercially reasonable steps, at Supplier's own cost, to avoid or mitigate the effect of such delay.

**7. Shipping.** Title and risk of loss or damage to items ordered herein shall remain with Supplier until delivered to and accepted by the MFA. All packaging, carting, transportation, and insurance charges are to be paid for by the Supplier, unless otherwise specifically stated in the Purchase Order. All goods shipped shall be free of liens or encumbrances. Upon request, the Supplier shall furnish satisfactory evidence of freedom from any such liens or encumbrances. The Parties will assist each other in the prosecution of claims against carriers.

**8. Hazardous Substance.** Supplier is given notice hereby that the MFA has a Hazardous Waste Management Plan (HWMP) pursuant to the 1976 Resource Conservation and Recovery Act and in compliance with EPA and District of Columbia regulations. If Supplier intends to bring onto the MFA's premises or remove from the MFA's premises any hazardous substances or intends to engage in any activities involving hazardous substances that might reasonably be expected to create a danger or hazard to employees or other persons at the MFA, then in advance of any such activity Supplier shall submit to the MFA's Office of Risk Management for review and approval its program for compliance with the MFA's HWMP and its schedule and methods for performing such activities. Supplier will adhere to its approved program in the performance of all work to be done on MFA premises. Supplier should obtain further information regarding the MFA's HWMP by emailing the MFA's Office of Risk Management at [riskmgmt@mfa.gwu.edu](mailto:riskmgmt@mfa.gwu.edu). Suppliers shipping goods to the MFA pursuant to this Purchase Order that contain a hazardous substance must provide a Safety Data Sheet prior to shipment. Supplier shall package, label, transport and ship hazardous materials, items containing hazardous materials, and any other regulated materials in accordance with all applicable federal, state, and local laws, rules, ordinances and regulations, Prior to each shipment of any hazardous or regulated materials, Supplier shall notify MFA of the nature of such shipment by such means of communication as will allow for the proper preparation for acceptance of the delivery and shall identify same on all shipping documents. Supplier shall be solely responsible for notifying carriers and other handlers of any risks inherent in any such shipments. In addition, Supplier shall be available to consult MFA on any concerns with such hazardous or regulated materials. "Hazardous substance" means any pollutant, contaminant, hazardous or toxic substance or waste, solid waste, petroleum or any byproduct thereof, or any other chemical, substance or material listed or identified in or regulated by any federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health, natural resources and/or the environment now or hereafter in effect including, without limitation, any and all claims or causes of action based upon such governmental statute, regulation, law or ordinance.

**9. Export Controls.** The Parties shall comply with all applicable U.S. export control laws and

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regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799 and/or other restrictions imposed by the Treasury Department's Office of Foreign Asset Controls, in the performance of this Purchase Order. Supplier shall not disclose or provide to the MFA or any employee or agent of MFA any data or technology subject to the licensing provisions of ITAR and EAR, without prior written notice to and advance written approval by the MFA. If the Supplier sends any such data or technology that is subject to export control, without notice of the applicability of such export control, MFA has the right to immediately terminate this Purchase Order.

**10. Indemnification.**

- a. Supplier shall defend and indemnify the MFA and the MFA's trustees, officers, employees, agents and representatives (collectively, the "**MFA Indemnitees**") against, and shall hold the MFA Indemnitees harmless from, any claims and demands made by any person or entity as a result of injuries, damages, expenses and losses incurred by such a person or entity, including without limitation such person's or entity's and the MFA's legal costs and attorney's fees (hereinafter collectively "**Liabilities**"), arising out of or relating to Supplier's (i) performance or failure to perform pursuant to this Purchase Order or (ii) misrepresentation or breach of any representation, warranty, obligation, or covenant of this Purchase Order, except to the extent that the Liabilities are a result of the direct and sole negligence of the applicable MFA Indemnitee. This provision shall survive the delivery of the goods, the termination or completion of the services, or the expiration of this Purchase Order.
- b. Supplier, at its expense, shall defend and indemnify the MFA Indemnitees against, and shall hold the MFA Indemnitees harmless from all claims and demands made by any person or entity as a result of Liabilities arising out of or relating to a claim that anything furnished under this Purchase Order infringed a patent, copyright, trademark, service mark, trade secret, or other legally protected propriety right. Supplier shall pay all costs, fees, and damages which may be incurred by the MFA Indemnitee for any such claim or action or the settlement thereof.
- c. Supplier, at its expense, shall defend and indemnify the MFA Indemnitees against, and shall hold the MFA Indemnitees harmless from all claims and demands made by any person or entity as a result of Liabilities arising out of or relating to any product liability claim relating to or arising from any goods supplied by Supplier hereunder. Supplier shall pay all costs, fees, and damages which may be incurred by the MFA Indemnitee for any such claim or action or the settlement thereof.

**11. Insurance.** Upon the Parties' entry into this Purchase Order, and from time to time upon request, Supplier will provide to MFA a Certificate of Insurance with proof of maintaining, at a minimum, the following amounts of coverage, it being acknowledged and agreed that the existence and maintenance of this coverage shall in no way limit Supplier's obligations or liabilities hereunder:

- a. Commercial General Liability: On occurrence basis with the following limits:

General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000 aggregate
Personal Injury and Adv. Injury Limit	\$1,000,000 ea. person/organization
Bodily Injury & Property Damage Limit	\$1,000,000 each occurrence
Fire Damage	\$1,000,000 (any one fire)
Medical Expense	\$5,000 (any one person)

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(Pollution Liability Endorsement of \$1,000,000 per occurrence will also be needed in the event hazardous materials are to be involved. If this contract requires the disposal of hazardous materials, all disposal locations must be approved by the Office of Risk Management.)

No exclusions for: Product/Completed Operations; Contractual Liability; Independent Contractors; Personal & Advertising Injury.

- b. Automobile Liability: Any Auto Owned, Hired and Non-Owned Combined Single Limit for Bodily Injury & Property Damage \$1,000,000.

For Transportation of Hazardous Materials: Automobile liability insurance with an MCS-90 endorsement for \$5,000,000 and Pollution Liability of \$1,000,000 each accident.

- c. Excess "Umbrella" Liability: \$2,000,000 ea. occurrence/aggregate. The umbrella coverage should be no more restrictive than underlying coverage.
- d. Workers' Compensation Statutory Coverage: As required by law.
- e. Employers' Liability: \$1,000,000 each accident; \$1,000,000 each employee – disease; \$1,000,000 aggregate disease.
- f. Professional Liability: If applicable, see Attachment A: Service Terms, Section A.8.

"Medical Faculty Associates, Inc." is to be named as an additional insured on all liability policies, except for Workers Compensation, and each insurer shall expressly waive any right of subrogation against MFA (or such waiver of subrogation shall be included in the policy). Each policy of insurance shall be issued in a company or companies licensed to do business in the District of Columbia, maintaining a rating of A-, VII or better in the *Best Guide*. Each policy shall also provide written notice to the MFA at least thirty (30) days prior to termination or any material amendment of any policy. The certificate holders' name must be shown as: "Medical Faculty Associates, Office of Risk Management, 2033 K Street, NW, Suite 220, Washington, DC 20052."

These insurance requirements are subject to change based on the contract amount and the type of activity. Refer to the updated Contract Insurance Matrix maintained by the MFA's Office of Risk Management for more contract specific requirements at <https://risk.gwu.edu/contract-insurance>

- 12. Conflict of Interest; Cancellation.** Supplier represents and warrants that there exist no conflicts of interest between Supplier and MFA or its employees or any member of employee's immediate family; and that it has not entered into and will not do so when performing under this Purchase Order, an agreement that would create a conflict with Supplier's obligations hereunder. Supplier hereby represents and warrants that it has neither received nor given gifts or gratuities to any member of the MFA community, nor participated in any other unethical conduct in connection with this Purchase Order. To the extent that Supplier can no longer make the representations and warranties contained in this Section, Supplier shall notify MFA immediately in writing. If, at any time, there is found to be a conflict of interest between any MFA employee and Supplier, this Purchase Order is subject to cancellation.
- 13. Debarment and Sanctions.** Supplier certifies that neither it nor any of its principals (officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel) is presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any grant, benefit, contract or program by any U.S. federal or state agency, or otherwise sanctioned. Supplier represents and warrants that it and any of its agents, employees, officers, and representatives providing Services under this Agreement have not been: (a) sanctioned by or excluded from participation in any state or federal healthcare program including but not limited to Medicare and Medicaid

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and Federal Health Care Programs) and are not sanctioned or debarred under any federal or state law or regulation; (b) listed on the current List of Excluded Individuals and Entities maintained by the Office of Inspector General for the United States Department of Health and Human Services; (c) listed on the General Services Administration's List of Parties Excluded from Federal Programs; (d) listed on the United States Department of Treasury, Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; (e) convicted of a criminal offense related to health care; and (f) been, and is not currently, under investigation or a party to a corporate integrity agreement, compliance agreement, settlement agreement or any other such agreement with a federal or state government agency. Supplier acknowledges that the certification is a material representation of fact upon which MFA is relying in entering into this transaction. Supplier agrees to provide immediate written notice to MFA if it learns at any time that its certification was erroneous when submitted or if, during the term of this PO, it, or any of its principals, is debarred, suspended, proposed for debarment, declared ineligible, subject to a corporate integrity agreement or other agreement, or excluded from participation in this transaction or in any federal grant, benefit, contract or program, including Medicare, Medicaid and other Federal Health Care Programs. If subcontracting is permitted by this PO, Supplier agrees that it will include this clause, without modification, in all subcontracts and subprojects, and in all solicitations for subcontract and subproject proposals. Supplier agrees that debarment, suspension, proposed debarment or suspension, ineligibility or exclusion of Supplier, or any of its principals or subcontractors shall constitute cause for immediate termination of this Agreement by MFA.

**14. Nondiscrimination.** Supplier will not discriminate against any qualified employee or applicant for employment in the performance of this Purchase Order, with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, religion, color, sex, age, national origin or ancestry, disability, veteran status, sexual orientation, gender identity or expression, or any other basis prohibited by applicable law. Supplier agrees to comply with all applicable federal equal opportunity laws, orders and regulations, including without limitation, Executive Order 11246, as amended, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1972, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Americans With Disabilities Act of 1990, and the Civil Rights Act of 1991.

**15. Remedies not Exclusive.** The remedies available to MFA under this Purchase Order are not exclusive, but are in addition to such other remedies available to MFA by law, or in any way arising out of Supplier's performance under this Purchase Order.

**16. Governing Law.** Except as otherwise provided herein, this Purchase Order, and all disputes arising hereunder, shall be governed by the laws of the District of Columbia, without regard for the conflict of law rules thereof, and (unless Attachment D: Terms Applicable to Non-US Suppliers or US Suppliers Providing Non-US Goods and Services applies to this Purchase Order) the Parties commit to the exclusive jurisdiction and venue of the courts located in the District of Columbia to adjudicate any dispute arising under or relating to this Purchase Order. With respect to any suit, action or proceeding arising pursuant to this Purchase Order, each Party hereby irrevocably submits to the jurisdiction of the courts located in the District of Columbia, which submission shall be exclusive unless none of such courts has lawful jurisdiction over such proceedings.

**17. Force Majeure.** A Force Majeure will excuse MFA's obligations under this Purchase Order for as long as the Force Majeure persists. "Force Majeure" shall mean any act, event, cause, or occurrence rendering the MFA unable to perform its obligations that is not within the reasonable control of the MFA, including governmental action, and anything related to the consummations of the transactions contemplated by this Purchase Order that would, in the MFA's good faith determination, jeopardize any MFA's local, state, regional or national

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licensure, its accreditation, federal, state or local tax exemptions (including, without limitation, the MFA's non-profit status under Section 501(c)(3) of the Internal Revenue Code of the United States), or eligibility for financial assistance from U.S. Department of Health and Human Services, and District of Columbia, but, in all cases, excluding any act, event, cause or occurrence caused by the MFA's own financial condition or negligence.

**18. Conflict with Provisions in Written Agreement.** In the event of a conflict between the terms of this Purchase Order and the terms and conditions of a separate written agreement executed by the MFA and Supplier in connection with a transaction governed hereby, the terms which are most favorable to the MFA shall prevail.

**19. Assignment.** None of Supplier's duties to perform its obligations under this Purchase Order may be delegated or assigned to another person or party without the prior written consent of the MFA's Procure-to-Pay Department. Any attempted assignment by Supplier without such consent will be null and void for all purposes. The MFA may assign this Purchase Order to any affiliate or successor in interest to all or any part of its operations without prior notice to Supplier.

**20. Sales and Use Taxes.** MFA is a 501(c)(3) organization and is exempt from sales and use taxes. A Federal Tax Exemption Certificate and other tax exemption are available upon request.

**21. Invoicing.** Each order must be accompanied by an original invoice, clearly displaying the corresponding Purchase Order number(s). Supplier will either email to [invoice@mfa.gwu.edu](mailto:invoice@mfa.gwu.edu) (preferred) or mail invoices to: "MEDICAL FACULTY ASSOCIATES – PAYABLES, 44983 Knoll Square, Suite 225, Ashburn, VA 20147". Any discount or rebate with respect to the goods or services that is subject to 42 CFR §1001.952(h) shall be fully and accurately reported, or the existence of such discount or rebate shall be disclosed to the extent its value is not known at the time of sale, on all applicable invoices submitted to MFA in accordance with 42 CFR §1001.952(h)(2). MFA Payables may return invoices that do not comply with MFA policy and procedures. Questions regarding MFA invoicing policies or procedures should be directed to MFA Payables at [P2P@mfa.gwu.edu](mailto:P2P@mfa.gwu.edu)

**22. Payment.** The MFA reserves the right to pay any or all amounts due under this Purchase Order by using either a procurement card (p-card) or a Single Use Account (SUA) method of payment. The Supplier must accept the MFA's p-card or an SUA method of payment, as applicable. Supplier is prohibited from charging the MFA any additional fee, charge, or other obligation related to the MFA's use of either a p-card or an SUA method of payment. MFA may withhold payment on any invoiced amounts reasonably disputed in good faith. Such nonpayment shall not constitute a breach of this Purchase Order and the parties shall work together in good faith to resolve the dispute in a timely manner. Supplier shall continue performing its obligations hereunder notwithstanding such dispute and/or nonpayment.

**23. Set-off.** All claims for money due or to become due to the MFA from Supplier may be subject to deduction or set-off by the MFA against any amounts owed to Supplier from MFA arising out of this or any other transaction with Supplier. The MFA may exercise its set-off rights without prior notice to Supplier.

**24. Access to Records.** To the extent this Purchase Order is subject to Section 1861(v)(1)(I) of the Social Security Act, Supplier agrees to make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, this Purchase Order, and any books, documents, and records of Purchase Order that are necessary to certify the nature and extent of costs incurred by MFA under this Purchase Order, until the expiration of four (4) years after the acceptance of the performance by Supplier or the termination of this Purchase Order by MFA, whichever is later. Supplier agrees that if Supplier carries out any of the duties or obligations contemplated by this Purchase Order through a contract or subcontract with a value of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, such contract or subcontract shall require this same access to

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the books, documents, and records of such contractor or subcontractor. Furthermore, Supplier shall keep, at its own expense, accurate, true and complete books and records with respect to the goods or services provided under this Purchase Order, the costs, expense and other charges billed to MFA, and compliance with any applicable quality or service levels. Supplier shall preserve and permit MFA or any of MFA's duly-authorized representatives to examine and audit all directly pertinent books, documents, papers and records of Supplier involving transactions related to this Purchase Order for the purpose of making audits, examinations, excerpts, copying and transcripts for a period of three (3) years after final payment hereunder. Supplier agrees to refund to MFA any overpayments disclosed by any audit within thirty (30) days of notification by MFA.

**25. Publicity.** Supplier shall not, in any way or in any form, publicize or advertise the fact that Supplier is supplying goods or providing services to MFA, nor otherwise use the name or the registered marks of the MFA (or any college, school, division, unit, employee or student thereof), without the prior express written approval of the MFA. This prohibition extends to inclusion of the name of the MFA in client lists or press releases.

**26. Miscellaneous.** 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. The MFA's delay or failure to enforce any term or condition of this Purchase Order shall not operate to waive such term or condition. Any such waiver must be expressed by the MFA in an authorized writing. This Purchase Order is not for the benefit of any third parties. All provisions that logically ought to survive termination of this Purchase Order shall survive.

**27. Additional Terms for Suppliers of Web or Digital Content Products or Services:** If this Purchase Order involves web or digital content services or products, Supplier shall create, develop, and deliver services, deliverables, and/or products, and shall coordinate with MFA to ensure that such services, deliverables, and/or products are accessible and in compliance with applicable law including, but not limited to, the Americans with Disabilities Act and Sections 504 and 508 of the Rehabilitation Act. To this end, Supplier shall (i) develop and provide the services, deliverables, and/or products in reasonable compliance with the Web Content Accessibility Guidelines ("WCAG") 2.1, level AA developed by the World Wide Web Consortium ("W3C"), or any other accessibility standards developed in the future that the parties mutually identify and agree as applicable, whichever affords greater accessibility standards for end users, and (ii) to use reasonable efforts to promptly respond and resolve any identified accessibility compliance issue. MFA and Supplier each agree to provide reasonable cooperation to the other with regard to such responses and resolutions. Additionally, Supplier will immediately notify MFA of any requests for accommodation received by Supplier related to the services or products. MFA and Supplier each agree to provide reasonable cooperation to the other with regard to such requests for reasonable accommodations. Upon request, Supplier will provide information about conformance with applicable accessibility standards via the Voluntary Product Accessibility Template (VPAT).

**28. Telecommunications and Video Surveillance Services and Equipment.** If this Purchase Order involves the purchase of telecommunications or video surveillance services or equipment, Supplier certifies and warrants that it complies with §889(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) ("NDAA") and 2 CFR. §200.216 regarding the prohibition of certain telecommunications and video surveillance services and equipment, and will provide services and/or equipment that do not contain a substantial or essential component of any system, or as critical technology as part of any system, including componentry or software, from any of the "Prohibited Entities" as identified on the General Services Administration's NDAA Section 889 webpage: <https://smartpay.gsa.gov/ndaa-section-889>. The Supplier is required to monitor the Prohibited Entities related to NDAA to ensure continued compliance with all related prohibitions, including

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among any subcontracts.

**29. Stark/Fraud & Abuse.** Supplier represents that it is currently, and shall remain in material compliance with federal laws prohibiting payments for referrals, including (i) the federal False Claims Act (31 U.S.C. § 3729 et. seq.); (ii) the federal Anti-Kickback Statute (42 U.S.C. 1320a-7(b)); and (iii) the "Stark Law" (42 U.S.C. 1395nn). No payments hereunder shall be for referrals of patients and no provision of this Purchase Order shall require or is intended to be constructed to require that Supplier or physician under the control of Supplier shall make referrals of patients to the MFA.

**30. Owner/Investor Providers.** If Supplier is not a publicly traded entity, Supplier represents and warrants that it does not have as owners or investors any *providers of Designated Health Services* (as such term is defined by 42 C.F.R. Section 411.351) who are in a position to refer patients or business to MFA or otherwise benefit from procurements by MFA under this Purchase Order; or such provider's compensation and all payments from Supplier to such provider is commensurate with the value of their respective ownership interests and will not vary or be based in whole or in part on the volume or value of any business or referrals to MFA from such provider or the volume or value of goods or services procured by MFA under this Purchase Order.

**31. Recalls.** In the event of a recall or Food and Drug Administration-initiated action with respect to any goods(or a component of same) supplied to MFA hereunder, Supplier shall immediately notify MFA in writing. In such event and notwithstanding anything to the contrary contained in this Purchase Order, MFA shall have the right, in its sole discretion, to return any goods MFA believes should be the subject of a refund from Supplier; Supplier will, in turn, arrange for return of such goods at its sole expense and shall provide such refund to MFA within thirty (30) days of receiving MFA's notice of refund.

**32. Discounts & Warranties.** If this Purchase Order involves warranties under 42 CFR §1001.952(g) or discounts or rebates under 42 CFR §1001.952(h) (the Anti-Kickback Statute discount safe harbor regulations) or other applicable laws and regulations, in addition to the invoicing requirements set forth in Section 21 (Invoicing)of this Purchase Order, Supplier must (i) promptly provide reasonable written notice to MFA of MFA's obligation to report such warranties, discounts or rebates and provide to MFA any information required under 42 CFR §1001.952(g) or 42 CFR 1001.952(h), as applicable, and (ii) fully and accurately reflect in cost reports or other submissions to federal healthcare programs all such discounts and upon request by MFA, the Secretary of Health and Human Services or a state agency, make available information concerning such discounts.

**33. Compliance with Laws and Policies.** Supplier shall comply with applicable: (a) foreign, federal, state, and local laws, regulations, executive orders and amendments thereto, including, but not limited to, import and export controls and restrictions, Occupational Safety and Health Act ("OSHA"), Nuclear Regulatory Commission ("NRC") and Centers for Disease Control ("CDC") regulations, Medicare and Medicaid billing and referral regulations, and the District of Columbia Department of Health and Human Services regulations; (b) requirements imposed under any city, state, federal, foundation or other award, contract, funding, reimbursement, payments policy, or grant; and (c) MFA's policies and procedures. Supplier represents and warrants that: (d) the goods are in compliance with Sections 5 and 12 of the Federal Trade Commission Act, and are properly labeled as to content as required by Federal Trade Commission Trade Practice Rules; (e) the goods are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, or within the meaning of any applicable state or municipal law or are not goods which may not under the provisions of Sections 405 or 505 of said Act be introduced in to interstate commerce; and (f) the goods are not manufactured or sold in violation of the Occupational Safety and Health Act of 1970, as amended



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- 34. Additional Terms for Service Providers.** If this Purchase Order involves the delivery of services, Supplier will comply with the provisions attached hereto as **Attachment A: Service Terms**.
- 35. Additional Terms for Federal Funded Purchases.** If this Purchase Order involves funds from the United States Government pursuant to a contract with or grant from the United States Government, Supplier will comply with the United States Government Funding provisions attached hereto as **Attachment B: Federal Compliance Terms**.
- 36. Additional Terms for Suppliers with Access to Non-Public Information.** If this Purchase Order involves access to regulated data or other information not generally available outside of the MFA (other than patient information as provided under Attachment E), Supplier will comply with the provisions attached hereto as **Attachment C: Terms Applicable to Suppliers with Access to Non-Public Information**.
- 37. Additional Terms for Non-U.S. Suppliers.** If this Purchase Order involves a Supplier that is outside of the U.S., or a U.S. Supplier that is providing non-U.S. goods or services hereunder, then Supplier will comply with the provisions attached hereto as **Attachment D: Terms Applicable to Non-US Suppliers or US Suppliers Providing Non-US Goods and Services**.
- 38. Additional Terms for Suppliers Processing European Personal Data.** If this Purchase Order involves processing European personal data, then Supplier will comply with the provisions of **Attachment E: Terms for Suppliers Processing Data Subject to Data Protection Regulations** located at <https://procurement.qwu.edu/purchase-orders>, which are made a part thereof by reference.
- 39. Additional Terms for Suppliers Processing Patient Information.** If this Purchase Order involves access to or processing of patient information, then Supplier will comply with the provisions of **Attachment F Terms for Suppliers with Access to Patient Information (Business Associate Agreement)**.
- 40. Conflicts of Interpretation.** If the terms or conditions of any applicable Attachment conflict with this Purchase Order, the terms and conditions of such Attachment shall control except where such provision would result in a breach or violation of this Purchase Order.

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**Attachment A: Service Terms (Applicable to all Suppliers providing Services)**

If the Purchase Order is issued to a Supplier that is providing Services, Supplier agrees it will comply with the terms and conditions included in this Attachment A.

**A.1. Independent Contractor.** Supplier is an independent contractor, and under no circumstances will Supplier or any of its employees, agents, or representatives be considered an employee, agent, or representative of the MFA, or act or purport to act as an agent, representative or employee of the MFA. Supplier will determine the means and methods of performing its services. Supplier is directly responsible for professional quality, timeliness, coordination of activities, and completeness of the services and will supply all equipment, tools, materials, parts, supplies and labor (and the transportation of the same) required to perform except as the MFA has otherwise agreed in writing. Supplier is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities. No payroll or employee taxes of any kind shall be withheld or paid with respect to payments to Supplier. The payroll or employment taxes that are subject of this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax.

**A.2. Standard of Care.** Supplier warrants that all services hereunder shall be performed by personnel experienced and highly skilled in their profession and in accordance with the highest applicable standards of professionalism for comparable or similar services. Supplier will provide adequate and competent personnel and supervision thereof, and will in all respects perform with at least that degree of care, skill and diligence normally exercised by persons regularly engaged in Supplier's business or profession. Supplier shall use only personnel required for the performance of the services who are qualified by education, training and experience to perform the tasks assigned to them. Supplier agrees to replace any of its personnel whose work is considered by the MFA to be unsatisfactory or contrary to the requirements of the services to be performed hereunder.

**A.3. Personal Property/Equipment.** MFA shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Supplier or its agents or employees that are brought onto MFA premises or stored at MFA, except for damage caused by the direct and sole negligence of MFA.

**A.4. Sanitation and Cleanliness.** With respect to catering or other food-related services, Supplier will at all times maintain clean, orderly, and sanitary conditions (satisfactory to MFA in all respects) in all kitchens, food preparation areas, service areas, loading dock areas, cooking equipment, floors, chairs, tables, and any other locations associated with the Services under this Purchase Order. Supplier will leave MFA's premises in as clean a condition, or cleaner condition, than existed prior to the Supplier's entry onto MFA's premises.

**A.5. Alcoholic Beverages.** For catering services that include alcohol, Supplier agrees with the following:

**A.5.a. Required Permits, Licenses, Registrations.** Supplier warrants, represents, and agrees that Supplier and all Supplier staff providing Services hereunder will obtain and maintain, at Supplier's sole cost and expense, any and all approvals, licenses, filings, registrations, and permits required by the District of Columbia, Virginia, Maryland, and/or any other jurisdiction where the services are provided, for the service of alcoholic beverages.

**A.5.b. MFA Approvals and Procedures.** Supplier represents, warrants, and agrees that alcoholic beverages may be served and sold only in accordance with the terms of service for the event and only when service of alcohol has been approved in writing by MFA prior to the catered event.

**A.5.c. Certified Training.** Should service of alcohol be necessary and approved in writing by MFA prior to the specific catered event, Supplier will require that all catering staff serving alcoholic beverages in the performance of the services have completed all bartender and server training certifications, such as Training for Intervention Procedures

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(TIPS®), in accordance with the laws and regulations of the jurisdiction in which the services are provided. Supplier will provide proof of certification at each function.

**A.6. IP Ownership.** Supplier agrees that the MFA will own all rights, title and interest in any and all intellectual property rights created in the performance of the services or otherwise arising from the purchased services. Such work shall be deemed to be a work made for hire and specifically ordered and commissioned by the MFA. To the extent any background intellectual property rights of Supplier are necessary for the MFA to fully exploit the goods or services provided under this Purchase Order, Supplier agrees they must be disclosed to the MFA prior to Supplier's commencement of work hereunder, and Supplier agrees to grant the MFA non-exclusive license rights thereto, sufficient for it to fully exploit the goods or services, without additional consideration. Supplier agrees that it will execute any assignments or other documents needed for the MFA to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the MFA, intellectual property rights will be governed by the terms of the grant or contract to the MFA to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

**A.7. Lawful Compliance.** Supplier and its employees will comply with all applicable laws, ordinances, and regulations of governmental authorities and with the policies, rules and procedures of the MFA and its insurers, while performing services for the MFA and when on the MFA's premises. To verify compliance with the foregoing, Supplier will permit MFA officials to inspect Supplier's on-site operations at any time.

**A.8. Licensed Professions.** Supplier represents and warrants that Supplier (and each person or entity, if any, acting for or on behalf of Supplier) has all licenses, certificates, and other professional credentials required by law to perform the purchased services. If Supplier, persons in Supplier's employ, or persons otherwise acting for or on behalf of Supplier are so required to maintain professional licensure, certification or similar credentials in order to perform the purchased services, then in addition to the requirements set forth in Section 11 of the Purchase Order Terms and Conditions, Supplier must maintain Professional Liability coverage on all professionals with limits of at least \$1,000,000 per occurrence and \$3,000,000 aggregate. If the terms of this Attachment A are applicable to this Purchase Order, then proof of professional liability insurance coverage shall be included in Supplier's certificate of Insurance.

**A.9. Background Checks.** Supplier shall also be responsible for ensuring that appropriate background checks are conducted in advance on its personnel who will regularly perform work for the MFA in connection with this Agreement. Supplier, at a minimum, shall conduct a social security trace, criminal history background check, and a sex offender registry search on all such persons, searching federal, state, district, and county of residence records and verify that such background checks and searches have been conducted. Supplier shall not knowingly assign any such person who has a history of conduct unacceptable for a medical practice and/or health facility environment to provide any direct services under this Agreement. Supplier shall be solely responsible for conducting proper background checks from a reputable consumer reporting agency and for securing any necessary consent from its personnel. Supplier shall abide by all applicable federal, state or local laws, rules, and regulations, including but not limited to the Fair Credit Reporting Act and/or equal opportunity laws and regulations, when conducting the background. Supplier agrees to indemnify and hold MFA harmless for any and all claims relating to the conducting of such checks and any adverse action that may be taken as a result of such checks. Upon a showing by Supplier that it is impracticable for the Supplier to be responsible for conducting a background check of its personnel, such personnel may be required to submit to a background check conducted by the MFA. Supplier will be invoiced for the cost of the background check incurred by the MFA.

**A.10. Work Authorization.** Supplier will ensure that if any employee assigned to work under this Purchase Order is not a US worker (i.e., US citizen, lawful permanent resident, temporary legal resident, refugee, or asylee), the terms of his/her visa status will permit the employee to perform and accept payments legally for services provided as an independent contractor under this Purchase Order. Supplier warrants further to the MFA that it will properly complete I-9 forms for each employee Supplier hires or retains to perform services for the MFA during the period of this Purchase Order. Supplier hereby indemnifies the MFA for any costs, expenses, penalties and damages, including reasonable attorneys' fees, arising out of Supplier's failure to comply with

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its obligations under the U.S. Immigration Reform and Control Act relating to the hiring and employment of unauthorized aliens.

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**Attachment B: Federal Compliance Terms (Applicable To Suppliers Paid With Federally-Sourced Funds)**

If the Purchase Order is issued using funds from a United States Government grant or contract, Supplier agrees it will comply with the terms and conditions included in this Attachment B. If Supplier is not otherwise aware of whether the funds are sourced from a federal grant or contract, then Supplier shall inquire of the MFA. Supplier agrees to flow down all applicable clauses to lower-tier subcontractors, if any.

**B.1. Flow Down Clauses Applicable to Purchases Involving Funds from a Federal Government Grant**

If the Purchase Order is issued using funds from a United States Government grant, Supplier agrees it will comply with the terms and conditions included in this Attachment B, Article I. The following are selected clauses from the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance"), Appendix II (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards). The full text of the Uniform Guidance may be found at 2 CFR Part 200.

Additionally, when the Purchase Order involves the use of funds from the US Department of Health and Human Services ("HHS"), applicable HHS terms will apply. Where the Purchase Order involves the use of funds from the National Institutes of Health ("NIH"), applicable NIH terms will apply. Where the Purchase Order involves the use of funds from the National Science Foundation ("NSF"), applicable NIH terms will apply. Supplier agrees to comply with such terms and flow down all applicable clauses to lower-tier subcontractors, if any.

In the event of any conflict between the clauses applicable to the Purchase Order, including those not applicable solely to federal grants, the most stringent clauses will apply.

**B.1.a. Equal Employment Opportunity.** Applies to all Purchase Orders that qualify as "federally assisted construction contracts as defined in 41 CFR part 60-1.3. Supplier agrees to comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**B.1.b. Davis-Bacon Act, as amended (40 USC 3141-3148).** If the Purchase Order qualifies as a prime construction contract and is in excess of \$2,000, and is required by Federal programs legislation, Supplier shall comply with the Davis-Bacon Act, as supplemented by Department of Labor regulations at 29 CFR part 5 ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). Under this law, Supplier is required to pay wages to laborers and mechanics at a rate not less than the minimum wage specified in a wage determination made by the Secretary of Labor. In addition, Supplier is required to pay wages not less than once a week.

**B.1.c. Copeland "Anti-Kickback" Act (40 USC 3145).** If the Purchase Order qualifies as a prime construction contract and is in excess of \$2,000, Supplier shall comply with the Copeland "Anti-Kickback" Act, as supplemented by Department of Labor Regulations at 29 CFR, part 3 ("Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides in part that Supplier is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled.

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- B.1.d. Contract Work Hours and Safety Standards Act (40 USC 3701-3708).** If the Purchase Order is in excess of \$100,000 and involves the employment of mechanics or laborers, the Supplier shall comply with the Contract Work Hours and Safety Standards Act, as supplemented by Department of Labor regulations at 29 CFR part 5. Under the Act, the Supplier is required to compute the wages of every mechanic and laborer on the basis of a standard forty-hour work week. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- B.1.e. Rights to Inventions Made Under a Contract or Agreement.** If the Purchase Order is for the performance or assignment of experimental, developmental, or research work that is under a "funding agreement" Supplier will provide for the rights of the Federal Government and the MFA with respect to any resulting invention by complying with 37 CFR part 401 ("Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements"), and any implementing regulations issued by the awarding agency.
- B.1.f. Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended.** If the Purchase Order is in an amount in excess of \$150,000, Supplier shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.
- B.1.g. Energy Policy and Conservation Act (42 USC 6201).** Supplier shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- B.1.h. Byrd Anti-Lobbying Amendment (31 USC 1352).** If the Purchase Order is in an amount of \$100,000 or more, the Supplier and each subcontractor of the Supplier shall file the certification required under this Amendment. Each tier shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the MFA.
- B.1.i. Debarment and Suspension (Executive Orders 12549 and 12689).** Supplier represents and warrants that it is not listed on the government-wide Excluded Parties List System in the System for Award Management, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689. The Excluded Parties List contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- B.1.j. Compliance with HHS, NIH and NFS Requirements.** When applicable, Supplier shall comply with the terms and conditions required by the policy requirements as set forth in the HHS Grants Policy Statement, available at <http://www.hhs.gov/grants/grants/grants-policies-regulations/>, the NIH Grants Policy

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Statement, available at <http://grants.nih.gov/policy/nihgps/index.htm>, and the NFS Grant General Conditions, available at <https://www.nsf.gov/awards/managing/> .

**B.2. Federal Government Contract Provisions.** If the Purchase Order is issued using funds from a Federal government contract, the following provisions from the Federal Acquisition Regulations ("FAR") and the Defense Federal Acquisition Regulation Supplement ("DFARS"), as in effect or as updated, amended, or revised from time to time, are incorporated into the Purchase Order by this reference where applicable and form a part of the terms and conditions of the Purchase Order.

The full text (as updated, amended, or revised) of the FAR clauses may be found at <https://www.acquisition.gov/far/> and the DFARS clauses may be found at <https://www.acquisition.gov/dfars>. By their terms, not all listed provisions apply to this transaction. The MFA may choose to flow down additional clauses when necessary to satisfy the MFA's contractual obligations.

Where necessary to make the language of the FAR and the DFARS clauses applicable to the Purchase Order, the term "contractor" shall mean "Supplier," and the term "contract" or "subcontract" shall mean "Purchase Order," and the terms "government," "contracting officer," and equivalent terms and phrases shall mean "MFA."

**Provisions Applicable to Purchases of "Commercial Items."** Only the following provisions are required for Purchase Orders involving the acquisition of "commercial items" (as defined at FAR 52.202-1). In general, a "commercial item" is a product or service that is available to the general public in the commercial marketplace.

- FAR 52.202-1 Definitions (Nov. 2013)
- FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Oct. 2015)
- FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (Apr. 2014)
- FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (June 2016)
- FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Oct. 2020)
- FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug. 2020)
- FAR 52.219-8 Utilization of Small Business Concerns (Nov. 2016)
- FAR 52.222-26 Equal Opportunity (Sept. 2016)
- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Oct. 2015)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (Jul. 2014)
- FAR 52.222-37 Employment Reports on Veterans (Feb. 2016)
- FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)
- FAR 52.222-50 Combating Trafficking in Persons (Mar. 2015) FAR 52.222-54 Employment Eligibility Verification (Oct. 2015)
- FAR 52.225-26 Contractors Performing Private Security Functions Outside The United States (Oct. 2016)
- FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Dec.

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2013)

- FAR 52.244-6 Subcontracts for Commercial Items (Jan. 2017)
- FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb. 2006)
  
- DFARS 252.211-7003 Item Identification and Valuation (Mar. 2016)
- DFARS 252.219-7004 Small Business Subcontracting Plan (Test Program) (Oct. 2014)
- DFARS 252.223-7008 Prohibition on Hexavalent Chromium (Jun. 2013)
- DFARS 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (Oct. 2014)
- DFARS 252.225-7013 Duty-Free Entry (May 2016)
- DFARS 252.227-7015 Technical Data – Commercial Items (Feb. 2014)
- DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (Sept. 2016)
- DFARS 252.229-7011 Reporting of Foreign Taxes – U.S. Assistance Programs (Sep. 2005)
- DFARS 252.235-7002 Animal Welfare (Dec. 2014)
- DFARS 252.235-7004 Protection of Human Subjects (Jul. 2009)
- DFARS 252-236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (Jun. 2013)
- DFARS 252.244-7000 Subcontracts for Commercial Items (Jun. 2013)
- DFARS 252.246-7003 Notification of Potential Safety Issues (Jun. 2013)
- DFARS 252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (June. 2013)
- DFARS 252.247-7023 Transportation of Supplies by Sea (Apr. 2014)
- DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (March 2000)



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**Attachment C: Terms Applicable to Suppliers with Access to Non-Public Information**

If the Purchase Order is issued for goods or services that require Supplier to access Non-Public Information, Supplier agrees it will comply with the terms and conditions included in this Attachment C.

NOTE: Where Supplier is providing goods or services that require Supplier to access, disclose or use patient information (protected health information as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. § 160.103), the terms and conditions included in Attachment F will supersede the terms and conditions of this Attachment C to the extent there is a conflict.

**C.1. Definitions.** For purposes of this Attachment C, Non-Public Information includes the following:

**C.1.a. Regulated Information** means information protected by local, national, international statutes or regulations, which mandate certain restrictions. This includes specific laws that govern certain types of information, such as the Family Educational Rights and Privacy Act (FERPA), which protects personal information about current and former students, , the Gramm-Leach-Bliley Act (GLBA), which protects personal financial information, and other statutory or regulatory requirements. Regulated Information includes Personally Identifiable Information, as hereinafter defined, relating to students, faculty, staff, users of MFA services and facilities. By way of illustration only, some examples of Regulated Information include: personally identifiable information from student educational and medical and health records, social security numbers, bank account and credit card numbers, personal financial information, and other personal information.

**C.1.b. Personally Identifiable Information** includes, but is not limited to: (i) personal identifiers such as name, address, phone number, date of birth, social security number, and student or personnel identification number; (ii) personally identifiable information contained in student education records as that term is used in the Family Educational Rights and Privacy Act (FERPA), 34 C.F.R. § 99.3; (iii) credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; (iv) nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. § 6809; and (v) other financial account numbers, access codes, driver's license numbers; and state- or federal-identification numbers such as passport, visa, or state identity card numbers.

**C.1.c. Restricted Information** means all information and data provided to Supplier, excluding Regulated Information, that must be protected from unauthorized access, use, or disclosure due to obligations set forth in MFA policies, the conditions of a contract, or particular designation made by the MFA, or because of proprietary or privacy considerations. Restricted Information is limited to appropriate MFA faculty, staff, students, or other authorized users who have a legitimate need to for such information. By way of illustration only, some examples of Restricted Information include: employment data, payroll records, tax information, and MFA telephone and directory information.

**C.2. Rights to Non-Public Information.** Supplier and MFA agree that as between them, all rights, including all intellectual property rights, in and to Non-Public Information shall remain the exclusive property of the MFA.

**C.3. Prohibition on Unauthorized Use or Disclosure of Non-Public Information.** Supplier acknowledges that in the course of its performance under this Purchase Order, it, its agents, and employees may have access to Non-Public Information. Supplier agrees to hold the Non-Public

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Information in strict confidence. Supplier shall not use or disclose Non-Public Information received from or on behalf of the MFA, except as permitted or required by this Purchase Order, as compelled by law, or as otherwise authorized in writing by the MFA. Supplier will ensure that its employees who will perform services under this Purchase Order have read, understood, and agree to comply with the terms of this Attachment C.

**C.4. Disclosure of Non-Public Information as Required by Law.** If Supplier is compelled by law, governmental rule or regulation, or order of a court with competent jurisdiction to disclose Non-Public Information, the Supplier shall, unless expressly prohibited by law, promptly provide written notice to the MFA of any such requirement to allow the MFA, in its discretion, to either (i) reach an agreement as to the timing and content of such disclosure, or (ii) enable the MFA to seek an appropriate protective order or other protection for the confidentiality of such information. Supplier further agrees to take any additional reasonable measures to assist the MFA in protecting the Non-Public Information.

**C.5 Safeguard Standard for Non-Public Information.** Supplier agrees that it will protect the Non-Public Information it receives from or on behalf of the MFA according to commercially acceptable standards and no less rigorously than it protects its own confidential information. The following sources provide some generally recognized industry standards for the protection of Non-Public Information. These sources are not intended to be comprehensive or exhaustive of all possible generally recognized industry standards:

**C.5.a.** Center for Internet Security - see <http://www.cisecurity.org>

**C.5.b.** Payment Card Industry/Data Security Standards (PCI/DSS) - see <http://www.pcisecuritystandards.org/>

**C.5.c.** National Institute for Standards and Technology - see <http://csrc.nist.gov>

**C.5.d.** ISO/IEC 27000-series - see <http://www.iso27001security.com/>

**C.6. Return or Destruction of Non-Public Information.** Upon termination, cancellation, expiration or other conclusion of the Purchase Order, Supplier shall return to the MFA or, if return is not feasible, destroy all Non-Public Information in whatever form or medium that Supplier received from or created on behalf of the MFA. This provision shall also apply to all Non-Public Information that is in the possession of subcontractors or agents of Supplier. In such case, Supplier shall retain no copies of such information, including any compilations derived from and allowing identification of Non-Public Information. Unless otherwise requested in writing by the MFA, Supplier shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this Purchase Order. Supplier agrees to return or destroy such Non-Public Information within seven (7) days of a request in writing by the MFA. Within the thirty (30) day period following termination or written request, Supplier shall certify in writing to the MFA that such return or destruction has been completed. Written confirmation of the destruction of data in the Supplier's possession or on Supplier computer systems should include standards used for the destruction; such standards should meet National Institute of Standards, Guidelines for Media Sanitization, see <http://csrc.nist.gov/>.

If Supplier believes that the return or destruction of Non-Public Information is not feasible, Supplier shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is not feasible, Supplier shall extend the protections of this Attachment C to Non-Public Information received from or created on behalf of the MFA, and limit further uses and disclosures of such Non-Public Information, for so long as Supplier maintains the Non-Public Information.

**C.7. Term and Termination.**

**C.7.a.** This Attachment C shall take effect upon execution and/or acceptance of the Purchase Order and shall continue through the expiration or termination of the Purchase

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Order.

**C.7.b.** In addition to the rights of the parties established by the underlying Purchase Order, if the MFA reasonably determines in good faith that Supplier has materially breached any of its obligations under this Attachment C, the MFA, in its sole discretion, shall have the right to: (i) exercise any of its rights to reports, access and inspection under this Attachment C; and/or (ii) require Supplier to submit to a plan of monitoring and reporting, as the MFA may determine necessary to maintain compliance with this Attachment C; and/or (iii) provide Supplier with a fifteen (15) day period to cure the breach; and/or (iv) terminate the Purchase Order immediately if Supplier has breached a material term of this Attachment C and cure is not possible.

**C.7.c.** Before exercising any of these options, the MFA shall provide written notice to Supplier describing the violation and the action it intends to take.

**C.8. Subcontractors and Agents.** If Supplier provides any Non-Public Information which was received from, or created for, the MFA to a subcontractor or agent, then Supplier shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on Supplier by this Attachment C.

**C.9. Maintenance of the Security of Electronic Information.** Supplier shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted Non-Public Information received from, or on behalf of, the MFA.

**C.9.a. Network Security.** Supplier agrees at all times to maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular (at least annual) third party vulnerability assessments. Likewise, Supplier agrees to maintain network security that conforms to generally recognized industry standards (as described in Section C.5) and best practices that Supplier then applies to its own network.

**C.9.b. Application and System Security.** Supplier agrees at all times to provide, maintain and support its software release and subsequent updates, upgrades, and bug fixes such that the software is, and remains secure from those vulnerabilities using applicable and recognized industry practices or standards including:

- i. The Open Web Application Security Project's (OWASP) "Top Ten Project" - see <http://www.owasp.org>;
- ii. The CWE/SANS Top 25 Programming Errors – see <http://cwe.mitre.org/top25/> or <http://www.sans.org/top25-programming-errors/>; or
- iii. Other generally recognized and comparable industry practices or standards.

Additionally, Supplier agrees to maintain a secure processing environment, including but not limited to, the timely application of patches, fixes and updates to operating systems and applications as provided by Supplier or open source support.

**C.9.c. Data Security.** Supplier agrees to use administrative, technical, and physical measures that conform to generally recognized industry standards and best practices (as described in Section C.5) and which are at least as secure as those that Supplier applies to protect its own processing environment and confidential information. Suppliers processing, storing or maintaining protected health information, are required to maintain SOC 2 Type 2 compliance covering the following trusted principles at a minimum: Confidentiality, Security, and Availability

**C.9.d. Data Storage.** Supplier agrees that all Non-Public Information will be stored, processed, and maintained solely on designated target servers. Additionally, Supplier agrees that no Non-Public Information at any time will be processed on or transferred to

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any portable or laptop computing device or any portable storage medium, unless that device or storage medium is in use as part of the Supplier's designated backup and recovery processes and encrypted in accordance with Subsection C.9.f regarding data encryption. Supplier agrees not to store Non-Public Information outside of the United States without prior written consent from the MFA.

**C.9.e. Data Transmission.** Supplier agrees that any and all electronic transmission or exchange of system and application data with the MFA and/or any other third parties when such third-party exchanges have been approved in writing by the MFA shall take place via secure means (using FIPS compliant cryptographic module and algorithms) and solely in accordance with Subsection C.9.g regarding data re-use.

**C.9.f. Data Encryption.** Supplier agrees to store all Non-Public Information and any backup of that information as part of its designated backup and recovery processes in encrypted form, using a FIPS encryption solution. Supplier further agrees that any and all Non-Public Information, as defined herein or under applicable legislation or regulations, stored on any portable or laptop computing device or any portable storage medium is likewise encrypted.

**C.9.g. Data Re-Use; Protection of Non-Public Information.** Supplier agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Purchase Order and this Attachment C. Non-Public Information shall not be distributed, repurposed, or shared across other applications, environments, or business units of Supplier. Supplier further agrees that no Non-Public Information of any kind shall be transmitted, exchanged, or otherwise passed to other Suppliers or interested parties except on a case-by-case basis as specifically agreed to in writing by the MFA.

**C.9.h. Malicious Code.** Supplier will not knowingly introduce into the MFA's systems any viruses, Trojan horses, worms, time bombs, locks, backdoors, counters, timers, spyware or other malware or any other computer programming devices that may damage the MFA's systems or data or prevent the MFA from operation or use of its systems, data or the like.

**C.10. Reporting of Unauthorized Disclosures or Misuse of Non-Public Information.** Supplier agrees to comply with all applicable laws that require notification of individuals in the event of unauthorized release of any Non-Public Information or other event requiring notification. Supplier further assumes responsibility for informing all such individuals in accordance with applicable laws. Supplier shall report by both telephone and written notification, by calling the MFA at 202-741-3341, and writing to the MFA at Medical Faculty Associates Privacy Officer, 2120 L Street, NW, Suite 610, Washington, D.C. 20037, any use Supplier or disclosure of Non-Public Information not authorized by this Attachment C or in writing by the MFA. Supplier shall make the report to the MFA no more than one (1) Supplier business day after Supplier learns of such use or disclosure. Supplier's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Non-Public Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Supplier has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Supplier has taken or shall take to prevent future similar unauthorized use or disclosure. Supplier shall provide such other information, including a written report, as reasonably requested by the MFA.

**C.11. Indemnity.** Supplier shall defend and hold the MFA harmless from all claims, Supplier liabilities, damages, or judgments involving a third party, including the MFA's costs and attorney fees, which arise as a result of Supplier's failure to meet any of its obligations under this Attachment C.

**C.12. Right to Audit.** The MFA or an appointed audit firm ("Auditors") has the right to audit the Supplier and the Supplier's sub-contractors or affiliates that provide a service for the

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processing, transport or storage of Non-Public Information. The MFA will announce their intent to audit the Supplier by providing at a minimum of ten (10) business days' notice to the Supplier. A scope document along with a request for deliverables will be provided at the time of notification of an audit and may request information regarding Service Provider's security policies, standards, and procedures, including summaries of test results, if any, of Service Provider network or computer systems, the loss or disruption of which would have a material impact on the services. If the documentation requested cannot be removed from the Supplier's premises, the Supplier will allow the Auditors access to their site. Where necessary, the Supplier will provide a personal site guide for the Auditors while on site. The Supplier will provide a private accommodation on site for data analysis and meetings; the accommodation will allow for a reasonable workspace, with appropriate lighting, electrical, a printer, and Internet connectivity. The Supplier will make necessary employees or contractors available for interviews in person or on the phone during the time frame of the audit. In lieu of the MFA or its appointed audit firm performing their own audit, if the Supplier has engaged an external audit firm to perform an audit, the MFA shall be permitted to review the controls tested as well as the results. Audits will be at the MFA's sole expense, except where the audit reveals material noncompliance with the requirements of this Attachment C, in which case the costs will be borne by the Supplier.

**C.13. Compliance with Laws.** Supplier agrees to comply in all material respects with all applicable laws, statutes, ordinances, rules, regulations, and judicial and administrative orders and decrees during the term of the Purchase Order and this Attachment C.

**C.14. Survival.** The respective rights and obligations of Supplier hereunder shall survive the termination of this Purchase Order.

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**Attachment D: Terms Applicable to All Non-U.S. Suppliers or U.S. Suppliers Providing Non-U.S. Goods or Services**

**D.1. Compliance with Law.** Supplier will comply with all laws and regulations applicable to its performance hereunder, including applicable laws and regulations of the United States, the jurisdiction in which Supplier performs under this Purchase Order or in which the goods are manufactured, assembled or obtained, and other jurisdictions to which the Supplier is otherwise subject. Without limiting the foregoing:

**D.1.a. Anti-Corruption.** Supplier represents, warrants, and agrees that (i) neither Supplier nor any of Supplier's employees, directors, agents, or other persons acting on Supplier's behalf have taken or will take any action related to or arising out of this Purchase Order that violates the United States Foreign Corrupt Practices Act or any applicable anti-corruption laws of any country; and (ii) neither Supplier nor any employees, directors, agents, or other persons acting on Supplier's behalf have or will, in connection with this Purchase Order, directly or indirectly request, give, offer or promise to give, or authorize another person or entity to give any money or anything of value to any person (whether or not such person is a government official) for the purpose of inducing such person to improperly take or improperly omit to take any action in order to secure a business advantage. Upon request by the MFA from time to time, Supplier shall certify in writing its compliance with the foregoing obligations.

**D.1.b. Compliance with Trade Control Laws.** Supplier will comply with all applicable U.S. and non-U.S. export controls, economic sanctions, import and customs laws and regulations in the supply, export, re-export, import and other transfer of the goods and services hereunder. Supplier hereby acknowledges and confirms that neither Supplier nor any of its subcontractors (if applicable) (i) is included on, owned or controlled by an individual or entity included on, or is acting on behalf of an individual or entity included on any of the restricted party lists maintained by the U.S. Government (e.g., Specially Designated Nationals List, Foreign Sanctions Evader List, Sectoral Sanctions Identification List, Denied Persons List, Unverified List, Entity List or List of Statutorily Debarred Parties) (collectively, "**Restricted Parties**"); or (ii) is located in, organized under the laws of, acting on behalf of, or owned or controlled by the government of or entities organized under the laws of countries or territories subject to U.S. economic sanctions (e.g., Crimea (region of Ukraine), Cuba, Iran, North Korea, or Syria). No Party shall be required to take or refrain from taking any action inconsistent with or penalized under the anti-boycott laws of the United States, including without limitation anti-boycott laws administered by the U.S. Commerce and Treasury Departments. Supplier represents and warrants that it has all necessary export or import authorizations for the supply of the goods or services to the MFA hereunder, shall comply with any import or export formalities, and shall at its own expense pay any duties, taxes or other fees with respect to the supply of goods and services to the MFA hereunder.

**D.1.c. Child Labor.** Supplier represents and warrants that it is and will at all times be in compliance with all applicable laws that prohibit child labor or other exploitation of children in the manufacturing and delivery of any goods hereunder, consistent with the International Labor Organization's Minimum Age Convention of 1973.

**D.1.d. Tropical Hardwood.** If applicable for the goods to be provided hereunder, Supplier represents and warrants that all wood products to be used and provided under this Purchase Order will be in accordance with the specifications and provisions of applicable state and federal laws that restrict or prohibit the purchase and use of tropical hardwoods. Qualification for an exemption under any such law will be the responsibility of Supplier, and proof of such qualification for exemption shall be provided to the MFA prior to the delivery of any applicable tropical hardwood products.

**D.2. Required Permits, Licenses, and Registrations.** Unless otherwise agreed in writing,

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nothing in this Purchase Order constitutes or implies the MFA's agreement to obtain, or undertake filings related to, licenses, registrations, permissions, exemptions, or any approvals or authorizations, from any governmental or regulatory authorities outside the United States.

**D.3. Currency of Payment.** Unless otherwise agreed by the Parties, MFA will make payment to Supplier in U.S. Dollars by check, wire transfer, or other agreed means. Supplier represents that it is able to receive the U.S. Dollar payments from MFA legally, without violating any applicable law, including foreign exchange control and taxation law and regulations in the location where Supplier receives payment. If payment to Supplier will be converted into local currency, MFA will be responsible only to send the payment amount in U.S. Dollars, and shall have no responsibility whatsoever to compensate Supplier for any fees or taxes arising from any foreign exchange transaction or for any exchange rate differences, including differences arising from the time of contracting or invoicing until the time of payment.

**D.4. Taxes.** Supplier will be solely responsible for, and will pay when due, all taxes, charges, and assessments under any applicable law in connection with MFA's payments to Supplier or Supplier's performance hereunder. Supplier will also timely provide, upon request by MFA, a completed taxpayer identification form and other such forms (e.g., Form W-8 series) in order to be eligible for payments under this Purchase Order. Supplier's services will be performed outside the United States.

**D.5. Safety and Security.** Supplier understands the risks associated with travel and performance in all of the countries relevant to this Purchase Order. Supplier will use its best judgment to assess the safety and security risks, if any, involved in performing hereunder and shall be responsible for determining whether it is safe to proceed with performance in any given circumstances. Supplier assumes all risk to its employees, property, or privacy that may arise from the performance of its obligations hereunder.

**D.6. Dispute Resolution.** The Parties will use their best efforts to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Purchase Order. Any dispute arising out of or in connection with this Purchase Order that is not resolved by the Parties within a reasonable period of time shall, upon the application of either Party, be finally settled under the Rules of Arbitration of the International Centre for Dispute Resolution by a single arbitrator appointed in accordance with the said Rules. The arbitration shall be conducted in the District of Columbia, with the seat of arbitration to be the District of Columbia. English will be the language of the arbitration. The arbitrator will be empowered to award specific performance, injunctive relief, and other equitable remedies as well as damages, but will not be empowered to award punitive or exemplary damages. To the extent that Supplier may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment, or other legal process, Supplier hereby agrees not to claim, and irrevocably and fully waives, such immunity for purposes of any arbitration and arbitration award hereunder.

**D.7. Controlling Language.** In the event that a translation of this Purchase Order is prepared or signed by the Parties in any other language, the English language version of this Purchase Order will govern in the event of a conflict between the English language version and such translation.

**D.8. Convention on Contracts for the International Sale of Goods.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Purchase Order.

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Attachment F: Terms Applicable to Suppliers with Access to Patient Information (Business Associate Agreement)[**NOTE: Supplier may be requested by MFA to sign a separate Business Associate Agreement in lieu of this Attachment F**]If the Purchase Order is issued for goods or services that require Supplier to access certain patient information of the MFA, Supplier agrees it will comply with the terms and conditions of this Business Associate Agreement set forth in this [Attachment E](#). Any conflicts or inconsistencies between the terms and conditions of this [Attachment F](#) and the remainder of this Purchase Order, shall be read and resolved in favor of this [Attachment F](#).

Supplier, as the "Business Associate" and MFA, as "Covered Entity" memorialize their obligations with respect to the "Standards for Privacy of Individually Identifiable Health Information" ("Privacy Rule"), the security regulations ("Security Rule"), and the Breach Notification Rule promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1171, et seq. ("HIPAA"), as well as any obligations arising from changes made to HIPAA or the Security Rule and Privacy Rule pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA") and its implementing regulations.

Because Covered Entity may disclose certain information to Business Associate under this Purchase Order, some of which may constitute Protected Health Information ("PHI") and/or Electronic Protected Health Information ("ePHI"), Business Associate and Covered Entity will comply with the requirements of the Privacy and Security Rules, including, but not limited to, the Business Associate Agreement requirements at 45 C.F.R. §§ 164.314(a) and 164.504(e), and as recently amended by HITECH/ARRA which extends direct application of certain Privacy and Security Rule standards to Business Associates.

### **F.1. Definitions.**

**F.1.1.** The following terms used in this [Attachment F](#) shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

### **F.1.2. Specific Definitions.**

HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

Electronic Protected Health Information or Electronic PHI. Electronic PHI which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

Privacy Rule. Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164.

Security Rule. Security Rule shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162, and 164.

Breach Notification Rule. The Breach Notification Rule shall mean the Breach Notification Regulation at 45 CFR Part 164, Subpart D.

A reference in this [Attachment F](#) to a section in the HIPAA Rules means the section as in effect or as amended.

### **F.2. Permitted Uses and Disclosures of PHI.**

**F.2.1. Services.** Pursuant to the Purchase Order, Business Associate provides or may provide services ("Services") for Covered Entity that involve receipt, creation, use and disclosure of individually identifiable health information pertaining to patients of Covered Entity which is deemed protected health information ("PHI"), as defined by the Privacy Rule. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations for the Covered Entity under the Purchase Order.



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All other uses not authorized by this Attachment F are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Attachment F only to its employees, subcontractors and agents, in accordance with Section F.3.1.4. and F.3.1.5., or as otherwise permitted by or as required by the Privacy or Security Rule, but only for the purpose of performing services for Covered Entity.

**F.2.1.1.** In addition, the uses, disclosures, or requests for the PHI described herein shall be, to the extent practicable, limited to the minimum necessary (as may be described by the Secretary in guidance on these terms) to accomplish the intended purpose of such use, disclosure, or request.

**F.2.2. Business Activities of the Business Associate.** Unless otherwise limited herein and if such use or disclosure of PHI would not violate the Privacy or Security Rules if done by the Covered Entity, the Business Associate may:

**F.2.2.1.** Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate to the Covered Entity provided that such uses are permitted under state and federal confidentiality laws.

**F.2.2.2.** Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate to the Covered Entity, provided that the Business Associate represents to Covered Entity, in writing, that (i) the disclosures are required by law, as provided for in 45 C.F.R. §164.103 or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. § 164.504(e)(4) and §164.314, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**F.2.2.3.** Provide data aggregation or de-identification services relating to the health care operations of the Covered Entity, for the Covered Entity. Business Associate may not de-identify Protected Health Information except as required by the Service Agreement. To the extent data aggregation or de-identification services are performed, Business Associate is prohibited from using or disclosing any such aggregated or de-identified information for its own purposes without the prior written consent of Covered Entity. Business Associate is further prohibited from disclosing such de-identified information to any third party who may attempt to re-identify such information, in violation of 45 C.F.R. 164

### **F.3. Responsibilities of the Parties with Respect to PHI.**

**F.3.1. Responsibilities of the Business Associate.** With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

**F.3.1.1.** Not use or disclose PHI other than as permitted or required by this Attachment F or the Purchase Order or as required by law;

**F.3.1.2.** Implement appropriate administrative, physical, and technical safeguards to prevent the unauthorized Use and Disclosure of Protected Health Information, and to protect the confidentiality, integrity, and availability of Electronic Protected Health Information, as required by the HIPAA Regulations. Without limiting the foregoing, Business Associate agrees to comply with the requirements of the HIPAA Rules;

**F.3.1.3.** Report, in writing, to Covered Entity within five (5) business days any use or disclosure of PHI not provided for by this Attachment F or the Purchase Order of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR §164.410, and any security incident of which it becomes aware, and cooperate with the Covered Entity in any mitigation or breach reporting efforts. Such notification shall include: (i) the identification of each individual who may be, has been or is reasonably believed to have been affected by the Breach; (ii) the date of the Breach; (iii) the date of discovery of the Breach; (iv) the scope and nature of the Breach; and (v) any steps Business Associate has taken to mitigate any harmful effects of the Breach and to protect against further Breaches.

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In all cases, the information included in Business Associate's notification shall be in accordance with any regulations and guidance provided by the Secretary of the United States Department of Health and Human Services ("Secretary");

**3.1.3.1.** Notwithstanding the above, the Parties recognize and agree that there are and will be a significant number of attempts to, without authorization, access use, disclose, modify or destroy e-PHI through activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service and any combination of the above (collectively "Unsuccessful Security Incidents"). As long as no such Unsuccessful Security Incident results in unauthorized access, use, disclosure, modification or destruction of electronic PHI or interference with information system operations related to the ePHI, Parties further agree that this subsection 3.1.3.1 satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents except on request of Covered Entity. Upon written request from Covered Entity, Business Associate will provide (a) a log or similar documentation of Unsuccessful Security Incidents for the period of time reasonably specified in Covered Entity's request and (b) a report that: (i) identifies the categories of Unsuccessful Security Incidents; (ii) indicates whether Business Associate believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (iii) if the security measures are not adequate, the measures Business Associate will implement to address the security inadequacies.

**F.3.1.4.** In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree pursuant to a written agreement to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

**F.3.1.5.** Ensure that any agent or subcontractor to whom the Business Associate provides PHI, as well as Business Associate, not export PHI beyond the borders of the United States of America without explicit written permission from Covered Entity;

**F.3.1.6.** Within five (5) business days of a request by Covered Entity, make available PHI in a designated record set, if applicable, to Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR §164.524;

**F.3.1.7.** Within five (5) business days, make any amendment(s) to PHI, if applicable, in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.526.

**F.3.1.8.** As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.528.

**F.3.1.9.** To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

**F.3.1.10.** Make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules.

**F.3.1.11.** Comply with minimum necessary requirements under the HIPAA Rules.

**F.3.1.12.** Shall not directly or indirectly receive remuneration in exchange for any PHI, except as permitted under the Privacy Rule.

**F.3.1.13.** Communicate with an Individual by alternative means or at alternative locations (e.g. address other than the Individual's) if so directed by Covered Entity.

**F.3.1.14.** Maintain sufficient insurance coverage as shall be necessary to insure Business

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Associate and its agents or subcontractors and that will cover damages incurred including, but not limited to, the costs associated with notification required by federal law and/or state law by Covered Entity and/or other third parties as a result of Business Associate's Unauthorized Use or Disclosure of PHI, Breach, or Security Incident.

**F.3.1.15.** Conduct annual penetration tests using an independent assessor and complete annual SOC 2 Type 2 assessments covering security controls that Business Associate is responsible for and security controls maintained by Business Associate, on Services provided to Covered Entity. Business Associate shall ensure that third parties who have access to any of Covered Entity's data and information received under this [Attachment F](#) or the Purchase Order, including PHI and ePHI, are included under Business Associate's annual SOC 2 Type 2 assessment or independently assessed. Business Associate shall ensure that findings from each annual SOC 2 Type 2 assessment and each annual penetration test are addressed within a reasonable timeframe. Upon Covered Entity's request, Business Associate shall provide the results from the assessments referenced above and information security policies and procedures that are relevant to the Services provided to Covered Entity.

**F.3.2. Responsibilities of Covered Entity.** With regard to the use and/or disclosure of PHI by the Business Associate, Covered Entity hereby agrees to do the following:

**F.3.2.1.** Inform the Business Associate of any limitations in the form of Notice of Privacy Practices that Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

**F.3.2.2.** Inform the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

**F.3.2.3.** Notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this [Attachment F](#) or the Purchase Order, except if the Business Associate will use or disclose PHI for data aggregation or management if provided for by the Purchase Order; administration and/or legal responsibilities of the Business Associate.

**F.3.2.4.** Not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by the Covered Entity.

### **F.4. Terms and Termination**

**F.4.1. Termination by Covered Entity:** Covered Entity may immediately terminate this Purchase Order and any related agreements, if any, if Covered Entity makes the determination that Business Associate has breached a material term of this [Attachment F](#). Alternatively, Covered Entity may choose to provide Business Associate with thirty (30) days written notice of the existence of any alleged material breach; and afford Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within ten (10) days, Business Associate must cure said breach to the satisfaction of Covered Entity within thirty (30) days after the written notice described above. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Purchase Order.

**F.4.2. Termination by Business Associate:** If Business Associate makes the determination that a material condition of performance has changed under this [Attachment F](#) or that Covered Entity has breached a material term of this [Attachment F](#), Business Associate may provide thirty (30) days advance notice of its intention to terminate the Purchase Order. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating the Purchase Order.

**F.4.3. Effect of Termination:** Upon the event of termination pursuant to Section 4 of this

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Attachment F, Business Associate will promptly return or destroy, in accordance with standards approved by the Department of Health and Human Services, all PHI, in whatever format, maintained by Business Associate and/or its subcontractors. Business Associate will provide written assurance to Covered Entity that all PHI maintained by Business Associate and/or its subcontractors has been destroyed in accordance with standards approved by the Department of Health and Human Services, or returned to Covered Entity.

**F.4.3.1.** In the alternative, Business Associate agrees to assess the feasibility of returning and/or destroying all PHI in light of applicable law and reasonable business practices and standards. Business Associate will also assess the feasibility of recovering any PHI in the possession of its subcontractors or agents.

**F.4.3.2.** If it is not feasible for Business Associate to return and/or destroy said PHI, Business Associate will notify Covered Entity in writing within thirty (30) days from the date of termination. Said notification shall include a statement that Business Associate has determined that it is infeasible to return and/or destroy the PHI in its possession, and the specific reasons for such determination.

**F.4.3.3.** Business Associate further agrees to extend any and all protections, limitations, and restrictions contained in this Attachment F to all PHI retained by Business Associate after the termination of the Purchase Order, and to limit any further Uses and/or Disclosures of PHI to the purposes that make the return and/or destruction of the PHI infeasible for so long as Business Associate maintains the PHI.

**F.4.3.4.** If it is infeasible for Business Associate to obtain, from a subcontractor or agent, any PHI in the possession of the subcontractor or agent, Business Associate will also provide a written explanation to Covered Entity. Further, Business Associate will require its subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in this Attachment F to all PHI retained by the subcontractors and/or agents after the termination of the Purchase Order, and to limit any further Uses and/or Disclosures to the purposes that make the return and/or destruction of the PHI infeasible for so long as the subcontractors and/or agents maintain the PHI.

**F.4.3.5.** Intentionally Omitted.

**F.5. Injunctive Relief.** Notwithstanding any rights or remedies provided for in this Attachment F or the Purchase Order, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by Business Associate or by any agent or subcontractor of Business Associate or by any third party that received or otherwise obtained PHI from Business Associate.

**F.6. Amendment.** In the event there is a change to, or amendment of, HIPAA (or a change in the interpretation of HIPAA) that necessitates a change to this Attachment F, the Parties agree that this Attachment F shall be deemed to be automatically amended to the extent necessary to incorporate such changes. If a Party objects to such amendment(s) within thirty (30) days prior to the effective date of the amendment of HIPAA (or within ninety (90) days after the publication of the change in interpretation of HIPAA), then either Party may terminate this Attachment F and the related Purchase Order consistent with its terms.

**F.7. Further Assurances.** Each Party shall in good faith execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other party to carry out the purpose and intent of this Attachment F.

**F.8. Conflicts.** The Parties agree that any ambiguity in this Attachment F shall be resolved in favor of a meaning that complies and is consistent with HIPAA, including any subsequent amendments or interpretations.

**F.9. Damages/Specific Performance.** Business Associate and Covered Entity agree that money damages would not be a sufficient remedy for any breach or threatened breach of the terms of this Attachment F and that Covered Entity shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach. Such remedy shall

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not be deemed to be an exclusive remedy for any such breach or threatened breach of the terms of this Attachment F but shall be in addition to all other remedies available at law to Covered Entity.

**F.10. Indemnification.** Notwithstanding any provisions to the contrary in this Purchase Order, Business Associate will indemnify, defend, and hold harmless Covered Entity, its officers, directors, employees, medical personnel, and agents from any and all damages, claims, actions, liability, and expenses (including the cost of investigation, notification, mitigation, Civil Monetary Penalties, judgments, settlements, court costs, and attorney's fees) relating to or resulting from (i) Business Associate's default or breach of this Attachment F; and (ii) any Use, Disclosure or Breach of Unsecured Protected Health Information by Business Associate or any subcontractor, agent, person or other entity to whom Business Associate disclosed PHI.

**F.11. Property Rights.** As between Covered Entity and Business Associate, PHI shall be and remain the property of Covered Entity regardless of Business Associate's Use, creation, possession and/or control of such PHI. Business Associate agrees that it acquires no title or rights to PHI, or to Limited Data Sets or De-Identified Information constructed from PHI, as a result of this Attachment F or the Purchase Order.

**F.12. No Third Party Beneficiaries or Agency.** Nothing express or implied in this Attachment F shall confer upon any person, other than Business Associate and Covered Entity and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever. It is the intent and agreement of the Parties that in performing under the Purchase Order and this Attachment F, Business Associate is an independent contractor of Covered Entity, and not an agent of Covered Entity.

**F.13. Good Faith.** The Parties agree to exercise good faith in the performance of this Attachment F.

**F.14. Waiver.** Neither the failure nor any delay by Covered Entity to exercise a right, remedy or privilege under this Attachment F shall operate as a waiver thereof, nor shall any single or partial exercise by Covered Entity of a right, remedy or privilege preclude any further exercise of the same.

**F.15. Notice.** Any notice to be given to Covered Entity pursuant to this Attachment F shall be given in writing to Covered Entity's representative signing below, with a copy to Medical Faculty Associates Privacy Officer, 2120 L Street, N.W., Suite 610, Washington, D.C. 20037. Any notice to be given to Business Associate pursuant to this Agreement shall be given in writing to Business Associate's representative signing below at the address provided below (or, if no address is provided below, to any address Covered Entity reasonably believes will reach Business Associate). Any party desiring to change its listed address must give written notice in the foregoing manner to the other party.