

VANDERBILT  UNIVERSITY

MEDICAL CENTER

***PURCHASE ORDER TERMS AND CONDITIONS***

1. Entire Agreement. The following Purchase Order Terms and Conditions are applicable to all Vanderbilt University Medical Center (“VUMC”) Purchase Orders, and to any agreements between VUMC and SUPPLIER that incorporate the Purchase Order Terms and Conditions by reference. Except as provided in Section 2 herein, the Purchase Order Terms and Conditions and any applicable Purchase Order, including any specifications or instructions attached thereto (“Specifications”), may be amended or modified only by an instrument of equal formality signed by duly authorized representatives of the respective parties. Any additional or inconsistent provision proposed by SUPPLIER, including in any SUPPLIER purchase order, shall be deemed of no force and effect unless the Purchase Order Terms and Conditions or Purchase Order was amended as provided herein. Any Purchase Order is binding upon VUMC only if signed by its duly authorized representative.
2. Changes to Purchase Order. VUMC reserves the right, upon written notice, to change at any time any Purchase Order for products or services, or any Specifications, and SUPPLIER shall accept such changes. If such changes affect the cost of furnishing the products or services, the price of such items or services and/or the delivery schedule, the parties shall equitably adjust the price or delivery schedule by mutual agreement as soon as practicable and incorporate such changes into the Purchase Order.
3. Price; Packing; Shipment
  - a. EXCEPT AS OTHERWISE PROVIDED IN A PURCHASE ORDER, each specified price in a Purchase Order includes all costs and charges to be borne by VUMC. To the best of SUPPLIER’s knowledge, all of the prices, warranties, benefits, and terms granted by SUPPLIER to VUMC in a Purchase Order will be equal to or more favorable than the prices, warranties, benefits and terms that are offered by SUPPLIER to any similar medical or health system customer that has purchased or has been offered similar quantities of products and services. If SUPPLIER enters into binding agreements with any other medical or health system customers providing more favorable prices, warranties, benefits, or terms, then the Purchase Order will automatically be deemed amended to provide the same to VUMC. VUMC has the right to benchmark pricing and if market conditions warrant, the pricing will be lowered to reflect such trends. Any price reductions made subsequent to placement of a Purchase Order, but prior to VUMC’s acceptance of the delivered items, will be applicable to a Purchase Order.
  - b. EXCEPT AS OTHERWISE PROVIDED IN A PURCHASE ORDER, SUPPLIER shall pack, mark and prepare all products for shipment to meet the carrier’s requirements at SUPPLIER’s expense, and SUPPLIER shall not charge VUMC for any costs related to packing, cartage, unloading, assembling or installation (including insuring for same). SUPPLIER represents and warrants that all packaging and containers shall conform to all applicable federal, state and local laws and regulations related to the safety of persons and property.
  - c. EXCEPT AS OTHERWISE PROVIDED IN A PURCHASE ORDER, THE PRODUCTS OR SERVICES ARE PURCHASED F.O.B. VUMC’S DELIVERY LOCATION SPECIFIED ON A PURCHASE ORDER. ITEMS PURCHASED F.O.B. SUPPLIER’S SHIP POINT SHALL BE SHIPPED IN THE LEAST EXPENSIVE MANNER BY SUPPLIER, UNLESS OTHERWISE INSTRUCTED BY VUMC.
  - d. Shipment and delivery of products to VUMC shall be made in accordance with the instructions set forth in a Purchase Order. SUPPLIER shall ensure that products are delivered within ten (10) days of the date of a Purchase Order, unless otherwise agreed by VUMC.
  - e. SUPPLIER shall declare replacement value on all parcel post shipments and shall effect transit

insurance on all other shipments. SUPPLIER shall be responsible for asserting claims for loss or damage against the carrier(s) involved.

f. Unless otherwise provided in a Purchase Order, title and risk of loss shall pass from SUPPLIER to VUMC upon receipt by VUMC at VUMC's delivery location specified on a Purchase Order.

g. Payment Terms. Terms of Payment shall be Net 45 Days from invoice date.

4. Acceptance and Conformity.

a. Acceptance shall occur when the products described in a Purchase Order meet the commercial, technical, performance, and other Specifications as described in the Purchase Order ("Acceptance Criteria"). If the products do not meet the Acceptance Criteria when they are delivered to VUMC, VUMC shall give SUPPLIER written notification of the deficiency or non-conformance within thirty (30) days of delivery. Within ten (10) business days of receipt of such written notification, SUPPLIER shall either correct the deficiency or non-conformance or provide a plan acceptable to VUMC for correcting the deficiency or non-conformance. If the deficiency or non-conformance is not corrected or if an acceptable plan for correcting such deficiency is not established during such ten-day period, then, upon notice by VUMC and with the return of all products, SUPPLIER shall refund to VUMC or credit VUMC's next invoice all amounts paid by VUMC relating to such deficiency.

b. In the event that the products or any part thereof do not substantially conform to all applicable specifications (even if VUMC has accepted the products under Section 4(a)), SUPPLIER shall, within thirty (30) days of notice by VUMC, without additional cost to VUMC: (i) restore such products to conformity, (ii) prepare a plan to restore the products to conformity, or (iii) at VUMC's option, (a) refund all amounts paid by VUMC to SUPPLIER that pertain to such non-conformity, or (b) retrieve the products and refund all amounts paid by VUMC hereunder.

5. Cancellation.

a. SUPPLIER agrees that time is of the essence for all VUMC Purchase Orders. Accordingly and without prejudice to any of its other rights, VUMC reserves the right to cancel a Purchase Order in whole or in part and to purchase elsewhere and charge SUPPLIER for any increases, costs or expenses, if SUPPLIER fails to make complete and timely delivery as provided in a Purchase Order.

b. VUMC may, with or without cause, suspend and/or terminate a Purchase Order in whole or in part (to the extent delivery or performance has not occurred), effective upon SUPPLIER's receipt of written notice from VUMC. VUMC may suspend and/or terminate a Purchase Order, in whole or in part, without prior notice to SUPPLIER, effective upon VUMC's discovery that (i) SUPPLIER has breached its warranties under the Purchase Order Terms and Conditions, the Purchase Order, or any other agreement between VUMC and SUPPLIER, or (ii) the products or services provided by SUPPLIER pursuant to the Purchase Order do not conform to the applicable specifications, drawings or instructions provided by VUMC, subject to the provisions of Section 4, herein.

6. Compliance with Law. SUPPLIER warrants that it is in compliance with all applicable federal, state and local laws, regulations and standards relating including but not limited to (i) all laws and regulations related to health, safety and environmental standards, and (ii) all such laws related to the design, manufacture, testing, labeling, sale and transportation of the products, and provision of the services, purchased under a Purchase Order. SUPPLIER represents, warrants, and covenants that it is in full compliance with the Immigration Reform and Control Act of 1986, as amended, and will only provide VUMC with personnel whose employment eligibility has been verified. SUPPLIER explicitly warrants that it is in compliance with all applicable federal, state and local laws, as amended, including but not limited to 41 CFR 60-1.4, 41 CFR 60-250.4 and 41 CFR 60-741.4 and the provisions of Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967 and the Americans with Disabilities Act of 1990, with respect to nondiscrimination in employment on the basis of race, religion, color, national origin or sex, equal opportunity, affirmative action, employment of disabled veterans and veterans of the Vietnam era, and employment of the handicapped.

7. Indemnification: SUPPLIER shall indemnify, defend, and hold harmless VUMC, its trustees, directors, officers, agents and employees, from any judgments, damages, costs and expenses, including reasonable attorneys' fees, from any claim, action or proceeding to the extent arising out of (i) SUPPLIER's, or its officers, employees, agents, or sub-supplier's performance or non-performance (including performance or non-performance of subcontractors) under the Purchase Order Terms and Conditions and applicable Purchase Order, or (i) any design or manufacture defect (to the extent not designed or manufactured by VUMC), or the transportation, installation, delivery, purchase or use by VUMC of the products or services purchased under a Purchase Order if such liability arises from the failure of such products or services to conform to the Specifications or warranties contained herein or in a Purchase Order.
8. Infringement Indemnity. SUPPLIER shall indemnify, defend, and hold harmless VUMC, its trustees, officers, agents and employees, from any judgments, damages, costs and expenses, including reasonable attorneys' fees, from any claim, action or proceeding alleging that any product or any part thereof supplied by SUPPLIER infringes the patent, copyright, or other intellectual property rights of another.
9. Quantity. SUPPLIER may supply only the quantity of products stated on the Purchase Order. Any excess products delivered to VUMC shall be returnable at SUPPLIER's expense; however, VUMC shall not be required to return such excess products and shall not be liable for the care, value, or any damage caused to such excess products.
10. Warranties. SUPPLIER expressly represents and warrants that:
  - a. Immediately prior to sale it had good title to the products, free from any liens, claims, or encumbrances of any kind against such products or any part of the products;
  - b. The products and services shall conform to generally accepted industry standards and practices for quality work and shall conform to the Specifications incorporated into a Purchase Order;
  - c. The products or services are of good and merchantable quality, free from defects (including latent defects) in design, material and workmanship and are fit and suitable for the purposes for which they are intended, provided such purposes are known to SUPPLIER;
  - d. The originality of any work it performs hereunder and that all products provided under this Purchase Order do not violate any U.S. patent, U.S. copyright, trade secret, or other intellectual property right of any third party; and
  - e. Neither it nor any of its employees or other agents providing services hereunder has ever been suspended, excluded, barred, or sanctioned by a federal agency or ever been convicted of a criminal offense related to healthcare. SUPPLIER shall notify VUMC immediately upon discovery that any such action is proposed or taken against SUPPLIER, its employees or agents.

The warranties provided in hereunder are in addition to all other warranties, expressed or implied, and survive any delivery, inspection, acceptance or payment. All warranties shall run to and be enforceable by VUMC, its successors, assigns, clients and third parties injured in person or property by any breach thereof.

11. Confidentiality.
  - a. "Confidential Information" is any information provided pursuant to or in furtherance of this Agreement by a Disclosing Party to a Receiving Party that is clearly marked as "confidential," or that a reasonable person in like circumstances would understand to be confidential or proprietary. For the sake of clarity, "Confidential Information" does not include Protected Health Information, as that term is defined at 45 C.F.R. § 160.103.
  - b. Receiving Party shall not disclose Confidential Information to third parties in a manner that is inconsistent with the terms of this Section 5.1. Except as stated herein, a Receiving Party shall restrict access to Disclosing Party's Confidential Information to Receiving Party's personnel or subcontractors with a need to know for the purpose of administering or implementing this Agreement or for the purpose of providing legal, actuarial, or accounting services to Receiving Party, and only to the extent such personnel and subcontractors agree to comply with the terms of this Article V.
  - c. SUPPLIER shall not use, copy, or remove from VUMC's premises, without the prior written consent of VUMC, any Confidential Information, except to the extent necessary to carry out the purposes of

this Agreement.

- d. Upon termination of this Agreement, Receiving Party shall return to Disclosing Party all documents or other materials that contain Receiving Party Confidential Information and destroy all copies thereof.
  - e. Notwithstanding the foregoing, VUMC may disclose pricing available under this Agreement to third parties, including third party consultants (collectively, "Third Party" or "Third Parties"), if such Third Party has entered into a written agreement with VUMC that prohibits (1) disclosing the information in any way identifiable or in any form other than on a national aggregate basis; and (2) publishing the information in the public domain in any form.
  - f. Confidential information shall not include, and these confidentiality obligations shall not operate as a restriction on SUPPLIER's right to use, disclose, or otherwise access information that: (i) is or becomes generally available to the public through no wrongful act of SUPPLIER; (ii) was in SUPPLIER's possession prior to the time it was acquired from VUMC and was not directly or indirectly acquired from VUMC; (iii) is independently made available as a matter of right to SUPPLIER by a third party, through no wrongful act of such third party; (iv) is required to be disclosed, in the opinion of SUPPLIER's legal counsel, by court order or operation of law; or (v) is independently developed by or for SUPPLIER by persons not having exposure to VUMC's Confidential Information. SUPPLIER's obligations of confidentiality regarding VUMC's Confidential Information shall survive termination of this Agreement.
12. Choice of Law: The Purchase Order Terms and Conditions and all Purchase Orders shall be construed and the legal relations between the parties determined in accordance with the laws of the state of Tennessee and the venue for any formal action initiated in connection with this Purchase Order shall be in Nashville, Davidson County, Tennessee.
  13. Use of VUMC Name or Marks. SUPPLIER shall not use VUMC's name, logos or trademarks in any manner, including without limitation in any advertising, promotional material, press release, publication, public statement or announcement, or through any form of other media, written or oral, without the prior written consent of VUMC, which consent can be granted or withheld in VUMC's sole and absolute discretion.
  14. Compliance With Applicable Government Requirements: All applicable government statutes, rules, regulations, and executive orders are hereby incorporated in a Purchase Order and made part of any resulting transaction. SUPPLIER certifies that all products and services listed in a Purchase Order have or will be furnished in compliance with and subject (i) all applicable federal and state statutes, amendments thereto and regulations issued pursuant thereto, and (ii) all applicable orders and regulations of the executive and other departments, agencies, and instrumentalities of the United States.
  15. Expiration. Purchase Orders not fulfilled by SUPPLIER within six (6) months from date listed on the Purchase Order are null and void unless otherwise noted in the body of the Purchase Order.
  16. Limitation of Liability. VUMC shall not be liable to SUPPLIER, its employees, representatives, agents, or subcontractors for any consequential, incidental, special, indirect or exemplary damages of any kind (including lost profits).
  17. Access to Books and Records. To the extent required by applicable law, until the expiration of four (4) years after the furnishing of any services pursuant to this Agreement, SUPPLIER shall upon written request, make available to the Secretary of Health and Human Services or the Comptroller General or their duly authorized representative the contract, books, documents, and records necessary to verify the nature and extent of the cost of such services. If SUPPLIER carries out any of its obligations under this Agreement by means of a subcontract with a value of \$10,000 or more, SUPPLIER agrees to include this requirement in any such subcontract.
  18. Discount Safe Harbor. SUPPLIER is responsible for fully and accurately reporting and/or providing information on all discounts, rebates or reductions in price on the invoice, coupon or statement submitted to VUMC in accordance with all applicable laws and regulations, including the provisions of the discount exception at 42 U.S.C. § 1320a-7b(b)(3)(A) and/or the discount safe harbor regulation at 42 C.F.R. §1001.952(h). SUPPLIER agrees that it shall promptly disclose and appropriately reflect any discount, rebate or other reduction in price as may be required under Medicare or any other federal or state health program,

and SUPPLIER represents that it shall refrain from taking any action or omission that would impede VUMC from meeting its obligations under law, consistent with the requirements of the Medicare/Medicaid anti-kickback statute and regulations.

19. Export Controls. It is understood that VUMC is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations, including the Export Administration Regulations (“EAR”) (15 C.F.R. §730-744), the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. § 120-130), and the economic sanctions programs administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) (as set forth in 31 C.F.R. §500-598 and certain executive orders). The transfer of any such Technology and Items and the entering into and provision of such Transactions and Services that are subject to Restrictions may require a license or authorization from the cognizant agency of the United States Government, and/or may require written assurances by the receiving party that it shall not re-export such Technology and Items to certain foreign destinations and/or to certain recipients without prior approval of the cognizant government agency, and/or may require that the involved individuals and entities will comply with conditions on Transactions and Services. While VUMC agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, VUMC cannot guarantee that such licenses will be granted. No party shall share or disclose information, materials, or technology with any person, party or location in Cuba, Iran, North Korea, Sudan, Syria, the Crimea region of the Ukraine or any other country or territory subject to U.S. trade sanctions, as listed at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.
20. Assignment; Subcontracting. SUPPLIER may not assign a Purchase Order, nor any rights or obligations hereunder, without VUMC’s prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. SUPPLIER may subcontract the provision of products or services under a Purchase Order only with VUMC’s prior written consent.
21. Waiver of Breach. The waiver of a breach of a Purchase Order by VUMC or the failure of VUMC to exercise any right under a Purchase Order shall in no event constitute a waiver as to any other breach, whether s the commercial, technical, performance, and other Specifications similar or dissimilar in nature, or prevent the exercise of any right under a Purchase Order.
22. Independent Contractors. None of the provisions hereunder are intended to create, nor will they be deemed to create any relationship between the parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of the Purchase Order Terms and Conditions and any other agreements between the Parties evidencing their business relationship.
23. HIPAA Requirements. The parties acknowledge that VUMC is a “Covered Entity,” as that term is defined at 45 C.F.R. § 160.103. As such, the parties agree to comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d et seq. (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), as each may be amended from time to time, and any current and future regulations promulgated thereunder (collectively referred to herein as “HIPAA Requirements”). The parties agree not to use or further disclose any Protected Health Information, as defined in the HIPAA Requirements, other than as permitted by the HIPAA Requirements and the terms of a Purchase Order or as otherwise authorized by the Patient in accordance with applicable law. To the extent SUPPLIER shall be required to use, disclose, or have access to Protected Health Information to carry out its duties pursuant to a Purchase Order, VUMC and SUPPLIER agree to the Business Associate Agreement, which is set forth below and incorporated herein.

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), dated as of the date of the Purchase Order and Purchase Order Terms and Conditions, is entered into by and between VUMC (referred to in this Agreement as the Covered Entity) and SUPPLIER (referred to in this Agreement as the “Business Associate”) (each a “Party” and collectively the “Parties”), and is made a part of that certain Purchase Order between the parties (the “Service Agreement”) pursuant to which Business Associate provides a service or services to Covered Entity that involves the use and/or disclosure of Covered Entity Protected Health Information (“PHI”).

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### I. DEFINITIONS:

- A. Terms used but not otherwise defined in this Agreement shall have the same meaning as the meaning ascribed to those terms in the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act of 2009, as codified at 42 U.S.C. § 17901 *et seq.* (“HITECH Act”), and any current and future regulations promulgated under HIPAA or the HITECH Act (HIPAA, HITECH Act and any current and future regulations promulgated under either are referred to as the “Regulations”).
- B. *Protected Health Information or PHI.* “Protected Health Information” or “PHI” shall have the same meaning as the term “Protected Health Information” in 45 CFR § 160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity, including but not limited to electronic PHI.

### II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE:

- A. Business Associate may only use and disclose PHI as permitted by this Agreement or as required by law. Specifically, Business Associate may 1) use and disclose PHI to perform its obligations as set forth in the Service Agreement, provided that such use or disclosure would not violate HIPAA if done by Covered Entity; (2) use PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities; (3) disclose PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities, if such disclosure is required by law or if Business Associate obtains reasonable assurances from the recipient that the recipient will keep the PHI confidential, use or further disclose the PHI only as required by law or for the purpose for which it was disclosed to the recipient, and notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached; (4) use PHI to provide data aggregation services relating to the health care operations of Covered Entity at the request and direction of Covered Entity; and (5) use PHI to create de-identified information for use by Covered Entity consistent with the standards set forth at 45 CFR § 164.514 and at the request and direction of Covered Entity. Business Associate will not sell PHI or use or disclose PHI for purposes of marketing, as defined and proscribed in the Regulations.
- B. Business Associate will limit its uses and disclosures of, and requests for, PHI (1) when practical, to the information making up a Limited Data Set; and (2) in all other cases subject to the requirements of 45 CFR § 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

### III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:

- A. Business Associate agrees not to use or disclose PHI other than as permitted or required by the Service Agreement, this Agreement, or as required by law. Business Associate will comply with the provisions of this Agreement related to privacy and security of PHI and the Regulations, as they may be modified

from time to time, and that are applicable to Covered Entity or Business Associate. To the extent that Business Associate performs any of Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

- B. Business Associate agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Rule with respect to electronic PHI, to prevent the use or disclosure of the PHI other than as provided for by this Agreement.
- C. Business Associate acknowledges and agrees that under the HITECH Act (i) the requirements of Sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements) of the Security Rule apply to Business Associate in the same manner that such sections apply to Covered Entity, and (ii) the additional requirements of the HITECH Act that relate to security and that are made applicable to Covered Entity shall also be applicable to Business Associate (with such security requirements in (i) and (ii) above collectively referred to as the "HITECH Act Security Requirements"). Business Associate shall comply with the HITECH Act Security Requirements which shall be, by this reference, incorporated into this BA Agreement.
- D. Unless Covered Entity agrees, in writing, that this requirement is infeasible with respect to particular data, Business Associate shall secure all Protected Health Information by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals consistent with guidance issued by the Secretary, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by the HITECH Act.
- E. Business Associate shall ensure that any agents and subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to comply with the same restrictions, conditions, and requirements that apply through this Agreement or otherwise to Business Associate with respect to such information. Business Associate shall enter into written agreements with any subcontractors, and the terms of such agreements shall incorporate the applicable requirements of, and otherwise comply with, the Regulations.
- F. Business Associate will make available during normal business hours at Business Associate's offices all records, books, agreements, internal practices, policies and procedures relating to the use or disclosure of PHI to the Secretary, in a time and manner designated by the Secretary, for purposes of determining compliance with the Regulations, subject to attorney-client and other applicable legal privileges.
- G. Business Associate will provide documentation regarding any disclosures by Business Associate that would be required for an accounting of disclosures to an Individual under 45 CFR § 164.528 and the HITECH Act, within a reasonable amount of time of receipt of a request from Covered Entity. Any request under § 164.528 from an Individual made directly to Business Associate will be referred within five (5) business days to Covered Entity.
- H. To the extent Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make PHI available for amendment and incorporate any amendments to PHI in accordance with the requirements of 45 C.F.R. § 164.526. Any request under § 164.526 from an Individual made directly to Business Associate will be referred within five (5) business days to Covered Entity.
- I. To the extent Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make PHI available to the extent and in the manner required by 45 C.F.R. § 164.524. Any request under § 164.524 from an Individual made directly to Business Associate will be referred within five (5) business days to Covered Entity.

- J. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522 and the Regulations and of which Business Associate has been notified by Covered Entity.
- K. Business Associate will mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by Business Associate not permitted by this Agreement.
- L. Business Associate agrees to notify within five (5) business days the designated Privacy Official of the Covered Entity of any use or disclosure of PHI by Business Associate not permitted by this Agreement, any Security Incident, and any Breach of Unsecured Protected Health Information of which Business Associate becomes aware.
  - 1. Business Associate shall provide the following information to Covered Entity within ten (10) business days of discovery of a breach of unsecured PHI except when despite all reasonable efforts by Business Associate to obtain the information required, circumstances beyond the control of the Business Associate necessitate additional time. Under such circumstances Business Associate shall provide to Covered Entity the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) calendar days from the date of discovery of a breach:
    - a. the date of the breach;
    - b. the date of the discovery of the breach;
    - c. a description of the types of unsecured PHI that were involved;
    - d. identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed; and
    - e. any other details necessary to complete a risk assessment in accordance with the Regulations.
  - 2. Business Associate will cooperate with Covered Entity in providing notification to individuals whose unsecured PHI has been disclosed, as well as to the Secretary and the media, to the extent required by Sec. 13402 of the HITECH Act, 42 U.S.C. § 17932, provided that Business Associate shall not provide any such notifications on behalf of Covered Entity without the express written consent of Covered Entity.
  - 3. Business Associate agrees to pay actual reasonable costs of notification and of any associated mitigation incurred by Covered Entity, such as credit monitoring, if Covered Entity determines that the breach is significant enough to warrant such measures.
  - 4. Business Associate agrees to establish procedures to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.

#### IV. TERM AND TERMINATION:

- A. Term. This Agreement shall become effective on the date of execution of a Service Agreement, and shall terminate upon the later of the termination or expiration of all Service Agreement(s) or when all PHI has been destroyed or returned to Covered Entity. Notwithstanding the foregoing, obligations imposed on either party pursuant to the Regulations must be complied with only when the particular provisions referenced become effective or compliance becomes required, whichever is later.
- B. Termination for Cause. Either Party may immediately terminate this Agreement and the Service Agreement(s) if such Party makes the determination that the other Party has breached a material term of this Agreement; provided, however, that the non-breaching Party may choose to provide the



breaching Party with written notice of the existence of an alleged material breach and thirty (30) days opportunity to cure the breach.

C. Effect of Termination.

1. Upon termination or expiration of this Agreement, Business Associate agrees to return to Covered Entity or destroy, within thirty (30) days of the termination or expiration of this Agreement, all PHI in the possession of Business Associate and/or in the possession of any subcontractor or agent of Business Associate (including without limitation destroying all backup tapes and permanently deleting all electronic PHI) and to retain no copies of the PHI.
2. In the event that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Upon mutual agreement by the Parties that return or destruction of the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains the PHI.

V. **INDEMNIFICATION:**

Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

VI. **MISCELLANEOUS:**

- A. Amendments. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. The parties agree to take such action to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of the Regulations.
- B. Survival. The respective rights and obligations of Business Associate and Covered Entity set forth in Sections IV.C. and V shall survive termination of this Agreement.
- C. Regulatory References. Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended or modified.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA. Furthermore, in case of any conflict between the terms and conditions of this Agreement and the Service Agreement, the terms and conditions of this Agreement shall prevail.
- E. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, or their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- F. Assignment. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- G. Independent Contractors. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.
- H. Governing Law. This Agreement will be governed by the laws of the State of Tennessee.
- I. Non-Waiver. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- J. Headings. The section headings contained in this Agreement are for reference purposes only and will not affect the meaning of this Agreement.
- K. Notices. Any notices given hereunder shall be in writing and addressed as follows:

If to Covered Entity:

Vanderbilt University Medical Center  
Privacy Office  
4560 Trousdale Drive, Suite 101  
Nashville, TN 37204  
Attention: Privacy Official

If to Business Associate:

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