

**Purchasing Agreement
for
Goods and/or Services
Contract No. UC-20-__ - _____**

This contract (hereinafter "Contract") is made and entered into by and between:

University of Connecticut

and

hereinafter "**University**"

hereinafter "**Contractor**"

_____/ (____) ____ - ____
University Contract Administrator/Phone

_____/ (____) ____ - ____
Contractor Contact/Phone

This Contract is comprised of the following documents, listed in order of precedence: (1) the **terms and conditions in this document** and (2) the **Incorporated Documents**, as identified below.

Section 1

Term

1.1 **Term.** This Contract will govern the provision of Goods and/or Services (as defined herein the Contract) to be provided hereunder from:

Effective Date: to End Date: ("Term")

1.2 **Extensions.** University shall have the option to extend the term for ____ () additional ____ () year periods, or any part or combination thereof. Said option(s) may be exercised by University, in its sole discretion, by providing written notice to the Contractor prior to the end of the then-current Term. If requested by University, Contractor shall execute an amendment memorializing University's exercise of such option(s).

Section 2

Contractor Responsibilities

2.1 **Statement of Work.** Contractor shall provide University with the Goods and/or Services more particularly described [in the Statement of Work attached hereto as Attachment B, at the pricing set forth therein.] **OR** [in one or more Statements of Work duly executed by the parties in a form substantially similar to Attachment B, at the pricing set forth therein.].

Section 3

Compensation

3.1 Maximum Amount Payable.

Maximum amount payable by University under this Contract:

\$ _____

3.2 Invoicing. Invoices shall be in a form reasonably acceptable to the University and include such information as the University may reasonably request, including, without limitation, the applicable University Purchase Order number against which such invoice is submitted. Invoices shall be issued in accordance with the payment schedule set forth in Attachment B. The University shall not be obligated to make payments on invoices that are not in such form and/or that do not contain such information.

3.3 Payment. Payments shall be due within **thirty (30)** days of receipt and approval of Contractor's invoice. The University may withhold payment of any amount invoiced that is subject to good faith dispute provided that, in the event of such a dispute, the University notifies Contractor of the amount and reason for such dispute. The University will not be considered in breach of Contract for withholding any amount that is under good faith dispute. Payments will be net of any required tax withholding. **[Invoice payments are subject to Conn. Gen. Stat. §4a-71 (Prompt payment by state departments and agencies)]**

3.4 Taxes. University is exempt from sales and use tax in Connecticut and several other states. Where applicable, Contractor will pay, and is solely responsible for, all taxes, tariffs, and duties imposed on Contractor in connection with its performance under the Contract, including any federal, state, and local income, sales, use, excise, and other taxes or assessments.

3.5 Travel. Check one box:

All travel and meals are included as part of this Contract. No reimbursements shall be made to Contractor.

The University shall reimburse travel and meals in accordance with the Contract and subject to University's Travel Policy.

Section 4

Notices

4.1 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Contract must be in writing. All notices, demands and requests shall be deemed to have been properly served if given by personal delivery or if delivered to Federal Express or other reputable express carrier for next business day delivery, charges billed to or prepaid by shipper; or if deposited in the United States mail, registered or certified with return receipt requested, proper postage prepaid, addressed as follows:

If to the University: University of Connecticut
Department of Procurement Services
3 Discovery Drive, U-6076
Storrs, CT 06269
Attention: _____

If to the Contractor: _____

Any party may change its notice information by giving written notice in accordance with this section.

Section 5

Incorporated Documents

5.1 Incorporated Documents. The following documents (“Incorporated Documents”) are hereby incorporated by reference into this Contract as if fully set forth herein, in the following order of precedence:

- i. State of Connecticut Terms and Conditions, which can be found at <https://uconncontracts.uconn.edu/wp-content/uploads/sites/458/2019/10/Procurement-State-Terms-Conditions-revised-10.24.19.pdf>, as of the Effective Date.
- ii. General Terms and Conditions of Purchase – Attachment A
- iii. Statement of Work – Attachment B
- iv. [Confidentiality Appendix – Attachment ____]
- v. [Federal/State Grant Appendix – Attachment ____]
- vi. [UConn Health Appendix – Attachment ____]

IN WITNESS WHEREOF, this Contract has been duly executed by the following parties:

UNIVERSITY OF CONNECTICUT: [_____]

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A

General Terms and Conditions of Purchase

1. **General.** The equipment, materials, goods, and supplies ("Goods") and/or services ("Services") furnished by Contractor under the Contract are governed by the terms and conditions in the Contract, including the terms and conditions set forth herein. Written acceptance, or shipment of all or any portion of the Goods, or the performance of all or any portion of the Services, will constitute Contractor's unqualified acceptance of the Contract.
2. **Delivery, Title, Risk of Loss of Goods.** Contractor shall deliver any and all Goods to the location designated by University in the quantities and on the date(s) specified by University. Title and risk of loss shall pass to University when Goods have actually been received, installed (if applicable) and accepted by University at the location that it designates. Acceptance for purposes of the preceding sentence does not limit University's right to reject Goods pursuant to the Contract. Contractor is solely responsible for packing, crating, marking, and transporting any Goods, and for liability for any loss or damage to such Goods in transit. Contractor is responsible for confirming, before delivery, that all University doorways, hallways, elevators, room sizes, service access spaces, and utilities are adequate to facilitate delivery and installation of the Goods.
3. **Inspection.** University shall have a reasonable period of time to inspect and test the Goods and/or Services, but in any event not less than thirty (30) days after receipt of such Goods and/or Services. Unless otherwise set forth in the Contract, University shall determine the manner and scope of inspection for the Goods and/or Services. If prior to final acceptance, any Goods and/or Services furnished are found to be incomplete, defective, not as specified, or otherwise nonconforming, University may at its discretion: (i) reject such Goods and/or Services; (ii) require Contractor to correct them at the sole cost of Contractor; and/or (iii) require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances. If Contractor is unable or refuses to correct such deficiencies within a time University deems reasonable, University may terminate the Contract in whole or in part. Contractor bears all risks as to rejected Goods and/or Services and, in addition to any costs for which Contractor may be liable under the Contract, will reimburse University for all transportation costs, other related costs incurred, and any payments to Contractor for the rejected Goods and/or Services. No action or inaction of University shall be deemed acceptance of any Goods and/or Services.
4. **Ownership and Use.**
 - 4.1 *Definitions.* "Intellectual Property" means all intellectual property rights of every kind and description, including without limitation all U.S. and non-U.S.: (i) patents, patent disclosures, and inventions; (ii) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (iii) copyrights and copyrightable works (including computer programs), and rights in data and databases; (iv) trade secrets, know-how, and other confidential information; and (v) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection. "Background IP" means any Intellectual Property owned, created, and/or developed by a party prior to or independently from this Contract. "Work Product" means all Intellectual Property and other materials and information created or developed under this Contract.
 - 4.2 *Ownership.* Each party shall own its Background IP. University shall exclusively own Work Product as of the date of its creation. Contractor agrees that Work Product is "work made for hire" under U.S. copyright law, and all Intellectual Property rights therein will be owned exclusively by University. To the extent that any Work Product is deemed not to be a "work made for hire", Contractor shall and hereby does irrevocably assign and transfer all of its right, title, and interest in and to the Work Product, including all intellectual Property therein, to University. Contractor shall ensure that its employees, subcontractors, representatives, agents, or other contractors engaged under this Contract comply with the requirements of this section. Where applicable, or at the request of University, Contractor shall deliver an executed, written assignment to University of the Work Product and all Intellectual Property therein.
 - 4.3 *License to Background IP.* If and to the extent any of Contractor's Background IP or a portion thereof is incorporated in the Work Product, or is otherwise necessary for the use of the Work Product, Contractor hereby grants to University a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, sublicensable, fully paid license to use, make, sell, distribute, execute, adapt, translate, reproduce, display, perform, modify, and create derivative works of Contractor's Background IP in connection with the Work Product in which such Background IP is incorporated.

4.4 *License to University's Materials.* University may provide Contractor with access to software, specifications, documentation, data, tools, know-how, methodologies, processes and/or other materials, information and/or Intellectual Property owned and/or licensed by University ("University Materials"). Contractor shall have no right or license to use any University Materials except solely during the Term of the Contract to the extent necessary to provide the Goods and/or Services to University and solely for the benefit of University. All rights in and to the University Materials are expressly reserved by University and/or its licensors.

5. **Representations and Warranties.**

5.1 *General.* Contractor represents and warrants that the Goods and Services: (i) are new and unused (unless otherwise specified in the Contract); (ii) are free from defects in material and workmanship; (iii) are of the quality, size, dimension and specifications ordered; (iv) meet the highest performance and manufacturing specifications as described in documents or writings made available by the Contractor to the public or University, or that are included herein the Contract; (v) comply with all applicable laws, codes, and regulations (including, without limitation, codes published by any national or statewide association or groups); (vi) do not infringe on, and are not restricted in any way by, any patent, copyright, trade secret, security interest, lien, or any other encumbrances or rights of third parties; and (vii) have been properly stored, labeled, handled and shipped by Contractor. Without limiting the foregoing, upon University's request, the Contractor shall sign all documents pertinent to assign to University any applicable third party warranties.

5.2 *Qualifications and Performance of Service.* Contractor represents and warrants that it, and its employees, agents and subcontractors, engaged to provide the Goods and/or Services under the Contract, have and will maintain all requisite skills, experience, and qualifications, including any required training, registration, certification or licensure, to provide such Goods and/or Services. Contractor will perform Services in a professional and workmanlike manner in accordance with best industry standards. Except as otherwise expressly set forth in the Contract, Contractor shall provide, at its sole cost and expense, all labor, supervision, equipment, tools, parts, materials, and supplies needed to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as University may so require.

5.3 *Conflict of Interest.* Contractor represents and warrants that to the best of its knowledge there exist no actual or potential conflict of interest that would prohibit it from entering into this Contract under University policy and any applicable federal and state laws (including, without limitation, Connecticut General Statutes §1-84(i) and the State's Code of Ethics).

5.4 *Authority.* Contractor represents and warrants that it has the right and authority to provide the University with the Goods and/or Services and to convey to University to right to use the same for its intended purpose or for such additional purposes as may be described in the Contract.

5.5 *Debarment and Good Standing.* Contractor represents and warrants that (i) neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from contracting with the federal government, recipients of federal grants or contracts, or the State of Connecticut or any agency thereof; and (ii) it is a legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Connecticut. Contractor agrees to immediately notify University in writing of it or its principals are debarred, proposed for debarment, declared ineligible or voluntarily excluded from contracting with the federal government, recipients of federal grants or contracts, or the State of Connecticut or any agency thereof, or there is any other event that makes Contractor or its principals an "Ineligible Person" at any time during the course of this Contract. An "Ineligible Person" is an individual or entity who: (A) is currently excluded, debarred, suspended, or otherwise ineligible to participate in any federal program (including, without limitation, any federal health care programs), or (B) has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

5.6 *Compliance with Laws.* Contractor represents and warrants that it will comply with all applicable federal, state, and local laws, regulations, and requirements in its performance hereunder, including, without limitation, the Americans with Disabilities Act of 1990 and Occupational Health and Safety Act of 1970. In addition to any other rights and remedies available to it, University may terminate this Contract immediately if Contractor breaches the foregoing representation and warranty.

6. **Background Checks.** The Contractor warrants that it will not assign any employee, independent contractor or agent to perform services on-site under this Contract unless that employee, independent contractor or agent has completed

a background check and is deemed suitable by Contractor for performing such services on a college campus attended and inhabited by students. The background check must minimally include criminal conviction information for the past seven years, a check of the national and state sex offender registries and a social security number verification. In conducting such background check, the Contractor shall comply with all applicable federal and state laws. All fees associated with the background checks shall be the responsibility of the Contractor. Contractor shall provide University with proof of a background check upon request. If the Services take place on the UConn Health campus in Farmington, Connecticut, Contractor shall only assign employees, independent contractors, or agents that have successfully completed a background check performed by UConn Health.

7. **Personnel.**

7.1 *Assigned Personnel.* Contractor will devote only its best-qualified personnel to work under the Contract. At no time will Contractor or Contractor's employees, agents, or subcontractors be considered employees of University for any purpose, including without limitation, workers' compensation provisions. Contractor shall be solely responsible to University for all Services performed by Contractor's employees, agents, and subcontractors, including being responsible for ensuring payment of all unemployment, social security, payroll, contributions, and other taxes with respect to such employees, agents, and subcontractors. Contractor shall advise University promptly, in writing, of any actual or anticipated labor dispute or other labor-related occurrence known to Contractor involving Contractor's employees or subcontractors, which may reasonably be expected to affect Contractor's obligations under this Contract. University shall have the option to require Contractor to arrange for temporary employees or subcontractors satisfactory to University to provide the Goods and/or Services hereunder.

7.2 *Removal of Personnel.* The Contractor shall immediately remove any of its employees, contractors and/or agents performing Services under this Contract: (i) if it becomes known to the Contractor that such person may be a danger to the health or safety of the campus community; or (ii) at the request of the University, based on a concern of community or individual safety.

8. **Wages.** Contractor shall comply with all applicable wage laws and regulations of the State of Connecticut, including, without limitation, Connecticut General Statutes § 31-57f, and shall pay wages in accordance with the current wage rates provided by the Connecticut Department of Labor ("DOL"). Information regarding the foregoing can be obtained from DOL's website at: <http://www.ctdol.state.ct.us>. Contractor should contact the DOL with any questions. Contractor shall also comply with any wage obligations owed to its employees under any collective bargaining agreement.

9. **Cooperation.** University may, in its sole discretion, engage or employ the services of others to perform work that may or may not be related to the Services. Contractor shall fully cooperate and coordinate its work with any other party, as directed by University.

10. **Goods and/or Services Provided at University Premise(s).**

10.1 *Cleaning Up.* Contractor will at all times keep University premises where the Services are performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its subcontractors, and, at the completion of the Services will remove all rubbish from and about the premises and all its tools, scaffolding, and surplus materials, and will leave the premises "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Contractor and its subcontractors as to responsibility for the removal of the rubbish, or if it is not promptly removed, University may remove the rubbish and charge the cost to Contractor

10.2 *Environmental, Safety, Health and Fire Protection.* Contractor will take all reasonable precautions in providing the Goods and Services to protect the health and safety of University employees and members of the public and to minimize danger from all hazards to life and property, and will comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event that Contractor fails to comply with such regulations and requirements, University may, without prejudice to any other legal or contractual rights of University, issue an order stopping all or any part of the provision of the Goods and/or Services; thereafter a start order for resumption of providing the Goods and/or Services may be issued at University's discretion. Contractor will not be entitled to make a claim for extension of time or for compensation or damages by reason of or in connection with such stoppage. Contractor will have sole responsibility for the safety of all persons employed by Contractor and its subcontractors on University premises, or any other person who enters upon University premises for reasons relating to the Contract. Contractor will at all times maintain good order among its employees and all other persons who come onto University's premises at Contractor's request and will not engage any unfit or unskilled person to provide the Goods and/or Services. Contractor will

confine its employees and all other persons who come onto University's premises at Contractor's request or for reasons relating to the Contract and its equipment to that portion of University's premises where the Services are to be provided or to roads leading to and from such work sites, and to any other area which University may permit Contractor to use. Contractor will take all reasonable measures and precautions at all times to prevent injuries to any of its employees or any other person who enters upon University premises at Contractor's request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous, and to prevent accidents of any kind whenever the Goods and/or Services are being provided in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, Contractor, its subcontractors, University or other persons. To the extent compliance is required, Contractor will comply with all relevant University safety rules and regulations when on University premises.

- 10.3 *Use of Vehicles.* To safeguard students, faculty, staff, patients, and visitors, as well as the aesthetic beauty of the University, all speed limits and traffic laws on or around the University premises shall be obeyed and, if no speed limit is posted, the driving speed shall be kept under 25 miles per hour. Contractor shall be responsible to measure all access routes to intended delivery areas, and to notify University of any anticipated delivery difficulties prior to scheduling deliveries and for coordinating the delivery with the appropriate University representative. Without limiting the foregoing, Contractor shall use vehicles on University premises only in a manner consistent with this Contract.
- 10.4 *Protection of University Property.* Contractor shall protect University property from any damage and promptly and properly repair damage of any kind arising from any act or omission of Contractor, its employees, agents, and/or subcontractors.
- 10.5 *Compliance with University Policy.* Contractor shall, at its own expense, comply with all applicable University policies and procedures, including, without limitation, those requiring individuals to check-in upon arrival, wear identification badges, and successfully complete any background checks and/or certifications required

11. **Use of University Marks.** Contractor is not permitted to use any University name or mark without prior written approval of the University's Office of Strategic Partnerships or such other University official as the University may designate. "University mark" is herein defined as all registered marks to the University's name (past or present), abbreviations, symbols, emblems, logos, mascot, slogans, official insignia, uniforms, landmarks, or songs. Contractor agrees to comply with the University's trademark licensing program concerning any use or proposed use by Contractor of any of University marks on goods, in relation to services, and/or in connection with advertisements or promotion of Contractor or its business. Prior to any use of a University mark by Contractor (or its affiliates or successors or assigns), Contractor will submit the proposed use of the University mark, together with a sample or specimen of the intended use, to the University's Office of Strategic Partnerships for approval. Such permission to use the mark as may be granted pursuant to the terms of this Contract shall terminate at the expiration of this Contract.

12. **Examination of Records and Audit.** Contractor shall prepare, maintain and preserve all records related to the Goods and/or Services, which shall be open to inspection and subject to audit by University, its authorized representatives, and/or the State Auditors of Public Accounts for evaluation and verification of any invoices, payments, or claims submitted by Contractor or any of its payees, as required by governmental authorities, as necessary to ensure compliance with the Contract or applicable law, or as desirable for any other valid business purpose. University or its authorized representatives shall give Contractor reasonable advanced notice of intent to audit. Contractor shall make available all relevant records so as to enable University, its authorized representatives, and/or the State Auditors of Public Accounts to audit Contractor's performance hereunder, including identifying all reimbursable items excluding the make-up of any agreed upon lump sum amounts, fixed rates, or unit prices. Contractor shall preserve the records and University or its authorized representatives shall have access to the records for a period of five (5) years after the satisfaction of Contractor's obligations under this Contract, or for such longer period as may be required by law. If an audit conducted in accordance with this section discloses overpricing or overcharges (of any nature) by Contractor, applicable adjustments and/or payments to University shall be made by Contractor, with interest, within a reasonable amount of time not to exceed ninety (90) days from presentation of University's findings to Contractor. If any such audit discloses overpricing or overcharging (of any nature) in an amount equal to or greater than 5%, Contractor shall, in addition to applicable adjustments and/or payments, reimburse University for all costs incurred in connection with such audit.

Contractor may also be required to provide for an annual financial audit acceptable to University for any expenditure of State or federal awarded funds made by Contractor. Such audit shall include audit recommendations. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all

records and accounts for the fiscal year(s) in which the award was made. Contractor will comply with federal and State single audit standards as applicable.

13. **Termination.**

- 13.1 *Termination for convenience.* University may terminate the Contract for convenience at any time, in whole or in part, by providing Contractor with at least thirty (30) days' prior written notice of such termination (unless a shorter period of time is set forth elsewhere in the Contract). Termination shall be effective as of the close of business on the date specified in the notice.
- 13.2 *Termination for non-appropriation of funds or in the best interest of the State.* University may immediately terminate the Contract at any time, without prior notice, in whole or in part, when funding for the Contract is no longer available, if University ceases operations applicable to the Contract, and/or whenever University determines that such termination is in the best interest of the State of Connecticut.
- 13.3 *Termination for cause.* If either party breaches the Contract, the non-breaching party may terminate the Contract for cause by giving the breaching party at least fifteen (15) days' written notice to cure such breach ("Cure Period"). If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Contract by written notice to the other party.
- 13.4 *Effect of termination or expiration.*

- (a) Upon termination or expiration of this Contract for any reason Contractor shall: (A) promptly deliver to University all materials (whether complete or incomplete) for which University has paid and all other University materials in its possession; (B) promptly remove Contractor's property located on University's premises; (C) provide reasonable cooperation and assistance to University, upon University's written request, in transitioning to a different Contractor; and (D) on a pro rata basis, repay all fees and expenses paid in advance for any Goods and/or Services not performed or provided.
- (b) Upon receipt of written notice of termination by University, Contractor shall, unless otherwise provided in such notice, immediately stop all work (including shipment of any Goods) and cause its suppliers and/or subcontractors to cease their work related to the Contract.
- (c) In no event shall University be liable to Contractor for any costs arising from expiration or termination of this Contract.

14. **Insurance.** Contractor shall secure and pay the premium, or premiums, of the following policies of insurance with respect to which minimum limits are fixed in the schedule set forth below. Each such policy shall be maintained in at least the limit fixed with respect thereto, and shall cover all of Contractor's operations hereunder, and shall be effective throughout the term of this Contract and any extension thereof. It is not the intent of this schedule to limit the types of insurance required herein. The insurance coverage listed in the following is in accordance with State of Connecticut Insurance and Risk Management Board requirements.

- (a) Commercial General Liability
 - 1. Each Occurrence \$1,000,000
 - 2. Products/Completed Operations \$1,000,000
 - 3. Personal and Advertising Injury \$1,000,000
 - 4. General Aggregate \$2,000,000
 - 5. Fire Legal Liability \$ 100,000
 - Umbrella Liability-Each Occurrence \$1,000,000
- (b) Technology Professional Liability (Errors and Omissions) Insurance with limits not less than \$2,000,000/occurrence annually. Coverage shall be sufficiently broad to respond to the duties and obligations in this Contract and shall include, but not be limited to, network security and privacy, release of private information, information theft, damage to or destruction of electronic information, alteration of electronic information. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as monitoring expenses. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of the Contract.
- (c) Business Automobile Liability. Minimum Limits for Owned, Scheduled, Non Owned, or Hired Automobiles with a

combined single limit of not less than \$1,000,000 per occurrence.

- (d) Workers' Compensation and Employer's Liability: As required under state law.
- (e) Such other insurance in such amounts which from time to time may reasonably be required by the mutual consent of the University and the Contractor against other insurable hazards relating to performance.

All policies of insurance provided for in this Section shall be issued by insurance companies with general policyholder's rating of not less than A- and a financial rating of not less than Class VIII as rated in the most current available A.M. Best Insurance Reports and be licensed to do business in the State of Connecticut. All such policies shall be issued in the name of Contractor, and shall name, as Additional Insured, The State of Connecticut, University of Connecticut, its officers, officials, employees, agents, boards and commissions with respect to liability arising out of the operations of the Contractor under this Contract. Certificates thereof shall be delivered to the University prior to the commencement of this Contract and thereafter certificates thereof shall be delivered to the University within ten (10) days prior to the expiration of the term of each such policy, all at no cost to the University. Contractor will notify University, in writing, within thirty (30) days of any modification, cancellation, termination or lapse of any of the policies required hereunder. Policies shall waive the right of recovery against the University and shall be primary

15. **Indemnification.**

- 15.1 *General.* Contractor shall indemnify, defend and hold harmless the State of Connecticut and the University, and their respective officers, employees, students, agents, and assigns (the "Indemnified Parties") from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liabilities, monetary loss, interest, attorneys' fees, costs and expenses of whatsoever kind or nature ("Claims") arising out of or resulting from any actual or alleged: (i) act or omission by Contractor or its employees, agents, or subcontractors; and/or (ii) breach of any of Contractor's representations, warranties or obligations under the Contract.
- 15.2 *Infringement.* Contractor shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims arising out of or resulting from any actual or alleged infringement of any Intellectual Property right by Contractor or the Goods and/or Services (including, without limitation, University's use thereof).
- 15.3 *Indemnification Procedures.* University will promptly notify Contractor of any Claims for which it seeks indemnity hereunder. Contractor shall use counsel reasonably acceptable to University in fulfilling its obligations hereunder. University may, at its own cost and expense, participate in the defense of any Claims. Contractor shall keep University informed at all times as to the status of Contractor's efforts and consult with University concerning such efforts. Contractor shall not settle any Claim without University's prior written consent.

16. **Vendor Code of Conduct.** In furtherance of its longstanding commitment to fundamental human rights, to the dignity of all people, and to the environment, the University has developed the Code of Conduct for University of Connecticut Vendors (the "Vendor Code of Conduct"). A copy of the Vendor Code of Conduct is available at <http://csr.uconn.edu/>. Contractor hereby acknowledges receipt of the Vendor Code of Conduct. The Vendor Code of Conduct is hereby incorporated herein by reference. Contractor agrees to comply with the "Principal Expectations" described in the Vendor Code of Conduct. Contractor further agrees to comply with the "Preferential Standards" described in the Vendor Code of Conduct, to the extent a commitment to so comply, or a representation of compliance, was provided by Contractor to the University in writing. Any such commitment or representation is hereby incorporated herein by reference. Contractor agrees to provide the University with such evidence of Contractor's compliance with this section as the University reasonably requests and to, at the request of the University, provide a comprehensive, annual summary report of Contractor's corporate social and environmental practices.

17. **Force Majeure.** If the performance of obligations under the Contract are rendered impossible or hazardous or is otherwise prevented or impaired due to illness, accident, Act(s) of God, riots, strikes, labor difficulties, epidemics, earthquakes, and/or any other cause or event, similar or dissimilar, beyond the control of the party required to perform such obligation ("Force Majeure Events"), then each party's obligations to the other under the Contract shall be excused and neither party shall have any liability to the other under or in connection with this Contract. The affected party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and shall resume performance of its obligations immediately after the removal of the cause.

18. **Assignment and Subcontracting.** Contractor may not assign, subcontract, or transfer, by operation or law or otherwise, any of its rights under this Contract or delegate any of its duties under this Contract to any third party without

University's prior written consent. The University may assign, subcontract or transfer any of its rights and obligations under this Contract without prior consent or notice.

19. **Relationship of the Parties.** Contractor is an independent contractor. Nothing in this Contract will be construed to make Contractor or University partners, joint venturers, principals, agents, or employees of the other. No officer, director, employee, agent, affiliate, or contractor employed by Contractor to perform work on University's behalf under this Contract will be deemed to be an employee, agent, or contractor of University. Neither party will have any right, power, or authority, express or implied, to bind or make representations on behalf of the other.

20. **Non-Exclusivity.** The Contract is a non-exclusive agreement and University remains free to enter into similar and/or identical agreements with other entities for the Goods and/or Services. Unless otherwise set forth in the Contract, University is not obligated to any minimum purchase or future purchase obligations under this Contract.

21. **Waiver.** No delay or failure by a party in exercising any right, power, or privilege under this Contract or any other instruments given in connection with or pursuant to this Contract will impair any such right, power, or privilege or be construed as a waiver of or acquiescence in any default. No single or partial exercise of any right, power, or privilege will preclude the further exercise of that right, power, or privilege or the exercise of any other right, power, or privilege.

22. **Severability.** If any provision of the Contract is held invalid, void, or unenforceable to any extent, that provision will be enforced to the greatest extent permitted by law, and the remainder of this Contract and application of such provision to other persons or circumstances will not be affected.

23. **No Third-Party Rights.** Nothing in the Contract is intended to make any person or entity that is not a signatory to the Contract a third-party beneficiary of any right created by this Contract or by operation of law.

24. **Amendments.** The Contract may only be amended in writing signed by both Contractor and University and, if applicable, approved as to form by the Office of the Attorney General.

25. **Survival.** All provisions of the Contract that should by their nature survive termination of this Contract shall so survive.

26. **Counterparts.** The Contract may be executed in counterparts, and each counterpart shall have the same force and effect as an original and, when taken together, shall constitute one and the same instrument and an effective binding agreement. Executed of a facsimile or PDF copy shall have the same force and effect as execution of an original. Signed copies of the Contract may be faxed and e-mailed with the same force and effect as if the originally executed Contract had been delivered.

27. **Entire Agreement.** The Contract is the entire agreement between the Contractor and the University and supersedes and rescinds all prior agreements relating to the subject matter hereof. No other terms or conditions will be binding upon the Parties relating to the subject matter hereunder, unless accepted by them in writing in accordance with the Amendments provision above.

ATTACHMENT B

Statement of Work

EFFECTIVE DATE: DD/MM/YYYY

Pursuant to Contract No. UC-20-__-_____ by and between the University of Connecticut (“University”) and _____ (“Contractor”), dated _____, (the “Agreement”), the University and Contractor agree that Contractor will perform and provide the Goods and/or Services set forth herein this Statement of Work. **[This paragraph is only needed if the SOW is attached to the Contract as a template]**

Section 1

Description of the Goods and/or Services

1.1 Contractor will provide the following Goods and/or Services:

[Describe Goods and/or Services to be provided by Contractor]

1.2 Details of the Goods and/or Services not explicitly stated in the Contract but necessarily attendant to the provision of the Goods and/or Services are acknowledged by Contractor to be included as part of the Goods and/or Services.

Section 2

Key Tasks, Deliverables, and Completion Timeframe

2.1 Contractor will perform and provide the following key tasks, activities and deliverables within the corresponding completion timeframe:

Task	Activities	Deliverables	Completion Date or Timeframe	Pricing	
1	[General description]	[Specific details using action verbs like “create”, “develop”, “test”, “analyze”, “evaluate”, etc.]	[List each discrete tangible work product that is considered a critical end result from the Contractor; deliverables are nouns, not verbs]	[Specific dates are best; can be stated as “Week 1”, “Week 2”, etc.]	[If pricing is fixed per task(s) include that information; if pricing is T&M, identify the applicable units of measure]

Section 3

Pricing

- 3.1 “Fixed Price Goods and/or Services” to be rendered, including deliverables to be provided as part of Fixed Price Goods and/or Services, are described [below OR in the attached Schedule B-1]:
- 3.2 “Time and Materials Goods and/or Services” to be rendered, including deliverables to be provided as part of Time and Materials Services, are described [below OR in the attached Schedule B-1]:

Section 4

Place(s) of Performance

[Add places of performance]

Section 5

Key Personnel

- 5.1 Contractor’s account manager is listed below, is subject to University approval, and has overall responsibility for managing the University/Contractor relationship: [Delete if N/A]

Name	
Title	
Phone	
Email	
Address	

- 5.2 Other key personnel (together with Contractor’s account manager listed above, “Key Personnel”) for Contractor [Delete if N/A]:

Name	
Title	
Phone	
Email	
Address	
Name	
Title	
Phone	
Email	
Address	

- 5.3 In the event that Contractor desires to substitute any Key Personnel, either permanently or temporarily, Contractor shall provide written notice to the University of the proposed

change and University shall have the right to approve or reject such change, in its sole discretion. If University does not respond to Contractor within fifteen (15) business days of Contractor's request to substitute Key Personnel, such request shall be deemed approved. . **[Delete if N/A]**.

Section 6

Reporting Requirements

[Insert reporting requirements, if any. Delete if N/A.]

Section 7

University Obligations

[Insert University obligations, if any. Delete if University's sole obligation is payment]

Section 8

Changes to Goods and/or Services

- 8.1 University may unilaterally reduce the Goods and/or Services by written order and may, at its discretion, require that such reduction be commemorated by written amendment to the Contract.
- 8.2 University may make changes to the Goods and/or Services within the general scope of the Contract including, without limitation, the drawings and specifications, place of delivery, method of shipment or packing by giving notice to Contractor and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of the Contract, Contractor will provide University with a proposal for an equitable adjustment to the price and/or delivery terms and will not make any such changes without University's written approval to proceed. Any claim of Contractor for an equitable adjustment under the Contract must be made in writing within thirty (30) days from the date Contractor receives notice of such change. Nothing in the Contract will excuse Contractor from proceeding with performance of the Contract as changed hereunder.

Section 9

Acceptance Criteria and Testing

[Delete if N/A]

[The following is only needed if the SOW is attached to the Contract as a template]

IN WITNESS WHEREOF, this Contract has been duly executed by the following parties:

UNIVERSITY OF CONNECTICUT:

[CONTRACTOR]

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

DRAFT



ATTACHMENT [X]

Health Appendix

1. Compliance with Laws.

- 1.1 Contractor shall comply with all applicable federal, state, and local laws, regulations, and requirements, including, without limitation: (a) the federal anti-kickback statute (42 U.S.C. § 1320a-7(b)) and related safe harbor regulations; and (b) the Limitation on Certain Physician Referrals, also referred to as the "Stark Law" (42 U.S.C. § 1395 (n)). No part of any consideration paid under the Contract is a prohibited payment for the recommending or arranging for the referral of business or the ordering of items or services; nor are any payments intended to induce illegal referrals of business.
- 1.2 Contractor represents and warrants that neither it nor any affiliate of it has entered into any direct or indirect relationship with a third party for the purpose of providing Goods and/or Services hereunder wherein such third party is directly or indirectly compensated or receives remuneration of any kind on the basis of the volume or value of referrals that it makes to University for "designated health services" as defined by 42 C.F.R. § 411.351. Contractor shall indemnify, defend and hold harmless University, the State of Connecticut and their respective officers, directors, members, employees, and agents from and against any and all claims, liabilities, obligations, losses, judgments, fines, assessments, penalties, awards, statutory damages, costs or expenses (including, without limitation, reasonable attorneys' fees and expenses) arising out of Contractor's breach of the representation and warranty made herein.
- 1.3 In the event that any part of this Contract is determined to violate federal, state, or local laws, rules, or regulations, the parties agree to negotiate in good faith revisions to the violative provision(s). If the parties are unable to agree to new or modified terms as required to bring the Contract into compliance, either party may terminate this Contract upon fifteen (15) days written notice to the other party.

2. Business Associate Agreement.

- 2.1 The University of Connecticut Health Center and/or one or more of its component entities (including, but not limited to, the UConn School of Medicine, UConn School of Dental Medicine, UConn John Dempsey Hospital, UConn Medical Group, UConn Health Partners, University Physicians, University Dentists and UConn Health Pharmacy Services, Inc.) (collectively, "UConn Health") is a "covered entity" as that term is defined in 45 C.F.R. § 160.103.
- 2.2 If performance of this Contract results in Contractor becoming a "business associate" of UConn Health under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Contractor must comply with all terms and conditions of this Business Associate Agreement section of the Contract (this "BAA"). If Contractor is not UConn Health's "business associate" under HIPAA, this BAA does not apply to Contractor.
- 2.3 Contractor is required to safeguard the use, publication and disclosure of information about individuals that it creates, maintains, transmits or receives pursuant to this Contract, in accordance with all applicable federal and state laws regarding confidentiality, including,

without limitation, HIPAA and more specifically the Privacy and Security Rules at 45 C.F.R. part 160 and part 164, subparts A, C, and E; and

- 2.4 Contractor and UConn Health agree to this BAA in order to comply with HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (Pub. L. 111-5, §§ 13400 to 13423) ("HITECH Act"), and more specifically with the Privacy and Security Rules at 45 C.F.R. part 160 and part 164, subparts A, C, D and E (collectively referred to herein as the "HIPAA Standards").
- 2.5 Definitions.
 - 2.5.1 "BAA" refers to this Business Associate Agreement section of the Contract, in its entirety. Where the term "Contract" is used in this BAA, it means the Contract in its entirety, including this BAA.
 - 2.5.2 "Business Associate," as that term is defined in 45 C.F.R. § 160.103, shall mean Contractor.
 - 2.5.3 "Covered Entity" shall mean UConn Health and/or one or more of its component entities.
 - 2.5.4 "Designated Record Set" shall have the same meaning as the term "Designated record set" in 45 C.F.R. § 164.501.
 - 2.5.5 "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. § 17921(5)).
 - 2.5.6 "HIPAA Breach" shall have the same meaning as the term "Breach" in 45 C.F.R. § 164.402, and shall also include any use or disclosure of PHI that violates the HIPAA Standards.
 - 2.5.7 "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
 - 2.5.8 "More Stringent" shall have the same meaning as the term "More stringent" in 45 C.F.R. § 160.202.
 - 2.5.9 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
 - 2.5.10 "Protected Health Information" or "PHI" shall have the same meaning as the term "Protected health information" in 45 C.F.R. § 160.103, and includes electronic PHI, as defined in 45 C.F.R. § 160.103, limited to information created, maintained, transmitted or received by Business Associate from or on behalf of Covered Entity or from another business associate of Covered Entity.
 - 2.5.11 "Required by Law" shall have the same meaning as the term "Required by law" in 45 C.F.R. § 164.103.
 - 2.5.12 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
 - 2.5.13 "Security Incident" shall have the same meaning as the term "Security incident" in 45 C.F.R. § 164.304.
 - 2.5.14 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
 - 2.5.15 "Unsecured Protected Health Information" shall have the same meaning as the term as defined in 45 C.F.R. § 164.402.
- 2.6 Obligations and Activities of Business Associate.
 - 2.6.1 Business Associate agrees not to use or disclose PHI other than as permitted or required by this Contract or another duly executed agreement with Covered Entity, or as Required by Law.

- 2.6.2 Business Associate agrees to use and maintain appropriate safeguards and comply with applicable HIPAA Standards with respect to all PHI and to prevent use or disclosure of PHI other than as provided for in this Contract and in accordance with HIPAA standards.
- 2.6.3 Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- 2.6.4 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Contract.
- 2.6.5 Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Contract, or any security incident of which it becomes aware.
- 2.6.6 Business Associate agrees, in accordance with 45 C.F.R. §§ 502(e)(1)(ii) and 164.308(d)(2), if applicable, to ensure that any subcontractors that create, receive, maintain or transmit protected health information on behalf of Business Associate, agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
- 2.6.7 Business Associate agrees to provide access (including inspection, obtaining a copy or both), at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. Business Associate shall not charge any fees greater than the lesser of the amount charged by Covered Entity to an Individual for such records; the amount permitted by state law; or Business Associate's actual cost of postage, labor and supplies for complying with the request.
- 2.6.8 Business Associate agrees to make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity, and in the time and manner designated by Covered Entity.
- 2.6.9 Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained, transmitted or received by, Business Associate on behalf of Covered Entity, available to the Secretary in a time and manner agreed to by the Parties or designated by the Secretary, for purposes of the Secretary investigating or determining Covered Entity's compliance with the HIPAA Standards.
- 2.6.10 Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- 2.6.11 Business Associate agrees to provide to Covered Entity, in a time and manner designated by Covered Entity, information collected in accordance with this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at Covered Entity's direction to provide an accounting of disclosures of PHI directly to an Individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- 2.6.12 Business Associate agrees to comply with any state or federal law that is More Stringent than the Privacy Rule.
- 2.6.13 Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- 2.6.14 In the event that an Individual requests that Business Associate:

- 2.6.14.1 restrict disclosures of PHI;
- 2.6.14.2 provide an accounting of disclosures of the Individual's PHI;
- 2.6.14.3 provide a copy of the Individual's PHI in an electronic health record; or
- 2.6.14.4 amend PHI in the Individual's designated record set,
Business Associate agrees to notify Covered Entity, in writing, within five (5) Business Days of the request.
- 2.6.15 Business Associate agrees that it shall not, and shall ensure that its subcontractors do not, directly or indirectly, receive any remuneration in exchange for PHI of an Individual without:
 - 2.6.15.1 the written approval of Covered Entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract; and
 - 2.6.15.2 the valid authorization of the Individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act (42 U.S.C. § 17935(d)(2)) and in any accompanying regulations.
- 2.6.16 Obligations in the Event of a HIPAA Breach.
 - 2.6.16.1 Business Associate agrees that, following the discovery by Business Associate or by a subcontractor of Business Associate of any use or disclosure not provided for by this Contract, any HIPAA Breach of Unsecured Protected Health Information, or any Security Incident, it shall notify Covered Entity of such HIPAA Breach in accordance with 45 C.F.R. part 164, subpart D, and this BAA.
 - 2.6.16.2 Such notification shall be provided by Business Associate to Covered Entity without unreasonable delay, and in no case later than five (5) Business Days after the HIPAA Breach is discovered by Business Associate, or a subcontractor of Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to 45 C.F.R. § 164.412. A HIPAA Breach is considered discovered as of the first Calendar Day on which it is, or reasonably should have been, known to Business Associate or its subcontractor. The notification shall include the identification and last known address, phone number and email address of each Individual (or the next of kin of the Individual if the Individual is deceased) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such HIPAA Breach.
 - 2.6.16.3 Business Associate agrees to include in the notification to Covered Entity at least the following information:
 - 2.6.16.3.1 A description of what happened, including the date of the HIPAA Breach; the date of the discovery of the HIPAA Breach; the unauthorized person, if known, who used the PHI or to whom it was disclosed; and whether the PHI was actually acquired or viewed.
 - 2.6.16.3.2 A description of the types of Unsecured Protected Health Information that were involved in the HIPAA Breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
 - 2.6.16.3.3 The steps Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the HIPAA Breach.
 - 2.6.16.3.4 A detailed description of what Business Associate is doing or has done to investigate the HIPAA Breach, to mitigate losses, and to protect against any further HIPAA Breaches.
 - 2.6.16.3.5 Whether a law enforcement official has advised Business Associate, either verbally or in writing, that he or she has determined that notification or notice to Individuals or the posting required under 45 C.F.R. § 164.412 would impede a criminal

investigation or cause damage to national security and, if so, contact information for said official.

- 2.6.16.4 If directed by Covered Entity, Business Associate agrees to conduct a risk assessment using at least the information in sections 2.6.16.3.1-4 of this BAA and determine whether, in its opinion, there is a low probability that the PHI has been compromised. Such recommendation shall be transmitted to Covered Entity within ten (10) Business Days of Covered Entity's direction to assess risk.
 - 2.6.16.5 If Covered Entity determines that there has been a HIPAA Breach by Business Associate or a subcontractor of Business Associate, Business Associate, if directed by Covered Entity, shall provide all notifications required by 45 C.F.R. §§ 164.404 and 45 C.F.R. 164.406.
 - 2.6.16.6 Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed of a HIPAA Breach have the opportunity to ask questions and contact Business Associate for additional information regarding the HIPAA Breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its website and a postal address. Business Associate agrees to include in the notification of a HIPAA Breach by Business Associate to Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by Business Associate.
 - 2.6.16.7 Business Associate agrees that, in the event of a HIPAA Breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to Covered Entity.
 - 2.6.17 Business Associate agrees that it shall obtain permission from Covered Entity prior to: (a) transmitting, or allowing the transmission of, any PHI to an offshore location; or (b) utilizing an offshore entity to perform services on behalf of Covered Entity. For the purposes of this section, "offshore" means any country that is not one of the fifty United States or one of the United States Territories (American Samoa, Guam, Northern Marianas, Puerto Rico, and Virgin Islands).
- 2.7 Permitted Uses and Disclosure by Business Associate.
- 2.7.1 General Use and Disclosure Provisions. Except as otherwise limited in this Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity.
 - 2.7.2 Specific Use and Disclosure Provisions
 - 2.7.2.1 Except as otherwise limited in this Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
 - 2.7.2.2 Except as otherwise limited in this Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - 2.7.2.3 Except as otherwise limited in this Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

2.8 Obligations of Covered Entity.

- 2.8.1 Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 2.8.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual(s) to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 2.8.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

2.9 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Contract.

2.10 Term and Termination.

- 2.10.1 Term. This BAA shall be effective as of the date the Contract is effective and shall continue for as long as Business Associate has possession of or access to Covered Entity's PHI. This BAA may be terminated only after the information collected in accordance with section 2.6.10 of this BAA is provided to Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.
- 2.10.2 Termination for Cause. Upon Covered Entity's knowledge of a HIPAA Breach or of a violation of the terms of this BAA by Business Associate, Covered Entity shall either:
 - 2.10.2.1 Provide an opportunity for Business Associate to cure the HIPAA Breach or end the violation and terminate the Contract if Business Associate does not cure the Breach or end the violation within the time specified by Covered Entity; or
 - 2.10.2.2 Immediately terminate the Contract if Business Associate has violated a material term of this BAA and cure is not possible; or
 - 2.10.2.3 If neither termination nor cure is feasible, Covered Entity shall report the HIPAA Breach and/or violation to the Secretary.
- 2.10.3 Effect of Termination.
 - 2.10.3.1 Upon termination of the Contract for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with section 2.6.10 of this BAA to Covered Entity within ten (10) Business Days of the notice of termination. This section shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate and its subcontractors shall retain no copies of the PHI, except as provided in section 2.10.3.2 of this BAA.
 - 2.10.3.2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains

such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that Business Associate maintains or preserves the PHI or copies thereof.

2.11 Miscellaneous.

- 2.11.1 Regulatory References. A reference in this BAA to a section in the Privacy Rule means the section as in effect or as amended.
- 2.11.2 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 2.11.3 Survival. The respective rights and obligations of the Parties under this BAA shall survive the Termination, Cancellation or Expiration of this Contract.
- 2.11.4 Effect on Contract. Except as specifically required to implement the purposes of this BAA, all other terms of the Contract shall remain in force and effect.
- 2.11.5 Construction. This BAA shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this BAA shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
- 2.11.6 Disclaimer. Covered Entity makes no warranty or representation that compliance with this BAA will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- 2.11.7 Indemnification. Business Associate shall indemnify and hold Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that arise from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors, subcontractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to this Contract or applicable law, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded under HIPAA, the HITECH Act, or the HIPAA Standards.

3. **Additional Guarantees.**

- 3.1 Contractor agrees that no food, drug, device, or cosmetic that constitutes, or is a part of, the Goods and/or Services will be adulterated or misbranded within the meaning of the Federal Food Drug or Cosmetic Act ("FDCA"), or within the meaning of any state, municipal, or local law in which definitions of adulteration and misbranding are substantially the same as those contained in the FDCA, or which may not, under the provisions of Section 404 or 405 of the FDCA, be introduced into interstate commerce.

4 **Medicare Access to Books and Records**

- 4.1 In the event that 42 CFR § 420.302 applies to this Contract, Contractor agrees that, for at least four (4) years immediately following the furnishing of Services hereunder, it will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives, this Contract and all books, documents, and records necessary to certify the nature and extent of the costs of the Services hereunder