

PURCHASE ORDER TERMS AND CONDITIONS

1. Entire Agreement: (a) This Purchase Order including any addenda, sets forth the entire agreement relating to the purchased products or services and merges all prior understandings, agreements or documents. Except as provided in paragraph 1(b) below, amendments to any provision must be in a written addendum executed by a duly authorized representative of the party to be bound thereby. Any additional or inconsistent provision proposed by SUPPLIER shall be deemed of no force and effect unless this Purchase Order shall have been amended as provided in preceding sentence. This Purchase Order is binding upon VANDERBILT only if signed by its duly authorized representative. VANDERBILT's failure to enforce any provision shall not waive its right subsequently to enforce such provision.

(b) VANDERBILT reserves the right, upon written notice, to change at any time any drawings, specifications or instructions provided by it. If such changes affect the cost of furnishing the products or services, the price of such items shall be equitably adjusted by mutual agreement. SUPPLIER shall represent claims for adjustment in writing within ten (10) days of receiving VANDERBILT's change notice.

2. Non-Assignment: This Purchase Order and the rights or duties arising hereunder may not be assigned, nor may the work contemplated be subcontracted without VANDERBILT's prior written consent.

3. (a) Price: EXCEPT AS PROVIDED ON THE FACE HEREOF, each specified price includes all costs and charges to be borne by VANDERBILT. SUPPLIER represents that the price charged (exclusive of transportation or shipping charges) is the lowest price charged by SUPPLIER to other customers in substantially similar transactions. Any price reductions made subsequent to placement of this Purchase Order, but prior to VANDERBILT's acceptance of the delivered items, will be applicable to this Purchase Order.

(b) Packing: EXCEPT AS PROVIDED ON THE FACE HEREOF, SUPPLIER shall pack, mark and prepare all shipments to meet the carrier's requirements at SUPPLIER's expense. All packing and containers shall conform to applicable laws and regulations related to the safety of persons and property. No charges to VANDERBILT shall be allowed for packing, cartage, unloading, assembling or installation unless specified on the face hereof.

(c) Shipping: EXCEPT AS OTHERWISE PROVIDED ON THE FACE HEREOF, THE PRODUCTS OR SERVICES ARE PURCHASED F.O.B. VANDERBILT'S DELIVERY LOCATION DESIGNATED ON THE FACE HEREOF. ITEMS PURCHASED F.O.B. SUPPLIER'S SHIP POINT SHALL BE SHIPPED THE LEAST EXPENSIVE WAY BY SUPPLIER, UNLESS OTHERWISE INSTRUCTED BY VANDERBILT.

Shipment and delivery shall be made in accordance with the instructions set forth on the face hereof. Absent such instructions, delivery shall be made within ten (10) days of the date of this Purchase Order.

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.

(d) Risk of Loss. Title and risk of loss shall pass from SUPPLIER to VANDERBILT upon receipt by VANDERBILT at VANDERBILT's delivery location designated on the face hereof.

(e) Acceptance and Payment. Except as otherwise provided on the face hereof or in supporting documents, VANDERBILT may inspect either before or after delivery but regardless of any earlier inspection, acceptance shall be final only after a final inspection within a reasonable time after the products or services are received at the delivery location designated on the face hereof. Rejected items will be held or returned at SUPPLIER's risk without a formal replacement order. VANDERBILT's inspection shall not relieve SUPPLIER or any responsibility for latent defects or from the warranties herein or in any other document containing warranties in favor of VANDERBILT.

Payment shall not be due until final acceptance. Payment prior to final inspection shall not constitute final acceptance.



4. Cancellation: (a) Time is of the essence. Without prejudice to any of its other rights, VANDERBILT reserves the right to cancel this 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 delivery as provided herein.

(b) VANDERBILT may, with or without cause, suspend and/or terminate this Purchase Order (to the extent delivery or performance has not occurred), in whole or in part, effective upon SUPPLIER's receipt of written notice from VANDERBILT. VANDERBILT may suspend and/or terminate, in whole or in part, this Purchase Order without prior notice to SUPPLIER, effective upon VANDERBILT's discovery (i) that SUPPLIER has breached its warranties under this or any other order of VANDERBILT or (ii) that SUPPLIER's deliveries hereunder do not otherwise conform to the applicable specifications, drawings or instructions provided by VANDERBILT.

5. Compliance With Law: SUPPLIER warrants that it is in compliance with all applicable federal, state and local laws, regulations and standards relating to the design, manufacture, testing, labeling, sale and transportation of the supplies or items, and provision of the services, purchased hereunder. SUPPLIER explicitly warrants that it is in compliance with all applicable Federal, state and local laws, as amended, including 41 CFR 60-1.4, 41 CFR 60-250.4 and 41 CFR 60-741.4, 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. SUPPLIER warrants that no item or service provided hereunder infringes, separately or in combination with other materials or processes, any intangible rights of others.

6. Indemnification: SUPPLIER shall indemnify and hold VANDERBILT harmless against and from any and all loss, cost or expense (including reasonable attorneys' fees), except those arising out of the gross negligence of VANDERBILT, incident to any claim, action or proceeding, including SUPPLIER's negligence, arising out of the design (to the extent not designed by VANDERBILT), manufacture, transportation, installation, delivery, purchase or use by VANDERBILT of the products or services purchased hereunder by reason of the failure of such items to conform to the warranties contained herein.

7. Quantity. SUPPLIER may supply only the quantity stated on the face hereof, any trade custom to the contrary notwithstanding without the explicit prior approval of VANDERBILT. Any excess shall be returnable at SUPPLIER's expense but VANDERBILT shall not be required to return such excess nor shall VANDERBILT be liable for the care of any excess or for its value or for any damage resulting to such excess. VANDERBILT's count shall be accepted as correct as to the quantity it received.

8. Additional Warranties: SUPPLIER further warrants that:

(a) Immediately prior to sale it had good title to the products or services, free from any lien or encumbrance unless otherwise specified;

(b) The products or services conform to the requirements of this Purchase Order, including any drawings or specifications herein incorporated and any samples furnished by VANDERBILT or SUPPLIER.

(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; and

(d) SUPPLIER is an independent contractor.

The warranties provided in this Purchase Order 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 VANDERBILT, its successors, assigns, clients and third parties injured in person or property by any breach thereof. All warranties run from the date of final acceptance by VANDERBILT.

9. Ownership of Designs, Etc.: SUPPLIER shall not disclose to any other person technical information furnished by VANDERBILT. Any technical information or other property furnished to SUPPLIER by VANDERBILT shall be returned to VANDERBILT upon demand in the same manner as received by SUPPLIER, ordinary wear and tear excepted.

10. Remedies: If any product or service fails to conform to any warranties specified herein or otherwise applicable, SUPPLIER shall, upon VANDERBILT's request (even if acceptance has been made by VANDERBILT) credit, replace or refund to VANDERBILT any payment already made or, at VANDERBILT's option, repair or replace such item at SUPPLIER's expense. VANDERBILT shall have the right to reject a portion of the items purchased and its partial



acceptance of the balance shall not be deemed a waiver of any of the VANDERBILT's other rights or claims. These remedies are not intended to be exclusive and are in addition to all other remedies available under law.

11. Choice of Law: The internal laws of the State of Tennessee shall govern this Purchase Order. If any provision shall be deemed invalid or unenforceable, the parties intend that all other provisions shall remain unimpaired and unaffected thereby. The headings used are for convenience only and shall not affect the construction of this Purchase Order. Nashville, TN. will be the point of venue for any required litigation resulting from this purchase order or contract

12. SUPPLIER agrees that it shall not use VANDERBILT's name or licensed trademarks in any of its promotional or marketing efforts without VANDERBILT's prior written approval.

13. Compliance With Anti-Kickback Act Requirements: To the extent that this Purchase Order constitutes a subcontract under a Federal prime contract, SUPPLIER shall comply with Federal Acquisition Regulation 52.203-7, Anti-Kickback Procedures, with the exception of subparagraph (c)(1) thereof.

14. Orders not fulfilled within 6 months from order date are null and void unless otherwise noted in the body of the Purchase Order.

15. It is expressly understood and agreed by SUPPLIER that none of VANDERBILT's covenants, undertakings or agreements herein are made or intended as personal covenants, undertakings or agreements by any of the administration or employees from time to time of VANDERBILT, and any liability of VANDERBILT for damages or break or nonperformance or otherwise arising under or in connection with this Purchase Order is hereby expressly waived by SUPPLIER against each and every one of the employees of VANDERBILT from time to time personally and individually, and in such instance SUPPLIER shall look solely to VANDERBILT and its assets and not to any individual administrators or employees, or any individual administrator's or employee's assets for discharge of any such liability.

16. In the event that any service being provided by SUPPLIER in connection with this Purchase Order requires that SUPPLIER have access to protected health information (“PHI”) of Vanderbilt such that SUPPLIER is a business associate of VANDERBILT for purposes of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), then, SUPPLIER and VANDERBILT agree to the Business Associate Agreement provisions set forth below.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), dated as of the date of this Purchase Order, is entered into by and between VANDERBILT (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 we hereby acknowledge, 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 Information Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d (“HIPAA”), the Health Information Technology Act of 2009, as codified at 42 U.S.C.A. prec. § 17901 (“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 or received by Business Associate from or on behalf of Covered Entity, including, but not limited to electronic PHI.

II. OBLIGATIONS OF BUSINESS ASSOCIATE

In order that Covered Entity and Business Associate may achieve and maintain compliance with the requirements of HIPAA, Business Associate agrees:

- A. To only use and disclose PHI as permitted by this Agreement or as Required By Law. Business Associate may 1) use and disclose PHI to perform its obligations as set forth in the Service Agreement; (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; (5) use or disclose PHI to report violations of the law to law enforcement; and (6) use PHI to create de-identified information consistent with the standards set forth at 45 CFR §164.514. Business Associate will not sell PHI or use or disclose PHI for purposes of marketing, as defined and proscribed in the Regulations.
- B. To limit its uses and disclosures of, and requests for, PHI (a) when practical, to the information making up a Limited Data Set; and (b) 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;
- C. To use appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of the PHI in compliance with the Regulations.

- D. To require all of its subcontractors and agents that receive, use or have access to PHI to agree, in writing, to adhere to the same restrictions and conditions on the use or disclosure of PHI that apply to the Business Associate pursuant to this Agreement;
- E. Upon reasonable notice and prior written request, to 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 the Covered Entity's compliance with the Regulations, subject to attorney-client and other applicable legal privileges;
- F. To provide documentation regarding any disclosures by Business Associate that would have to be included in an accounting of disclosures to an Individual under 45 CFR 164.528 (including without limitation a disclosure permitted under 45 CFR 164.512) and the HITECH Act, within a reasonable amount of time of receipt of a request from Covered Entity;
- G. If, and to the extent that Business Associate possesses an applicable Designated Record Set, within a reasonable amount of time of receipt of a request from the Covered Entity for the amendment of an individual's PHI contained in the Designated Record Set, Business Associate shall provide such information to the Covered Entity for amendment and shall also incorporate any such amendments in the PHI maintained by Business Associate as required by 45 C.F.R. 164.526.
- H. Subject to Section III.C.2. of this Agreement, return to the Covered Entity or destroy, within thirty (30) days of the termination of this Agreement, any and all PHI in its possession and retain no copies (which for purposes of this Agreement shall include without limitation destroying all backup tapes and permanently deleting all electronic PHI).
- I. To mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by Business Associate not permitted by this Agreement.
- J. Business Associate agrees to notify 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 involving electronic PHI, and any Breach of Unsecured Protected Health Information within five (5) business days.
 - 1. Business Associate shall provide the following information to Covered Entity within ten (10) business days of discovery of a breach 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 an assessment of the risk of harm to the individual.
 - 2. Covered Entity will be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as the Secretary and the media, as required by Sec. 13402 of the HITECH Act, 42 U.S.C.A. § 17932;
 - 3. Business associate agrees to pay actual costs for 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.

5. The parties agree that this section satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. For purposes of this Agreement, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI.

III. TERM AND TERMINATION:

- A. Term. This Agreement shall become effective on the date of execution of a Service Agreement, and shall terminate upon the termination or expiration of all Service Agreement(s). Notwithstanding the foregoing, obligations imposed on either party pursuant to the HITECH Act 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. Alternatively, the terminating Party may choose to provide the other Party with thirty (30) days written notice of the existence of an alleged material breach and an opportunity to cure the breach. If termination is not feasible, the terminating Party shall report the breach to the Secretary.
- C. Effect of Termination.
 1. Upon termination or expiration of this Agreement, Business Associate agrees to return to Covered Entity or destroy 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.

IV NOTICES: Any notices given hereunder shall be in writing and addressed as follows:

If to Covered Entity

Vanderbilt University Medical Center Privacy Office
3319 West End Avenue, Ste 130
Nashville, TN 37203

Attention: Privacy Official

If to Business Associate

Attention: _____

