



Terms and Conditions for the Purchase of Goods and Services

1. **Terms and Conditions.** Acceptance of a Tufts University purchase order (hereafter, the “PO”) by the supplier identified in the PO (the “Supplier”) on the terms and conditions hereof shall be evidenced by either (i) the Supplier’s written acknowledgment of the PO or (ii) the Supplier’s commencement of performance contemplated in the PO. Together, these Terms and Conditions for the Purchase of Goods and Services and the PO shall form the agreement between the Supplier and the Trustee of Tufts College (aka Tufts University (“Tufts”)) (hereafter, this “Agreement”). The Supplier and Tufts shall each be a “Party” to the Agreement and collectively, the Supplier and Tufts shall be known as the “Parties.”
 - 1.1. The Supplier shall perform all of the services (the “Services”) and supply all of the goods (the “Deliverables”) set forth in the PO.
 - 1.2. Any employee, agent or consultant of the Supplier performing the Services or supplying the Deliverables hereunder shall be bound by the applicable terms and conditions of this Agreement.
 - 1.3. To the extent there exists any inconsistency between this Agreement and the terms of Supplier’s purchase order or any other agreement (other than an amendment as approved and executed as set forth in Paragraph 26.5), this Agreement shall control.
2. **Effective Date.** This Agreement shall be effective on the date set forth in the PO (“Effective Date”) and shall remain in effect until all obligations set forth in this Agreement have been fulfilled or until the Agreement has been terminated as permitted herein, whichever occurs first. Notwithstanding the foregoing, Paragraphs 1.2 (Inconsistency), 5 (Confidentiality), 6 (Use of Name), 7 (Media Contact), 9 (Tufts Property), 10 (Ownership/License of Intellectual Property), 12 (Warranty), 14 (Independent Contractor), 15 (Breach of Agreement; Termination), 16 (Indemnification), 18 (Insurance (to the extent required in the last sentence)) and 26 (Miscellaneous) of this Agreement shall survive any termination.
3. **Consideration and Terms of Payment.** The consideration for all Services performed by Supplier under this Agreement and all Deliverables under this Agreement shall be paid by Tufts as follows:
 - 3.1. Fees. As specified in the applicable PO.
 - 3.2. Expenses. Unless otherwise specified in the PO, Supplier is responsible for all out-of-pocket travel and living expenses. If expenses are reimbursable, each request for reimbursement must be itemized, accompanied by original receipts and must be pre-approved by Tufts.
 - 3.3. Frequency of Invoicing; Payment Terms. Supplier shall submit invoices as set forth in the PO. Payment is due net forty-five (45) calendar days from Tufts’ receipt of Supplier’s undisputed invoice.

- 3.4. Appropriations. Tufts' financial obligations under this Agreement are contingent upon Tufts' receipt of sufficient annual appropriations and requisite authorization by the Trustees of Tufts College. If in any year sufficient annual appropriations and authorization are not provided, this Agreement will terminate upon delivery or written notice by Tufts to Supplier. The decision of the Trustees of Tufts College as to whether sufficient appropriations are available shall be made in their discretion and shall be final and binding on Supplier. In the event of termination due to insufficient appropriations and authorization, Tufts will pay Supplier for the Services and the Deliverables ordered and accepted by Tufts through the date of termination and Tufts will have no further liability to Supplier thereafter, provided that in no event, shall Tufts be obligated to pay for such Services or Deliverables in excess of the fees set forth in this Agreement or any Statement of Work.
- 3.5. Freight Charges. Freight charges billed directly to Tufts by Supplier, if any, must include all discounts and rebates received by Supplier from the carrier without mark-up. Supplier will provide Tufts copies of shipping documents and carrier freight bills when requested. Any charges for packing, special handling or dangerous materials must be quoted and billed as separate line items. Tufts retains the right to route any shipment with the charges billed directly to Tufts by the carrier when deemed appropriate by Tufts.
4. **Changes.** Tufts reserves the right, by notice to Supplier as provided herein, to make reasonable changes in the scope of Services and Deliverables required, in which event a mutually acceptable adjustment will be made to the price, time of performance, and/or other relevant provisions of the Statement of Work required to be changed thereby.
5. **Confidentiality.**
- 5.1. If Supplier has executed Tufts' Confidentiality Agreement, then the Confidentiality Agreement shall govern any use and disclosure of Confidential Information by Supplier and any provision in this Paragraph 5 conflicting with the Confidentiality Agreement shall be superseded by the provisions in the Confidentiality Agreement. Confidential Information means information marked or otherwise identified in writing by Tufts as proprietary or confidential or information that should in good faith be treated as proprietary or confidential given the context of the disclosure. It includes, without limitation, non-public information regarding Tufts' financials, investments, intellectual property, trade secrets, products, courses, courseware, features, information related to trustees, officers, faculty, employees, customers, alumni, donors, students, applicants, patients, customers, clients, contractors, agents, systems, marketing plans, promotions, business practices and other information shared by third parties with Tufts or its trustees, officers, employees, students or agents in confidence. Confidential Information does not include (i) information the recipient developed independently without use of or any reference to Confidential Information; (ii) information which the recipient knew before receiving it under the relevant agreement; or (iii) information which is or subsequently becomes publicly available or is received from another source, in both

cases other than by a breach of an obligation of confidentiality or by a breach of applicable law.

- 5.2. Supplier agrees to hold Tufts' Confidential Information in confidence. Supplier will exercise commercially reasonable efforts to safeguard Tufts' Confidential Information. Such precautions will be at least as great as those that Supplier takes to protect its own Confidential Information, but in no event less than a reasonable degree of protection. Supplier will disclose Tufts' Confidential Information to its directors, officers, employees, agents, consultants and other representatives only on a need-to-know basis and subject to the confidentiality obligations imposed herein. Use or disclosure of Tufts' Confidential Information shall be limited to the minimum extent necessary to achieve the specified goal. When Tufts' Confidential Information is no longer necessary to perform any obligation under any part of the Agreement or upon the termination of this Agreement, it will be, at the option of Tufts, returned to its owner or destroyed or permanently deleted.
- 5.3. Supplier shall not use Tufts' Confidential Information except in furtherance of this business relationship or disclose Tufts' Confidential Information except: (i) to obtain advice from legal advisors or financial consultants, or (ii) if such disclosure is directly required pursuant to a valid and existing order of a court or other governmental body or agency, in which case Supplier will give Tufts prompt notice of the requirement so that the disclosure can be contested or limited.
- 5.4. Without limiting the foregoing, Supplier acknowledges that Tufts, as an educational institution, is subject to legal obligations with respect to the privacy of student information. Notwithstanding the provisions set forth in Paragraph 5.1, personally identifiable student educational records ("Educational Records"), as such term is defined under the Family Educational Rights and Privacy Act ("FERPA"), shall be treated as Confidential Information. Supplier agrees that it and its representatives shall comply fully with and be bound by FERPA, the Federal regulations promulgated thereunder, and Tufts' FERPA policies, to the same extent as if Supplier and its representatives were educational officials for purposes of such law, regulations and policies. Supplier shall take all steps reasonably necessary to protect the privacy and confidentiality of all Educational Records. Supplier shall also take any action requested by Tufts to adhere to its legal obligations or otherwise protect the privacy and confidentiality of Educational Records.
- 5.5. Without limiting the foregoing, Massachusetts Data Security Law, G.L. c. 93H&I and 201 CMR 17.00, et seq. and other similar laws in other states (collectively, the "IS Regulations") mandate certain procedures to safeguard the "Personal Information" (as defined in the IS Regulations) of Massachusetts residents and residents of such states. To the extent that Supplier may have access to Personal Information about Tufts' applicants, trustees, officers, employees, contractors, consultants, clients, students, donors or customers, Supplier shall comply with the IS Regulations including by maintaining appropriate security measures to protect Personal Information, in accordance with the IS Regulations. Notwithstanding the provision set forth in

Paragraph 5.1, such Personal Information shall be treated as Confidential Information. Supplier further agrees that, in the event of any suspected or actual Security Incident (defined below) involving such Personal Information, Supplier shall immediately (in any event no later than three (3) business days after becoming aware of such known or suspected Security Incident) notify Tufts Office of University Counsel by telephone (617-627-3336) and in writing of all known or suspected relevant facts, including the date and description of the Security Incident, and any remedial steps Supplier has taken or intends to take relating to the Security Incident. Supplier shall only take emergency remedial steps necessary to prevent further harm or subsequent Security Incidents and shall consult with and obtain approval from Tufts' Counsel prior to taking any non-emergent remedial steps. For purposes of this paragraph, the term "Security Incident" shall mean: (a) the unauthorized acquisition or use of unencrypted or encrypted electronic data and the confidential process or key that is capable of compromising the security of such data, thereby creating a risk of identity theft or fraud against an individual; or (b) any other unauthorized use or acquisition of, or access to, Personal Information.

- 5.6. Without limiting the foregoing, to the extent that any Tufts' Confidential Information includes "customer data", as such term is defined under the Gramm-Leach-Bliley Act ("GLB") and the regulations promulgated thereunder, Supplier shall implement and maintain appropriate safeguards to protect such data as required under GLB and related regulations.
- 5.7. Unless otherwise required herein, in the Confidentiality Agreement or in the Business Associate Agreement, if applicable, or by law, Supplier, as soon as practicable, and in any event no later than ten (10) business days after becoming aware of any known or suspected unauthorized use or disclosure, shall report to Tufts any known or suspected unauthorized use or disclosure of Tufts' Confidential Information. Supplier's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) Tufts' Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Supplier has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Supplier has taken or shall take to prevent similar unauthorized use or disclosure of Confidential Information in the future. Supplier shall comply with all applicable laws in its reporting, mitigation, notification, response and corrective action in connection with any security or privacy breach, provided that Supplier agrees to coordinate with Tufts in making any reports or notifications. Supplier agrees that any breach of its obligations under this Paragraph 5 will cause irreparable harm to Tufts. Therefore, Tufts shall have, in addition to any remedies available at law, the right to obtain equitable relief to enforce this Paragraph 5.

6. Use of Name.

- 6.1. Supplier shall not use the names "Tufts" or "Tufts University", or the name of any school or division thereof, or any logo or insignia of Tufts or of any school or division thereof, or otherwise identify Tufts or any school or division thereof, in any form of

publicity or disclosure (other than including Tufts University's name in a list of clients) without the prior written consent of Tufts, which consent may be withheld or granted by Tufts in its complete and uncontrolled discretion at any time or times. Any request for any such name use shall be directed to the Office of University Counsel at Tufts.

6.2. Supplier acknowledges that the mark TUFTS (or TUFTS UNIVERSITY or THE FLETCHER SCHOOL) is the sole property of Tufts. Supplier shall never directly or indirectly challenge, contest or question, or take any action inconsistent with, the validity of the mark TUFTS or TUFTS UNIVERSITY or THE FLETCHER SCHOOL or the fact that the mark and corresponding registrations are owned by Tufts. Supplier will not apply to register as a trademark or service mark any mark containing the word pairs "TUFTS" or "TUFTS UNIVERSITY" or "THE FLETCHER SCHOOL" (whether standing alone or combined with any other word or words or elements) with any governmental agency or any organization created pursuant to treaty or other international agreement, anywhere in the world.

7. **Media Contact.** Supplier shall not communicate with members of the media or otherwise make any public announcement regarding the Services performed or the Deliverables created or delivered by Supplier pursuant to this Agreement, or the terms of this Agreement, without the prior written consent of Tufts' Senior Vice President for University Relations or its Vice President of Marketing and Communications. Any inquiries from the media shall be referred to Tufts' Senior Vice President for University Relations or Vice President of Marketing and Communications.

8. **Compliance with Law.**

8.1. In performing its obligations under this Agreement, Supplier shall comply with all applicable federal, state and local laws and regulations, including but not limited to the Americans with Disabilities Act (ADA), the Fair Labor Standards Act, the Occupational Safety and Health Act, Executive Order 11246, as amended, relating to Equal Employment Opportunity and other applicable non-discrimination and employment laws and applicable laws regarding human trafficking. Supplier shall also comply with all applicable laws regarding privacy of information including, but not limited to, the FERPA, GLB and the Health Insurance Portability and Accountability Act, as well as Tufts' applicable policies concerning such laws. Supplier shall be responsible for obtaining all licenses and permits required for the performance of Services and the creation or the manufacturing and delivery of the Deliverables hereunder. Supplier represents, warrants and covenants to Tufts that it has and will maintain all licenses and permits required to deliver Services and the Deliverables covered by this Agreement. Supplier further agrees to comply with applicable US laws and regulations controlling the export of goods, technology, software and services, including the International Traffic in Arms Regulations, the Export Administration Regulations, and the sanctions regulations administered by the Office of Foreign Asset Controls of the United States Treasury Department. Supplier agrees that it will provide the export control classification associated with the commodity being purchased, to the extent that any Deliverable is controlled either under the Export Administration

Regulations (EAR) or the International Traffic in Arms Regulations (ITAR). For EAR-controlled items, the correct ECCN classification based on the Commerce Control List will be provided. For ITAR items, the correct USML Category will be provided. In both cases, to the extent that the item includes technical data such as operational manuals, such data must also be classified. In the event that the Supplier is unable to comply with this instruction, it will notify Tufts within 5 business days of purchase order, indicating the reason for non-compliance and recommended solution.

- 8.2. Without limiting the foregoing, Supplier hereby represents and warrants and covenants that Supplier, its directors, officers, employees or agents have not offered, promised, given, authorized, solicited or accepted and will not offer, promise, give, authorize, solicit or accept any payment directly or indirectly, of any money, gift or anything of any value, now or in the future, to any government official or private party to obtain an undue financial or other advantage of any kind relating to this Agreement or the Services or the Deliverables to be provided hereunder or on behalf of Tufts in violation of the U.S. Foreign Corrupt Practices Act or any other similar laws of the United States or of other countries and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.
- 8.3. If the Services or Deliverables are for electronic and information technology, Supplier shall comply with the ADA by designing its Deliverables in a manner that supports assistive software or devices such as large print interfaces, text-to-speech output, voice-activated input, refreshable braille displays, alternate keyboard or pointer interfaces, and by other means to ensure that end users with disability-related impairments have an equal opportunity to the use and enjoy the Deliverables in a manner consistent with the [W3C Web Content Accessibility Guidelines](#). Supplier shall provide to Tufts a current completed [Voluntary Product Accessibility Template](#) (VPAT) to demonstrate compliance with the WCAG 2.0 level AA standards. If the Deliverables do not comply with the WCAG 2.0 level AA standards, Tufts reserves the right to terminate this Agreement, seek redress for harm incurred by end users and to adapt the Deliverables in order to comply with federal and state accessibility laws.
- 8.4. If Tufts receives a contract or grant from any department or agency of the United States government or any state government (“Government Contract”) or is hired as a subcontractor under a Government Contract, and Supplier shall be paid out of funds from such Government Contract, then Supplier agrees to comply with all applicable flow down provisions of the Government Contract from the [Federal Acquisition Regulations](#) (FAR), provided however, that such terms have been disclosed to Supplier prior to Supplier’s execution of this Agreement. In accordance with Executive Order 12549, Supplier certifies by entering into this transaction that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

- 8.5. Supplier and its subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), as applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.
9. **Tufts Property.** All materials, equipment and similar intellectual property supplied by Tufts to Supplier or purchased or fabricated by Supplier for Tufts (hereinafter sometimes referred to as “Tufts Property”) shall be and remain the sole property of Tufts and no title or interest shall pass from Tufts to Supplier hereunder. All Tufts Property shall be used only in providing services to Tufts under this Agreement and shall be kept free of any liens or encumbrances. All Tufts Property shall be subject to recovery by Tufts at any time. Upon Tufts’ request, or cancellation or termination of this Agreement, Supplier shall deliver all Tufts Property not previously delivered hereunder in good repair, normal wear and tear excepted.
10. **Ownership/License of Intellectual Property.** To the extent Supplier generates any unique drawings, designs, processes, inventions, specifications or other technical information in any form (herein called “Intellectual Property”) for Tufts in the course of performing the Services or providing the Deliverables under this Agreement, such Intellectual Property shall be deemed to be works made for hire, shall be the sole property of Tufts, and Supplier shall not use, duplicate or disclose such data for any purpose, other than the performance of the Services and the delivery of the Deliverables required hereunder, without the prior written consent of Tufts. At no extra cost or fee, Supplier hereby assigns to Tufts any interest Supplier may have in such Intellectual Property and Supplier will, upon request by Tufts, promptly execute all applications, assignments, or other instruments that Tufts shall deem necessary or useful in order to apply for and obtain intellectual property protection in the United States and any foreign countries for such Intellectual Property. Notwithstanding anything to the contrary elsewhere in this Agreement, to the extent that any Deliverable or any other work product of Supplier created pursuant to this Agreement incorporates or requires the use of pre-existing processes, inventions or other intellectual property owned by Supplier prior to this engagement, Supplier hereby grants to Tufts an irrevocable, perpetual, worldwide, non-exclusive license for Tufts and its officers, employees, students, agents and representatives to use such pre-existing intellectual property as required solely for Tufts’ business.
11. **Inspection and Approval; Conformance with Specifications.** Supplier represents, warrants and covenants to Tufts that all labor, products, Deliverables, materials and Services furnished pursuant to this Agreement shall perform substantially in conformance with all specifications and warranties contained in any written proposal made by Supplier to Tufts, and with those contained in any request for proposals delivered by Tufts to Supplier. All materials shall be new and of first quality. All Services, Deliverables, materials and work furnished by

Supplier shall be subject to final inspection and approval by Tufts after delivery (“Acceptance”), and Tufts reserves the right to reject non-conforming Deliverables and Services. Notwithstanding prior payment, the Parties expressly agree that payment will not constitute final Acceptance. Supplier agrees, at its own expense, to diligently correct any work and replace any materials deemed unsatisfactory by Tufts in a timely manner.

12. **Warranty.** Supplier represent and warrants to and agrees with Tufts that the Services shall be performed and the Deliverables shall be created or manufactured by appropriately qualified and trained resources, (i) with due care and diligence and to a high and professional standard of quality as is customary in the industry; (ii) in compliance with Exhibit A, all applicable specifications and the terms and conditions of this Agreement; (iii) in accordance with all applicable professional standards for Supplier’s field of expertise; and (iv) in accordance with all applicable laws and regulations. Supplier shall devote such time, energy, attention and efforts to the services provided hereunder in order to promptly, efficiently and satisfactorily complete such services. Supplier further represents and warrants to and covenants with Tufts that (i) it has all the authority and power to enter into this Agreement; (ii) this Agreement is enforceable against Supplier, (iii) this Agreement has been duly authorized on behalf of or for Supplier; (iv) it has and will have the power to convey good title to any Intellectual Property transferred to Tufts pursuant to Paragraph 10; (v) it owns and will own any processes, software, inventions or similar intellectual property which are licensed to Tufts pursuant to Paragraph 10 and (vi) neither entering into this Agreement, performing the Services to be performed hereunder, nor manufacturing, creating or delivering any Deliverables or other work product to be provided hereunder will violate or infringe the rights of any other person, including any contract right or any patent, copyright, trade secret or other property right. Unless a product warranty is specifically addressed in a separately executed agreement or unless Supplier provides Tufts with a manufacturer’s product warranty upon product delivery, Supplier warrants that any products purchased by Tufts hereunder or any Deliverable delivered hereunder shall have been manufactured and shall operate in accordance with the specifications as agreed to by Tufts.
13. **Taxes.** Unless otherwise agreed by Tufts, the prices for any Services and any Deliverables to be provided under this Agreement do not include any state or local sales, use or other taxes. Upon request, Tufts will provide Supplier with a copy of its tax exemption certificate.
14. **Independent Contractor.** In all matters relating to this Agreement and the performance of Services hereunder and the delivery of the Deliverables, the status of Supplier shall be that of an independent contractor and not that of an employee, co-venturer, agent or partner of Tufts. Supplier’s employees and agents shall not be treated as employees of Tufts and shall not be entitled to any of the benefits provided to Tufts’ employees. Supplier shall be solely responsible for any and all taxes, Social Security contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes applicable to the Services provided hereunder and the production and the delivery of the Deliverables. Supplier hereby indemnifies and holds Tufts harmless from, any claims, losses, costs, fees, liabilities, damages or injuries suffered by Tufts arising out of Supplier’s failure with respect to its obligations in this Paragraph 14. Supplier shall take all actions reasonably necessary to

support such determination. Supplier shall have no power or authority to act on behalf of Tufts or in its name or to bind Tufts, either directly or indirectly, in any manner.

15. Breach of Agreement, Termination.

15.1. **Termination.** Tufts may terminate this Agreement at any time, in whole or in part and at the convenience of Tufts, upon not less than thirty (30) days' written notice to Supplier. Upon any termination of this Agreement, Supplier shall stop work promptly and shall deliver to Tufts all Tufts' proprietary information, Tufts Property and such work in process or completed items as Tufts may request. Tufts shall have no liability to Supplier beyond payment for Services and the Deliverables properly performed and rendered to and accepted by Tufts prior to the effective date of any notice of termination and for such additional items specifically requested by and delivered to Tufts.

15.2. **Notice to Cure.** In any case where Supplier has failed to deliver or has delivered non-conforming Services or Deliverables (with time being deemed of the essence with respect to adherence to any timetable agreed to in writing by Supplier in the Agreement or in any specifications issued by Supplier), Tufts may deliver a "Notice to Cure" to Supplier, citing the instances of noncompliance. Supplier shall have ten (10) days to reply to the Notice to Cure and indicate why the Agreement should not be terminated and recommend remedies to be taken.

- a. If Supplier and Tufts reach an agreed upon solution, Supplier shall then have thirty (30) days after such agreement (the "Cure Agreement") is reached to cure the noncompliance cited in the Notice to Cure.
- b. If a mutually agreed-upon solution cannot be reached within ten (10) days after receipt of Notice to Cure by Supplier, Tufts reserves the right to immediately terminate this Agreement.
- c. If the mutually agreed upon solution is not implemented to Tufts' reasonable satisfaction within thirty (30) days from the date of the Cure Agreement, Tufts reserves the right to immediately terminate the Agreement.

15.3. **Breach.** The occurrence of any of the following events, unless consented to by Tufts in writing, shall be deemed a breach of the Agreement by Supplier, without Tufts being required to give Supplier an opportunity to cure as set forth in Paragraph 15.2: (i) Supplier becomes insolvent or makes an assignment for the benefit of creditors; or a receiver or similar officer is appointed to take charge of all or part of Supplier's assets and such condition(s) is not cured within thirty (30) days; or (ii) Supplier violates the provisions of Paragraphs 5, 8, 12 or 26.1 of this Agreement.

15.4. **Refunds; Reimbursements.** Any cancellation or termination by Tufts whether for default or otherwise, shall be without prejudice to any claims or damages or other rights of Tufts against Supplier. To the extent any fees or expenses have been prepaid by Tufts, Supplier shall refund a pro rata portion of such fees or expenses. In any action by

either Party for any default hereunder, the prevailing Party shall be entitled to reimbursement of its attorney's fees.

15.5. **Removal.** Without limiting the foregoing, in the event that Tufts believes, in its sole discretion, that the continued presence of Supplier (or any personnel provided by Supplier) on the Tufts campus or at a site at which Supplier (or such person) is performing his/her services threatens the safety or security of members of the university community or persons at such remote site, Tufts reserves the right to immediately suspend Supplier (or such person) from further work, remove Supplier (or such person) from the Tufts campus or such remote site, and, if Supplier is an individual, immediately terminate this Agreement.

16. Indemnification.

16.1. **Claims.** Supplier shall indemnify, defend and hold Tufts and its affiliates, trustees, directors, officers, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all costs, expenses (including reasonable attorneys' fees and disbursements), interest, losses, obligations, liabilities, and damages and/or bodily injuries (including death) (collectively, "Losses") incurred by any of the Indemnified Parties, and any and all third-party claims, demands, suits or actions made ("Claims") against any of the Indemnified Parties, arising, directly or indirectly, out of (i) the negligent act or omission of Supplier or its directors, managers, officers, employees, subcontractors or agents in connection with its or their performance of Services or while on Tufts premises, (ii) any willful or intentional misconduct or fraud of Supplier or its directors, managers, officers, employees, subcontractors or agents; or (iii) any inaccuracy in or breach of any representations or warranties of Supplier contained in this Agreement or any breach of Supplier's covenants, agreements, obligations or warranties under this Agreement or under applicable law.

16.2. **Notice.** If Tufts receives notice of the assertion or commencement of any Claim against Tufts with respect to Supplier's obligation to provide indemnification under this Agreement, Tufts shall give such Supplier prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve Supplier of its indemnification obligations. Tufts shall have the right, at its own cost and expense, to participate in the defense of any Claim with counsel subject to Supplier's right to control the defense thereof. If Supplier elects not to defend such Claim or fails to defend diligently, Tufts may defend such Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Claim. Notwithstanding any other provision of this Agreement, Supplier shall not enter into settlement of any Claim without the prior written consent of Tufts.

16.3. **Charitable Immunity.** Notwithstanding anything to the contrary in this Agreement, it is understood and agreed by the Parties that Tufts will at all times under this Agreement and to the extent applicable, retain any exemption or limitation from liability pursuant to Massachusetts General Laws Chapter 231, Paragraph 85K and its successors.

16.4. Consequential Damages. EXCEPT WITH RESPECT TO SUPPLIER'S OBLIGATION TO INDEMNIFY HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, INCLUDING LOSS OF FUTURE REVENUE OR INCOME, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY RELATING TO THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT, OR DIMINUTION OF VALUE.

Notwithstanding the foregoing, if Supplier willfully and knowingly engages in unfair or deceptive trade practices in violation of Massachusetts General Law Chapter 93A, Tufts may seek to recover treble damages plus reasonable attorney's fees and costs.

17. Insurance. Supplier agrees to obtain and maintain the following insurance: (i) comprehensive general liability insurance including bodily injury and property damage liability, independent contractors liability and completed operations liability in an amount not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate, (ii) workers' compensation insurance for all employees in compliance with state law, (iii) automobile liability for Supplier's employees driving on Tufts University property in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage, including owned, hired and non-owned vehicle coverage, (iv) professional liability in an amount of not less than \$1,000,000 each claim for all professional services and \$2,000,000 aggregate including, but not limited to, architects, engineers, consultants and testing services. Tufts University shall be named as an additional insured on Supplier's general liability, automobile liability and umbrella/excess liability policies pertaining to the work done/service provided/product delivered to Tufts. Upon Tufts' written request, Supplier agrees to obtain and maintain the following insurance: (i) privacy and network security insurance loss arising out of or in connection with loss or disclosure of Confidential Information or confidential medical information, in a minimum amount of \$5,000,000 per loss and (ii) third-party fidelity/crime coverage, including blanket employee dishonesty and computer fraud insurance, for loss arising out of or in connection with fraudulent or dishonest acts committed by the employees of Supplier, acting alone or in collusion with others, in a minimum amount of \$5,000,000 per loss. Supplier's policies shall include severability of interest or cross liability clause wording. Supplier's insurance must be primary and noncontributory as to any other valid and collectible insurance and must waive subrogation. Any deductible or Self-Insured Retention (SIR) over \$25,000 requires approval by Tufts. All insurance policies shall be underwritten by U.S. admitted carriers and rated at least "A-" in A.M. Best's Key Rating Guide. Supplier shall provide a thirty (30) day notice of cancellation or non-renewal of coverage to Tufts. Supplier shall provide certificates of insurance prior to the performance of any services and annual renewal certificates until all work is completed. If Supplier's general liability or professional liability insurance is on a "claims-made" form, Supplier is required to maintain such coverage for a minimum of three (3) years (six (6) years for construction defect claims) following completion of the performance or attempted performance of the provisions of this Agreement.

18. Conflict of Interest. Supplier acknowledges that Tufts' and Federal policies prohibit Tufts employees from accepting gifts or gratuities from suppliers, subcontractors and contractors. This includes the use of property or facilities, gift certificates, entertainment, or

other favors of value extended to employees or their families. The applicable Business Conduct Policy is found on the Tufts website at <http://finance.tufts.edu/policies/>. Supplier agrees to use all reasonable efforts and diligence to ensure that its officers, employees and subcontractors comply with Tufts' policy.

19. **Title; Risk of Loss; Release of Liens and Claims.** Title to all products, Deliverables (other than software products) and Services will vest in Tufts upon the delivery to Tufts. Risk of loss for products and Deliverables purchased will pass to Tufts upon Tufts' receipt and acceptance at Tufts' premises. Supplier will furnish Tufts with a complete "Release of Liens and Claims" at intervals requested by Tufts and before final payment is made. If any lien is filed or remains unsatisfied after final payment, Supplier will indemnify Tufts for all costs incurred in discharging such lien.
20. **Force Majeure.** Any delay or failure of either Party (the "Affected Party") in the performance of its required obligations hereunder shall be excused if and to the extent delays by or acts or orders of any governmental body or changes in laws or government regulations, or any other similar cause or causes beyond the reasonable control of such Party, provided that (i) written notice of such delay or suspension is given by such Party to the other Party within 72 hours of such event, which notice shall set forth in detail the nature of each delay; (ii) such Party shall use all commercially reasonable efforts to minimize the extent of such force majeure delay and (iii) additional expense or other adverse financial conditions shall not be deemed force majeure. Upon receipt of a notice of force majeure, the time for the Affected Party's performance shall be extended for a period of time reasonably necessary to overcome the effect of such delays and such Party's sole remedy shall be reimbursement for the additional cost of such delays; provided, further, that the other Party may terminate this Agreement by written notice to the Affected Party within ten (10) business days of receiving the Affected Party's notice of force majeure, in which event the other Party shall receive a refund of all monies paid hereunder for services which the Affected Party has failed to deliver, which are non-conforming or which have failed to achieve Acceptance.
21. **Suspension of Work.** Tufts may order Supplier in writing to suspend, delay or interrupt all or any part of the work hereunder for a period not to exceed ninety (90) consecutive days. An adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused thereby. An adjustment shall also be made in the delivery or performance dates and any other contractual provisions affected thereby. However, no adjustment shall be made for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Supplier. Also, no adjustment shall be made under this clause for any suspension, delay or interruption for which an equitable adjustment is provided for or excluded under any other provision of this Agreement. No claim under this clause shall be allowed unless the claim, in an amount stated, is asserted in writing within fifteen (15) days after the termination of such suspension, delay or interruption.
22. **Prohibiting Discrimination.** Supplier and its subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), as applicable. These regulations prohibit discrimination against qualified individuals based on their status

as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

23. **Notice of Employee Rights.** Tufts incorporates into this Agreement, as applicable, the obligations regarding the notice of employee rights under federal labor laws found at 29 CFR Part 471, Appendix A to Subpart A, and Supplier will likewise incorporate those obligations into all applicable subcontracts as required by 29 CFR Part 471.
24. **VETS-4212.** For purchases of or contracts for \$100,000 or above, in a single purchase order and not aggregated, which purchase is necessary for the performance of Tufts' direct federal contracts, Supplier may be obligated to complete a VETS-4212 in accordance with 41 CFR Part 61-300.
25. **Payroll Transparency.** Supplier and its subcontractors will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

26. Miscellaneous

- 26.1. **Assignment and Subcontracting.** No Party shall assign or delegate this Agreement or any rights, duties or obligations hereunder to any other person or entity without the prior express written approval of the other Party; provided, that either Party may assign this Agreement or its rights and obligations under this Agreement in connection with a merger, acquisition reorganization, initial public offering or other similar transfer of control. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives and assignees of the Parties hereto. Notwithstanding the foregoing, Tufts may assign this Agreement to a subsidiary or any entity owned or controlled by Tufts upon written notice to Supplier. Any assignment or delegation by either Party shall be conditioned upon the assignee or delegate representing to the other Party that it has agreed to assume all its rights and obligations under this Agreement, and demonstrating to such other Party's reasonable satisfaction that it has the ability to fulfill its obligations specified in this Agreement.

- 26.2. **Governing Law.** This Agreement, the performance of the Parties hereunder and all claims relating to or arising out of this Agreement shall be governed and construed in accordance with the laws of Massachusetts, without regard to its choice-of-law principles. The rights and obligations of the Parties hereunder shall not be governed by the provisions of the U.N. Convention on Contracts for the International Sale of Goods, which do not apply to this Agreement. The Parties agree that the state and federal courts located in Eastern Massachusetts shall have exclusive jurisdiction over any dispute under this Agreement and the Parties waive any objections to venue of such courts.
- 26.3. **Waiver of Jury Trial.** Each Party waives the right to a jury trial in connection with any dispute arising out of the Agreement.
- 26.4. **Notices.** Any notices required or permitted to be given or made under this Agreement shall be in writing and shall be deemed given when delivered personally or via reputable national overnight carrier, or shall be deemed received after three (3) days of mailing by certified mail, return receipt requested to the relevant party's address specified in the PO.
- 26.5. **Amendment.** No revision or waiver of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the Parties.
- 26.6. **Counterparts.** This Agreement may be executed in any number of counterparts, including facsimile, PDF and other electronic copies, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.
- 26.7. **Severability.** If any provision of this Agreement shall be declared void, illegal or unenforceable, the remaining provisions of this Agreement shall be valid and enforceable to the extent permitted by applicable law.
- 26.8. **No Waiver.** The failure of Tufts in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right in this Agreement shall not be construed as a waiver of such term, condition or right.
- 26.9. **Entire Agreement.** This Agreement and the PO constitute the entire agreement between Tufts and Supplier. This Agreement supersedes all prior communications, oral or written, between Tufts and Supplier. Notwithstanding anything to the contrary in this Agreement, emails sent or received shall not create a binding contract in the absence of a fully signed written Agreement.