CONTRACT NO: C/X-505435
AGENCY NO: 3320211

AGREEMENT FOR BARIATRIC SURGEON PHYSICIAN SERVICE

THIS AGREEMENT ("Agreement") is made as of the 15th day of July, 2020, (the "Effective Date"), by and between **THE STATE UNIVERSITY OF NEW YORK** ("SUNY"), an educational corporation organized and existing under the laws of the State of New York and having its principal offices located at State University Plaza, Albany, New York 12246, acting through and on behalf of **SUNY UPSTATE MEDICAL UNIVERSITY** (also known as SUNY Health Science Center at Syracuse), a component of which is **UNIVERSITY HOSPITAL**, a general hospital licensed under Article 28 of the New York Public Health Law, located at 750 East Adams Street, Syracuse, New York 13210 (the "Hospital") and **UNIVERSITY SURGICAL ASSOCIATES, LLP** a limited liability partnership organized under the laws of the State of New York and having its principal offices located at 750 East Adams Street, Syracuse, New York 13210 (the "MSG").

WHEREAS, the SUNY Board of Trustees has authorized physicians in various specialties at the SUNY Health Science Centers to engage in limited professional and independent clinical practice, subject to the limitations of the applicable collective bargaining agreements; and

WHEREAS, those agreements recognize that the total income for physicians at the SUNY Health Science Centers may include a combination of New York State salary and income from professional practice and other sources; and

WHEREAS, the MSG is a professional partnership of physician specialists who are licensed to practice medicine in the State of New York and who are members of the Department of Surgery at the Hospital and as such, are members of the Clinical Practice Plan at SUNY Upstate Medical University; and

WHEREAS, the Hospital wishes to engage the MSG to provide a Bariatric Surgeon to provide clinical physician services, all as shall be set forth on the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Services. During the term of this Agreement, the MSG shall provide to the Hospital the professional services of a qualified physician (the "Physician"), as described in Exhibit B, incorporated herein and made part of this Agreement. The Physician shall meet the qualifications and be responsible for performing the services described in Exhibit B. It is agreed that the Physician who shall provide such services shall be Dr. Flavia Soto. The MSG and the Hospital additionally agree that any services provided under this Agreement shall be evaluated by the parties on an annual basis, based upon a schedule and criteria as mutually agreed between the parties.

2. MSG Obligations.

(a) The MSG shall ensure that any Physician providing services under this Agreement at all times: (i) holds a current New York State license to practice medicine, (ii) is a member of the medical staff of the Hospital with appropriate privileges, and (iii) is Board eligible or Board certified in Surgery. The MSG shall additionally ensure, with the assistance of Human Resources and Compliance, by reference to the current Department of Health and Human Services Office of the Inspector General's List (www.oig.hhs.gov), the System for Award Management (www.sam.gov) and the New York State Medicaid Disqualified Provider List (www.omig.state.ny.us) the MSG and the Physician have never been excluded from participating as a provider in any federally funded health care program, including but not limited to Medicare and Medicaid. The MSG assures that all services provided pursuant to this Agreement are in accordance with the rules and regulations of the Hospital, the Hospital medical staff Bylaws, all applicable Federal and New York State laws and regulations, and in compliance with all applicable standards promulgated by the Hospital's current Centers for Medicare and Medicaid Services (CMS) Approved Accreditation Organizations and all other appropriate public or private licensing or accrediting organizations. The MSG additionally agrees to complete the semi-annual time studies required by the Hospital and to document all activities provided to the Hospital under this Agreement. The MSG shall ensure that all of its employment and other contractual arrangements with the Physician: (i) is commercially reasonable, (ii) is set forth in a signed written arrangement, and (iii) provides for aggregate compensation that is consistent with fair market value and does not vary with or take into account the volume or values of the MSG Physicians' referrals to or other business generated for the Hospital.

3. Compensation.

(a) The Hospital shall pay to the MSG the aggregate annual rate (the "Rate") as outlined in Exhibit C. Payments will be made in monthly installments within thirty (30) days following the end of each month based upon submission of proper invoices. The parties shall have the ability to adjust the Rate upon mutual written agreement at any point during this Agreement, subject to the prior written approval of the New York State Attorney General and the New York State Office of the State Comptroller, as applicable. It is understood that the MSG shall not seek or accept any compensation for the services provided under this Agreement other than the compensation provided for herein, provided, however, that the MSG shall bill third party payors for billable services provided by the Physician in the course of performing his or her obligation under this Agreement. No payments from the Hospital will be due under this Agreement unless and until it is approved in writing by the New York State Attorney General and the New York State Office of the State Comptroller.

(b) Electronic Payment. The MSG shall provide complete and accurate invoices to the Hospital in order to receive payment. Invoices submitted to the Hospital must contain all information and

supporting documentation required by the Agreement, the Hospital and the New York State Office of the State Comptroller. Payment for invoices submitted by the MSG shall only be rendered electronically unless payment by paper check is expressly authorized by the Hospital's Senior Vice President for Administration or his/her designee, in his or her sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York State procedures and practices. The MSG shall comply with the New York State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the New York State Comptroller's website at http://www.osc.state.ny.us/vendors/epayments.htm, by e-mail at ePayments@osc.state.ny.us, or by telephone at 518-486-1255. The MSG acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the New York State Comptroller's electronic payment procedures, except where the Hospital's Senior Vice President for Administration or his/her designee has expressly authorized payment by paper check as set forth herein.

(c) During the term of this Agreement, the MSG shall annually provide the Hospital with adequate documentation demonstrating the activities of the MSG in providing the services required under this Agreement, in accordance with the Hospital's policies relating to submission of contract documentation. The MSG shall submit its annual documentation to the Hospital no later than ninety (90) days after the close of each annual period. Such documentation shall include, but not be limited to, the volume of billable procedures performed by the Physician classified by Current Procedural Terminology ("CPT") code. The Hospital shall have the right to reconcile the MSG's documentation with any other appropriate sources of information to ensure compliance with the terms of this Agreement and applicable laws, regulations and policies, and shall have the right to review the MSG's books and records relating to billable procedures performed by the Physician. If the reconciliation evidences a need to adjust the MSG's compensation or the reimbursement to the Hospital under Section 4 for any reason, including but not limited to the volume or type of billable procedures performed by the Physician or the number of hours of Physician effort, the Hospital shall notify the MSG in writing of the adjustment amount and the terms of repayment or reimbursement by the MSG or additional payment by the Hospital, as applicable. Prior to implementing any proposed adjustment, the Hospital shall provide the MSG with a reasonable period in which to respond in the event that the MSG disagrees with the proposed adjustment. To the extent feasible, the adjustment shall be made within the remaining term of this Agreement. If the Hospital determines that the adjustment cannot be made within the remaining term, any outstanding adjustment shall be made in the subsequent renewal term, if any. Notwithstanding the foregoing, upon termination of this Agreement for any reason, the outstanding adjustment in compensation required hereunder shall be paid to the applicable party within sixty (60) days following the date of termination. The terms of this paragraph shall survive termination of this Agreement.

4. Billing for Professional Services. The MSG shall bill the patient and/or the appropriate third-party payor for all billable professional services performed by the Physician under this Agreement. On all bills that it submits to Medicare and Medicaid and any other third-party payor having a "site of service" billing requirement, the MSG will use the appropriate site of service code. The MSG shall reimburse the Hospital on a monthly basis for such professional services based on the Work, Malpractice and Practice Expense Components of the Medicare Resource-Based Relative Value System. The reimbursement for the period from the period July 15th, 2020 through July 14th, 2021 is $267,215.00, as shown on the attached Exhibit C and is based upon anticipated volume data relating to such period, as shown in Exhibit C. Payments to the Hospital are due thirty (30) days after the end of the month to which they relate. No payments from the MSG will be due under this Agreement unless and until it is approved in writing by the New York State Attorney General and the New York State Office of the State Comptroller.

5. Term. Except as otherwise provided herein, the term of this Agreement (the "Term") shall commence on **July 15st, 2020** and expire on **July 14th, 2021** and is subject to the prior written approval of the New York State Attorney General and the New York State Office of the State Comptroller.

6. Termination.

(a) The Hospital may terminate this Agreement for cause upon written notice of termination to the MSG specifying the reason(s) for termination, which may include without limitation the MSG's inability, failure or neglect in any material manner to properly perform or observe the duties and obligations required under this Agreement to be performed or observed by it.

(b) The MSG may terminate this Agreement upon thirty (30) days prior written notice to the Hospital in the event the Hospital fails to pay the compensation due the MSG hereunder, provided that the Hospital fails to cure such non-payment within such period.

(c) Either party may terminate this Agreement, upon written notice, in the event of any of the following: (i) the other party makes an assignment for the benefit of creditors; (ii) a petition in bankruptcy or any insolvency proceeding is filed by or against the other party and is not dismissed within thirty (30) days from the date of filing; or (iii) all or substantially all of the property of the other party is levied upon or sold in any judicial proceeding.

(d) The Hospital may terminate this Agreement immediately, in the event it is found that the Department of Taxation and Finance for ST-220-CA statements filed by the MSG are found to be intentionally false or intentionally incomplete.

(e) The Hospital may terminate this Agreement immediately in the event it is found that certification filed by the MSG in accordance with New York State Finance Law 139 j-k was intentionally false or intentionally incomplete.

(f) The Hospital may terminate this Agreement upon thirty (30) days prior written notice to the MSG.

(g) This Agreement may be terminated upon the mutual written agreement of the parties.

(h) The parties may terminate this Agreement in accordance with Section 10(c), *Compliance,* of this Agreement.

(i) The parties may terminate this Agreement in accordance with Section 14(b), *Responsibility*, of this Agreement.

(j) If at any time during the term of this Agreement, the MSG or the Physician is excluded from participation in any federal health care program, the MSG shall immediately notify the Hospital of the exclusion, and the Hospital shall have the option of immediately terminating this Agreement, in whole or in part as necessary and applicable in the Hospital's sole discretion, and the MSG shall provide a pro rata refund to the Hospital based on the period of time remaining in the term of this Agreement.

7. Approvals. This Agreement and any amendment shall be conditioned upon and is subject to the written approvals of the Hospital, the New York State Attorney General and the New York State Office of the State Comptroller, as applicable.

8. Insurance. Throughout the Term of this Agreement the MSG shall maintain and be covered by professional malpractice liability insurance policies in accordance with the Hospital's Medical Staff Bylaws and any applicable policies, rules and regulations of SUNY and the Hospital, as may change from time to time. The MSG shall maintain liability insurance policies with respect to the non-patient services provided hereunder with limits of liability in the minimum amounts of $1,000,000/$3,000,000. In the event the MSG procures a "claims made" policy as distinguished from an "occurrence" policy, the MSG shall procure and maintain prior to termination of such insurance and at the MSG's sole cost and expense, "tail" coverage to continue and extend coverage complying with this Agreement after the end of the "claims made" policy. The MSG shall provide evidence of such insurance coverage within fifteen (15) days upon request by the Hospital.

9. Consultant Reporting Requirements. The MSG shall comply with Section 163(4)(g) of the New York State ("State") Finance Law ("NYSFL"), which requires that all contractors (including subcontractors) who provide consulting services for State purposes pursuant to a contract submit (i) the Contractor's Planned Employment—Form A, and (ii) the Contractor's Annual Employment Report—Form B, for each such contract. Section 8(17)(f) of the NYSFL defines a contract for consulting services to be

any contract entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services. The employment report shall include for each employment category within the contract, the number of employees employed to provide services under the contract, the number of hours they work and their total compensation under the contract. The MSG shall be responsible for submitting the employment report to (i) the State agency that awarded the contract, (ii) the State Department of Civil Service and (iii) the State Department of Audit and Control. Instructions for completing the employment reports are attached hereto as Exhibit W and the Contractor's Planned Employment—Form A, and the Contractor's Annual Employment Report—Form B are attached hereto as Exhibits X and Y respectively. Copies of the completed Forms shall be available for public inspection and copying pursuant to Section 87 of the State Public Officers Law, provided that, in disclosing such reports, the State agency making the disclosure shall redact the name or social security number of any individual employee that is included in such document.

10. Compliance.

(a) Notwithstanding any other provision in this Agreement, the Hospital remains responsible for ensuring that any service provided pursuant to this Agreement complies with all pertinent provisions, as may be from time to time amended, of Federal, State and local statutes, rules and regulations, and policies of the State University of New York Board of Trustees.

(b) The parties recognize that this Agreement at all times is subject to applicable provisions, as may be from time to time amended, of federal, state, and local statutes, rules, and regulations, and policies of the State University of New York Board of Trustees. Any provision of law or regulation or judicial or administrative interpretation of same that invalidates, or otherwise is inconsistent with the terms of this Agreement that, in the reasonable judgment of either party, would cause one or both parties to be in violation of law or regulation shall be deemed to have suspended the terms of this Agreement; provided, however, that the parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of law and regulations.

(c) If either party determines that a term of this Agreement, including the compensation to the MSG, is required to be modified or terminated for purposes of compliance with Federal or New York State laws or regulations, or with the policies of the State University of New York Board of Trustees, such party shall promptly notify the other party in writing of the determination, together with sufficient details supporting the determination. Within thirty (30) days of the foregoing notification, the parties shall renegotiate, in good faith, the term(s) required to be modified or terminated to ensure compliance with applicable laws, regulations and policies. If the parties are unable to make a good faith resolution within such thirty (30)-day period, resolution will be attempted through the Institutional

Compliance Committee. If the Institutional Compliance Committee is unable to resolve the issue within an additional thirty (30)-day period, either party may terminate this Agreement upon ten (10) days prior written notice to the other party or such earlier date as may be required by law, regulation or policy.

11. Health Insurance and Portability and Accountability Act ("HIPAA") Compliance. The MSG understands and agrees that the MSG's employees and/or agents assigned to the Hospital shall, at all times, comply with the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") of 1996 and its implementing regulations, as well as applicable the Hospital's policies and procedures governing the confidentiality, privacy and security of patient protected health information. This Agreement shall be subject to, and hereby incorporates by reference, the SUNY Standard HIPAA Business Associate Agreement, which is attached hereto as Exhibit Z, and made an integral part hereof.

12. Ethics Compliance. The MSG attests that it has adopted and maintains ethical business practices consistent with applicable law and regulations, and that the MSG, where applicable, to Det Norske Veritas and any other accrediting body utilized by the Hospital, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Occupational Safety and Health Administration, Health Insurance Portability and Accountability Act, and the New York State Department of Health standards, as well as the standards relating to services provided under this Agreement.

13. Disclosure of Non-Public Personal Information. The MSG hereby acknowledges and agrees to use commercially reasonable efforts to maintain the security of private information (as defined in the New York State Information Security Breach and Notification Act, as amended "ISBNA" (General Business Law § 899-aa; State Technology Law § 208) that it creates, receives, maintains or transmits on behalf of SUNY and to prevent unauthorized use or disclosure of that private information; and to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic private information that it creates, receives, maintains or transmits on behalf of SUNY ("SUNY Data"). The MSG hereby acknowledges and agrees to fully disclose to SUNY pursuant to the ISBNA and any other applicable law, any breach of the security of a system where the MSG creates, receives, maintains or transmits private information on behalf of SUNY, immediately following discovery or notice of a breach in the system potentially affecting New York State residents whose private information was, or is reasonably believed to have been acquired by a person without valid authorization ("Security Incidents"). The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the system. The MSG shall be liable for the costs associated with such breach if caused by the MSG's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the MSG's officer, employees, subcontractors, agents, licensees, licensors, or affiliates. In the event of a Security Incident involving

SUNY Data pursuant to the ISBNA, SUNY has an obligation to notify every individual whose private information has been or may have been compromised. In such an instance, the MSG agrees that SUNY will determine the manner in which notifications will be provided to the individuals involved pursuant to the ISBNA and agrees to indemnify SUNY against all costs of providing any such legally required notice. Upon termination or expiration of this Agreement, the MSG will follow SUNY's instructions relating to any SUNY Data remaining in the MSG's possession. Upon authorization from SUNY, the MSG will use data and document disposal practices that are commercially reasonable and appropriate to prevent unauthorized access to or use of SUNY Data and will render the information so that it cannot be read or reconstructed.

14. Responsibility.

(a) Pursuant to the Governor's Office memorandum dated April 3, 2013, attached hereto as Exhibit U and made part of this Agreement, the MSG shall at all times during the Term of this Agreement remain responsible. The MSG agrees, if requested by the Chancellor of SUNY, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(b) The Chancellor of SUNY, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the MSG. In the event of such suspension, the MSG must comply with the terms of the suspension order. Activity on this Agreement may resume at such time as the Chancellor of SUNY, or his or her designee, issues a written notice authorizing a resumption of performance under this Agreement.

(c) Upon written notice to the MSG, and a reasonable opportunity to be heard with appropriate SUNY officials or staff, this Agreement may be terminated by the Chancellor of SUNY, or his or her designee at the MSG's expense where the MSG is determined by the Chancellor of SUNY to be non-responsible. In such event, the Chancellor of SUNY, or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

15. **Equal Opportunity Clause. The MSG and any of its subcontractors shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

16. Status of the Physician. The Physician is solely an employee of the MSG when providing services hereunder, and in accordance with New York Public Officers Law, Physician shall not be deemed

an employee or agent of the State of New York, SUNY, SUNY Upstate Medical University or the hospital for purposes of this Agreement.

17. False Claims. The State University of New York Upstate Medical University is required by law to provide information to all of its contractors and agents regarding the Federal False Claims Act, New York State Laws regarding civil or criminal penalties for false claims and payments, administrative remedies for false claims and statements, and whistleblower protections under these laws. Exhibit V of this Agreement satisfies this notification requirements, and by execution of this Agreement, the MSG acknowledges that they have received and understand the information provided therein.

18. Exhibits. This Agreement shall be subject to, and hereby incorporates by reference and which are attached hereto, Exhibit A, *SUNY Standard Contract Clauses*, Exhibit B, *Bariatric Surgeon (the "Physician") Services*; Exhibit C, *Compensation and Reimbursement;* Exhibit U, *Memorandum Regarding Responsibility Provisions,* Exhibit V, *False Claims Acknowledgment Form,* Exhibit W, Vendor *Instructions for Completion of NYS for Consultant Services Agreements,* Exhibit X, *Form A State Consultant Services,* Exhibit Y *Form B State Consultant Services, and* Exhibits Z and Z-1, the *Health Insurance Portability and Accountability ("HIPAA") Act Clauses* and made an integral part hereof.

19. Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and delivered in person or by courier, receipt acknowledged, or mailed by certified mail, return receipt requested, postage prepaid, to the addresses set forth below:

To Hospital:
SUNY Upstate Medical University
Attention: Contract Administrator, Contracts Office
750 East Adams Street, Suite 2050 SLC
Syracuse, New York 13210

With copies to:
SUNY Upstate Medical University
Attention: Associate Administrator for Ambulatory Services
750 East Adams Street
Syracuse, New York 13210

SUNY Upstate Medical University
Attention: Chief Executive Officer
University Hospital
750 East Adams Street
Syracuse, New York 13210

To MSG:
University Surgical Associates, LLP
750 East Adams Street
Syracuse, New York 13210
Attention: Managing Partner

With a copy to: SUNY Upstate Medical University
Attention: Dean
College of Medicine
750 East Adams Street
Syracuse, New York 13210

Notice shall be deemed complete on the date of hand or courier delivery (as evidenced by a signed receipt) or the date of delivery by certified mail (as evidenced by a return receipt from the United States Postal Service). Each party may change its address or addressee set forth above by giving written notice of change to the other party.

20. Assignment. In accordance with Section 138 of the State Finance Law, this Agreement shall not be assigned by the MSG or its right, title or interest herein assigned, transferred, conveyed, sublet, or otherwise disposed of without the previous written consent of SUNY, and where applicable, the New York State Attorney General and the New York State Office of the State Comptroller, and any attempts to assign this Agreement without written consent are null and void.

21. Independent Contractors. The relationship of the parties arising out of this Agreement shall be that of an independent contractor, and this Agreement between them shall not constitute the formation of a partnership, joint venture, agency, employment or master/servant relationship. The MSG and the Physician, as the result of this Agreement, shall not be considered an employee of the Hospital, SUNY Upstate Medical University, SUNY, or the State of New York, nor shall the MSG or the Physician represent that such employee relationship exists arising out of this Agreement.

22. No Third-Party Beneficiary. No term of this Agreement shall be construed to confer any third-party beneficiary rights to any non-party.

23. Waiver. The waiver of any term or condition of this Agreement or any breach of a provision of this Agreement by either party shall not operate or be construed as a subsequent waiver of any term or condition or waiver of any subsequent breach by either party.

24. Severability. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the remaining portions or provisions of this Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid, unless to do so would contravene the present valid and legal intent of the parties.

25. Construction. The parties hereto acknowledge and agree that (i) each party has reviewed the terms and provisions of this Agreement; (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement, and

(iii) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favor or against any party, regardless of which party was generally responsible for the preparation and drafting of this Agreement.

26. Governing Law; Venue. This Agreement shall be enforced and construed in accordance with the laws of the State of New York. Jurisdiction of any litigation with respect to this Agreement shall be in New York, with venue in a court of competent jurisdiction located in Onondaga County or any other court having competent jurisdiction in the State of New York.

27. Entire Agreement. This Agreement, together with Exhibit A, *SUNY Standard Contract Clauses*; Exhibit B, *Bariatric Surgeon Services;* Exhibit C, *Compensation and Reimbursement;* Exhibit U, *Memorandum Regarding Responsibility Provisions;* Exhibit V, *False Claims Acknowledgment Form;* Exhibit W, *Vendor Instructions for Completion of NYS Consultant Agreement;* Exhibit X, *Form A State Consultant Services;* Exhibit Y, *Form B State Consultant Services;* and Exhibits Z and Z-1, the *Health Insurance Portability and Accountability ("HIPAA") Act Clauses* sets forth the entire agreement of the parties and supersedes all prior proposals, representations, communications, negotiations and agreements between the parties whether oral or written, with respect to its subject matter. This Agreement may not be amended or changed in any of its provisions except by a subsequent written agreement signed by duly authorized representatives of the parties. In the event of any inconsistency or conflict among the elements of the Agreement or the exhibits described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Exhibit A, (2) Exhibit Z and Z-1, (3) this Agreement, inclusive of Exhibit B, Exhibit C, Exhibit U, Exhibit V, Exhibit W, Exhibit X and Exhibit Y.

The remainder of this page has been left intentionally blank.

The Parties hereto have executed this Agreement as of the day and year first above written.

Agency No. 3320211

Contract No. C/X-505435

MSG Certification:
"I certify that all information provided to SUNY with respect to New York State Finance Law §139 j-k is complete, true and accurate."

Agency Certification:
"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

University Surgical Associates, LLP

Robert Cooney, MD
Managing Partner
University Surgical Associates

3/30/2021
Date

State University of New York
Upstate Medical University

Robert Corona, D.O., M.B.A.
Chief Executive Officer of
University Hospital

4-8-21
Date

Letitia James
Attorney General

Date

Thomas P. DiNapoli
Comptroller

Date

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT

Contract No.: C/X- 505435

STATE OF) New York
SS:
County of) Onondaga
On this 30th day of March 20 21, before me personally appeared Robert Cooney, MD
to me known and known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at 5078 Bergenfield Way, Fayetteville, NY 13066
Town of Manlius,
County of Onondaga
State of New York and further that:
[CHECK ONE]

____ **(If an Individual)**: he/she executed the foregoing instrument in his/her name and on his/her own behalf.

____ **(If a Corporation)**: he/she is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

X **(If a Partnership)**: he/she is the Managing Partner of University Surgical Associates, LLP, the partnership described in said instrument; that, by the terms of said partnership, he/she is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

____ **(If a limited liability company)**: he/she is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that, he/she is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Jennifer J. Potter

Notary Public

JENNIFER J POTTER
Notary Public - State of New York
NO. 01PO6193590
Qualified in Onondaga County
My Commission Expires 9/22/2024

Registration Number: _____ State of: New York

Standard Contract Clauses

State University of New York

EXHIBIT A

March 16, 2020

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **PROHIBITION AGAINST ASSIGNMENT.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of SUNY and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. SUNY retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with SUNY. The Contractor may, however, assign its right to receive payments without SUNY's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law and Section 355 of the Education Law, if this contract exceeds $250,000, or, if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $25,000, it shall not be valid, effective or binding upon the State, and the State shall bear no liability, until it has been approved by the State Comptroller and filed in his or her office, or the pertinent pre-audit review period has elapsed. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State- -approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of competitive bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to SUNY a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State 's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by SUNY, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as SUNY and any other agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to SUNY by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to SUNY or the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of SUNY contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street,

Albany, New York 12236.

12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women its workforce on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992) , the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.**
It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business

Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. **RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain.
NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. **COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa; State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. **COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

24. **PURCHASES OF APPAREL AND SPORTS EQUIPMENT.** In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

25. **PROCUREMENT LOBBYING**. To the extent this contract is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this contract the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the contract by providing written notification to the Contractor in accordance with the terms of the contract.

26. **CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS**. To the extent this contract is a contract as defined by Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the contract, if SUNY determines that such action is in the best interests of the State.

27. **IRAN DIVESTMENT ACT**. By entering into this contract, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

https://ogs.ny.gov/list-entities-determined -be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012

Contractor further certifies that it will not utilize on this contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this contract, it must provide the same certification at the time the contract is renewed or extended. Contractor also agrees that any proposed Assignee of this contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the contract, should SUNY receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, SUNY will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then SUNY shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

SUNY reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

28. **ADMISSIBILITY OF REPRODUCTION OF CONTRACT**. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

29. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

30. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of $10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

31. Hospital Retained Authority: Hospital Retained Authority: The Hospital retains direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the facility's management level employees (including but not limited to, the Facility/Service Administrator/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff. The Hospital retains the right to adopt and approve, at its sole discretion, the facility's operating and capital budgets. The Hospital retains independent control over and physical possession of the facility's books and records. The Hospital retains independent control over and physical possession of the facility's operating policies and procedures. The Hospital retains full authority and responsibility for, and control over, the operations and management of the facility. The Hospital retains the right and authority to independently adopt, approve and enforce, in its sole discretion, policies affecting the facility's delivery of health care services. The Hospital retains the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts. The Hospital retains the right to approve, at its sole discretion, contracts for administrative services,

management and/or clinical services. The Hospital retains the right to approve, at its sole discretion, any facility debt. The Hospital retains the right to approve, at its sole discretion, settlements of administrative proceeding or litigation to which the facility is a party. No powers specifically reserved to the Hospital may be delegated to, or shared by, the Contractor or any other person. In addition, if there is any disagreement between the parties to this Agreement regarding control between the Hospital and the Contractor, the terms of this Section shall control.

EXHIBIT B

SUNY UPSTATE MEDICAL UNIVERSITY/UNIVERSITY HOSPITAL (the "HOSPITAL")

UNIVERSITY SURGICAL ASSOCIATES, INC. (the "MSG")

BARIATRIC SURGEON ("PHYSICIAN")

Sub-Specialty: Bariatric Surgery

Job Description and Responsibilities: Physician shall provide the Hospital the following services:

a. Outpatient, inpatient, surgical and post-surgical coverage and provision of professional services for the Hospital's Bariatric Surgery Program (the "Program").

b. Upon request, meet with the Hospital's senior administration and provide input, direction and recommendations regarding the Hospital's Program.

c. Upon request, participate in quality improvement reviews.

d. Upon request, participate in the recruitment of key personnel for the Hospital's Program.

e. Participate in the education of surgery residents.

f. Participate in a yearly review of the Hospital's Program with the MSG and the Hospital.

g. Be available for consult by cell phone for emergencies.

h. Other duties and responsibilities as mutually agreed upon by the parties.

EXHIBIT C
Compensation and Reimbursement

Compensation to MSG (C-505435):

Period	Physician Services @ .60 FTE*
07/15/2020 – 07/14/2021	**$303,405.00**

* 1.0 FTE equals a minimum of 2,080 aggregate hours annually

Reimbursement to the Hospital (X-505435):

Period	Reimbursement @.60 FTE*
07/15/2020 – 07/14/2021	**$267,215.00**

* 1.0 FTE equals a minimum of 2,080 aggregate hours annually

**Estimated reimbursement. Actual reimbursement for the period shall be adjusted and calculated using actual volume data relating to the calendar year preceding such period, per the terms and conditions of this agreement.

EXHIBIT U

STATE OF NEW YORK

ANDREW M. CUOMO
GOVERNOR

LAWRENCE SCHWARTZ
SECRETARY TO THE GOVERNOR

MEMORANDUM

TO: Heads and Chief Financial Officers of State Agencies and Public Authorities

FROM: Larry Schwartz, Secretary to the Governor

SUBJECT: Responsibility Provisions in State Contracts

DATE: April 3, 2013

The State must conduct business only with responsible entities. Taxpayer dollars should not be paid to entities that lack financial ability and integrity. New York law and public policy have long required that entities wishing to bid for State contracts be found to be responsible at the time of contract award. A determination of responsibility should be made only when the entity demonstrates the requisite financial ability, organizational capacity, legal authority, integrity (of both the entity and its principals), and, where appropriate, satisfactory performance of all prior government contracts.

But our attention to the responsibility of entities that we do business with must not end with the contract award process. Circumstances may change, and we need to be certain that our vendors and grantees remain responsible throughout the term of their contracts. In order to ensure that the State is protecting taxpayer dollars, effective immediately, all State agencies are required, and State public authorities are strongly encouraged, to include in every State contract, lease, grant, or equivalent legal instrument, the following provisions:

1. A clause requiring that every vendor or grantee remain responsible throughout the life of the contract;

2. A clause authorizing the procuring or granting State entity to immediately suspend work under the contract when it discovers information that calls into question the responsibility of the vendor or grantee; and

3. A clause authorizing the procuring or granting State entity to terminate the contract for cause based upon a determination that the vendor or grantee is non-responsible.

Attached is model language to be incorporated into every new contract, lease, grant or other equivalent instrument. Any variation from the attached language must be first submitted to and approved by the Counsel to the Governor.

If a State agency or authority discovers information that indicates a vendor or grantee may no longer be responsible, the agency or authority shall conduct an investigation. Such investigation may entail summoning representatives of the vendor or grantee to a meeting to answer questions and address the concerns raised by the agency or authority. If the investigation reveals that the vendor or grantee is not responsible—that is, based on the information now known, the agency or authority would not award a contract to the vendor or grantee—then the agency or authority has two options: (1) Depending on the nature or seriousness of the issue, and only if there is some way the vendor or grantee could fix the problem (e.g., terminate an executive who has been indicted for fraud), then the agency or authority could, at its sole discretion, give the vendor or grantee the opportunity to take appropriate remedial measures to become responsible. (2) If there is no reason to give the vendor or grantee an opportunity to fix the problem (e.g., the vendor was clearly trying to cheat the government), or if there is no way the vendor or grantee could readily fix the problem, or if the vendor or grantee refuses to fix the problem, then the agency or authority shall suspend activities under the contract and terminate the contract.

Any termination of a contract for reasons of non-responsibility shall be reported to the Office of General Services ("OGS") by the procuring or granting State entity within 30 days of the notice of termination to the vendor or grantee. The State entity shall provide OGS with the name of the vendor or grantee and the date of the termination. OGS shall post a list of the non-responsibility terminations on the OGS public website. Each posted termination shall remain on the list for five years or until OGS receives notice of a finding by a court of competent jurisdiction that the non-responsibility determination was in error.

If you have any questions about the implementation of this memorandum within your agency or authority, you should contact the Assistant Counsel to the Governor assigned to your agency or authority. For general guidance, you may want to review a presentation that OGS offered on performing vendor responsibility reviews at the May 2010 State Purchasing Forum. You will find the presentation materials (a Powerpoint presentation and handouts) posted on the OGS website at http://www.ogs.ny.gov/purchase/snt/overviews/SPFpps.asp. Scroll down the webpage to the bullet labeled "Contract Administration / Vendor Responsibility." In addition, questions may be may sent to OGS at: LegalServicesWeb@ogs.ny.gov. Finally, OGS will be conducting vendor responsibility training at the May 15-16, 2013 State Purchasing Forum to be held at the Empire State Plaza in Albany.

Attachment
cc: Mylan Denerstein
All Agency and Authority General Counsels
All Assistant Counsels to the Governor
All Deputy and Assistant Secretaries to the Governor

EXHIBIT V

Information for Contractors and Agents of the State University of New York Upstate Medical University

Federal and State false claims laws are important in detecting fraud, waste and abuse in health care programs. The State University of New York (SUNY) Upstate Medical University (University Hospital) is required by law to provide information to all our contractors and agents regarding the following:

1. Federal False Claims Act
2. New York State laws regarding civil or criminal penalties for false claims and payments
3. Administrative remedies for false claims and statements
4. Whistleblower protections under these laws

This information should be provided to all employees in your organization who:

1. Have contact in any way with SUNY Upstate Medical University (University Hospital) contracts
2. Provide health care items or services to SUNY Upstate Medical University (University Hospital)
3. Perform billing or coding functions
4. Are otherwise involved with SUNY Upstate Medical University (University Hospital)

FEDERAL FALSE CLAIMS ACT

The Federal False Claims Act allows a civil action to be brought against a person or entity who:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval to any federal employee;
- Knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved;
- Conspires to defraud the government by getting a false or fraudulent claim allowed or paid; or
- Knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay the government.

Under the Federal False Claims Act, a "claim" is any request or demand for money or property if the Federal government provides any portion of the money or property in question. This includes requests or demands submitted to a contractor of the Federal government, including but not limited to Medicaid and Medicare claims.

The Federal False Claims Act broadly defines the terms "knowing" and "knowingly". Specifically, knowledge will have been proven for purposes of the Federal False Claims Act if the person or entity:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

The Federal False Claims Act provides that a specific intent to defraud is not required in order to prove the law has been violated.

A federal false claims action may be brought about by the United States Attorney via the United States Department of Justice (DOJ) or an individual may file a qui tam action on behalf of the government for violations of the Federal False Claim Act. The government may decide to intervene with the individual's lawsuit, in which case, the U.S. Department of Justice will direct the prosecution. If the government does not intervene, the individual may still continue to pursue the lawsuit. If the qui tam lawsuit is successful, the individual may receive between 10 – 30% of the recovery, depending upon, among other things, the level of government participation. Reasonable attorney fees and other costs may also be covered. However, any person who brings about a clearly frivolous case can be held liable for the defendant's attorney fees and costs.

A person or entity found guilty of violating the Federal False Claims Act will be obligated to repay all falsely obtained reimbursement and will be liable for a civil penalty between $5,500 - $11,000, plus up to three times the amount of damages incurred by the government for each violation of the Act. Additionally, the United States Department of Health and Human Services (DHHS) of the Office of the Inspector General (OIG) may exclude the violator from participation in federal health care programs, such as Medicaid and Medicare.

Under the Federal False Claims Act, an action may be brought up to 6 (six) years after the date of the violation or 3 (three) years after the date when material facts with respect to the violation are known or should have been known by the government, however, no later than 10 (ten) years after the date on which the violation was committed.

Federal law prohibits an employer from discriminating against an employee in the terms and conditions of his/her employment because the employee initiated or otherwise assisted in a false claims action. The employee is entitled to all relief necessary to make the employee whole with remedies including: reinstatement with comparable seniority as the employee would have had except for the

discrimination; two times the amount of any back pay plus interest; and compensation for reasonable damages sustained as a result of such discrimination, including litigation costs and reasonable attorney fees.

FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT

The Federal Program Fraud Civil Remedies Act establishes an administrative remedy against any person who makes, presents or submits, or causes to be made, presented or submitted a claim for property, services or money to certain federal agencies, including the DHHS, that the person or entity "knows or has reason to know" is:

- False, fictitious or fraudulent;
- Includes or is supported by any written statement which asserts a material fact that is false, fictitious or fraudulent;
- Includes or is supported by any written statement which omits a material fact, is false, fictitious or fraudulent because of the omission and is a statement which the person or entity has a duty to include as a material fact; (or)
- Is for the provision of items or services which their person or entity has not provided as claimed.

Additionally, it is illegal to make, present or submit, or cause to be made, presented or submitted any written statement with respect to a claim or to obtain the approval or payment of a claim if the person or entity "knows or has reason to know" such statement:

- Asserts a material fact which is false, fictitious or fraudulent (or)
- Omits a material fact which makes the statement false, fictitious or fraudulent.

Similar to the Federal False Claims Act, a person who "knows or has reason to know" is defined as one who:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; (or)
- Acts in reckless disregard of the truth or falsity of the information.

The law specifically provides that a specific intent to defraud is not required to prove a violation.

A violation of the Federal Program Fraud Civil Remedies Act can result in a civil monetary penalty up to $5,000 per false claim and, in certain circumstances, an assessment of twice the amount of any false claim. Additionally, under certain circumstances, a penalty of $5,000 per false statement may be imposed.

Unlike the Federal False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also, unlike the Federal False Claims Act, the determination of whether a claim is false and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

NEW YORK STATE FALSE CLAIMS ACT

The New York State False Claims Act allows a civil action to be brought against a person or entity who:

- Knowingly presents or causes to be presented, a false or fraudulent claim for payment or approval to any New York State or local government employee;
- Knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved;
- Conspires to defraud New York State or a local government by getting a false or fraudulent claim allowed or paid;
- Has possession, custody or control of property or money used or to be used by New York State or a local government and, intending to defraud New York State or a local government or willfully to conceal the property or money, delivers less property or money than the amount for which the person receives a receipt;
- Is authorized to make or deliver a receipt for property used or to be used by New York State or a local government and intending to defraud New York State or a local government makes or delivers a receipt without completely knowing the information on the receipt is true;
- Knowingly buys or receives as a pledge public property from an officer or employee of New York State or a local government knowing that the officer or employee may not lawfully sell or pledge such property; (or)
- Knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to New York State or a local government.

Under the New York State False Claims Act, a "claim" is any request or demand for money or property which is made to New York State or a local government or to any contractor, grantee or other recipient if New York State or a local government provides any portion of the money or property in question.

The terms "knowing" and "knowingly" are defined as that under the Federal False Claims Act. New York State law, like Federal law, provides that a specific intent to defraud is not required in order to prove the law has been violated. New York State law excludes acts arising out of mistake or mere negligence.

The New York State Attorney General has authority to investigate claims and to bring action on behalf of New York State or a local government. A local government may also investigate claims and bring action on its behalf. The Attorney General must consult with the Office of Medicaid Inspector General before bringing a claim related to the Medicaid program.

An individual may file a qui tam action on behalf of the New York State or local government for violations of the New York State False Claim Act. In a qui tam action, an individual must file his/her complaint and written disclosure of substantially all material

evidence and information s/he possesses in New York State Supreme Court, where it will remain under seal for at least 60 (sixty) days. New York State may decide to intervene or to authorize a local government to intervene with the lawsuit. If neither New York State nor a local government intervenes, the individual may still continue the lawsuit independently. If a qui tam lawsuit is successful, the individual may receive between 15 – 30% of the recovery, depending upon, among other things, the level of the State's or local government's participation. Reasonable attorney fees and other costs may also be covered. The individual's share may be reduced to no more than 10% if the Court finds the action was based primarily on disclosure of specific information not provided by the individual relating to allegations or transactions in a criminal, civil or administrative hearing. An individual's share of any recovery may also be reduced if the individual planned or initiated the violation in question. If an individual is convicted of criminal conduct arising from his/her role in the violation, s/he is not entitled to any portion of the recovery.

No action may be filed against the Federal government, the State or a local government or any officer or employee thereof acting in his/her official capacity.

A person or entity found guilty of violating the New York State False Claims Act is obligated to repay all the falsely obtained reimbursement and will be liable for a civil penalty between $6,000 - $12,000, plus up to three times the amount of damages incurred by New York State or a local government for each violation of the Act. If the person committing the violation furnished information regarding such violation to the appropriate New York State or local government official within 30 (thirty) days of obtaining such information and cooperated fully in the investigation, additional damages are caped at twice the amount.

The time periods for bringing a claim under the New York State False Claims Act are the same as under the Federal False Claims Act.

The New York State False Claims Act prohibits an employer from discriminating against an employee in the terms and conditions of his/her employment because the employee initiated or otherwise assisted in a false claims action. The employee is entitled to all relief necessary to make the employee whole with remedies including: reinstatement with comparable seniority as the employee would have had except for the discrimination; two times the amount of any back pay plus interest; and compensation for reasonable damages sustained as a result of such discrimination, including litigation costs and reasonable attorney fees.

OTHER NEW YORK STATE LAWS

Various other New York State laws also prohibit false claims. Certain relevant portions of the New York State Code are as follows:

New York Social Services Law 145-b

It is unlawful for a person or entity to knowingly make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device, to obtain or attempt to obtain payments under the New York State Medicaid program. For violations of this law, the local social services district or New York State has the right to recover civil damages equal to three time the amount by which any figure is falsely overstated. In the case of non-monetary false statements, the local social service district or New York State may recover three times the damages or $5000, which ever is greater, for damages sustained by the government due to the violation.

A "statement or representation" includes a claim for payment, an acknowledgement, certification or report of data which serves as a basis for a claim or rate of payment.

The New York Social Services Law also empowers the New York State Department of Health to impose a monetary penalty on any person or entity that, among other actions, causes Medicaid payments to be made if the person or entity knew or had reason to know that the:

- Payment involved care, services or supplies that were medically improper, unnecessary or excessive;
- Care, services or supplies were not provided as claimed;
- Person who ordered or prescribed the improper, unnecessary or excessive care, services, or supplies was suspended or excluded from the Medicaid program at the time of the care, services or supplies were furnished; (or)
- Services or supplies were not in fact provided.

The monetary penalty cannot exceed $2000 for each item or service determined to be inappropriate, unless a penalty under the section has been imposed within the previous 5 (five) years, in which case the penalty cannot exceed $7,500 per item or service.

New York Social Services Law 366-b(2)

Any person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise, knowingly submits false information for the purpose of obtaining compensation greater than that which s/he is legally entitled for furnishing services or merchandise or knowingly submits false information for the purposes of obtaining authorization for furnishing services or merchandise shall be guilty of a class A misdemeanor. If such an act constitutes a violation of a provision of the penal law of the State of New York, the person committing the act will be punished in accordance with the penalties fixed by such law.

New York Penal Law Article 155

A person, who with intent to deprive another of his property obtains, takes or withholds such property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud or other similar behavior is guilty of larceny. Larceny is a felony with the applicable class being based on the value of the property involved.

New York Penal Law Article 175

Four crimes are specified which relate to filing false information or claims.

Under 175.05 it is a Class A misdemeanor to falsify business records, including entering false information, omitting material information or altering an enterprise's business records with the intent to defraud.

Under 175.10 falsifying business records as provided in 175.05 with the intent to commit another crime or conceal its commission is a Class E felony.

Under 175.30 it is a Class A misdemeanor to present a written instrument, including a claim for payment, to a public office knowing that it contains false information.

Under 175.35 it is a Class E felony to submit a claim as provided in 175.30 with the intent to defraud New York State or a political subdivision.

New York Penal Law Article 176
This article applies to intentional filing of a health insurance claim knowing that it is false. Violation of this law is either a misdemeanor or felony, with the applicable class being based on the value of the claim involved.

New York Penal Law 177
This law establishes the crime of "health care fraud". A person commits such a crime when, with the intent to defraud Medicaid or other health plans, including non-government plans, s/he knowingly and willfully provided materially false information or omits material information for the purpose of requesting payment for a heath care item of service and as a result of the false information or omission, s/he or another person receives a payment in an amount to which s/he or such other person is not entitled. Health care fraud is punished with fines and jail time based on the amount of payment inappropriately received due to the commission of the crime; the higher the payments received in a one year period, the more severe the punishments, which currently range up to 25 (twenty-five) years if more than $1 million in improper payments are involved.

New York Labor Law 740
New York law affords protections to employees who may notice and report inappropriate activities. An employer may not take any retaliatory action against an employee because the employee:

- Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety or which constitutes health care fraud;
- Provides information to, or testifies before any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; (or)
- Objects to, or refuses to participate in any such activity, policy or practice in violation of al aw, rule or regulation.

In order to be protected when disclosing information to a public body, an employee must first bring the alleged violation to the attention of a supervisor of the employer and give the employer a reasonable opportunity to correct the allegedly unlawful practice. The law allows employees who are the subject of a retaliatory action to bring a civil action in court and seek relief such as injunctive relief to restrain continued retaliation; reinstatement, back-pay and compensation of reasonable costs. If the court finds that a health care employer's retaliatory action was in bad faith, it may impose a civil penalty up to $10,000 on the employer. The law also provides employees who bring an action without basis in law or fact may be held liable to the employer for its attorney's fees and costs.

New York Labor Law 741
Under certain circumstances, New York law provides additional protections to employees of health care service providers, which include the Hospital. A health care service provider may not take any retaliatory action against an employee because the employee:

- Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care; (or)
- Objects to or refuses to participate in any such activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

In order to claim this protection, the employee must first bring the issue to the attention of a supervisor of the employer and give the employer a reasonable opportunity to correct the allegedly improper activity or practice. However, this is not required and an employee may disclose an alleged improper quality of patient care to a public body or interest, if the alleged improper quality of healthcare presents an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

SUNY UPSTATE MEDICAL UNIVERSITY COMPLIANCE PROGRAM

SUNY Upstate Medical University (University Hospital) Policies
In addition to Federal and New York State law, University Hospital has a Compliance Program and Plan that is applicable to all contractors and agents of the Hospital. The Compliance Plan consists of several policies and procedures regarding the detection and prevention of fraud, waste and abuse, including the Institutional Compliance Code of Conduct. Copies of these policies are available upon request.

The Deficit Reduction Act requires such contractors and agents of the Hospital to:

1. Adopt the Hospital's polices and procedures regarding the prevention and detection of fraud, waste or abuse;
2. Abide by the Hospital's policies and procedures relating to all work performed for University Hospital;
3. Train your employees who perform any work for University Hospital regarding the necessity of compliance with applicable laws and regulations;
4. Make available to your employees University Hospital's prevention of fraud and abuse policies.

University Hospital is committed to assuring compliance with its mission, vision, values and principles and strives to integrate these principles into an effective Compliance Program. The University Hospital Compliance Program has been established to promote adherence with relevant Upstate Medical University policies/procedures and Federal and State rules and regulations through open

lines of communication with the Compliance Officer, provision of education/training, auditing/monitoring, enforcement of standards/sanctions and through corrective action for identified concerns.

University Hospital reserves the right to change, modify or amend the Compliance Plan as deemed necessary.

PREVENTION OF FALSE CLAIMS

University Hospital compliance efforts, as outlined in the University Hospital Compliance Plan, are designed to establish a culture within the Hospital that promotes the prevention, detection and resolution of conduct that does not conform to such Upstate Medical University policies/procedures and Federal and State rules and regulations.

If you observe something that is not right, University Hospital encourages you to report your concern for further investigation to the University Hospital Institutional Compliance Office for Hospital Affairs by:

1. Calling 315-464-4343 to speak with the Institutional Compliance Officer
2. Faxing information to the Institutional Compliance Office at 315-464-4342
3. Writing to the Institutional Compliance Officer for Hospital Affairs, 750 East Adams Street, Syracuse, New York, 13210

If you are not comfortable reporting your concern directly, you may utilize the anonymous Institutional Compliance Office hotline number at 315-464-6444. While you are encouraged to report your concerns to the University Hospital Institutional Compliance Office for Hospital Affairs, this is not required and you may report possible false claims act violations to the federal Department of Justice.

Original: 11/02/07
Revised: 12/30/07

Exhibit W

VENDOR INSTRUCTIONS FOR COMPLETION OF NYS FORMS FOR CONSULTANT SERVICES AGREEMENTS

New York State Finance Law mandates the annual reporting of certain employment data from vendors that have active consultant services agreements valued above $15,000 with any New York State agency (including SUNY Upstate Medical University at Syracuse).

For new consultant contracts (issued after 6/19/06), vendors must provide the State Consultant Services Contractor's Planned Employment form ("**Form A**") to the contracting agency prior to final execution of the contract. This form is provided only **once** and captures the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.

For all consulting contracts, vendors must provide the State Consultant Services Contractor's Annual Employment Report form ("**Form B**") once each year. This form is provided **annually** and captures historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Form B must be completed in triplicate and submitted by the vendor to the NYS Department of Civil Service, the Office of the State Comptroller and SUNY Upstate Medical University at Syracuse.

For Form B only, the first required reporting period will be the 2011-2012 fiscal year, April 1, 2011 - March 31, 2012. The first reports are due no later than May 15, 2012. Thereafter, reports will be due no later than May 15th of each succeeding year.

INSTRUCTIONS FOR COMPLETING FORM A AND FORM B:

Form A and Form B should be completed for contracts for consulting services in accordance with the following:

Scope of Contract (Form B only): a general classification of the single category that best fits the predominate nature of the services provided under the contract.

Employment Category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract.

(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at http://online.onetcenter.org to find a list of occupations.)

Number of Employees: the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.

Number of hours (to be) worked: for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the Report Period by the employees in the employment category.

Amount Payable under the Contract: the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

INSTRUCTIONS FOR ANNUAL SUBMISSION OF CONSULTANT SERVICES DATA:

Reports that are to be submitted to SUNY Upstate Medical University at Syracuse may be transmitted as follows:

By Mail

Contracts Office, Suite 209 MT
SUNY Upstate Medical University
750 East Adams Street
Syracuse, New York 13210

By Fax

(315) 464-4679

Reports that are to be submitted to Office of the State Comptroller may be transmitted as follows:

By Mail

New York State Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, New York 12236
Attn: Consultant Reporting

By Fax

(518) 474-8030 or (518) 473-8808

Reports that are to be submitted to Department of Civil Service may be transmitted as follows:

By Mail:

New York State Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

Exhibit X

OSC Use Only:
Reporting Code:
Category Code:
Date Contract Approved:

FORM A

State Consultant Services - Contractor's Planned Employment

From Contract Start Date Through The End Of The Contract Term

State Agency Name: SUNY Upstate Medical University Agency Code: 28110

Contractor Name: University Surgical Associates, LLP_ Contract Number: C/X -505435

Contract Start Date: July 15, 2020 | Contract End Date July 14, 2021

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
29-1069.00 Surgeon	1	1248	$303,405
Total this page	1	1248	$303,405
Grand Total	1	1248	$303,405

Name of person who prepared this report: Jennifer Potter

Title: Project Staff Associate Phone #: 315-464-6271

Preparer's Signature:

Date Prepared: 3/29/2021

(Use additional pages, if necessary)

Exhibit Y

FORM B

OSC Use Only:
Reporting Code:
Category Code:

State Consultant Services
Contractor's Annual Employment Report
Report Period: April 1, to March 31,

Contracting State Agency Name :SUNY Upstate Medical University Agency Code: 28110
Contract Number: _____
Contract Term: _____to _____
Contractor Name: _____
Contractor Address: _____
Description of Services Being Provided _____
_____

Scope of Contract (Choose one that best fits):

Analysis ☐ Evaluation ☐ Research ☐ Training ☐
Data Processing ☐ Computer Programming ☐ Other IT consulting ☐
Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐
Health Services ☐ Mental Health Services ☐
Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☐

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page			
Grand Total			

Name of person who prepared this report: _____
Preparer's Signature: _____
Title: _____ Phone #: _____
Date Prepared: __/__/____

Use additional pages if necessary) Page of

EXHIBIT Z

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT is made by and between THE STATE UNIVERSITY OF NEW YORK ("SUNY"), an educational corporation organized and existing under the laws of the State of New York, having its principal offices located at State University Plaza, Albany, New York 12246, acting for and on behalf of

Upstate University Hospital
"Covered Entity"
with its address at

750 East Adams Street
Street Address

Syracuse NY 13210
City State Zip

and

University Surgical Associates, LLP.
"Business Associate"
with its principal offices at

750 East Adams Street
Street Address

Syracuse, NY 13210
City State Zip

Facsimile Number: 315-464-6236

Covered Entity and Business Associate, collectively, may hereinafter be referred to as the "Parties," as in the parties to this Agreement.

The Parties have entered into one or more certain agreements (each and together, the "Underlying Agreement") under which the Business Associate uses and/or discloses PHI in its performance of the Services described below. The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the Standards for Security of Electronic Protected Health Information (the "Security Rule) under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including the 2013 HIPAA Omnibus Rule. This Agreement, in conjunction with the Privacy and Security Rules, sets forth the terms and conditions pursuant to which PHI (electronic and non-electronic) that is created, received, maintained, or transmitted by, the Business Associate from or on behalf of Covered Entity, will be handled between the Business Associate and Covered Entity and with third parties during the term of their Underlying Agreement and after its termination. The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

1.1 **Services**. Pursuant to the Underlying Agreement, Business Associate provides services ("Services") for Covered Entity that involve the use and disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement. All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only: (a) to its employees, subcontractors and agents, in accordance with Section 2.1(d), or (b) as otherwise permitted by or as required by the Privacy or Security Rule.

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

(a) use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws.

(b) disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to Covered Entity, in writing, that (i) the disclosures are required by law, as provided for in 45 CFR § 103 or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 CFR § 164.504(e)(4) and § 164.314, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

1.3 Business Associate understands and agrees that its access to Protected Health Information stored in databases and information systems at the Covered Entity is subject to review and audit by the Covered Entity or agents of the State of New York at any time, that remote audits of such access may occur at any time, if remote access exists, that on-site audits of such access will be conducted during regular business hours, and that any review or audit may occur with or without prior notice by the Covered Entity.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

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

(a) Not use or disclose PHI other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;

(c) Report, in writing, to Covered Entity within five (5) business days any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware, and cooperate with the Covered Entity in any mitigation or breach reporting efforts; this notice shall be deemed sufficient if it is delivered to the Parties at their respective addresses listed above and the Privacy Officer using the following contact information:

Cynthia Nappa		
	Privacy Officer	
750 East Adams Street		
	Street Address	
Syracuse	NY	13210
City	State	Zip

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

(e) Except as provided in this subsection, ensure that any agent or subcontractor to whom the Business Associate provides PHI, as well as Business Associate, shall not export PHI beyond the borders of the United States of America. If the Business Associate or its agent or subcontractor exports PHI beyond the borders of the United States of America, then, subject to the United States and New York State export control and foreign outsourcing laws, rules and regulations, the Business Associate will provide to Covered Entity prior to such export, a reasonable assurance, evidenced in writing, that the Business Associate, subcontractor, or agent will comply with the privacy and security obligations of Business Associate the set forth either in this Agreement or in applicable law, rules and regulations with respect to such PHI.

(f) Agrees to provide the Covered Entity, at the Covered Entity's request, a list of all agents and subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate.

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

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

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

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

(k) Upon request, may make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules.

(l) Comply with minimum necessary requirements under the HIPAA Rules.

2.2 Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that Business Associate is required to comply with the confidentiality, Disclosure and re-Disclosure requirements of 10 NYCRR Part 63 to the extent such requirements may be applicable.

2.3 If, in the performance of the Services, Business Associate extends, renews or continues credit to patients or regularly allows patients to defer payment for services including setting up payment plans in connection with one or more covered accounts, as defined at 15 USC 1681m(e)(4), the Business Associate must comply with the Federal Trade Commission's "Red Flag" Rules, if applicable, or develop and implement a written identity theft prevention program designed to identify, detect, mitigate and respond to suspicious activities that could indicate that identity theft has occurred in the Business Associate practice or business.

2.4 Business Associate acknowledges that if Business Associate or any of its agents or subcontractors violate any Security provision as Required By Law specified in subparagraph 2.1(b) above, sections 1176 and 1177 of the Social Security Act 42 USC §1320d-5, 1320d-6 shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such Security provision, thus resulting in civil or criminal penalties.

2.5 Covered Entity and Business Associate recognize that unsecured PHI may contain the social security numbers, financial account information or driver's license number or non-driver identification card number ("private information" as defined in the New York State Information Security Breach and Notification Act, as amended ("ISBNA"), General Business Law § 889-aa; State Technology Law § 208). Subject to the issue of interim final regulations by the Secretary and any periodic updates thereof all of which are incorporated by reference in this Agreement, in the event of a Breach of unsecured PHI

containing an Individual's private information, Business Associate shall, in addition to notifying Covered Entity as required under in subparagraph 2.1(c), comply with the provisions of the New York State ISBNA. Business Associate shall be liable for the costs associated with such Breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.

3. RESPONSIBILITIES OF COVERED ENTITY.

3.1 With regard to the use and/or disclosure of PHI by the Business Associate, Covered Entity hereby agrees:

(a) to inform the Business Associate of any limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) to inform the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(c) to notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement. except if the Business Associate will use or disclose PHI for (and the Underlying Agreement includes provisions for) data aggregation or management and administration and legal responsibilities of the Business Associate.

(d) Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by the Covered Entity.

4. REPRESENTATIONS AND WARRANTIES [THIS SECTION MAY BE REMOVED IF IT IS INCLUDED IN THE UNDERLYING AGREEMENT]

4.1 Mutual Representations and Warranties of the Parties. Each Party represents and warrants to the other Party:

(a) that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws.

(b) that neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. Each Party represents and warrants to the other Party that it will not enter into any agreement the execution and/or performance of which would violate or interfere with this Agreement.

(c) that it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition.

(d) that all of its employees and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that Business Associate has agreed to adhere to with regards to the use and disclosure of PHI of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Standard will be communicated to the Business Associate, in writing, and in a timely fashion.

(e) that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.

(f) that neither the Party, nor its shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deferred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (i) the neglect or abuse of a patient, (ii) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (iii) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (iv) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (v) interference with or obstruction of any investigation into any criminal offense.

4.2 Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate

or may become incorrect at any time during the term of this Agreement.

5. **TERMS AND TERMINATION**

5.1 **Term**. The Term of this Agreement shall commence on the Effective Date, and shall terminate on the termination date of the relevant Underlying Agreement or on the date Covered Entity terminates this Agreement for cause as authorized in paragraph 5.2 of this Section, whichever is sooner.

5.2 **Termination for Cause**. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

5.3 **Obligations of Business Associate upon Termination**. Business Associate agrees to return or destroy all PHI pursuant to 45 CFR § 164.504(e)(2)(I). Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify Covered Entity in writing and the Covered Entity may disagree with the Business Associate's determination. Said notification shall include: (a) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (b) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to Covered Entity and require such subcontractor or agent to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractor's and/or agent's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

5.4 Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Underlying Agreement.

6. CONFIDENTIALITY [THIS SECTION MAY BE REMOVED IF IT IS INCLUDED IN THE UNDERLYING AGREEMENT]

6.1 **Confidentiality Obligations**. In the course of performing under this Agreement, each Party may receive, be exposed to or acquire the Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party. For purposes of this Agreement, "Confidential Information" shall not include PHI, the security of which is the subject of this Agreement and is provided for elsewhere. The Parties including their employees, agents, representatives and subcontractors: (a) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Agreement, (b) only permit use of such Confidential Information by employees, agents, representatives and subcontractors having a need to know in connection with performance under this Agreement, and (c) advise each of their employees, agents, representatives and subcontractors of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (d) after it becomes publicly available through no fault of either Party; (e) which is later publicly released by either Party in writing; (f) which is lawfully obtained from third parties without restriction; or (g) which can be shown to be previously known or developed by either Party independently of the other Party.

7. INSURANCE AND INDEMNIFICATION [THIS SECTION MAY BE REMOVED IF IT IS INCLUDED IN THE UNDERLYING AGREEMENT]

7.1 **Insurance**. Business Associate will procure and maintain in effect during the term of this Agreement: (a) general liability insurance coverage with minimum limits of $1 million per occurrence and $3 million aggregate; and (b) as applicable, professional liability insurance coverage within minimum limits of $1 million per occurrence and $3 million in aggregate; and (c) workers' compensation insurance coverage within statutory limits of state law in which Business Associate is located. Upon request, Business Associate shall provide evidence of continuous coverage to Covered Entity.

7.2 **Indemnification**. The Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered Entity's employees, trustees, officers, agents and other members of its workforce from any costs, damages, expenses, judgments, losses, and attorney's fees arising from any breach of this Agreement by Business Associate or any of its agents or subcontractors, or arising from any negligent or wrongful acts or omissions of Business Associate or any of its agents or subcontractors, including failure to perform its obligations under the Privacy Rule. The Business Associate's indemnification obligation shall survive the expiration or termination of this Agreement for any reason.

8. MISCELLANEOUS

8.1 **Business Associate**. For purposes of this Agreement, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a Covered Entity under the

Privacy or Security Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 CFR § 164.504(a), as the Business Associate for purposes of this Agreement.

8.2 **Survival**. The respective rights and obligations of Business Associate and Covered Entity under this Agreement, shall survive termination of this Agreement indefinitely.

8.3 **Amendments; Waiver**. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

8.4 **Interpretation**. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

8.5 **No Third Party Beneficiaries**. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

8.6 **Notices**. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given above , and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed above. A copy of any such notice shall also be given in the same manner to the Privacy Officer listed above. Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

8.7 **Counterparts; Facsimiles**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

8.8 **Disputes**. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

8.9 **LIMITATION OF LIABILITY**. COVERED ENTITY SHALL NOT BE LIABLE TO BUSINESS ASSOCIATE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

8.10 **Changes in Law**. The Parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws. The Parties further recognize that this Agreement may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the Parties hereto to be in violation of law, shall be deemed to have superseded the terms of this Agreement and, in such event, the Parties agree to use their best efforts to modify in an executed written agreement the terms and conditions of this Agreement to be consistent with the requirements of such law(s) in order to effectuate the purposes and intent of this Agreement within thirty (30) days of receipt of notice from one Party to the other Party setting forth the proposed changes. If the Parties fail to so modify this Agreement, then either Party may, by giving the other an additional sixty (60) days written notice, terminate this Agreement, unless this Agreement would terminate earlier by its terms. In the event amendments or changes in existing law, general instructions, or new legislation, rules, regulations, or decisional law preclude or substantially preclude a contractual relationship between the Parties similar to that expressed in this Agreement, then, under such circumstances, where renegotiation of the applicable terms of this Agreement would be futile, either Party may provide the other at least sixty (60) days advance written notice of termination of this Agreement, unless this Agreement would terminate earlier by its terms. Upon termination of this Agreement as hereinabove provided, neither Party shall have any further obligation hereunder except for (a) obligations occurring prior to the date of termination, and (b) obligations, promises or covenants contained herein which are expressly made and intended either to arise upon the termination of this Agreement ot to extend beyond the term of this Agreement.

8.11 **Construction of Terms**. The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the Department of Health and Human Services of the Office of Civil Rights from time to time.

8.12 **Contradictory Terms**. Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Agreement ("Contradictory Term") shall be superceded by the terms of this Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity's compliance with the Privacy Rule and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.

8.13 **Governing Law**. This Agreement and any Underlying Agreement shall be governed by New York law notwithstanding any conflicts of law provisions to the contrary.

9. DEFINITIONS.

9.1 The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, PHI, Required By Law, Secretary, Security

Incident, Subcontractor, Unsecured Protected Health Information, and Use.

9.2 Specific definitions include:

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Party identified as the Business Associate above.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Party identified as the Covered Entity above.

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

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

(e) Privacy Officer. "Privacy Officer" shall have the meaning as set out in its definition at 45 CFR § 164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended or revised, and in reference to this Agreement, shall mean the person identified as the Privacy Officer above.

(f) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164.

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

(h) A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

THE STATE UNIVERSITY OF NEW YORK on behalf of COVERED ENTITY

By: Robert J Corona

Print Name: Robert J. Corona

Print Title: Chief Executive Officer of University Hospital

Date: 4-8-21

BUSINESS ASSOCIATE

By: Robert Cooney

Print Name: Robert Cooney

Print Title: Managing Partner, University Surgical Associates, LLP

Date: 3/30/2021

Contract No.: C-505435 and X-505435

EXHIBIT Z-1

AMENDMENT TO IMPLEMENT HIPAA BUSINESS ASSOCIATE REQUIREMENTS (SUNY=BUSINESS ASSOCIATE)

THIS AMENDMENT is made as by and between **THE STATE UNIVERSITY OF NEW YORK** ("SUNY"), an educational corporation organized and existing under the laws of the State of New York and having its principal offices located at State University Plaza, Albany, New York 12246, acting through and on behalf of **SUNY UPSTATE MEDICAL UNIVERSITY** (also known as SUNY Health Science Center at Syracuse), a component of which is **UNIVERSITY HOSPITAL,** a general hospital licensed under Article 28 of the New York Public Health Law, located at 750 East Adams Street, Syracuse, New York 13210 ("Business Associate"), and **UNIVERSITY SURGICAL ASSOCIATES, LLP,** located at 750 East Adams Street, Syracuse, NY 13210 ("Covered Entity").

WHEREAS, Covered Entity and Business Associate are parties to one or more agreements, and may in the future become parties to additional agreements (collectively, the "Underlying Agreements"), pursuant to which Business Associate provides certain services to Covered Entity and, in connection with such services, creates, receives, uses or discloses for or on behalf of Covered Entity certain individually identifiable protected health information relating to patients of Covered Entity ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as such law and regulations may be amended from time to time (collectively, "HIPAA"); and

WHEREAS, by reason of such activities, the parties believe that Business Associate is a "business associate" of Covered Entity, as such term is defined in 45 CFR 160.103; and

WHEREAS, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA, including requirements applicable to the relationship between a covered entity and its business associates;

NOW, THEREFORE, the parties agree that each of the Underlying Agreements shall hereby be amended as follows:

1. Definitions.

(a) "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(b) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(c) "Protected Health Information" 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.

(d) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.

(e) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Underlying Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards, including without limitation administrative, physical, and technical safeguards, to prevent use or disclosure of the Protected Health Information other than as provided for by this Amendment and to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it may create, receive, maintain, or transmit on behalf of the Covered Entity.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Amendment.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Amendment or any security incident of which it becomes aware involving Protected Health Information of the Covered Entity.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Amendment to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information 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 CFR 164.524.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business

Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section (2)(i) of this Amendment, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

3. Permitted Uses and Disclosures by Business Associate. Except as otherwise limited in this Amendment, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(a) Except as otherwise limited in this Amendment, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Amendment, Business Associate may disclose Protected Health Information for the proper management and administration of the 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4 Obligations of Covered Entity.

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

5. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6. Term and Termination.

(a) Term. The Term of this Amendment shall be effective as of the Effective Date (as defined below), and shall terminate when all of the Protected Health Information 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 Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, in its sole discretion, either (1) provide Business Associate with an opportunity to cure the breach and then terminate the Underlying Agreement if Business Associate does not cure the breach within time period specified by the Covered Entity or (2) terminate the Underlying Agreement immediately.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Amendment and/or the Underlying Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Amendment to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(d) Effective Date. The effective date of this Amendment (the "Effective Date") shall be the later of (i) the effective date of the Underlying Agreement or (ii) April 14, 2003.

7. Miscellaneous.

(a) Regulatory References. A reference in this Amendment to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. The Parties agree to take such action as is necessary to amend the Underlying Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191; provided, however, that no amendment shall be deemed valid unless signed by both parties and approved by the New York State Attorney General and the Office of the State Comptroller.

(c) Survival. The respective rights and obligations of Business Associate under Section 4(c) of this Agreement shall survive the termination of this Amendment and the Underlying Agreement, as shall the rights of access and inspection of Covered Entity.

(d) Interpretation. Any ambiguity in this Amendment shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

8. Material Breach. The parties acknowledge that in the event the Covered Entity learns of a pattern or activity or practice of the Business Associate that constitutes violation of a material term of this Amendment, then the parties promptly shall take reasonable steps to cure the violation. If such steps are, in the judgment of the Covered Entity, unsuccessful, ineffective or not feasible, then the Covered Entity may terminate, in its sole discretion, any or all of the Underlying Agreements upon written notice to the Business Associate, if feasible, and if not feasible, shall report the violation to the Secretary of HHS.

9. Governing Law; Conflict. This Amendment shall be enforced and construed in accordance with the laws of the State of New York. Jurisdiction of any litigation with respect to this Agreement shall be in New York, with venue in a court of competent jurisdiction located in Onondaga County. In the event of a conflict between the terms of this Amendment and the terms of any of the Underlying Agreements, the terms of this Agreement shall control.