

Terms and Conditions of Purchase

Effective June 20, 2014 - March 8, 2021:

Dartmouth College Standard Purchase Order Terms and Conditions

These Purchase Order Terms and Conditions ("Terms and Conditions") and the Purchase Order, including any and all appendices, and/or exhibits attached hereto or otherwise confirmed by the Parties, collectively constitute an agreement (this "Agreement") by and between the Trustees of Dartmouth College ("Dartmouth College") and Supplier (as defined in the Purchase Order), (Dartmouth College and Supplier are sometimes collectively referred to as the "Parties" and each individually is sometime referred to herein as a "Party").

Acceptance of Agreement; Purchase Order Confirmation; Termination.

1.1 Acceptance of Agreement. Supplier shall be deemed to have accepted this Agreement including all of its terms and conditions upon the earlier to occur of (a) Supplier's commencement of performance, or (b) Supplier's other confirmation of acceptance hereof, including without limitation, by email, fax, or other written communication of Supplier to Dartmouth College. This Agreement constitutes the entire agreement of the Parties, and supersedes any agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof. Each Party acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by the other Party, or anyone acting on behalf of the other Party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. ANY ATTEMPTED ACKNOWLEDGMENT OF THIS AGREEMENT CONTAINING TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF THIS AGREEMENT IS NOT BINDING UNLESS SPECIFICALLY ACCEPTED BY DARTMOUTH COLLEGE IN WRITING.

1.2 Order of Precedence. In the event of any conflict between these Terms and Conditions and any appendix or exhibit to the Agreement, these Terms and Conditions shall govern unless otherwise specifically provided in such appendix or exhibit.

1.3 Purchase Order Confirmation. If requested by Dartmouth College, Supplier shall provide Dartmouth College with a copy of the Purchase Order signed by Supplier.

1.4 Failure to Perform. If Supplier fails to perform any of its obligations under this Agreement and such failure continues for ten (10) days after written notice of such failure given to Supplier by Dartmouth College, Dartmouth College may (i) immediately, or at any time thereafter, terminate this Agreement by written notice to Supplier, without prejudice to any remedies (whether set forth in this Agreement or provided by law) which might otherwise be available to Dartmouth College or (ii) withhold payment for the Goods and/or Services until such time that Supplier's nonperformance has been rectified. In the event of cancellation, Supplier will pay all associated costs, including, but not limited to, extra

handling costs, expedited routing costs, return shipping charges, and storage expenses. Upon receipt of Dartmouth College's notice to terminate the Agreement, Supplier will immediately stop work and cause its contractors, subcontractors and suppliers to stop work, preserve and protect materials, and conclude performance in accordance with Dartmouth College's instructions. Supplier agrees that it will not be entitled to any damages, penalties or cancellation charges as a result of termination by Dartmouth College.

1.5 Term. The term ("Term") of this Agreement shall be as set forth in the Purchase Order. Should any exhibits or appendices included herewith provide for a longer term with regard to the provision of any Goods and/or Services covered thereby, the Term of this Agreement shall remain in effect until all obligations set forth therein have been satisfactorily fulfilled unless terminated pursuant to the provisions of this Agreement.

1.6 Effect of Termination. Upon termination or expiration of this Agreement, Dartmouth College shall have thirty (30) days to pay any undisputed amounts for any Goods and/or Services provided up to and including the effective date of termination in accordance with the procedures in this Agreement with respect to timing of invoicing and payment, and the Parties shall have no further rights or obligations under the Agreement, other than such rights and obligations arising prior to the date of such termination, including any rights of a non-breaching Parties at law or in equity, provided that the provisions of this Section 1.6, Section 6.3, Articles 7 through 10, Section 11.1, Section 11.3, Sections 11.9, and Sections 11.12 through 11.14 shall survive such termination and continue in effect.

Provisions Specifically Applicable to Goods.

2.1 Provision of Goods. Supplier shall provide the goods described in the Purchase Order or any appendices or exhibits comprising part of this Agreement ("Goods") in accordance with the terms of this Agreement.

2.2 Standards of Performance for Delivery of Goods. Supplier shall deliver the Goods in accordance with the specifications set forth in this Agreement. Supplier agrees that Dartmouth College shall have the right to reject any Goods that do not meet those specifications but that such rejection will not relieve Supplier of its obligation to provide conforming Goods.

2.3 Inspection. Dartmouth College may inspect and test all Goods delivered, and Supplier agrees to provide reasonable assistance for such inspections and tests, whether before or after payment is made. If any Goods are defective or do not conform to this Agreement, Dartmouth College may cancel this Agreement as to those Goods, accept the Goods at a price reduction acceptable to Dartmouth College and Supplier, or reject the Goods completely. Supplier agrees to pay the costs and to assume all risk associated with rejected Goods, including but not limited to, costs of storage, transportation charges for return, and delivery of replacements. Dartmouth College's lack of inspection of any Goods does not waive its right to contest the condition of Goods later determined to be unacceptable.

2.4 Delivery. Supplier will deliver the Goods in a timely manner in accordance with the timetable set forth in this Agreement.

2.5 Risk of Loss: Supplier assumes and retains all risk of loss with respect to the Goods ordered and all work in progress, materials, and other items related to this Agreement until the same are accepted by Dartmouth College. Supplier assumes and retains all risk of loss of, or damage relating to, any Goods, materials, and other items rejected by Dartmouth College until the same are received by Supplier or finally accepted by Dartmouth College.

2.6 Recalls. Supplier will be responsible for all costs and expenses associated with any Goods that are subject to a manufacture-prompted product recall.

2.7 Shipping. Supplier shall pack, mark and ship all Goods in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained herein and the requirements of common carriers. All Goods will be shipped FOB destination, unless instructed otherwise by Dartmouth College. Any and all freight charges must be stated separately with respect to each item shipped. Shipments are not to be sent C.O.D.

2.8 Documents. All documents provided by Supplier will include the Purchase Order Number governing Supplier's sale to Dartmouth College of the Goods subject to this Agreement. Supplier will provide to Dartmouth College all shipping papers, including without limitation the original bill of lading, express receipt, memorandum of shipment and packing slip (stating "Order Complete" if the last one in the Purchase Order), to Dartmouth College prior to shipment arrival or included in the shipment.

2.9 Safety Data. Supplier shall notify Dartmouth College in writing within three (3) business days of issuance of the Purchase Order by Dartmouth College of any local, state, and/or federal laws or regulations relating to hazardous or toxic substances or hazardous wastes, or any other applicable environmental, health, or safety laws or regulations applicable to the shipping, handling, use, storage, disposal or any other activity pertaining to the Goods to be furnished hereunder. Supplier shall provide Dartmouth College handling instructions, applicable warnings, and material safety data sheets with each shipment of Goods.

Provisions Specifically Applicable to Services.

3.1 Scope of Services. Contractor shall perform the services described in the Purchase Order or any appendices or exhibits comprising part of this Agreement ("Services") in accordance with the terms of this Agreement.

3.2 Standards of Performance for Services; Replacement of Supplier Personnel. Supplier shall perform the Services with promptness and diligence in accordance with any timetable or schedule agreed to by the Parties. Supplier shall assign qualified individuals with suitable training, education, experience and skills to provide the Services. In the event that Dartmouth College desires to have any of Supplier's personnel who are involved with the

delivery of Goods or Services replaced, Dartmouth College shall inform Supplier and Supplier shall remove such personnel in accordance with Dartmouth College's request and will manage the transition of replacement personnel to minimize the impact on the performance of the Services. Supplier shall have a reasonable period of time to replace such personnel with another person with suitable training, education, experience and skills to provide the Services.

Compliance with Laws and Dartmouth Policies; Equal Opportunity.

4.1 Compliance with Laws and Dartmouth College's Policies. Supplier shall comply with all applicable laws with respect to its performance under this Agreement, including, but not limited to, environmental laws and regulations and those pertaining to labor, wages, hours and other conditions of employment, and current OSHA requirements. While on Dartmouth College's premises, Supplier and its employees, agents and representatives shall comply with all safety and security regulations of Dartmouth College and take all necessary precautions to prevent injury or damage to persons or property. It is the policy of Dartmouth College to maintain a drug-free workplace. Supplier agrees that it will inform all of its employees, contractors and agents that Dartmouth College seeks to ensure that all individuals are free from the effects of drug use while performing Services, and that drugs are not permitted on Dartmouth College's premises.

4.2 EQUAL OPPORTUNITY. If Dartmouth College requires Goods and/or Services ordered pursuant to this Agreement in order to perform under a contract or subcontract with the federal government, Supplier shall comply with and be subject to all applicable laws, rules and regulations, including but not limited to, all federal acquisition regulations, Executive Orders 11246 and 11375 as amended from time to time, and the rules and regulations promulgated thereunder, including the provisions set forth in 41 CFR §§60-1.4(a), 60-300.5(a), and 60-741.5(a) and the rules, regulations and guidelines as the State of New Hampshire or the United States issues to implement these regulations. During the performance of this Agreement, Supplier agrees to comply with the aforementioned laws, rules and regulations as follows: Supplier will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, sexual orientation, gender identity or expression, age, disability, or status as a disabled veteran, recently separated veteran, other protected veteran, Vietnam era veteran, and/or Armed Forces Services medal veteran (each individually referred to as "Qualified Covered Veteran" and collectively as "Qualified Covered Veterans"). Supplier will take affirmative action to employ, advance in employment, and treat all qualified individuals without discrimination based upon their race, color, sex, religion, sexual orientation, national origin, age, disability, or status as a Qualified Covered Veteran. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, right of return from layoff and rehiring, rates of pay or other forms of compensation and changes in compensation, leave of absence, sick leave or any other leave, and selection for training including apprenticeship.

(A) All qualified suppliers must be in compliance with the above and submit a written statement confirming conformance at the time of bid solicitation.

(B) An affirmative action effort by all qualified suppliers will be made to identify women, minority, disabled, Qualified Covered Veteran-owned vendors and suppliers who are capable of fulfilling Buyer's requirements.

Compensation; Terms of Payment.

5.1 Fee and Expenses. Dartmouth College shall pay fees to Supplier ("Fees"), and reimburse Supplier for its reasonable expenses ("Expenses"), as set forth in this Purchase Order.

5.2 Payment Terms. Supplier shall provide Dartmouth College with detailed invoices for Fees and Expenses and Dartmouth College shall pay the undisputed portion of such invoices within forty-five (45) days following receipt or as otherwise determined by the Parties.

Warranties.

6.1 Financial Capability. Supplier represents and warrants to Dartmouth College that it is financially capable of fulfilling its obligations under this Agreement.

6.2 No Legal Impediments to Performance; Non-Infringement. Supplier represents and warrants to Dartmouth College that (a) there are no legal or administrative proceedings pending or threatened against Supplier that could adversely affect Supplier's performance hereunder; (b) the execution and delivery of this Agreement does not, and the performance by Supplier or any of its employees or contractors of any of Supplier's obligations hereunder do not and will not, (i) violate any provisions of Supplier's or any contractor's organizational documents, (ii) violate any law or regulation applicable to Supplier or any of such employees or contractors, (iii) result in the breach of any provisions of, or constitute a default under any agreement, fiduciary duty, or other obligation to which Supplier or any of its owners, officers, employees or contractors is or may be bound, or (iv) if applicable, impair the acceptance of any resulting data from the Services by any governmental or regulatory authority; (c) each of Supplier and its employees and contractors have the full and unrestricted right to disclose any information, know-how, materials, knowledge or data disclosed by Supplier or any of such employees and contractors to Dartmouth College in the performance of this Agreement; (d) neither the use by Dartmouth College of any Goods or other Deliverables (as defined in Section 9.4.3) provided to Dartmouth College under this Agreement nor the acceptance by Dartmouth College of the Services provided hereunder will infringe upon any Intellectual Property Right (as defined in Section 9.4.1) of any person or entity; and (e) no Deliverable shall contain any libelous, unlawful or otherwise actionable matter.

6.3 Specific Warranties for Goods. Supplier warrants that the Goods (a) will be new, (b) will conform to the specifications in the Purchase Order, any appendix or exhibit or as otherwise provided by this Agreement, (c) will be free from all liens, defects, claims and encumbrances permitted or caused by or through Supplier, and (d) will be merchantable and fit for their intended purpose. In addition, Supplier agrees that (a) the Goods will be warranted for such time, under such conditions, and otherwise in accordance with the

warranties given by the manufacturer(s) of the Goods, (b) such warranties will pass through to the benefit of Dartmouth College, and (d) Supplier will process all warranty claims against manufacturer(s) on behalf of Dartmouth College. Supplier shall correct all warranty or defect issues within ten (10) days of written notice from Dartmouth College.

6.4 Performance of Services. Supplier warrants that it will perform all Services in a professional and workmanlike manner consistent with industry standards.

6.5 Certification Regarding Debarment, Suspension and Other Responsibility Matters. By execution of the Agreement, Supplier warrants that it has certified compliance regarding debarment, suspension, and other responsibility matters - primary covered transactions pursuant to 32 CFR Ch. I (7-1-13 Edition) as amended from time to time, where applicable.

Insurance Requirements.

7.1 Coverage Requirements. Supplier agrees to maintain and provide evidence of current liability insurance coverages with limits that meet or exceed Dartmouth College's current minimum insurance requirements, including workers' compensation where applicable, and that lists the Trustees of Dartmouth College as an additional insured with respect to Supplier's general liability policy. If any insurance policy is written on a claims-made basis, Supplier agrees that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time this Agreement is terminated. Insurers shall have an A.M. Best rating of A or greater and policy surplus acceptable to Dartmouth College. Supplier agrees to abide by the minimum insurance requirements and vendor compliance requirements set forth on Dartmouth College's website at: <http://www.dartmouth.edu/~rmi/rmsinsurance/compliance.html>.

7.2 Certificate of Insurance. Supplier shall provide Dartmouth College a certificate of insurance evidencing that the foregoing insurance is in place and will not be cancelled or reduced during the term of this Agreement, or if applicable, the three (3) year period described in the second sentence of Section 7.1, without the insurer giving Dartmouth College such number of days' prior written notice as such policy permits. Such certificate of insurance must be submitted to Trustees of Dartmouth College, Office of Risk and Internal Controls Services, 53 South Main Street, #212, Hanover, NH 03755.

Indemnification.

8.1 Supplier Indemnification Obligation. Supplier agrees to indemnify, defend and hold harmless Dartmouth College, its affiliated corporations, and its and their directors, trustees, officers, employees and agents from and against any damages, losses, liabilities, penalties and expenses, including without limitation attorneys' fees, (collectively, "Damages") resulting or arising from or connected in any way with the performance or non-performance of its obligations under this Agreement.

8.2 Procedures Regarding Third Party Claims. Dartmouth College shall notify Supplier in writing within thirty (30) days of the assertion by a third party of any claim that is subject to

indemnification under Section 8.1. Failure to notify Supplier shall not result in the waiver of indemnity rights with respect to such claim unless such failure materially prejudices the ability of Supplier to defend such claim and only to the extent thereof. The Parties shall cooperate with each other in the defense and settlement of any such claim. In the event Supplier does not accept the defense of any matter, Dartmouth College shall have the right to defend such matter. No Party who has assumed the defense of any matter shall settle the matter without the consent of the indemnifying Party or the Party seeking indemnification, as the case may be, which consent shall not be unreasonably withheld, conditioned or delayed.

Use of Dartmouth College's Name; Supplier Confidentiality Obligations; Intellectual Property Matters.

9.1 Restrictions on Use of Dartmouth College's Name. The use by Supplier or any of its employees, agents or contractors of the name, trademark, trade name, logo, or any adaptation thereof, of Dartmouth College in any publication, press release, advertisement, announcement, promotional material, or in connection with any promotional activity requires the prior written consent of Dartmouth College. Notwithstanding the foregoing, Supplier may list Dartmouth College as a customer in its customer list or promotional literature as long as there are at least five other customers listed in the same manner as Dartmouth College is listed.

9.2 Confidentiality Obligations. "Confidential Information" means (a) any information or data disclosed by, or on behalf of, Dartmouth College to Supplier in connection with this Agreement, which (i) if in tangible form, is marked as proprietary or confidential, (ii) if in oral or visual form, is identified at the time of disclosure as proprietary or confidential, (iii) by its nature, or under circumstances surrounding its disclosure, should be reasonably considered confidential, or (iv) includes personally identifying information as defined in the applicable state and federal privacy laws, including but not limited to the Gramm-Leach-Bliley Act, the Family Educational Rights and Privacy Act ("FERPA"), the Payment Card Industry Data Security Standards, and the National Automated Clearing House Association Standards pertaining to electronic payments, as amended, together with all rules and regulations promulgated thereunder; or (b) the provisions of this Agreement. Confidential Information shall not include information that is (a) rightfully obtained without restriction by Supplier from a third party who is not under a confidentiality obligation to Dartmouth College; (b) already in the possession of Supplier prior to receipt from Dartmouth College, any of Dartmouth College's contractors other than Supplier as evidenced by Supplier's records and is not the subject of a separate confidentiality obligation; or (c) can be demonstrated to be in the public domain through no fault of Supplier. If Supplier will have access to personally identifiable information from education records as those terms are defined in FERPA, Supplier agrees to enter into an addendum to this Agreement in order for Dartmouth College and Supplier to comply with the requirements of FERPA. Supplier hereby agrees to observe Dartmouth College's information privacy and data security rules and policies with regard to all Confidential Information, and shall not disclose Confidential Information to third persons or entities without the prior written consent of the Dartmouth College, except (a) when required to be

disclosed by court rule or governmental law or regulation, provided that Supplier gives Dartmouth College prompt notice of any such requirement and cooperates with Dartmouth College in attempting to limit such disclosure, to the extent Supplier may do so in compliance with court rule or governmental law or regulation and (b) that Supplier may disclose the existence and general nature of this Agreement, but not any specific terms hereof. To access Dartmouth College's information and data security requirements, please visit: <http://www.dartmouth.edu/comp/about/departments/info-security/information-security-policy.html>. For questions regarding compliance with Dartmouth College's data and information security requirements, please contact its Chief Information Security Officer, Steve Nyman, at (603) 646-9685 or via email at: steven.m.nyman@dartmouth.edu.

9.3 Injunctive Relief. Supplier acknowledges and agrees that a breach of Section 9.1 or 9.2 will cause irreparable damage to Dartmouth College. Accordingly, Supplier agrees that in the event of any breach by Supplier of Section 9.1 or 9.2, in addition to any other remedy that may be available at law or in equity, Dartmouth College will be entitled to injunctive relief without the requirement to post any bond or security and without the necessity of having to establish the failure of legal remedies.

9.4 Intellectual Property Matters.

9.4.1 "Intellectual Property Rights" means all intellectual property rights worldwide arising under statutory or common law, whether or not registered or perfected, including without limitation all (a) rights associated with works of authorship, including copyrights, copyright applications and copyright registrations and moral rights, (b) rights associated with indicia of source, including trademarks, trade name and trade dress, (c) rights relating to patents and patent applications, (d) rights relating to the protection of trade secrets, know-how and information that is confidential, and (e) renewals and extensions or any of the foregoing, whether now existing or hereafter filed, issued or acquired.

9.4.2 All Intellectual Property Rights held by each Party prior to the commencement of this Agreement shall remain the sole property of such Party.

9.4.3 Unless otherwise expressly provided to the contrary, and subject to Section 9.4.2 above, all right, title and interest in and to any items specified in the Agreement to be furnished by Supplier to Dartmouth College ("Deliverable"), including without limitation, the Intellectual Property Rights therein, shall vest in Dartmouth College and each Deliverable shall be deemed to be a work made for hire. To the extent that title to any such Deliverable may not, by operation of law, vest with Dartmouth College or such Deliverable may not be considered a work for hire, Supplier hereby irrevocably transfers and assigns any and all of his right, title and interest in and to such Deliverable, including without limitation any and all Intellectual Property Rights therein, to Dartmouth College. Supplier agrees to (a) cooperate with and assist Dartmouth College in applying for, and to execute any applications or assignments reasonably necessary to obtain, any patent, copyright, trademark or other statutory protection for any Deliverable in Dartmouth College's name as Dartmouth College shall

request from time to time, and (b) execute such documents and take such other actions as Dartmouth College shall reasonably request from time to time to confirm and enforce its rights under this Section 9.4.3. Any cooperation or assistance Supplier provides pursuant to this Section 9.4.3 will be at Dartmouth College's sole expense.

Governing Law; Venue; Litigation Costs.

10.1 Governing Law; Venue and Consent to Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of New Hampshire without reference to its conflict of laws rules. Supplier agrees that it shall not bring any suit against Dartmouth College, its trustees, officers, employees or agents with respect to this Agreement in any court other than a court of the State of New Hampshire or the United States Federal District Court for the State of New Hampshire. Supplier consents to the jurisdiction of such courts in the event that Dartmouth College shall bring any suit against Supplier with respect to this Agreement.

10.2 Attorneys' Fees. In the event of litigation between the Parties arising from or related to the Services, the prevailing party shall be entitled to recovery of all reasonable costs and attorneys' fees.

Miscellaneous.

11.1 Right to Audit. Supplier shall maintain auditable records of all Goods and and/or Services associated with this Agreement and will make such records available to Dartmouth College upon request. The records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter.

11.2 Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement, other than a failure to pay, due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, terrorism, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the delayed party through the use of alternate sources, workaround plans or other means ("Force Majeure Event"). For any Force Majeure Event, the non-performing party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and provided the non-performing party: (a) gives the other party prompt notice of such cause, describing at a reasonable level of detail the circumstances causing such failure or delay, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If either Party is unable to perform its obligations hereunder for a period of thirty (30) consecutive days as a result of a continuing Force Majeure Event, the other party may terminate this Agreement effective on notice to the non-performing party.

11.3 Employee Hiring and Non-Solicitation. The Parties acknowledge that each Party has invested substantial time and expense in recruiting, hiring, training and retaining employees.

The Parties agree not to hire any of the other Party's employees or agents who are involved with the Services and/or Goods during the term of this Agreement and for twelve (12) months thereafter, without the other Party's prior written consent, provided, that the foregoing shall not be deemed to prohibit a Party from interviewing, make an offer of employment or other engagement, or engaging or hiring, any person who responds to a general publicly available advertisement or solicitation initiated on or behalf of such Party, such as a website posting. For purposes of this Agreement, "to hire" means to hire as an employee or otherwise engage or retain as an independent contractor or consultant.

11.4 Assignment. Supplier shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval from Dartmouth College.

11.5 Subcontracting. Supplier shall not subcontract any portion of the Services without prior written approval from Dartmouth College. Supplier shall be responsible for each subcontractor's compliance with all the terms of this Agreement, and Supplier shall not be relieved of any of its obligations hereunder as result of its engagement of any subcontractor.

11.6 Dispute. Supplier will continue to perform this Agreement during the pendency of any dispute or legal proceeding between or involving Supplier and Dartmouth College.

11.7 Non-Exclusivity. Unless otherwise specified by the Parties, the Goods or Services will be provided on a non-exclusive basis and Dartmouth College may procure goods or services similar or identical to the Goods or Services from sources other than Supplier.

11.8 Time is of the Essence. Supplier understands that time is of the essence in performing the Services and/or delivering the Goods and that failure to perform this Agreement on time and as agreed could cause substantial disruption and expense to Dartmouth College.

11.9 Remedies. The Parties will have all rights and remedies available to it at law and in equity. Such remedies are cumulative and may be exercised concurrently or separately. The exercise of one remedy will not constitute an election of the exclusion of other remedies.

11.10 Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been delivered to a Party upon: (a) personal delivery to that Party; (b) if simultaneously mailed as provided herein, upon: (i) electronically confirmed delivery by facsimile to the telephone number provided by the Party for such purposes; or (ii) electronic mail transmission to the electronic mailbox provided by the Party for such purposes; (c) upon deposit for overnight delivery with a bonded courier holding itself out to the public as providing such services, with charges prepaid; or (d) four (4) business days following deposit with the United States Postal Service, postage prepaid, and in any case addressed to the Party's address set forth on the Purchase Order, or to any other address that the Party provides by notice, in accordance with this Section to the other Party.

11.11 Amendments; Waivers. This Agreement may be amended only by a written document signed by authorized representatives of the Parties. No waiver of any provision of this

Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against which enforcement of the waiver is sought. No failure by a Party to exercise, and no delay by a Party in exercising, any right hereunder will operate as a waiver of such right, nor will any single or partial exercise by a Party of any right hereunder preclude any future exercise of that right, or any other right, by that Party.

11.12 Binding Effect; No Third Parties Beneficiaries. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer on any person or entity, other than the Parties and their respective successors and permitted assigns, any rights hereunder.

11.13 Severability. If any term or condition of this Agreement is determined to be invalid or unenforceable in whole or in part for any reason, this Agreement shall be reformed to be valid and enforceable consistent with the intention of the parties as expressed herein to the greatest extent permitted by law.

11.14 Captions. The captions and headings used in this Agreement are for convenience only and do not limit or amplify the terms and provisions hereof.