



Purchase Order Terms & Conditions

1. General

The following terms and conditions, together with such terms as are set forth in the Purchase Order Form ("Form"), with such plans, specifications or other documents as are incorporated by reference, as amended in any subsequent authorized writing from the University of the Sciences in Philadelphia ("Buyer"), shall constitute the entire contract (the "Purchase Order") between Buyer and Supplier. If bid documents, performance specifications, technical product descriptions or other similar descriptive materials submitted by Supplier in connection with the Purchase Order, or Supplier's proposal, have been incorporated by reference, these shall not be deemed to supersede any contrary requirements of Buyer, but to the extent that such materials are not inconsistent with Buyer's requirements, they shall constitute a part of the basis of this agreement. If this Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this offer and notice of objection to any different or additional terms in any response to this offer is hereby given. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offeror's assent to any different or additional terms contained or referenced in this Purchase Order. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties. This Purchase Order shall be deemed to have been accepted by the Supplier upon receipt by the Buyer of any writing, including a writing transmitted by fax or other means of electronic transmission, indicating acceptance, or by any of the following: (i) shipment of the goods or any portion thereof, (ii) commencement of any work on site or (iii) performance of any services hereunder.

2. Payment

Payment terms are as set forth in the Form. If no terms are specified, the net amount shall be payable within 30 days after the later of (i) delivery and acceptance of goods or other performance conforming with the terms of this Purchase Order and (ii) invoicing.

3. TIME

If delivery or completion dates can not be met, Supplier shall inform Buyer immediately. Such notice shall not, however, constitute a change to the delivery or completion terms of this Purchase Order unless Buyer modifies this Purchase Order in writing. If any item is not received or if any element of the work is not completed by the date specified, the Buyer, at Buyer's option and without prior notice to Supplier, may either approve a revised date or may cancel this Purchase Order and may obtain such goods or work elsewhere and in either event the Supplier shall be liable to the Buyer for any resulting loss incurred by the Buyer. Supplier's sole remedy for a delay caused by Buyer shall be an extension in the time for Supplier's performance equal to the duration of Buyer's delay. **TIMING OF DELIVERY AND/OR PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THIS PURCHASE ORDER.**

4. Improper Performance and Disputes

In addition to other remedies provided by law, Buyer reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Supplier fails to deliver all or any part of the goods or perform any of the work in accordance with the terms and conditions of this Purchase Order. Acceptance of any part of the Purchase Order shall not bind the Buyer to accept any future shipments or work, nor deprive it of the right to return goods already accepted. At Buyer's option, if Buyer so elects in its sole discretion with regard to any particular dispute, any dispute arising in connection with this Purchase Order shall be resolved by arbitration in Philadelphia, PA by a single JAMS arbitrator using JAMS Streamlined Arbitration Rules. The arbitrator shall have

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the power to issue binding equitable and monetary relief. The University and Consultant shall split equally the expenses and fees of the arbitrator and the Parties shall each bear their own legal expenses, however, the party that does not prevail in such arbitration shall pay the costs of the prevailing party that would be taxable under the Federal Rules of Civil Procedure. Any arbitration award may be enforced in any court having jurisdiction over the other party, however, all costs, expenses and attorneys' fees incurred in enforcing the award in any court action or in contesting an arbitration award shall be borne solely by the party that did not prevail in the underlying arbitration.

All disputes the Buyer elects not to submit to arbitration shall otherwise be resolved in and only in the Court of Common Pleas of Philadelphia County, PA as the exclusive judicial forum. BUYER AND SUPPLIER WAIVE THEIR RIGHT TO A JURY TRIAL WITH REGARD TO ANY DISPUTE ARISING IN CONNECTION WITH THIS PURCHASE ORDER.

5. Patents

Supplier agrees, upon receipt of notification, to promptly assume full responsibility for defense of any claim, suit or proceeding which may be brought against Buyer, its agents or customers for alleged patent infringement as well as for any alleged unfair competition resulting from similarity in design, trademarks or appearance of merchandise furnished hereunder and Supplier further agrees to indemnify and defend Buyer, its agents and customers against any and all expense, losses and damages, including court costs and attorney's fees resulting from any such claim, suit or proceeding, including any settlement.

6. Invoices

Suppliers invoice must be submitted to the address specified on the purchase order. Invoices must indicate the purchase order number, buyer's name, date, description of services or items, sizes, quantities, unit prices, extended totals and place of delivery. Invoices will be vouchered for payment after acceptance of the goods and receipt of a complete and accurate invoice (whichever is later) within thirty calendar days.

7. Taxes

The University is generally exempt from Pennsylvania sales tax and transportation taxes. Exemption certificates will be provided upon request.

8. Warranty

Supplier expressly warrants all (i) goods delivered under this Purchase Order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered and (ii) work performed under this Purchase Order to be in conformity with all plans, specifications and other data incorporated as part of this Purchase Order. These express warranties shall not be waived by reason of acceptance or payment by the Buyer. This Purchase Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the Commonwealth of Pennsylvania (the "UCC") providing any protection to Buyer for goods, including but not limited to all warranty protection (express or implied) and all of Buyer's remedies under the UCC. All goods and work shall also be subject to any stricter warranties specified in the Purchase Order or in other materials incorporated by reference.

If within 12 months after the delivery any merchandise is found not to conform to the foregoing warranty, Buyer, in addition to the other rights it may have under warranty or otherwise, shall have the right to return such merchandise at Supplier's expense including the cost of unpacking, examining, repacking and reshipping.

9. Price Warranty

Seller warrants that the prices for the articles sold Purchaser hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such article during the term of this order, Seller agrees to reduce the price herein correspondingly. Seller warrants that prices shown on this purchase order shall be complete, and no additional charges of any type shall be added without the Purchaser's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, storage, insurance, boxing and crating.

10. Indemnity and Hold Harmless

From and after the date of this Purchase Order, the Supplier agrees to indemnify, defend and hold harmless the Buyer, its trustees, officers, agents, employees, and students, from all losses, liabilities, claims, damages, costs and/or expenses (including, without limitation, attorneys' fees) regardless of by whom such claim or liability may be asserted, for personal injury (including death), or loss or damage to property, or otherwise that may result directly or indirectly from the use, possession or ownership of the goods or from the services provided by Supplier pursuant to this Purchase Order.

With regard to Supplier's obligation to defend, the Buyer shall have the right to select the legal counsel whom Supplier shall provide to defend any Indemnified Party, subject to Supplier's approval, which shall not be unreasonably withheld, of the qualifications of such legal counsel and the reasonableness of counsel's hourly rates as compared to the rates of attorneys with similar experience and qualifications in the relevant area of legal expertise and in the jurisdiction where the claim will be adjudicated. If the Buyer elects, in its sole discretion, to retain separate legal counsel, in addition to or in lieu of the counsel to be provided by Supplier, then all costs and expenses incurred by the Buyer for such separate counsel shall be borne by the Buyer and the Supplier shall reasonably cooperate with the Buyer and its separate legal counsel in the investigation and defense of any such claim or action. Supplier shall not settle or compromise any claim or action giving rise to Claims in a manner that imposes any restrictions or obligations on Buyer without Buyer's prior written consent. If the Buyer elects to require that Supplier defend a Claim pursuant to this paragraph, and Supplier fails or declines to assume the defense of such Claim within thirty (30) days after notice thereof, the Buyer may assume the defense of such Claim for the account and at the risk of Supplier, and any Liabilities related thereto shall be conclusively deemed a liability of Supplier. The indemnification rights of the Indemnified Parties contained herein are in addition to all other rights which such Indemnified Party may have at law or in equity or otherwise.

11. Assignment/Subcontracting

Neither party shall have any right to assign this Purchase Order or any benefits arising from this Purchase Order without prior written consent of the other party and, unless otherwise agreed upon in writing, the rights of any assignee shall be subject to all set-offs, counterclaims, and other comparable rights arising hereunder. Except as agreed in writing by the Buyer Supplier shall not delegate or subcontract the work on any item of material or service to be delivered or performed under this Purchase Order.

12. Insurance

In connection with the Purchase Order, Supplier, at its own cost and expense, shall obtain and maintain in force during the term of this Purchase Order, the following insurance coverage:

- a. A policy of workers' compensation insurance, in amounts required by law, covering all officers and employees of Supplier who are in any way engaged in or connected with the Purchase Order, and employer's liability insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000). Supplier shall require its agents, sub-suppliers and subcontractors, who are in any way engaged in or connected with the Purchase Order to maintain the same insurance as required herein of Supplier.

- b. A policy of commercial general liability insurance with broad form property damage endorsement, personal injury and products completed operations coverage, affording protection in an amount of not less than Two Million Dollars (\$2,000,000) per incident and in the aggregate, with respect to personal injury, death, or damage to property.
- c. If this Purchase Order contemplates professional services, a policy of professional liability insurance, including errors and omissions, affording protection of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000) in the aggregate.
- d. A policy of comprehensive automobile liability insurance covering the operation of all motor vehicles used by Supplier or its agents in connection with this Purchase Order, affording protection in an amount of not less than One Million Dollars (\$1,000,000) combined single limit with respect to personal injury, death, or damage to property.
- e. Umbrella/Excess Liability insurance in an amount not less than One Million Dollars (\$1,000,000) each occurrence.

All of these insurance policies shall be issued by insurance companies with an AM Best rating of "A" or higher and a financial strength rating of VII or higher, or equivalent ratings provided by a disinterested, generally recognized rating agency, which companies shall be licensed or permitted to conduct business in the Commonwealth of Pennsylvania. The commercial general liability, comprehensive auto liability and umbrella/excess liability policies shall name University of the Sciences as an additional insured, and shall be Such coverage shall be primary over and noncontributory with any other valid and collectible insurance, deductibles or self-insured retentions program maintained by the University of the Sciences in Philadelphia.

A Waiver of Subrogation is granted in favor of the University of the Sciences in Philadelphia on the General Liability and Workers' Compensation policies. Supplier waives all rights against the University of the Sciences in Philadelphia to the extent of any insurance required to be carried above. Policies of insurance must be endorsed, as needed, to provide such waivers. Such waivers will be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Such waiver shall also apply to the extent that any deductible or self-insured retention applies to any such policy and to the extent that the insured party is underinsured.

Supplier shall maintain appropriate insurance for its account on all of its owned, leased and rented property, equipment and tools including any property, equipment and tools of its employees.

Upon request, Supplier shall furnish to Buyer a current certificate of insurance for each of the policies required above as well as a full copy of that policy. Insurance coverage(s) provided under this Purchase Order shall not limit or restrict in any way the liability of Supplier arising under or in connection with this Purchase Order. Such insurance shall not be canceled or terminated without ten (10) days prior written notice of any cancellation or termination.

13. Regulatory Compliance and Non-Discrimination in Employment

The Supplier must comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction ("Laws") including without limitation the applicable provisions of the following and any Laws referenced in the General Conditions, all as amended and in effect as of the date of this order: the Anti-Kickback Act (41 U.S.C. Sections 51 *et seq.*), the Civil Rights Act of 1964 (42 U.S.C. Section 2000a *et seq.*), Executive Orders 11246 and 11375, the Age Discrimination in Employment Act of 1967 (29 U.S.C. Section 621 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. Sections 701 *et seq.*), the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*), and of all other applicable Laws dealing with labor and wages, workmen's compensation, employer liability, unemployment compensation, old age benefits, safety, antitrust and anti-collusion, fair trade, the environment, equal employment opportunity and discrimination on the basis of race, color, religion, gender, national origin, veteran's status or disability.

In the event of the Supplier's non-compliance with any of the above laws, rules, regulations, or orders or similar laws, this Purchase Order may be cancelled, terminated, or suspended in whole or in part at the Buyer's discretion, and the supplier may be declared ineligible for further contracts.

14. Confidentiality and Privacy Requirements

Unless otherwise defined herein, Confidential Information shall include sensitive personally identifiable information (e.g. social security numbers, account numbers, grades, student records, etc.) and proprietary information (e.g. financial data, business plans, trade secrets, and copyrighted materials) provided by, or on behalf of the Buyer, in any form, including oral or written information, whether presented in text, graphics, charts, or other formats.

Supplier shall comply with all applicable laws, ordinances, statutes regulations and other requirements established by federal, state and local governmental authorities regarding privacy and security protections for Confidential Information. Applicable statutes may include but are not limited to The Family Education Rights and Privacy Act, the Gramm-Leach-Bliley Act and The Health Insurance Portability and Accountability Act.

Supplier shall not use, provide, trade, give away, barter, lend, sell, or otherwise disclose Confidential Information, and shall not make any copies of such data or any type whatsoever, in readable or encrypted form, or in individually identifiable or aggregate form, except

1. as necessary for the services described in this Purchase Order to be performed; or
2. as expressly permitted by Buyer in a separate writing.

[Attached as appendix A is a complete description of the confidentiality and privacy requirements of the Buyer. That description is incorporated into this paragraph as though fully set forth here.]

15. Termination Without Cause

Buyer, in its sole discretion and without cause, may terminate this Purchase Order, in whole or in part, at any time without incurring liability to Supplier for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for work completed on site or goods delivered. Payment due shall be a percentage of the purchase price equal to the percentage of the work completed and/or any unit prices in the purchase price specified for goods delivered. Supplier's warranties, and Supplier's liability for defective or non-conforming work or goods, as well as sections 5, 6, 7, 8, 9, 11, 13, and 16 of these Terms and Conditions, shall survive termination and remain in full force and effect.

16. Force Majeure

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrence beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

17. Risk of Loss

Unless the Purchase Order expressly states otherwise, all goods shall be shipped FOB: the "Ship to" location designated in the Form. Risk of loss shall not pass to Buyer until goods called for in this

Purchase Order actually have been received and accepted by the Buyer at the destination specified herein. Supplier assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if Buyer has agreed to pay freight, express or other transportation charges.

18. FREIGHT

Unless expressly otherwise specified the freight terms are F.O.B Destination, Freight Prepaid.

19. Additional Provisions for Work Performed on Site

The Supplier shall maintain on the Site at all times a sufficient work force to carry out its obligations in an efficient and timely manner. The Supplier shall employ only competent, skilled, reliable and honest workmen who will work in harmony with other workmen on the Site. All persons furnished by Supplier shall be deemed Supplier's employees or agents, and Supplier shall comply with all applicable statutes regarding worker's compensation, employer's liability, unemployment compensation, and/or old age benefits and all other applicable laws relating to or affecting the employment of labor. At the Buyer's instruction, the Supplier shall promptly remove from the Site any employee who, in the Buyer's opinion, represents a threat to the safety or progress of the Project or persons on the Site, or who has engaged in any improper conduct, specifically including (without limitation) conduct which the Buyer perceives as constituting harassment of students or other persons.

Supplier shall secure all materials and the site where Work is performed, and shall leave all areas broom clean (unless a more stringent cleanliness standard is set forth in documents that are incorporated in this Purchase Order by reference) and in a safe condition at the end of each work day and upon completion of the Work. In case of dispute, Buyer may remove waste at Supplier's expense.

Supplier is responsible for securing all applicable licenses and permits, if any, and complying therewith, and the price shall be deemed to include the cost of these items.

Supplier shall exclude from the Site any dishonest, dangerous or otherwise unqualified persons. When required in writing by Buyer, Supplier shall ensure that federal, state and county of residence criminal background checks are conducted on all persons performing Work at the Site.

In the event of an emergency threatening health, life or property, the Supplier shall take such action as may be necessary to save lives and protect persons from injury and, this being done, to protect and preserve property. The Supplier shall notify the Buyer of any such emergency as promptly as is practicable under the circumstances.

Supplier, for itself and all of its subcontractors, hereby waives all rights under the Contractor and Subcontractor Payment Act and agrees that the Act shall not be applicable to this order. To the extent that this waiver is not enforceable, payment terms specified in the Purchase Order Form and these Terms and Conditions shall constitute "terms otherwise agreed by the parties." Contractor agrees to include this provision in all subcontracts issued related to the subject Purchase Order.

20. Authorized Signature

Unauthorized or incomplete signatures do not constitute a legally enforceable agreement. Authorized signatures can be confirmed with the Purchasing Manager or Controllers Office of the University.

21. Entire Agreement & Interpretation

This Purchase Order and these Terms and Conditions constitute the entire agreement between the parties. The Buyer's Purchase Order and these Terms and Conditions control over any other document

sent by either party, including any terms and conditions on Seller's invoices, Seller's purchase order, or any other document not incorporated herein.

If any term or provision of these Terms and Conditions or the application thereof shall be invalid or unenforceable, the remainder of these Terms and Conditions shall be unaffected thereby and each remaining term or provision shall be valid and be enforced to the fullest extent permitted by law.

These Terms and Conditions shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of laws principles.

APPENDIX A

UNIVERSITY CONFIDENTIALITY AND PRIVACY REQUIREMENTS

A. **Definitions:** When used in this document, the following definitions shall apply:

Confidential Information – Sensitive Personally Identifiable Information and Proprietary Information provided by, or on behalf of the Buyer, in any form, including without limitation oral or written (paper or electronic) whether presented in text, graphics, charts or other formats.

Sensitive Personally Identifiable Information (“SPII”) – Information relating to an individual that reasonably identifies the individual and, if compromised, could cause harm to that individual or to Buyer. Examples may include, but are not limited to: Social Security Numbers, credit card numbers, bank account information, student grades or disciplinary information, salary or employee performance information, donations, patient health information, information Buyer has promised to keep confidential, and account passwords or encryption keys used to protect access to SPII. SPII shall not include information that can not reasonably be used to identify the individual to whom it pertains.

Proprietary Information (“PI”) – Data, information or intellectual property in which the Buyer has an exclusive legal interest or ownership right which, if compromised could cause harm to Buyer. Examples may include, but are not limited to, business planning, financial information, trade secret, copyrighted material, and software together with comparable material from a third party when the Buyer has agreed to keep such information confidential.

B. **Service Provider** – The Supplier under the Purchase Order is a Service Provider hereunder.

In General: Service Provider agrees to maintain strict confidentiality concerning Confidential Information in accordance with the requirements and conditions set forth in this Section.

Exclusions: These requirements shall not apply to information or data which:

1. is lawfully possessed by Service Provider prior to entering into this Agreement;
2. shall be lawfully acquired by Service Provider in circumstances or in a manner not resulting from, or related to, this Agreement or the performance of the Services;
3. becomes part of the public domain in any manner other than the publication thereof in violation of this Agreement or otherwise unlawfully;
4. is disclosed by Service Provider with the prior written approval of the Buyer; or
5. is otherwise required by applicable law to be disclosed by Service Provider (but then only to the extent that, and only to the recipient or recipients to whom or which such disclosure is required; and only after Buyer has failed to obtain a protective order or other appropriate relief governing disclosure of the data within 10 days after notice from Supplier of any disclosure request).

C. **Property of Buyer:** Confidential Information shall remain the sole property of Buyer. Service Provider expressly acknowledges and agrees that Service Provider has no property right or interest whatsoever in any such data.

D. **Security Safeguards:** Service Provider shall maintain adequate administrative, technical and physical safeguards against unauthorized access, use, or disclosure of Confidential Information. This requirement includes but it is not limited to, the following components.

1. Confidential information may only be stored on electronic computing devices that are current in their anti-virus software and security patches and that are protected by a firewall.
2. All access to confidential information electronically shall be via a unique user ID and unique password that is not shared with others.
3. Confidential information shall not be downloaded to a portable device, such as Laptop computers, PDAs and USB drives, unless such data is protected with strong encryption.

4. Confidential information transmitted electronically must be encrypted in transmission, unless otherwise authorized by the Buyer.
5. Any use or handling of Social Security Numbers must be specifically approved by the Buyer.
6. Confidential information shall not be removed from the Service Provider's work site unless such removal is authorized by the Buyer as necessary for Agreement-related purposes.
7. When Confidential Information is no longer required to perform services required under this Agreement, and is not longer required to be maintained by applicable law or the terms of this Agreement, the Service Provider shall securely destroy such information whenever such destruction is possible.
8. If Service Provider is retaining backups of Confidential Information, such backups shall be maintained in conformity with these Security Safeguards.

Any question regarding the applicability of or interpretation of these requirements must be directed to Buyer's Office of Audit, Compliance and Privacy or Buyer's Office of Information Security.

E. Compliance.

1. **Laws.** Service Provider shall comply with all applicable laws, ordinances, statutes regulations and other requirements established by federal, state and local governmental authorities regarding privacy and security protections for Confidential Information. Applicable statutes may include but are not limited to The Family Education Rights and Privacy Act, the Gramm-Leach-Bliley Act and The Health Insurance Portability and Accountability Act.
2. **Other.** Service Provider shall comply with the Payment Card Industry Data Security Standard, as applicable.

F. Use and Disclosure Limitation: Service Provider shall not use, provide, trade, give away, barter, lend, sell or otherwise disclose Confidential Information, and shall not make any copies of such data or any type whatsoever, in readable or encrypted form, or in individually identifiable or aggregate form, except

1. as necessary for the services described in this Agreement to be performed; or
2. as expressly permitted by Buyer in a separate writing.

G. Restricted Access: Service Provider shall only permit access to Confidential Information acquired by Service Provider in connection with this Agreement, and only to employees, agents or independent contractors of Service Provider (1) who are directly involved in performing the Services for the Buyer and have a specific need to know such information, and (2) who have entered into written confidentiality agreements which impose, or are otherwise bound by, restrictions on the Confidential Information at least equivalent to those imposed under this Agreement.

H. Breach: Service Provider shall immediately report to Buyer any unauthorized access, use, disclosure, modification, or destruction of Buyer's Confidential Information or interference with system operations in an information system containing Buyer's Confidential Information ("Breach") of which Service Provider becomes aware.

I. Remediation/Mitigation: When Service Provider learns of a Breach it shall (1) use best efforts to determine the scope and nature of the Breach, (2) work with the Buyer, in light of the circumstances and applicable law, to determine what risks are posed by the Breach and whether and how those persons whose data was accessed, acquired or disclosed should be notified, and (3) restore the reasonable integrity of the data system which hosts the Buyer's Confidential Information without compromise to forensic investigation.

J. Indemnification: Service Provider agrees to indemnify, defend and hold harmless Buyer, its trustees, officers and employees (individually, an "Indemnified Party", and collectively, the "Indemnified Parties"), from and against any and all liability, loss, damage, action, claim or expense ("Claims") suffered or incurred by the Indemnified Parties (including reasonable attorney's fees and expenses) that results from or arises out of any unauthorized access, use or disclosure of Buyer's Confidential Information by Service Provider. With regard to Service Provider's obligation to defend, the Buyer shall have the right to select the legal counsel whom Service Provider shall provide to defend any Indemnified Party, subject to Service Provider's approval of the qualifications of such legal counsel and the reasonableness of counsel's hourly rates as compared to the rates of attorneys with similar experience and qualifications in the relevant area of legal expertise and in the jurisdiction where the Claims will be adjudicated. If the Buyer elects, in its sole discretion, to retain separate legal counsel, in addition to or in lieu of the counsel to be provided by Service Provider, then all costs and expenses incurred by the Buyer for such separate counsel shall be borne by the Buyer and the Service Provider shall reasonably cooperate with the Buyer

and its separate legal counsel in the investigation and defense of any such claim or action. Service Provider shall not settle or compromise any claim or action giving rise to Claims in a manner that imposes any restrictions or obligations on Buyer without Buyer's prior written consent. If the Buyer elects to require that Service Provider defend a Claim pursuant to this paragraph, and Service Provider fails or declines to assume the defense of such Claim within thirty (30) days after notice thereof, the Buyer may assume the defense of such Claim for the account and at the risk of Service Provider, and any Liabilities related thereto shall be conclusively deemed a liability of Service Provider. Service Provider agrees that if it is named as a party in an action that results from or arises out of any unauthorized access, use or disclosure of Buyer's Confidential Information, and Buyer is not named as a party to such action, Service Provider shall, immediately upon receiving notice of an action, notify Buyer of the action. The indemnification rights of the Indemnified Parties contained herein are in addition to all other rights which such Indemnified Party may have at law or in equity or otherwise.

- K. **Return of Confidential Information:** Upon the expiration or earlier termination of the Agreement or at the request of Buyer, Service Provider will either (1) at its own expense, immediately return to Buyer all Confidential Information embodied in tangible form, whether or not reduced to such form by Service Provider including all copies thereof, or (2) at the Buyer's option, certify in writing to Buyer that all such Confidential Information has been destroyed, except that Service Provider may retain Confidential Information to the extent that retention is required by law or is needed to document performance under this Agreement.

- L. **External Request for Confidential Information:** In the event that the Service Provider receives a request for Confidential Information by subpoena or other legal process or from a court, governmental authority, or accrediting agency, the Service Provider shall give prompt written notice to the Buyer in order to allow the Buyer the opportunity to seek a protective order or to take other appropriate action to protect the Confidential Information.