

URSULINE COLLEGE PURCHASE ORDER

TERMS AND CONDITIONS

1. Definitions

- (A) Goods – shall be defined as those items specified and/or described in the attached quotation/quote that are to be furnished to the College by Contractor under this Purchase Order.
- (B) Services – shall be defined as all tasks and duties to be performed by Contractor related to the delivery, installation, maintenance, repair and/or replacement of Goods as specified in the attached quotation/quote or this Purchase Order, as well as all other related tasks and duties.
- (C) Work – shall be defined as the delivery and provision of all Goods and Services under this Purchase Order.
- (D) Substantial Completion – shall be defined as the full installation and operational availability of all Goods in material accordance with the Good's published specifications, documentation or other written representations, including but not limited to the specifications contained in Exhibit A and herein.

2. Formation of Contract

- (A) These Purchase Order Terms and Conditions ("Purchase Order") shall constitute Ursuline College's offer to buy from Contractor and Contractor's offer to sell to Ursuline College (the "College") the Goods and/or Services specified in the Purchase Order. Contractor's acceptance of this Purchase Order shall be by either prompt written acknowledgement, delivery of an invoice referencing this Purchase Order, delivery of Goods or by commencement of Services, and shall be strictly limited to the terms and conditions stated herein.
- (B) The College is not bound by any printed or written conditions on Contractor's proposals, quotations, warranties, acknowledgement forms, purchase orders, or invoices that impose terms or conditions in conflict with the terms and conditions stated herein.

3. Description of Work & Contractor's Personnel

- (A) Contractor shall perform the Work specified and/or described in the Quotation, which is attached hereto as Exhibit A and made a part hereof, as well as all other Work described herein. Unless specifically noted otherwise in this Purchase Order, Contractor shall supply all labor, material, equipment, supervision and all other items and services necessary in the performance of the Work.
- (B) All Work shall be performed in a diligent, workmanlike, and professional manner, free from defects or deficiencies of any kind and without unnecessarily interfering with any other work being performed by the College or other contractors/sub-contractors. All personnel involved in the performance of the Work on behalf of Contractor shall be properly qualified, trained, competent, and experienced to perform the duties and tasks required under this Purchase Order. All matters pertaining to the employment of such personnel are the responsibility of the Contractor, which is in all respects the employer of such personnel. In the event that the actions or conduct of any employee of Contractor is determined by the College to be detrimental to its interests or operations, upon the College's request, Contractor shall refrain from using such employee in the performance of the Work.
- (C) Contractor agrees that it is acting as an independent contractor in the performance of the Work under this Purchase Order, and not as an agent of the College. Nothing contained in this Purchase Order is intended or is to be construed so as to make Contractor a partner, joint venturer, agent or employee of the College. Contractor shall not have any express or implied right under this Purchase Order to assume or create any obligation on behalf of or in the name of the College, nor shall Contractor have the right to bind the College to

any contract, agreement or undertaking with any third party, and no conduct of either party shall be deemed to imply such a right. All employment arrangements for the completion of Work under this Purchase Order are solely the concern of the Contractor, and the College shall have no liability whatsoever with respect thereto.

- (D) Contractor shall fully comply with all applicable laws and regulations pertaining to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and all other applicable employer-employee related subjects. Contractor shall accept full responsibility for and pay all withholdings to be made from the wages of its employees, including, without limitation, payroll taxes, social security, unemployment taxes, and all other contributions required by the laws of the United States and any applicable state, territory, or political subdivision, with respect to its employees. Contractor shall also insure that all subcontractors likewise accept responsibility for and pay all such withholdings, taxes and contributions due with respect to their employees. Contractor agrees to reimburse the College on demand for all such taxes and contributions that it fails or refuses to pay and for which the College may be required or deems it necessary to pay. Alternatively, the College, at its election, is authorized to deduct all sums so paid for taxes and contributions from any payment due Contractor hereunder.

4. Delivery of Goods & Time for Performance

- (A) Contractor shall deliver to the College all Goods specified in Exhibit A to the address set forth on the Purchase Order Request form by no later than the "Delivery Date" specified on the Purchase Order Request form. If Contractor fails to deliver Goods by the Delivery Date, the College may require Contractor to ship Goods, at Contractor's sole expense, by airfreight or expedited routing. The College may, at its option, either retain (and store at Contractor's expense) any Goods received in excess of ten (10) calendar days in advance of the specified Delivery Date or return them to Contractor at Contractor's risk and expense. If such Goods are retained, time for payment and discount shall be calculated on the basis of the scheduled Delivery Date.
- (B) Unless specified by the College, Contractor shall be responsible for selecting packaging methods and materials to provide adequate protection of the Goods at minimum cost. Commercial packaging is normally acceptable for shipment to the College. Packaging methods and material selected should consider, at minimum, fragility, part composition, surface finish, size, weight, and transportation mode. Any packaging specified or referenced in Exhibit A must be adhered to unless written deviation is authorized by the College. Nonconforming packaging is subject to rejection by the College or repackaging by Contractor at Contractor's expense.
- (C) A packaging memorandum must accompany each shipment of Goods arising under this Purchase Order, and the package containing such memorandum must be clearly indicated. The Quotation or Purchase Order number shall be identified on all packages, shipment papers, and other subordinate documents.
- (D) Except as specifically authorized by this Purchase Order, the College shall not be responsible for payment of Goods delivered by Contractor that are not in conformance with the quantities or specifications of Exhibit A. Upon receipt of any nonconforming Goods, the College will notify Contractor of same and allow forty-eight (48) hours for Contractor's determination of whether Contractor will:
 - i) Take possession of such nonconforming Goods at the College's delivery address; or
 - ii) Authorize the College to repack and return shipment of the nonconforming Goods to Contractor at Contractor's delivery address and at Contractor's sole expense.

(E) Contractor shall accept all risk of loss until the College receives Goods ordered hereunder. Title to Goods ordered hereunder shall pass to the College upon the College's receipt thereof.

(F) Contractor shall commence the performance of the installation aspects of the Work on the "Commencement Date" specified on the Purchase Order Request form, and all Work shall be completed no later than the "Substantial Completion Date" specified on the Purchase Order Request form. If Contractor is delayed at any time in the progress of the Work by any act or neglect of the College, or by changes ordered in the Work by the College, or by any Force Majeure (as defined below) that Contractor could not anticipate, control or circumvent, then, as Contractor's sole remedy, the Substantial Completion Date shall be changed to such date in the future that corresponds to the period equal to such delay. All claims for extension of the Substantial Completion Date shall be made in writing to the College no more than three (3) business days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one claim is necessary.

(G) The obligation of Contractor to meet the Delivery Date, Substantial Completion Date, and the quantities and specifications set forth in Exhibit A and herein shall be a basic assumption of the transaction as contemplated hereby and time is of the essence. Contractor shall strictly adhere to the Delivery Date and Substantial Completion Date set forth above (collectively, the "Work Schedule"). If, at any time, Contractor believes it may be unable to comply with the Work Schedule, Contractor shall immediately notify the College in writing of the probable length of any anticipated delay and the reasons for same, and shall provide the College with an acceptable written recovery schedule. Contractor shall continue to notify the College of any material change in Contractor's ability to comply with its obligations hereunder on an on-going basis.

5. Inspections

The College may inspect and test all Goods and Services provided under the Purchase Order. Such inspections and tests, to the extent practicable, may occur at all times and places, including the period and place of manufacture or performance, and in any event, before acceptance. The College will perform all inspections and tests in a manner that will not unduly delay any tasks necessary for fulfillment of Contractor's obligations under this Purchase Order.

6. Acceptance and Rejection

(A) The College shall have thirty (30) days from receipt of Goods or Services to accept or reject such Goods delivered or Services performed by Contractor. Any rejection of Goods or Services shall be communicated by written notice of rejection delivered by the College to Contractor within said thirty (30) day period.

(B) If Contractor tenders Goods to the College that fail to conform in any respect with said Good's published specifications, documentation or other written representations, or with the specified quantities of the Goods, the College, in its sole discretion, may require Contractor to replace, repair or correct such nonconforming Goods, at no increase in price or costs to the College. If Contractor is unable to replace, repair or correct nonconforming Goods within forty-eight (48) hours of notice of nonconformance, the College may accept the nonconforming Goods and make an equitable price reduction in the costs of such Goods and any corresponding Services related to such Goods.

(C) If Services fail to conform to the requirements of Exhibit A or this Purchase Order, the College may require Contractor to perform the Services again in conformity with the requirements of Exhibit A or this Purchase Order, and at no increase in price or costs to the College. When defects in Services cannot be corrected by re-performance, the College may accept the nonconforming Services

and equitably reduce the Quotation price to reflect the reduced value of the Services performed.

7. Substantial Completion

(A) Upon written notice from Contractor of Substantial Completion of the Work to be performed under this Purchase Order, the College shall, as soon as possible, but not later than thirty (30) days after receipt of such notification, inspect the Work and either accept it or state in writing its reason for rejecting the Work, together with a listing of all items to be corrected or Work to be completed, whereupon Contractor shall promptly make such corrections or perform such Work. Upon completion of such Work, Contractor shall deliver to the College a written notice of completion and the College shall, as soon as possible but not later than ten (10) days after receipt of such notification, inspect the Work, and, if it is acceptable, the College shall issue an Acknowledgement of Substantial Completion; provided, however, that if the College again advises Contractor that the Work is not acceptable the above procedure shall be followed until the College accepts the Work by issuing an Acknowledgement of Substantial Completion or otherwise undertakes the Work itself pursuant to Paragraph 16 (Termination for Default). Any notice of Substantial Completion, Acknowledgement of Substantial Completion, or written acceptance or rejection under this Paragraph 7 shall be deemed duly given when delivered by hand or by confirmed electronic mail transmission, in each case, to the duly authorized representative of each respective party to the Purchase Order.

(B) For any minor Work which remains to be completed or repaired at the time of Substantial Completion, Contractor and Owner, prior to the payment which is due on Substantial Completion, shall create a written punch list of those items and Contractor shall deliver in writing, or as part of the punch list, its guarantee to complete those items within the time frame established in the punch list, provided however, that the time frame for completion of such punch list items shall be no more than fifteen (15) days from the date of the punch list. The College may retain a sum equal to 150% of the cost, as set forth in the punch list, of completing or repairing such items. Each such item shall have the completion date for finishing or repairing the same and the estimated cost for the same. The College shall pay to Contractor the amount retained for such items once they all have been completed or repaired.

(C) Upon Substantial Completion of the Work, Contractor will deliver to the College warranties and/or assignments of warranties, if any, from all subcontractors and vendors of the components of the Work.

8. Invoices and Payment

The College shall pay Contractor for all Work performed in accordance with the prices set forth in Exhibit A. Upon Substantial Completion, Contractor shall submit to the College a detailed invoice for all Work performed. Payment terms for all invoices submitted in accordance with this Purchase Order shall be net forty-five (45) days from the date of the invoice. To the extent permitted under applicable law, the College may, in addition to other remedies, withhold the whole or any part of any payment due to Contractor to such extent as may be necessary in its reasonable opinion to protect itself from loss on account of: (a) defective Work not remedied; or (b) unsatisfactory or incomplete Work performed by Contractor or any subcontractor on Contractor's behalf.

9. Change Orders

(A) The College may, at any time, upon issuance of a written change order, make changes within the general scope of the Work to be performed pursuant to Exhibit A, which affect the:

- i) method of shipment or packaging;
- ii) place of inspection, delivery or acceptance;

- iii) drawings, designs or specifications;
 - iv) quantities and Work Schedule;
 - v) method of installation;
 - vi) description of time or place of performance.
- (B) If any such change causes an increase or decrease in the cost of or the time required for performance of the Work, an equitable adjustment shall be made to the Quotation price or Work Schedule or both, and the Quotation attached as Exhibit A shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this provision must be asserted in writing to the College not later than ten (10) calendar days after the date of receipt by Contractor of the written change order or within such extension as the College may grant in writing. The College may, in its sole discretion, consider any claim received from Contractor regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information.
- (C) Pending any such adjustment, Contractor shall diligently proceed with the Work as described in the modified Quotation. If the cost of Goods made obsolete or in excess as a result of a change order is included in Contractor's claim for adjustment, the College shall have the right to direct the manner of disposition of such Goods. The College shall have the right to examine any of Contractor's pertinent books and records for the purpose of verifying Contractor's claims.
- (D) Notwithstanding any dispute under this Paragraph 9, Contractor shall proceed with performance of the Purchase Order as modified.

10. Software

- (A) In the event software is procured through the performance of the Work under this Purchase Order, the parties agree that any pre-printed terms, shrink-wrap terms or click agreement(s) shall not be applicable, but the terms of this Purchase Order shall apply.
- (B) The College shall be granted a non-exclusive, fully paid, perpetual and irrevocable license to use the software for any business purpose. The license is deemed to be an enterprise license for Ursuline College.
- (C) Contractor warrants that the software shall operate per its intended purpose and that Contractor has the right to grant a license to use the software and that the software is free of all liens, claims, encumbrances, and other restrictions and without otherwise violating any rights of any third party, including any intellectual property rights, patent, copyright, trade secret or other proprietary rights.
- (D) The parties expressly disclaim and waive the application of the Uniform Computer Information Transactions Act ("UCITA") to this Purchase Order and any claims arising under or related to this Purchase Order.
- (E) Contractor shall provide the College, upon the delivery of the software, all published documentation and specifications that are necessary to enable the College to operate the software. Ursuline College shall have the right to copy all documentation.

11. Lien Protection

- (A) To the extent permitted under applicable law, if at any time during the progress of the Work, Contractor or any subcontractor shall allow any indebtedness to accrue for labor, materials, equipment, or other things, which may become a lien on the Work, or on the premises wherein the Work or any part thereof is to be performed, the College may refuse to make any further payments until satisfactory evidence has been furnished to the College that such indebtedness has been discharged, and if such evidence is not furnished within twenty (20) days after written demand therefor, the College may, in addition to other remedies, discharge such

indebtedness and deduct the amount thereof from any payment then due or thereafter to become due to Contractor. Contractor shall be required to continue performing all such Work during the time in which it takes the indebtedness to be discharged.

- (B) Contractor shall, within twenty (20) days of the date of recordation or date of Substantial Completion, promptly discharge each and every mechanic's lien which may be recorded or served in connection with its Work hereunder or any Work performed on its behalf, by paying the amounts claimed or by obtaining a release bond or by any other manner. Until the time that such liens are discharged by Contractor, to the extent permitted under applicable law, the College shall be entitled to withhold from payment to Contractor an amount sufficient to protect itself from loss on account of such liens, and final payment hereunder shall not be due while any such liens remain undischarged. Contractor shall be required to continue performing all such Work during the time in which it takes the lien to be discharged.
- (C) Contractor shall indemnify, defend and hold harmless the College from any liability, losses or damages arising from any claims of persons or entities performing services or furnishing materials to Contractor or any subcontractor for use in the performance of the Work under this Purchase Order, and shall pay all valid claims so as to prevent the filing of any lien against the College. This provision does not apply to liens that directly result from the College's failure to timely pay Contractor undisputed sums on account of the claimant's work. The parties agree that, upon request by the College, Contractor shall execute and deliver to the College a Waiver of Lien Rights, Acknowledgement of Partial/Final Payment and Release of Claims on Final Payment, in form and substance acceptable to the College.
- (D) To the extent permitted under applicable law, the College may withhold from any amount due under this Purchase Order a sum determined by the College to be necessary to protect the College against loss because of outstanding liens or claims of former lien holders.

12. Indemnification

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the College, and its officers, directors, shareholders, partners, representatives, employees and agents (all of which persons and organizations are referred to herein collectively or individually as "Indemnitee") from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs, expenses, liens, judgments, or obligations whatsoever, including without limitation, attorneys, consultants and experts reasonable costs and fees, resulting from or to the extent connected with the performance of or failure to perform any obligation under this Purchase Order, or the acts, omissions or errors of Contractor, any subcontractor, sub-subcontractor, material supplier or design professionals employed by Contractor or the officers, partners, employees, consultants or agents of any of them or of anyone for whose acts they may be liable. Contractor's indemnification obligations hereunder shall not apply to the extent loss is caused by the negligence or willful misconduct of an Indemnitee. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any person or entity described herein.

13. Insurance

In the event that Contractor provides Services under this Purchase Order, Contractor shall procure, at its own expense, and maintain in full force and effect at all times during the term of this Purchase Order the following insurance coverages. Any subcontractors engaged by Contractor to provide Services under this Purchase Order also shall be required to maintain the insurance described herein at the same limits while performing such Services:

- (A) Worker's Compensation insurance covering injury or occupational disease or death of all employees engaged in the Work in accordance with the statutory requirements of the state or other jurisdiction where the Work will be performed.
- (B) Employer Liability insurance, at limits not less than \$500,000.00 per accident; \$500,000.00 per employee for injury by disease; and \$500,000.00 per policy year for injury by disease.
- (C) Disability Benefit Law Coverage, providing statutory benefits, if required in the state or other jurisdiction where the Work will be performed.
- (D) Commercial General Liability insurance on an occurrence basis, on Insurance Services Office ("I.S.O.") form CG 00 01 or its equivalent, at a limit not less than \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate. This insurance shall be endorsed to include as Additional Insured "Ursuline College, its affiliates and their respective directors, officers, employees and agents as an Additional Insured." The required limits may be arranged through a combination of primary and excess policies, as needed. A copy of the additional insured endorsement must be attached to the certificate of insurance to be provided to the College.
- (E) Automobile Liability insurance for any vehicles operated by the contractor or its employees in connection with the Work to be performed, including owned, non-owned, borrowed, and hired autos, at limits not less than \$1,000,000.00 per accident.
- (F) Professional Liability or Errors and Omissions insurance, at a limit not less than \$1,000,000.00 for claims of damages arising from Services of a professional nature and/or beyond the scope of general liability coverage. Higher limits may be required for specific assignments.
- (G) Excess Liability or Umbrella Coverage, at a limit not less than \$3,000,000.00 per occurrence/\$3,000,000.00 aggregate.
- (H) If Contractor will have possession or control over physical or electronic property of Ursuline College and/or its customers and/or clients, Employee Dishonesty coverage (also known as a Fidelity Bond), covering all employees and agents of the Contractor, at a limit not less than the greater of \$100,000.00 for each occurrence or the annual value of the contract. This policy shall be endorsed to include as Loss Payees "Ursuline College, its affiliates and their respective directors, officers, employees and agents, as their interests may appear," and shall extend to the misappropriation of physical or electronic property of others in the possession or control of Contractor's employees, including any leased employees. A copy of the Loss Payee endorsement or provisions shall also be attached to any certificate of insurance Contractor provides to the College as evidence of this coverage.
- (I) If Confidential Information will be captured or stored on Contractor's servers, computers, laptops or other electronic devices, Information Security Coverage insuring against liability for the wrongful release, theft, duplication or misappropriation of Confidential Information resulting from unauthorized penetration of or access to Contractor's systems and from negligent acts of Contractor's employees, leased employees, directors, officers, agents or subcontractors, at a limit not less than \$1,000,000.00 per event. This policy shall be endorsed to include as additional insured "Ursuline College, its affiliates and their respective directors, officers, employees and agents, as their interests may appear;" shall include coverage for the costs of monitoring identity theft and wrongful use of credit in the name of Ursuline College customers or consumers affected by such wrongful release, theft, duplication or misappropriation; and shall contain a severability provision such that coverage for any insured shall not be prejudiced by the exclusion or denial of coverage for any other insured.

All coverage shall be maintained with insurers licensed to transact insurance business in the state(s) where the Work will be performed. The insurers shall have an A.M. Best rating of A- or better; deviations from that standard are subject to review and approval by Ursuline College. Contractor shall furnish Certificates of Insurance and any required copies of policies or endorsements including provisions for at least 30 days prior written notice of cancellation or material change in coverage with "endeavor to" and "but failure to provide such notice shall impose no obligation or liability upon the insurer" or any equivalent wording struck from the certificate form, any of the insurance policies described in the Certificates. Regardless of any limitations to any indemnification of Ursuline College by Contractor as may be stated elsewhere in this Purchase Order, Contractor expressly understands and agrees that if Contractor fails to maintain any of the required insurance coverages, Contractor shall be directly liable for claims that would otherwise be covered by the insurance required of Contractor, its vendors and/or subcontractors. Contractor shall also be responsible for the payment of any applicable deductibles.

14. Privacy & Confidentiality

- (A) Contractor agrees that it shall not, without the written consent of the College, use or disclose the College's information, data, or any other material created, developed, produced or otherwise obtained in the course of the Work required hereunder for any purpose except as necessary to implement or perform its obligations under this Purchase Order and shall protect same using the same standard of care as it uses to protect its own confidential information. Contractor further agrees that it will not divulge any matter known to it, the disclosure of which would be detrimental to the interests of the College as determined by the College. The foregoing obligations of confidence shall not apply to: (i) information in the public domain through no fault of Contractor; (ii) information previously and lawfully known by Contractor prior to disclosure by the College; (iii) information rightfully learned from a third party not under restriction of disclosure; or (iv) information disclosed pursuant to court order, judicial subpoena or requirement of government authority with reasonable prior notice given to the College by Contractor.
- (B) Contractor must comply with the provisions of the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. Section 1232(g); 343 C.F.R. Part 99); the Graham-Leach-Bliley Act ("GLB") (15 U.S.C. Section 6801, *et seq.*; 16 C.F.R. 313.1, *et seq.*; 16 C.F.R. 314.1, *et seq.*); and Ohio House Bill 104 (HB 104) as they apply to any personally identifiable information of a student and/or parent which may be provided to the Contractor in accordance with this Purchase Order.
 - i) "Education records" as defined by FERPA, includes files, documents, or other materials (regardless of the medium maintained) which contain information directly related to the student and maintained by the College.
 - ii) "Customer information," as defined under GLB, includes personally identifiable financial information that the College collects about an individual in connection with providing a financial product or service, unless that information is otherwise publicly available. Financial products or services offered by the College include student financial aid packages.
 - iii) "Personal information," as defined by HB 104, includes any information that describes anything about a person, actions done by or to a person, or even personal characteristics. This would include any identifying information, such as an encrypted name that is linked to data, such as a social security number, driver's license number, or account information.
- (C) Contractor may use the information defined above only for purposes intended by this Purchase Order, unless otherwise

authorized by law; if conducting studies on behalf of the College, Contractor must conduct its Work in a manner that does not permit the disclosure of the above-defined information of parents or students by individuals other than representatives of Contractor and Contractor must destroy in a secure manner or return the information defined above to the College when no longer needed for the purposes intended, as the parties determine. Contractor shall have in place and follow a routine destruction policy for all said information (whether an electronic, paper, or other form) related to Contractor's performance under this Purchase Order. In addition to the information defined above, this will include confidential information, data, deliverables, and any working papers, correspondence, notes, memorandum, drafts, or other materials (whether an electronic, paper, or form). No such materials will be maintained unless mandated under this Purchase Order or by applicable law.

- (D) Contractor will not directly or indirectly reuse or redisclose to any affiliate or any unaffiliated entity or person, any confidential material, including but not limited to, any personally identifiable consumer information provided by the College under this Purchase Order for any propose other than to perform the activities contemplated by this Purchase Order.
- (E) In the event Contractor knows or reasonably believes that there has been any unauthorized acquisition of or access to data that compromises the security, confidentiality, or integrity of the information defined above maintained by or for Contractor (hereinafter a "Breach"), Contractor shall take the following actions:
 - i) Immediately notify the College of such Breach.
 - ii) Identify to the College what specific data has or may have been breached by name and/or account and/or social security number. This will be done at no cost to the College.
 - iii) Monitor any affected accounts for any unusual activity (if appropriate).
 - iv) Take measures to contain and control the incident to prevent further unauthorized access.
 - v) Remedy the circumstances that permitted such Breach to occur.
 - vi) Cooperate with the College as necessary to facilitate the College's compliance with any applicable federal or state law regarding unauthorized access of said information.
- (F) Contractor is notified that if the U.S. Department of Education finds that Contractor has violated applicable provisions of FERPA, the College may not allow Contractor further access to educational records for at least five (5) years.

15. Termination for Convenience

- (A) The College, in its sole discretion, may terminate performance of the Work under this Purchase Order in whole or in part, by delivering to Contractor a written Notice of Termination specifying the extent of termination and the effective date thereof.
- (B) Upon termination as provided for herein, Contractor shall be entitled to reasonable payment for (i) any Goods delivered and accepted but previously unpaid for and (ii) any Services performed and accepted but previously unpaid for.
- (C) In the event of termination for convenience as provided for herein, Contractor will submit to the College a fully supported written claim for any amounts due within ten (10) business days after receipt of a Notice of Termination. All amounts so claimed must be accompanied by supporting documentation reasonably sufficient to permit the College to substantiate the amounts thereof. If

Contractor fails to timely submit a fully supported claim, the College will determine the amount due, if any, and Contractor will be bound by the College's determination.

16. Termination for Default

- (A) The College may, by written notice of default to Contractor, terminate this Purchase Order in whole or in part: (i) if Contractor fails to deliver Goods or to perform Services within the timeframes specified by this Purchase Order or any written extension; (ii) if Contractor fails to perform any other provision of this Purchase Order or fails to make progress, so as to endanger performance of the Work, and, in either of these two circumstances, does not cure the failure within fifteen (15) days after receipt of notice from the College specifying the failure; or (iii) in the event of Contractor's suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against Contractor, appointment of a trustee or receiver for Contractor's property or business, or any assignment, reorganization or arrangement by Contractor for the benefit of its creditors.
- (B) If the College terminates this Purchase Order in whole or in part, in addition to remedies provided by the law, the College may, at its option and upon five days' written notice to Contractor, take over and perform for the College's own account all or part of the Work then remaining unperformed or may terminate all Work by Contractor and subcontractors under this Purchase Order and take possession, for the purpose of completing the Work, of all Goods and facilities, and employ any other contractor or subcontractors to finish the Work or finish it itself. In case of such performance of all or part of the Work for the College's own account or in case of such termination, Contractor shall not be entitled to receive any further payments under this Purchase Order until the Work shall be wholly finished, at which time Contractor shall be paid for all Work properly completed to the College's satisfaction prior to the date of termination, less any expense or damage incurred by the College attributable to such default or incomplete Work, including, without limitation, any excess cost incurred by the College in completing the Work and less payments already made to Contractor and any amounts withheld by the College to settle claims against or to pay indebtedness of Contractor or any subcontractor. In the event that the foregoing results in any cost to the College exceeding the sum of the Quotation price, Contractor shall be liable to and shall within ten (10) days of being notified thereof pay the College for such cost. Failure of the College to exercise any of the rights given it under this Paragraph shall not excuse Contractor from compliance with the provisions of this Purchase Order nor prejudice rights of the College to recover damages for such default.
- (C) If, after termination, it is determined that Contractor was not in default, the rights and remedies of the parties would be as if the Purchase Order had been terminated in accordance with Paragraph 15 (Termination for Convenience).

17. Contractor's Representations & Warranties

- Contractor represents and warrants the following to the College (in addition to any other representations and warranties contained elsewhere herein or in the attached Exhibits) as an inducement to the College to execute this Purchase Order:
- (A) Contractor warrants that all Goods, when and as delivered to Ursuline College, will conform to their quantities and specifications, and will be free from defects in materials and workmanship.
 - (B) Contractor warrants that all Services to be performed will be performed with professional diligence and skill and will conform to the requirements of this Purchase Order in all material respects.
 - (C) Contractor warrants that its performance and/or provision of Goods and Services to Ursuline College as called for hereunder does not and shall not violate: (i) any applicable law, rule or regulation

now or hereafter imposed; (ii) any contracts with third parties; or (iii) any third-party rights in any patent, trademark, copyright, trade secret, or similar right.

- (D) Contractor warrants that the title conveyed to the College shall be good and merchantable and its transfer rightful, and that all Goods shall be delivered free from any security interest or other lien or encumbrance.
- (E) The Contractor represents and warrants to Ursuline College (which representations and warranties will survive the termination of this Purchase Order) that it: (i) is an organization duly structured, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated; (ii) has the corporate power and authority to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the doing of business requires such qualification; (iv) has the corporate power to execute, deliver, and perform its obligations hereunder; (v) has authorized, by all requisite corporate action, the execution, delivery and performance of this Purchase Order; and (vi) is financially solvent and able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform its obligations hereunder.
- (F) If Contractor breaches the warranties as set forth herein, the College may, at no increase in Quotation price: (i) require Contractor to promptly repair or replace, at Contractor's election, defective or non-conforming Goods; (ii) require Contractor to promptly furnish materials or parts and installation instructions required to successfully accomplish the correction of defective or nonconforming Goods, and equitably reduce the Quotation price to account for the cost of installation and removal; (iii) require Contractor to promptly redesign defective or nonconforming Goods not manufactured pursuant to designs furnished by the College and require Contractor to promptly repair or replace Goods manufactured in accordance with such defective design; (iv) require Contractor to promptly correct or re-perform, at Contractor's election, defective or nonconforming Services; or (v) equitably reduce the Quotation price.

18. Notices

Any notices required or permitted under this Purchase Order shall be in writing, shall refer specifically to this Purchase Order, and shall be sent by recognized national or international overnight courier; or certified mail, postage prepaid, return receipt requested; or by facsimile; or delivered by hand to the delivery addresses for the applicable recipient. Notices under this Purchase Order will be deemed to be duly given: (a) when delivered by hand or facsimile; (b) two days after deposited with a recognized national or international overnight courier; or (c) on the delivery date indicated in the return receipt for certified mail. A party may change its contact information immediately upon written notice to the other party in the manner provided in this Paragraph.

19. Disputes

A court of competent jurisdiction located in Cuyahoga County, Ohio will decide any dispute that arises under or is related to this Purchase Order. Pending final resolution of any dispute arising under or related to this Purchase Order, Contractor will proceed with performance of the Work in accordance with the College's instructions and this Purchase Order.

20. Applicable Law

The laws of the State of Ohio shall govern this Purchase Order and all attached Exhibits hereto.

21. No Waiver

The failure by either party to enforce any right or to insist upon strict compliance with the terms and conditions of this Purchase Order shall not at any time constitute a waiver of such right or any other right, and

will not modify the rights and obligations of either party under this Purchase Order.

22. Rights and Remedies

The rights and remedies of the parties set forth in this Purchase Order are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity.

23. Compliance with Laws

Contractor shall procure all necessary licenses or permits and shall abide by all applicable statutes, laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which any Work under the Purchase Order is performed. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with Work to be performed at Ursuline College's campus and shall comply with all applicable provisions of federal, state, and municipal safety laws and codes, including all applicable OSHA Guidelines. If Contractor performs any Work contrary to any applicable law, regulation, ordinance, or rule, Contractor shall promptly correct the same and all costs and expenses arising therefrom shall be charged to Contractor.

24. Third-Party Beneficiary

The College shall have rights of a third party beneficiary of each subcontract between Contractor and subcontractor. Contractor shall include in each subcontract a provision which acknowledges the College's contingent third party beneficiary status thereunder.

25. No Assignment

Contractor shall not, without the prior written consent of the College, assign, sell, trade or transfer, in whole or part, any of its rights or obligations under this Purchase Order or any monies due or to become due to Contractor hereunder, and any such assignment, sale, trade or transfer without such consent shall be void and of no effect.

26. Non-Exclusivity

The execution of this Purchase Order is not intended to give Contractor an exclusive right to perform the Work under this Purchase Order, and the College shall be permitted to contract with other vendors to procure the same or similar services.

27. Performance of Service

All Services must be performed in the United States and all Confidential Information, including customer information and consumer information, must be stored, maintained, accessed from, and utilized only in the United States.

28. Force Majeure

Neither party is liable hereunder for any failure or delay in its performance under the Purchase Order arising from any cause beyond the defaulting party's reasonable control, including acts of God, such as fires and floods, earthquakes, epidemics, wars, governmental actions, civil disturbances, strikes and riots. Provided the defaulting party has used every available and reasonable means to remedy or mitigate its failure to perform, the time for performance will be extended by the amount of the delay.

29. Conflicting Terms

The College is not bound by any printed or written conditions on Contractor's proposals, quotations, warranties, acknowledgement forms, purchase orders, or invoices that impose conditions in conflict with the terms of this Purchase Order. In the event of any conflict or inconsistency between the terms and conditions of this Purchase Order and any inconsistent supplemental terms specified by Contractor (including any attached exhibits hereto), the terms and conditions of this Purchase Order shall prevail and govern.

30. Survival of Terms

The provisions of Paragraph 10 (Software), Paragraph 12 (Indemnification), Paragraph 14 (Privacy & Confidentiality), Paragraph 17 (Contractor's Representations & Warranties), and Paragraph 24 (Third-Party Beneficiary) shall continue in full force and effect throughout the Work, and will survive completion of the Work or termination of this Purchase Order.

31. Entire Agreement

This Purchase Order and the attached Exhibits thereto state the entire agreement between Ursuline College and the Contractor with respect to the subject matter hereof and supersedes all prior understandings, both written and oral. This Purchase Order may not be amended in any material form unless authorized in writing by both parties.