

## **DARTMOUTH COLLEGE STANDARD TERMS AND CONDITIONS**

**EFFECTIVE: JULY 20, 2022**

Unless otherwise specifically provided by separate written agreement signed by Trustees of Dartmouth College ("Dartmouth"), these standard terms and conditions ("Terms and Conditions") shall govern with respect to any purchase of Goods and/or Services (as such terms are defined below) by Dartmouth, including those purchases identified in any Purchase Orders or Procurement Card transactions or other applicable document (each, an "Order"). These Terms and Conditions, together with any Order and any and all appendices, and/or exhibits attached thereto or otherwise incorporated therein, or into which these Terms and Conditions are incorporated, shall collectively constitute an agreement (this "Agreement") by and between Dartmouth and the individual and/or entity supplying the Goods and/or Services to Dartmouth ("Vendor"). Dartmouth and Vendor are sometimes collectively referred to as the "Parties" and each individually is sometimes referred to herein as a "Party". Capitalized words used but not defined herein shall have those meanings given them on any applicable Order.

### **1. Acceptance of Agreement**

- 1.1. Acceptance of Agreement. Vendor shall be deemed to have accepted the terms of this Agreement, including these Terms and Conditions, upon the earlier to occur of (a) Vendor's commencement of performance, and (b) Vendor's other confirmation of acceptance hereof, including without limitation, by email, fax, or other written communication of Vendor to Dartmouth. If requested by Dartmouth, Vendor shall provide Dartmouth with a copy of a Purchase Order signed by Vendor.
- 1.2. Entire Agreement. 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 TERMS AND CONDITIONS INCLUDED IN AN ATTEMPTED ACKNOWLEDGMENT OR ACCEPTANCE OF THIS AGREEMENT THAT ARE INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL NOT BE BINDING UNLESS SPECIFICALLY ACCEPTED BY DARTMOUTH IN WRITING. Notwithstanding the foregoing, any confidentiality or similar agreement executed between the Parties prior to the acceptance of the Agreement to cover the exchange of information pursuant to the contemplation of Goods and/or Services (as defined in Section 3) to be delivered under this Agreement shall remain in effect with respect to confidential information (as defined under such agreement) exchanged between the Parties before the acceptance of the Agreement.
- 1.3. Order of Precedence. In the event of any conflict between these Terms and Conditions and any Order, appendices, and/or exhibits that forms part of the Agreement, these Terms and Conditions shall govern unless otherwise specifically provided in such Order, appendix, or exhibit.

### **2. Term and Termination**

- 2.1. Term. The term ("Term") of this Agreement shall be as set forth in the 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.
- 2.2. Termination for Convenience. Dartmouth, in its sole discretion, may terminate this Agreement or cancel any Order, without cause, by providing at least sixty (60) days' prior written notice to Vendor.
- 2.3. Failure to Perform. If Vendor 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 Vendor by Dartmouth, Dartmouth may (i) immediately, or at any time thereafter, terminate this Agreement by written notice to Vendor, without prejudice to any remedies (whether set forth in this Agreement or provided by law) which might otherwise be available to Dartmouth or (ii) withhold payment for the Goods and/or Services until such time that Vendor's nonperformance has been rectified. In the event of cancellation, Vendor 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's notice to terminate the Agreement, Vendor will immediately stop work and cause any Subcontractors to stop work, preserve and protect materials, and conclude performance in accordance with Dartmouth's instructions. Vendor agrees that it will not be entitled to any damages, penalties or cancellation charges as a result of termination by Dartmouth.
- 2.4. Effect of Termination. Upon any termination or expiration of this Agreement, Dartmouth shall 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 Party at law or in equity), provided that the provisions of this Section 2.4 (Effect of Termination), Section 4.4 (Records and Audit Rights), Section 5 (Representations and Warranties), , Section 6 (Indemnification), , Section 7 (Use of Dartmouth's Name; Confidentiality Obligations), Section 8 (Proprietary Rights), Section 9 (Governing Law; Venue; Litigation Costs) and Section 10 (Miscellaneous), as well as Sections 1.2 ("Claims Made" Coverage) and 1.3 (Verification of Coverage) of the Insurance Addendum and Section 4 (Reimbursement) of the Data Security Addendum shall survive any termination or expiration and continue in effect.

### **3. Performance of Services and Provision of Goods**

- 3.1. Standards and Methods for Performance for Services. Vendor shall perform the services described in the Order and any appendices or exhibits comprising part of this Agreement ("Services") with promptness and diligence in accordance with this Agreement. Vendor shall (i) assign qualified individuals with suitable training, education, experience and skills to provide the Services and (ii) commit sufficient resources for the timely and satisfactory completion of the Services. Vendor agrees to participate in periodic status meetings and, as reasonably requested by Dartmouth, provide written status reports concerning Vendor's progress in performing the Services. Vendor agrees to notify Dartmouth of any act, event or circumstance that is likely to cause a material delay in completion of the Services or attainment of scheduled milestones. Vendor will determine the method, details, and means of performing the

Services to be carried out for Dartmouth. Dartmouth will have no right to, and will not, control the manner or determine the method of accomplishing such Services. Dartmouth may, however, where applicable, require Vendor to observe security and safety policies of Dartmouth as further set out in this Agreement. In addition, Dartmouth will be entitled to assure itself that Vendor is performing satisfactorily, including the right to inspect, the right to stop Services, the right to make suggestions or recommendations concerning the Services so as to comport with Dartmouth's needs, and the right to request modifications to the scope of Services provided. Except as otherwise provided in this Agreement, Vendor will at its own expense secure all governmental licenses and permits, all authorizations, licenses and permissions, and supply all tools and equipment necessary to perform the Services. Vendor agrees that Dartmouth shall have the right to reject any Services in accordance with Section 3.4 below that do not meet the specifications set forth in documentation issued or information provided by Vendor (the "Specifications") ; such rejection, however, will not relieve Vendor of its obligation to provide conforming Services.

- 3.2. Standards and Methods for Provision of Goods. Vendor shall provide the goods described in the Order and any appendices or exhibits comprising part of this Agreement ("Goods") in accordance with the terms of this Agreement, in a timely manner (including upon any timetable or schedule set forth in this Agreement), in conformance with any Specifications relating to the Goods, and in accordance with Section 5.3 below. Vendor agrees that Dartmouth shall have the right to reject any Goods in accordance with Section 3.4 below that do not meet the Specifications; such rejection, however, will not relieve Vendor of its obligation to provide conforming Goods.
- 3.3. Replacement of Vendor Personnel. If Dartmouth determines that Vendor's personnel assigned are not appropriate for the Services being assigned based on their specific or general skills or their background and experience, Vendor will make a reasonable effort to assign other qualified personnel. If Dartmouth wishes Vendor to replace any Vendor personnel, Dartmouth shall inform Vendor in writing and Vendor shall remove such personnel in accordance with Dartmouth's request and will manage the transition of replacement personnel to minimize the impact on the performance of Vendor's obligations under this Agreement. Vendor shall have a reasonable period of time, taking into account the nature of the Goods and/or Services being provided and the reasons for Dartmouth's replacement request, to replace such personnel with another individual with suitable training, education, experience and skills.
- 3.4. Testing and Inspection. Dartmouth reserves the right to inspect and test all Goods and Services (including without limitation any Deliverable, as defined below) prior to Acceptance, and to reject any Goods and Services that are defective or otherwise do not conform to this Agreement. Vendor agrees to provide reasonable assistance at Vendor's own expense for such inspections and tests. Unless otherwise specified in the Order, Dartmouth will have thirty (30) days from delivery of Goods or completion of Services, as the case may be (the "Delivery Date"), to inspect, test and verify conformance of the Goods and/or Services, including without limitation any Deliverable, to the requirements of this Agreement, including without limitation the Specifications, and will have ten (10) days or more, unless otherwise agreed to by the Parties, thereafter to provide Vendor with a notice of deficiency as to any Goods or Services that Dartmouth identifies as nonconforming to such requirements (the "Deficiency Notice"). If Dartmouth does not provide a Deficiency Notice as to particular Goods or Services, those Goods and Services will be deemed accepted upon expiration of the ten (10) day period ("Acceptance"). Upon receipt of the Deficiency Notice, Vendor will: (i) as to

Goods, replace the non-conforming Goods with conforming Goods within five (5) business days, and (ii) as to Services, re-perform the Services to the satisfaction of Dartmouth within ten (10) business days (each and collectively the "Cure Period"). All substitute Goods and re-performed Services will be at the sole expense of Vendor. Dartmouth's lack of inspection of any Goods or Services does not waive its right to contest the condition of Goods or Services later determined to be defective, nonconforming or otherwise unacceptable.

- 3.5. Title and Risk of Loss: Vendor assumes and retains all risk of loss with respect to the Goods ordered and, if applicable to Services, all work in progress, materials, and other items related to this Agreement until the same are received, inspected, and accepted by Dartmouth in accordance with the terms and conditions set forth in the Agreement.
- 3.6. Recalls. Vendor will be responsible for all costs and expenses associated with any Goods that are subject to a manufacture-prompted product recall.
- 3.7. Documents. All documents provided by Vendor will include the Purchase Order number governing Vendor's sale to Dartmouth of the Goods and/or Services. Vendor will provide to Dartmouth 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 prior to shipment arrival or included in the shipment.
- 3.8. Shipping. Vendor assumes full responsibility for packing, crating, marking, transporting, and liability for loss or damage in transit, notwithstanding any consent by Dartmouth to pay shipping fees, including freight, express or other transportation charges. Any shipping fees that Dartmouth agrees to pay shall be set forth in writing and stated separately with respect to each item shipped. Vendor shall pack, mark, and ship all Goods in a commercially reasonable manner; and if Dartmouth is responsible for shipping, freight, or travel fees, Vendor shall secure the lowest, reasonable transportation cost in accordance with the shipping instructions contained herein and the requirements of common carriers. All Goods will be shipped to Dartmouth "FOB" destination to the address specified by Dartmouth in the Order. Shipments are not to be sent C.O.D.
- 3.9. Hazardous Material. Vendor shall notify Dartmouth in writing prior to each hazardous or regulated material shipment, or if sooner, within three (3) business days of issuance of an Order by Dartmouth 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 and/or Services to be furnished hereunder. Seller shall package, label, transport and ship hazardous material, items containing hazardous materials, and any other regulated materials, in accordance with all applicable federal, state, and local laws, rules, ordinances and regulations, and ii) furnish any appropriate Material Safety Data Sheets.
- 3.10. Compliance with Laws and Dartmouth Policies. Vendor shall comply with all applicable laws with respect to its performance under this Agreement, including, but not limited to, environmental laws and laws pertaining to anti-discrimination and anti-retaliation in employment, labor, wages, hours, leave and other conditions of employment, and current OSHA requirements. It is the policy of Dartmouth to maintain a drug-free workplace. Vendor agrees that it will inform all of its employees and any Subcontractors (as defined below) that Dartmouth seeks to ensure that all individuals are free from the effects of illegal drug use and/or are not impaired due to drugs or

alcohol while performing Services, and that illegal drugs are not permitted on Dartmouth premises. Vendor agrees that, while on Dartmouth premises, Vendor's employees and Subcontractors will comply with all regulations of Dartmouth then in effect, including safety and security regulations, and take all necessary precautions to prevent injury or damage to persons or property.

- 3.11. Equal Opportunity. If Dartmouth requires Goods and/or Services ordered pursuant to this Agreement in order to perform under a contract or subcontract with the federal government, Vendor shall comply with and be subject to laws applicable thereto, 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 applicable rules, regulations and guidelines as may be issued to implement these laws by any local, state or federal agency or authority, including the State of New Hampshire and the United States. During the performance of this Agreement, Vendor agrees that it will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, citizenship, sexual orientation, gender identity or expression, age, genetic information, pregnancy, marital or parental status, 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"). Vendor will take affirmative action to identify women, minority, disabled, Qualified Covered Veteran-owned vendors and Subcontractors who are capable of fulfilling Dartmouth's requirements, as well as to employ, advance in employment, and treat all qualified individuals without discrimination based upon their race, color, sex, religion, national origin, citizenship sexual orientation, gender identity or expression, age, genetic information, pregnancy, marital or parental status, 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, as well as any other affirmative action measures which are required by applicable law.
- 3.12. Non-Exclusivity. Unless otherwise specified in the Order, the Goods and/or Services will be provided on a non-exclusive basis and Dartmouth may procure services similar or identical to the Services and goods similar or identical to the Goods from sources other than Vendor.
- 3.13. Time is of the Essence. Vendor understands that time is of the essence in performing the Services and delivering the Goods and that failure to perform this Agreement on time and as agreed could cause substantial disruption and expense to Dartmouth.
- 3.14. Independent Contractors. Nothing in this Agreement shall make Dartmouth and Vendor partners, joint venturers, joint employers or otherwise associated in or with the business of the other. Vendor is an independent contractor engaged in the operation of its own business; neither Party shall be considered to be the agent, master or servant of the other for any purpose whatsoever, neither Party has any general authority to enter into any contract, or incur any debts or other obligations, on behalf of, the other Party, and neither Party shall be liable for any debts, accounts, obligations or other liabilities of the other Party except as specifically provided herein.

#### **4. Compensation; Terms of Payment, Records and Audit Rights.**

- 4.1. Fees and Expenses. Dartmouth shall pay fees to Vendor ("Fees"), and reimburse Vendor for its reasonable pre-approved, actual expenses, net of all related discounts, rebates, commissions, allowances, write-downs and similar consideration or adjustments paid or allowed by the third party providers ("Expenses"), all as set forth in the Order.
- 4.2. Invoices. Vendor shall provide Dartmouth with detailed invoices for Fees and Expenses. In the event of a delay in issuing invoices, which is greater than twelve (12) months from the date of performance of Service or delivery of Goods, Vendor will not be entitled to issue invoices to Dartmouth and Dartmouth will not be obligated to pay for Goods or Services. Invoices must be submitted electronically to [invoice@dartmouth.edu](mailto:invoice@dartmouth.edu). Each invoice must be attached as a separate file to the email. Invoices must include the following details to be accepted:
  1. Bill To: Trustees of Dartmouth College
  2. Department Name
  3. Department Contact
  4. Invoice Number (each invoice should have a unique invoice number)
  5. Invoice Date
  6. PO Number, if applicable
  7. Detailed Description of Billing
  8. Invoice Amount Due
- 4.3. Payment Terms. Vendor may request Dartmouth to be paid via a Single Use Account ("SUA"), Automated Clearinghouse (ACH), check or International Wire. Assuming Dartmouth has no objection to the invoiced Fees and Expenses, such invoices shall be payable by Dartmouth within (i) if Vendor has requested to be paid using a SUA, then upon receipt of an accepted invoice; (ii) if Vendor has requested to be paid via ACH, then thirty (30) days from the invoice date; (iii) if Vendor has requested to be paid via check, then forty-five (45) days from the invoice date; (iv) if Vendor has requested to be paid via International Wire, then upon receipt of an accepted invoice. If Vendor elects to be paid via SUA, Vendor shall be responsible for any bank fees.
- 4.4. Records and Audit Rights. Vendor will maintain auditable account records and documentation pertaining to the Goods and Services, including all charges billed to Dartmouth, and will make them available to Dartmouth upon request. Vendor will retain such records and documentation for the balance of the calendar year in which made and for six (6) additional years thereafter, or such other longer period as is required under applicable law. Subject to reasonable notice and assurance of confidentiality, Dartmouth will have the right to examine and audit such records and documentation for a period of up to two (2) years after delivery of the invoice for such charges. If an audit reveals overcharges, then Vendor will promptly, at Dartmouth's sole option, credit the overcharge to Dartmouth's account or repay the amount of the charge directly to Dartmouth. If the overcharges in any six (6) month period exceed five (5) percent of the correct aggregate charges for that time period, Vendor will pay for the cost of the audit.

## **5. Representations and Warranties.**

- 5.1. Financial Capability. Vendor represents and warrants to Dartmouth that it is financially capable of fulfilling its obligations under this Agreement.
- 5.2. No Legal Impediments to Performance; Non-Infringement. Vendor represents and warrants to Dartmouth that (a) there are no legal or administrative proceedings pending or threatened against Vendor that could adversely affect Vendor's performance hereunder; (b) the execution and delivery of this Agreement does not, and the performance by Vendor or any of its employees or other personnel or any Subcontractors of any of Vendor's obligations hereunder do not and will not, (i) violate any provisions of Vendor's or any Vendor's organizational documents, (ii) violate any law or regulation applicable to Vendor or any of such employees, personnel or Subcontractors, (iii) result in the breach of any provisions of, or constitute a default under any agreement, fiduciary duty, or other obligation to which Vendor or any of its owners, officers, employees or Vendors 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 Vendor and its employees, personnel and Subcontractors have the full and unrestricted right to disclose any information, know-how, materials, knowledge or data disclosed by Vendor or any of such employees and Vendors to Dartmouth in the performance of this Agreement; (d) neither the use by Dartmouth of any Goods or other Deliverables (as defined below) provided to Dartmouth under this Agreement nor the Acceptance by Dartmouth of the Services provided hereunder will infringe upon any Intellectual Property Right (as defined below) of any person or entity; and (e) no Deliverable shall contain any libelous, unlawful or otherwise actionable matter.
- 5.3. Specific Representations and Warranties for Goods. Vendor warrants that the Goods: (i) will be new; (ii) will conform to and operate in conformity with the Specifications or as otherwise provided by Dartmouth; (iii) will be merchantable and fit for their intended purpose; (iv) will be free from errors, malfunctions and defects (including design defects) and, as applicable to the extent that the Goods include code, Harmful Code (as defined below); (v) will be free from all liens, security interests, claims (including to title), and encumbrances; and (vi) will not infringe any Third Party Rights (as defined below). In addition, Vendor 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, and (d) Vendor will process all warranty claims against manufacturer(s) on behalf of Dartmouth. "Harmful Code" means any software or other materials that are intentionally designed to surreptitiously, or otherwise, disrupt, disable, harm, impair and/or impede operation of any software or system, including through lapse of time, viruses, worms, time bombs, time locks, drop-dead devices, access codes, undisclosed security keys, undisclosed back doors, or trap door devices.
- 5.4. Specific Representations and Warranties for Performance of Services and Deliverables. Vendor warrants that it will perform all Services in a timely, professional and workmanlike manner consistent with industry standards. Vendor further warrants that all Deliverables: (i) will be new; (ii) will conform to and operate in conformity with all Specifications or as otherwise provided or required by Dartmouth; (iii) will be merchantable and fit for their intended purpose; (iv) will be free from errors, malfunctions and defects (including design defects) and Harmful Code; (v) will be free from all liens, security interests, claims (including to title), and encumbrances; (vi) will not infringe any Third Party Rights (as defined below); and (vii) will not contain or require

the use of Open Source Technology (as defined below) except as specified to Dartmouth as Third Party Rights. "Open Source Technology" means software licensed under terms that (x) require as a condition of the use, modification or distribution thereof that other software incorporated into, derived from, or distributed with such software (i) be disclosed or distributed in source code form, (ii) be licensed under terms that permit making derivative works, (iii) be redistributable at no charge to subsequent licensees; and/or (y) otherwise impairs or prevents the ability of Dartmouth or any third party to maintain the confidentiality of and/or commercialize the Deliverables or any part thereof.

- 5.5. **Warranty Claims Response.** Except as otherwise agreed between the Parties, Vendor will correct all warranty or defect issues within ten (10) days of written notice from Dartmouth.
- 5.6. **Warranty Periods.** Except as otherwise provided in third party warranties as described below, all warranty periods under this Agreement commence as of the date of Acceptance. For Goods and Services of Vendor, and any Deliverable, the warranty period will be for a period of five (5) years. For Goods of third parties being provided by Vendor, Vendor agrees that 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, that such warranties will pass through to the benefit of Dartmouth, and that Vendor will process all warranty claims against manufacturer(s) on behalf of Dartmouth.
- 5.7. **Debarment.** Vendor represents to Dartmouth that neither Vendor, nor to Vendor's knowledge any individual employed or engaged by Vendor, including without limitation any Subcontractor, has been excluded from participation in any United States government healthcare program or has been debarred from or under any other United States government federal program nor is Vendor aware of any pending or potential actions that would give rise to any such exclusion or debarment.

## **6. Indemnification.**

- 6.1. **Vendor Indemnification Obligation.** Vendor agrees to and will indemnify and defend Dartmouth, its affiliated entities, trustees, officers, employees, students, and subcontractors from and against any third party claims, demands, actions, suits and proceedings (collectively "Claims"), and all damages, losses, liabilities, penalties, interest, settlement payments, and expenses, including attorneys' fees, arising from or related to any Claim (collectively, "Damages") resulting or arising from or connected in any way with the performance or non-performance of its obligations under this Agreement, including: any Claim (i) that the Goods or Services, including without limitation any Deliverable, infringe, misappropriate or violate any patent, copyright, trademark, trade secret, privacy, publicity or other intellectual property or proprietary right of third party, (ii) of libel, defamation, fraud, misrepresentation or other similar claim in connection with the Goods or Services, (iii) arising from any breach of any representation or warranty of Vendor provided herein, (iv) arising from any breach by Vendor of any other provision of this Agreement, or (v) arising from any negligence, recklessness or willful misconduct of Vendor or any Subcontractor or other Person (as defined below) acting on behalf of or at the direction of Vendor.
- 6.2. **Procedures regarding Claims.** Dartmouth shall notify Vendor in writing within thirty (30) days of the assertion by a third party of any Claim that is subject to indemnification under this Section 6. Failure to notify Vendor shall not result in the waiver of indemnity rights with respect to such Claim unless such failure materially prejudices the ability of Vendor to defend such Claim and then only to the extent thereof. The Parties shall

cooperate with each other in the defense and settlement of any such Claim. In the event Vendor does not accept the defense of any Claim, Dartmouth shall have the right to defend such Claim. Dartmouth may, at its sole option, participate in the defense of any Claim with counsel of its own choosing and at its own expense. Vendor may not settle any Claim for other than monetary relief, or enter into any consent judgment, without Dartmouth's consent, which will not be unreasonably withheld, conditioned or delayed.

## **7. Use of Dartmouth's Name; Confidentiality Obligations.**

- 7.1. Restrictions on Use of Dartmouth's Name. The use by Vendor of: (i) Dartmouth's name, trademarks, service marks, trade names, logos, or any adaptations thereof; or (ii) any use of any photographs or other images depicting Dartmouth's property, students, faculty or employees in such a way that implies the endorsement of Dartmouth, in any publication, press release, advertisement, announcement, promotional material, or promotional activity requires the prior written consent of Dartmouth.
- 7.2. Confidentiality Obligations. "Confidential Information" means (a) any information or data disclosed by, or on behalf of, Dartmouth to Vendor 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 Protected Personal Data or Sensitive Entity Data (as such terms are defined in the Data Security Addendum), or (b) the provisions of this Agreement. The following information will not be considered Confidential Information under this Agreement: (i) information obtained by Vendor from a third party who, at the time of disclosure to Vendor, to the knowledge of Vendor was not prohibited from disclosing such information to Vendor by a legal, fiduciary or contractual obligation to Dartmouth; (ii) information already in the possession of Vendor prior to receipt from Dartmouth, without any obligation of confidentiality to Dartmouth or any other Person and which can be verified through appropriate documentation; and (iii) information that is or is released into the public domain through no fault or wrongful act of Vendor. Vendor shall not disclose Confidential Information to third persons or entities or use Confidential Information except in connection with the performance of Vendor's obligations to Dartmouth hereunder without the prior written consent of the Dartmouth, except (a) when required to be disclosed by applicable law or regulation or by legal process, or when necessary to enforce Vendor's rights hereunder, provided that Vendor gives Dartmouth prompt notice of any such requirement and cooperates with Dartmouth in attempting to limit such disclosure, to the extent Vendor may do so in compliance with applicable law, including obtaining a protective order, as deemed appropriate by Dartmouth, and (b) that Vendor may disclose the existence and general nature of this Agreement, but not any specific terms thereof.
- 7.3. Injunctive Relief. Vendor acknowledges and agrees that a breach of Section 7.1 or 7.2 will cause irreparable damage to Dartmouth. Accordingly, Vendor agrees that in the event of any breach by Vendor of Section 7.1 or 7.2, in addition to any other remedy that may be available at law or in equity, Dartmouth 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.
- 7.4. Obligations Upon Termination or Expiration. Upon termination or expiration of this Agreement, Vendor will, and will cause all Persons to whom it has disclosed Confidential Information to: (i) stop using all Confidential Information under their

possession or control; (ii) permanently and completely erase and destroy all such Confidential Information residing in any computer memory or data storage apparatus; and (iii) at Dartmouth's option, either destroy or return to Dartmouth all such Confidential Information that is in tangible form and all copies thereof. Any such destruction referenced herein will be undertaken according to industry recognized best practices for safe and thorough destruction and erasure, and upon request, be certified in writing to Dartmouth by an authorized officer of Vendor supervising such destruction.

## **8. Proprietary Rights.**

- 8.1. Definitions. "Proprietary Rights" means all right, title, interests in, ownership, Intellectual Property Rights (as defined below), rights of publicity and privacy, and other rights, of any kind and nature worldwide, including those arising under statutory and common law, and whether or not registered or perfected. "Intellectual Property Rights" means all (i) rights associated with works of authorship, including copyrights, copyright applications and copyright registrations, (ii) rights associated with indicia of source, including trademarks and service marks, trade names and trade dress, (iii) rights relating to patents and patent applications, (iv) rights relating to the protection of trade secrets, know-how and information that is confidential, and (iv) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof and the like related to any of the foregoing, whether now existing or hereafter filed, issued or acquired.
- 8.2. Rights of the Parties. All Proprietary Rights held by each of the Parties prior to the commencement of this Agreement shall remain the sole property of such Party. All right, title and interest in and to any work product, including designs, inventions, discoveries, products, computer programs, procedures, trade secrets, works of authorship and other proprietary information, Vendor makes, conceives or develops, alone or with others, arising directly from performance by Vendor of Services ("Deliverables"), including the Proprietary Rights therein, shall belong exclusively to Dartmouth and shall be deemed to be a work made for hire. To the extent that sole title to any Deliverable may not, by operation of law, vest with Dartmouth or such Deliverable may not be considered works made for hire, Vendor hereby irrevocably transfers and assigns any and all of its right, title and interest in and to any and all such Deliverable, including all Proprietary Rights therein and all causes of action for past infringement of such rights, to Dartmouth. Furthermore, Vendor automatically releases and waives, and will cause its personnel automatically to release and waive, at the time of creation of the Deliverable, any and all moral rights in the Deliverable worldwide.
- 8.3. Third-Party Intellectual Property and Releases. If any Intellectual Property Rights of Vendor existing prior to commencement of Services ("Pre-Existing Rights") or Intellectual Property Rights owned or otherwise required to be obtained from third-party licensors or vendors ("Third-Party Rights") are required to be incorporated into, or are required to be used or delivered with, any Deliverable, then the Vendor will so specify. Incorporation of Pre-Existing Rights and/or Third-Party Rights into any Deliverable may only be made with prior written consent of and as agreed to by Dartmouth.
- 8.4. Vendor's Undertakings. Vendor agrees to (i) disclose promptly in writing to Dartmouth all Deliverables, (ii) assist Dartmouth in applying for, and execute any applications or assignments reasonably necessary to obtain, any patent, copyright, trademark or other statutory protection for any such Deliverables in Dartmouth's or its designee(s)' name(s) as Dartmouth shall request from time to time, (iii) treat such Deliverables as "Confidential Information" as defined above, and (iv) execute such documents and take

such other actions as Dartmouth shall reasonably request from time to time to confirm, perfect and enforce its rights under this Section 8. Any cooperation or assistance Vendor provides pursuant to this Section 8 will be at Dartmouth's sole expense. Vendor represents and warrants to Dartmouth that all Deliverables created by Vendor, including any permitted Subcontractor, under the Agreement (i) does not and will not infringe any Proprietary Right of any Person or contain any libelous, unlawful or otherwise actionable matter, and (ii) is original and previously unpublished except for any third-party material that is either (x) in the public domain or (y) for which permission to use same in the Deliverables, including without any restrictions on Dartmouth's use of the Deliverables, has been obtained.

- 8.5. Residual Rights of Vendor. Notwithstanding any of the other provisions of this Section 8, Vendor and its personnel will be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any Confidential Information or proprietary information of Dartmouth and without any unauthorized use or disclosure of any Deliverable.

## **9. Governing Law; Venue; Litigation Costs.**

- 9.1. This Agreement will be governed by and construed in accordance with the laws of the State of New Hampshire. Vendor agrees that it shall not bring any suit against Dartmouth, its trustees, officers, employees, or subcontractors with respect to this Agreement in any court other than a state or federal court of appropriate subject matter jurisdiction and venue located in the State of New Hampshire. Vendor consents to the exclusive personal jurisdiction of such courts in the event that Dartmouth shall bring any suit against Vendor with respect to this Agreement. The Parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods nor any other laws pertaining to the contractual relations of the Parties other than the laws of the State of New Hampshire will apply to this Agreement.
- 9.2. 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.

## **10. Miscellaneous.**

- 10.1. 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.
- 10.2. Assignment. Vendor shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval from Dartmouth.

- 10.3. Subcontractors and Others. Vendor shall not subcontract any portion of its performance under this Agreement without prior written approval from Dartmouth. Vendor shall be responsible for compliance of each Subcontractor, and each employee, trustee, director, officer, member, manager, and owner of Vendor, with all the terms of this Agreement, and shall be liable for the acts or omissions of each such Person that give rise to liability to Dartmouth and/or that constitute a breach of this Agreement by Vendor. As used in this Agreement the term "Subcontractor" means any contractors, agents, consultants, and any other Person acting on behalf of or at the instruction of Vendor.
- 10.4. Disputes, Remedies. Vendor will continue to perform this Agreement during the pendency of any dispute or legal proceeding between or involving Vendor and Dartmouth. 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.
- 10.5. 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 any Order, or to any other address that the Party provides by notice, in accordance with this Section to the other Party.
- 10.6. 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.
- 10.7. Language. The Parties agree that they will contract in the English language and that there shall be no requirement to translate this Agreement or any of the documents incorporated into this Agreement into any other language. In the event of any inconsistencies between any translations thereof into another language, the English language version shall govern.
- 10.8. Captions, Interpretation. The captions and headings used in these Terms and Conditions are for convenience only and do not limit or amplify the terms and provisions hereof. Terms other than those defined in this Agreement shall be given their plain English meaning and terms of art having a specialized meaning in the relevant industry shall be construed in accordance with industry standards. Unless the context otherwise requires, words importing the singular include the plural and vice-versa and words importing the masculine include the feminine and gender neutral and vice-versa. The term "including" means "including, but not limited to." The terms "herein", "hereunder," "hereof" and similar expressions refer to this Agreement in its entirety. "Person" means

any individual or entity, including unincorporated organizations, associations and partnerships. The terms "law" and "laws" means statutes, common law, regulations, rules, ordinances, treaties, and the like, and when referring to remedies includes both damages and equitable remedies. Except as otherwise specifically stated in this Agreement, "days" means calendar days.

10.9. Binding Effect; No Third Party 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.

10.10. 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.

**PRIOR VERSIONS**

**TERMS AND CONDITIONS OF PURCHASE MARCH 9, 2021 – JULY 19, 2022**

**TERMS AND CONDITIONS OF PURCHASE JUNE 20, 2014 - MARCH 8, 2021**

**TERMS AND CONDITIONS OF PURCHASE JULY 1, 2013 - JUNE 20, 2014**

**TERMS AND CONDITIONS OF PURCHASE MAY 16, 2012 - JULY 1, 2013**

**TERMS AND CONDITIONS OF PURCHASE JUNE 25, 2007 - MAY 16, 2012**

**TERMS AND CONDITIONS OF PURCHASE FEBRUARY 15, 2005 - JUNE 25, 2007**

## **INSURANCE ADDENDUM**

1. Coverage Requirements. During the Term, Vendor will maintain at its expense, and ensure that its Subcontractors obtain and maintain at their expense, insurance with insurers licensed to do business in all jurisdictions where Vendor and/or its Subcontractors provide Goods or Services, and Vendor agrees to abide by, and ensure that its Subcontractors involved in the performance of Vendor's obligations under this Agreement abide by, the minimum coverage and other insurance requirements, all as set forth in this Section 1 or as otherwise included in any Order, each of which is incorporated herein by reference. Insurers shall have an A.M. Best rating of AV or greater.
  - 1.1. Commercial General Liability Insurance. Commercial general liability insurance written on an occurrence basis, including bodily injury, property damage, personal injury, advertising injury, products and completed operations and contractual liability in the amount no less than:
    - \$1,000,000 each occurrence;
    - \$1,000,000 products/completed operations limit;
    - \$1,000,000 advertising injury and personal injury limit; and
    - \$1,000,000 general aggregate.
  - 1.2. Business Automobile Liability Insurance. If using motor vehicles (whether owned by Vendor or not) to deliver Goods or perform Services, business automobile liability insurance with a minimum limit of \$1,000,000 combined single limit each accident for bodily injury and property damage for all vehicles used in conjunction with this Agreement.
  - 1.3. Workers' Compensation & Employer's Liability Insurance. If personnel are working on Dartmouth premises, statutory workers' compensation insurance in accordance with all state and local requirements of the state(s) in which Goods are provided or Services will be performed. This will include employers' liability insurance with minimum occurrence limits of:
    - \$100,000 bodily injury by accident/\$100,000 each accident;
    - \$500,000 bodily injury by disease/\$500,000 policy limit; and
    - \$100,000 bodily injury by disease/\$100,000 each employee.
  - 1.4. Professional Liability Insurance. If Services provided include professional services (including engineers, designers, information technology/software consultants/designers, compliance trainers, lawyers, accountants, actuaries, real estate agents, executive search firms, and medical professions), professional or errors and omissions liability insurance with combined single limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, per year, covering the performance of Vendor and any of its Subcontractors under this Agreement.
  - 1.5. Additional Policies of Insurance. Vendor shall additionally carry such additional coverage or policies of insurance as reasonably required by Dartmouth in light of the Goods and/or Services provided.
2. "Claims Made" Coverage. Any liability insurance purchased on a "claims made" basis must be continuously maintained for a period equal to the applicable statute of repose, but in any case not less than three (3) years, following final delivery of Goods or termination of Services, either through the continued purchase of insurance or the purchase of an extended reporting period. The retroactive date applicable to such "claims made" insurance,

if any, must precede the first date on which Services are to be performed and/or Goods are to be delivered.

3. Verification of Coverage. Vendor, for itself and any permitted Subcontractors, will have furnished to Dartmouth original certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required prior to or at the time of execution of this Agreement, and shall further provide evidence that the foregoing is in place and will not be cancelled or reduced during the term of this Agreement without the insurer giving Dartmouth such number of days' prior written notice as such policies permit. Vendor's and any Subcontractors' certificates of insurance will list "Trustees of Dartmouth College" as an Additional Insured on its or their commercial general liability policy and business automobile liability policy (as applicable). Vendor and any of its Subcontractors will submit updated certificates of insurance upon expiration of the required policies. Neither Vendor's failure to provide, nor Dartmouth's failure to obtain, proof of compliance shall act as a waiver of any of the terms in this Agreement. Dartmouth reserves the right to require complete, certified copies of all required insurance policies, including endorsements required under this Section 1 at any time. Such certificates of insurance and endorsements must be submitted to the Dartmouth address provided on the applicable Order, or as otherwise instructed by Dartmouth from time to time.

## **DATA SECURITY ADDENDUM**

1. Vendor will ensure that all Services are performed in a manner that complies with any applicable data protection, data security, and data breach laws or regulations of any jurisdiction in which Vendor operates or processes data, and the rules and regulations thereunder, all as may be amended or supplemented from time to time, 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; (collectively, "Data Security Regulations").
2. **Data Security Safeguards.** Vendor will implement and maintain reasonable administrative, technical and physical safeguards, and other security measures appropriate for the protection of any data provided by Dartmouth that will be maintained by Vendor as part of the Services ("Data") from unauthorized use or disclosure. Vendor acknowledges that Data may also include (i) certain information about a natural person that identifies such individual or could reasonably be used to identify such individual, or relates to a natural person and is associated with information that could reasonably be used to identify such individual and is classified as protected or restricted from disclosure or use under any Data Security Regulation ("Protected Personal Data"), (ii) information about an entity that is proprietary or otherwise confidential ("Sensitive Entity Data"), and/or (iii) data arising from the aggregation and analysis of any of the foregoing. Without limiting the generality of the first sentence of this Section 2, Vendor agrees that for as long as it provides Services to Dartmouth, Vendor shall not alter its information technology security policies in any manner that would constitute a material reduction in the requirements described on any documentation provided to Dartmouth (including as applicable the above-referenced questionnaire). In addition, to the extent required under any applicable Data Security Regulations, Vendor shall be responsible for procuring all necessary rights to collect and process or allow collection and processing of such Protected Personal Data in accordance with Vendor's performance of its obligations under this Agreement.
3. **Data Security Breach.** Vendor will promptly (and in any event within three (3) business days or such shorter period as may be required under applicable Data Security Regulations) notify Dartmouth of the occurrence of any event that constitutes or is reasonably suspected to constitute a "breach" or any equivalent term under any applicable Data Security Regulation or an unauthorized disclosure of Protected Personal Data or Sensitive Entity Data (a "Data Security Breach"). In the event of a Data Security Breach, Vendor will share with Dartmouth the following information to the extent applicable and known: (i) a description of the facts pertaining to the Data Security Breach, including the date of the Data Security Breach and the date of discovery of the Data Security Breach; (ii) a description of any Protected Personal Data or Sensitive Entity Data involved in the Data Security Breach; (iii) the names of the individuals who committed the Data Security Breach or who knew of it at the time it occurred; (iv) the names of the unauthorized individuals or entities to whom Protected Personal Data or Sensitive Entity Data has been disclosed; (v) the likelihood that the Protected Personal Data or Sensitive Entity Data involved in the Data Security Breach has been or will be misused; (vi) a description of the action taken or proposed by Vendor to mitigate the financial, reputational or other harm to the individual(s) or entities who may be the subject(s) of the Data Security Breach, including the prevention of further unauthorized

access or disclosure of Protected Personal Data or Sensitive Entity Data; and (vii) such other information as Dartmouth may reasonably request including the information, data and documentation required by Dartmouth to timely comply with applicable Data Security Regulations or other laws. Unless required by applicable Data Security Regulations or other applicable laws, Vendor will only be required to provide the notices and information set forth above and will not notify the Persons whose Protected Personal Data or Sensitive Entity Data has been disclosed. Each Party will also reasonably cooperate with the other Party in connection with the investigation of such Data Security Breach. Vendor will not, except as may be required by applicable Data Security Regulations or other applicable laws, make any public announcements relating to such Data Security Breach without Dartmouth's prior written approval.

4. **Reimbursement.** Vendor will reimburse each of the indemnified Persons described in Section 6 of the Agreement for any Data Security Breach Remedy Costs (as defined below) incurred by such Person in connection with a Data Security Breach to the extent such Data Security Breach is caused by Vendor, including without limitation any of Vendor's Subcontractors', acts or omissions or any breach of Sections 1, 2 or 3 above. Vendor will be obligated to make such reimbursement promptly following receipt of a request therefor from Dartmouth which describes the purpose for which reimbursement is requested and includes supporting evidence as to the incurrence of the costs for which reimbursement is claimed. For purposes of the foregoing, "Data Security Breach Remedy Costs" means all reasonable costs a Person may incur in connection with remediation efforts for (i) the development and delivery of legal notices required by applicable Data Security Regulations, which may include providing notice to all individuals whose Protected Personal Data may have been affected by a Data Security Breach, (ii) the establishment of a toll-free telephone number where affected Persons may receive information relating to a Data Security Breach; and (iii) the provision of credit monitoring expenses for affected Persons.
5. **FERPA.** Vendor acknowledges and understands that Dartmouth may be required to protect certain personally identifiable information ("PII") and student education records from disclosure under the FERPA. Any such PII shall constitute Protected Personal Data under this Agreement, and to the extent that Vendor is required to access or maintain any such PII or student education records in the performance of Services under this Agreement, Vendor agrees to: (i) use any such PII or student education records only as needed for the performance of the Services or as otherwise permitted under FERPA; and (ii) secure all PII and student education records related to Dartmouth's students using industry standard security practices, which will include procedures at least as stringent as those data security standards as Vendor is required to maintain for Protected Personal Data under this Agreement. Any such PII and/or student educational records shall be released to permitted Subcontractors by Vendor only with the consent of the student to which the PII or student education records relate or as otherwise permitted under FERPA, and Vendor shall ensure that any such permitted Subcontractors to which PII and/or student educational records are released abide by the same restrictions, including such data security requirements, as those which apply to Vendor in connection with such PII and student educational records as set out herein.