

## DESIRE2LEARN OPEN COURSES HOSTING AGREEMENT

### For all MOOCs ordered on or after February 28, 2014

This Desire2Learn Open Courses Hosting Agreement, including any Quotations, Statement(s) of Work Order and/or Order Forms signed or agreed to (including electronically) between the Parties ("Agreement") governs terms and conditions between the requesting party ("Client") specified in the relevant MOOC Order Form and the Desire2Learn entity specified in the relevant MOOC Order Form ("D2L").

By completing and submitting a Desire2Learn Open Courses Order Form to order a MOOC, Client agrees to the terms as listed below.

#### 1 Definitions

- 1.01 **Client** includes its employees, directors, officers, or agents, and to the extent they are specifically identified, its affiliates and subsidiaries.
- 1.02 **Confidential Information** is information provided to one Party about the other Party's products or services, business, affairs, computer systems, installations or clients, to the extent that the information might reasonably be expected to be confidential. Confidential information also includes Client information, User information and all personal information protected under privacy laws.
- 1.03 **Content** means all Course Content and all Client and User input, text, pictures, sound, graphics, video, links and other data, third party materials and links, all as may be modified from time to time and stored by Client on D2L's systems. Content does not include User Data.
- 1.04 **Course Content** means the educational course and all related Client or third party material, including integrations with Client or other third party systems, that Client uploads to the Site as required to provide and execute the MOOC.
- 1.05 **Dedicated Space** means the URL, storage (on dedicated or shared server computers), bandwidth and other related products and services identified in the Order Form and/or Statement of Work as may be made available to Client by D2L for the MOOC.
- 1.06 **Deliverable** is a tangible, verifiable work output such as a specification, programming, code, or other output developed under a Statement of Work.
- 1.07 **Effective Date** is the date that the Client signs this Agreement, unless otherwise specified in the Order Form.
- 1.08 **Intellectual Property** is any present or future development work, copyright, patent, trade-mark, trade name, service mark, design, program, procedure and method of computation, trade secret, data model, invention, drawing, plan, specification, process or similar property.
- 1.09 **MOOC** means the massive open online course(s) identified in the Order Form.
- 1.10 **Order Form** is a document created pursuant to this Agreement that specifies the names and addresses of the Parties and relevant details of a specific Desire2Learn Open Course.
- 1.11 **Partner** means a third party that has a business relationship with D2L.
- 1.12 **Registration Agreement** means an agreement between User and Desire2Learn Incorporated that governs User's registration with Desire2Learn Incorporated.
- 1.13 **Site** means the Dedicated Space including the MOOC and all pages and Content and User Data, as may be modified from time to time.
- 1.14 **Statement of Work (or Work Order)** is a document created pursuant to this Agreement that specifies the roles and responsibilities of the Parties with respect to a particular engagement.
- 1.15 **Terms of Use** means the then-current Terms of Use between Client, User and Desire2Learn Incorporated, to be agreed to by each User upon registering for any MOOC. Client is responsible for providing to D2L certain necessary information for the Terms of Use as part of the Order Form. A template for the then-current Terms of Use shall be provided to Client as part of the Order Form process.
- 1.16 **User** means anyone who registers for, has input into, or interacts with the MOOC.
- 1.17 **User Data** means (i) the information a User provides when registering for the MOOC; (ii) account and password information; and (iii) any modifications to the foregoing as may be made from time to time.

#### 2 MOOC Hosting

- 2.01 D2L will provide the Dedicated Space as set out in the Order Form for storage and access of Content and the MOOC. The Client must ensure that the MOOC and Content are "server-ready" prior to launch. D2L will provide bandwidth and storage as specified in the Order Form. If Client desires additional bandwidth, storage, or other products or services, D2L and Client may agree to add them to this Agreement at a cost to be negotiated between the Parties. Desire2Learn reserves the right to limit the number of Users enrolled in a MOOC as well as the use, features or functionality of the Site if D2L reasonably believes that there is a threat to the integrity of the Site due to excessive use, or use not foreseen under this Agreement.
- 2.02 D2L will back up the Site in a commercially reasonable manner. However, D2L is not responsible for lost Content or lost User Data. Site backups, when and as may be made, will be stored by D2L for no longer than 14 days. Backups are intended for disaster recovery, not the restoration of individual files. In any event, all Content shall be deleted from the Site and destroyed after 90 days from the Course End Date as set out in the Order Form.
- 2.03 D2L will take commercially reasonable steps to prevent unauthorized access to the Site, Content, User Content, and Confidential Information stored on D2L's server computers. There is no such thing as "perfect" security on the Internet, but D2L will take commercially reasonable steps to help ensure the safety of Content and User Data. Client understands and agrees that such measures do not guarantee that use of the Site is safe from all security breaches. D2L makes no warranty or representation that use of the Site is protected from viruses, security threats or other vulnerabilities.

2.04 D2L will employ commercially reasonable efforts in providing advance notice to Client of scheduled server computer/network outages. D2L, with no notice to Client, may perform emergency upgrades or maintenance to the Site as may be required. For planned upgrades and/or outages, Client shall be responsible for monitoring the Site upgrade schedule and notifying its Users accordingly.

2.05 As regards the MOOC, Client is responsible for the following:

2.05.1 supplying all equipment necessary to use the Site;

2.05.2 ensuring that all such equipment is compatible with D2L's hardware, software and systems;

2.05.3 paying all costs related to such equipment as well as all internet access and other fees;

2.05.4 requiring compliance by Client and Users with (i) D2L's Registration Agreement as required by the User at the time of registration; and (ii) any Client terms of use as may be applicable, and in the event of conflict between the D2L Registration Agreement and any other terms of use, the D2L Registration Agreement shall prevail;

2.05.5 managing and ensuring the quality of Content and links from Content to third party systems;

2.05.6 backing up and exporting all Content;

2.05.7 cancelling, terminating or suspending the MOOC at any time in whole or in part if Client so chooses;

2.05.8 grading User results;

2.05.9 having capable and qualified staff that are trained (at Client's expense) on D2L software and systems prior to launching the MOOC to Users, and ensuring that such staff are available to manage MOOC activities for the duration of the MOOC;

2.05.10 paying for and obtaining all licensing agreements and other necessary authorizations from third parties to run their product(s) on the Site;

2.05.11 providing front line support to MOOC Users.

### **3 Confidentiality & User Data**

3.01 No Party shall furnish Confidential Information to any unauthorized person or entity.

3.02 Neither Party shall be bound by confidentiality obligations if the Confidential Information (a) is required to be disclosed pursuant to law or court or regulatory order, provided that, where feasible, the owner of the Confidential Information is given a reasonable opportunity to limit the extent of disclosure; (b) was already rightfully in its possession before negotiations commenced that led to this Agreement; (c) is learned from a third party under no apparent duty of confidentiality and is not otherwise protected under law; or (d) becomes part of the public domain other than as a result of a breach of this section and is not otherwise protected under law.

3.03 Subject to the relevant governing law, nothing in this section is intended to prohibit D2L from issuing a mutually-acceptable press release, or naming Client in client listings or having Client's name disclosed as part of the natural use of the Site. By this present Agreement and as may be set out in the Order Form, D2L is expressly permitted to list Client's name on D2L's MOOC catalog page and any associated formal or informal publicity related to the MOOC catalog.

3.04 Client and D2L agree that Client's access to User contact information gathered upon the User's registration and acceptance of the Client's Course Registration Agreement, shall be determined in the Order Form. Notwithstanding the foregoing and the terms of the Order Form, by providing the site, D2L may collect, analyze, and interpret data elements acquired by, associated with, or provided in the use of the MOOC ("MOOC Analysis"). All algorithm, computational, or cumulative results of the MOOC Analysis are wholly-owned by D2L. Upon request, D2L may provide an aggregate of the results of the MOOC analysis to Client in a format to be determined by D2L, and, subject to the relevant privacy laws that govern this Agreement, D2L may also provide such aggregate results to other third parties in D2L's sole discretion, provided always that no personally identifiable information or other information that is protected under relevant privacy laws is disclosed.

3.05 D2L will not sell, provide or otherwise disclose any User Data collected in connection with the MOOC, including email addresses and other contact information, to Client or any third party without the User's express permission. D2L will provide Users the option to opt in to receiving different forms of email communications from Client, D2L or its partners as may be applicable, and as permitted by law. D2L agrees that it will use User's email address only to deliver communications or advertisements from Client, D2L and/or D2L's partners that do not unreasonably intrude on any Users' time or resource, and only for the purposes of (i) MOOC-based communications; or (ii) Client, D2L or partner-sponsored activities.

3.06 In the event that Client provides to D2L a list of User Data for registration by D2L of such Users to the MOOC, (i) Client will first obtain the Users' express consent to allow Client to provide the User Data to D2L; and (ii) Client is deemed to have granted a perpetual, worldwide license to the User Data to D2L to enable D2L to contact such Users in accordance with section 3.05 above.

3.07 Insofar as may be applicable, all personally identifiable information disclosed to D2L or any of its Partners shall be used only for the specific purposes of (i) carrying out its obligations under the Agreement; and (ii) using the User Data only as expressly set out in this Agreement. D2L and its Partners shall not permit any other party to have access to such information without the written consent of the parents of the student, or in the case of an eligible student, the consent of the student.

### **4 Proprietary Rights & Restrictions**

4.01 D2L has all appropriate rights and interest in its software, documentation, materials, Deliverables, and other Intellectual Property (collectively, the "IP"), and D2L reserves these rights and privileges in connection with the IP, except as expressly granted to Client pursuant to this Agreement. Except as may be expressly granted in a Statement of Work, D2L does not transfer any title or interest in its IP. The IP contains valuable intellectual property of D2L and its licensors. The IP is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

4.02 Except as permitted by this Agreement, Client shall not:

4.02.1 attempt to decompile, disassemble, modify the source code of, or reverse engineer the IP;

4.02.2 use, reproduce, transmit, modify, adapt or translate the IP;

4.02.3 rent, lease, license, transfer, assign, sell or otherwise provide access to the IP on a temporary or permanent basis;

4.02.4 alter, remove or cover proprietary notices in or on the IP.

4.03 Client represents and warrants that it owns and retains all right, title and interest to, or has appropriate possessory rights in the Course Content. Except as may be expressly made available by Client to D2L under a Creative Commons license, D2L makes no claim of license, title or ownership to such Course Content. Client is responsible for keeping copies and backups of their Course Content.

4.04 Any default in Client's obligations under this section may cause irreparable harm to D2L. If Client takes or threatens any action that may infringe on D2L's IP rights, D2L may seek injunctive or other equitable relief in addition to any damages to which D2L may be entitled.

4.05 Except as specifically set forth in a Statement of Work, D2L shall retain sole and exclusive ownership of and all intellectual property rights in the Deliverables, which include: tools, methodologies, questionnaires, responses, and proprietary research, data, requirements, specifications, and code generated in the course of performing the consulting services. D2L grants to Client a time-limited, non-exclusive, royalty-free license to use and to disclose the Deliverables, subject to the limitations set forth below.

4.06 D2L may provide services to others and develop work products that are competitive with, or functionally comparable to, the Deliverables. D2L shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the consulting services or producing Deliverables, provided that D2L shall not use or disclose any of Client's Confidential Information or Content.

4.07 Unless otherwise stated, Client shall retain its rights in any proprietary material that Client supplies to D2L. If Client provides D2L with materials owned or controlled by Client or with use of, or access to, such materials, Client grants to D2L all rights and licenses that are necessary for D2L to fulfill its obligations under each Statement of Work for consulting services.

4.08 D2L grants to Client for internal purposes only a worldwide, royalty-free, time-limited license to use, reproduce, and display of the Deliverables upon payment (if applicable) for such Deliverables. Client shall not make the Deliverables available to anyone outside of Client without the prior written consent of D2L, except Client may share the Deliverables with (i) its outside auditors and/or accountants, (ii) third parties who have signed appropriate confidentiality agreements with Client who are engaged by Client to review or implement suggestions or to further research the issues contained in the Deliverables, and (iii) as required by law.

4.09 Professional services billing rates are dependent upon the scope of the engagement/implementation and the consulting skill levels required. Project managers are assigned to oversee professional services implementations at a rate based upon complexity of the project and skill level required.

## **5 Content; Accessibility**

5.01 Client agrees that Site may only be used for lawful purposes. Publication or transmission of any material in violation of any applicable laws or regulations is prohibited. This includes, but is not limited to copyrighted material, material protected as trade secrets, or material that is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane, racist or otherwise objectionable, taking into account Client's academic freedom.

5.02 Should D2L become aware that Client or its Users has violated section 5.01, D2L must notify Client and may, at its option, remove and/or delete the Content or User Data in violation, terminate or suspend one or more User accounts, immediately terminate hosting Client's MOOC under section 7, and/or notify authorities. If hosting is suspended, D2L may, in its sole discretion, reinstate hosting at a later date, or terminate it.

5.03 Client represents and warrants that Course Content shall not contain (i) advertisements unrelated to the MOOC unless otherwise expressly agreed in the Order Form; and/or (ii) cookies, forms, surveys or other functionalities ("Functionalities") where the sole purpose of such Functionalities is to collect User Data for the purposes of non-MOOC-related communications with Users unless otherwise agreed in writing between D2L and Client in advance (e.g. in the Order Form).

5.04 Accessibility. D2L will at its expense, use commercially reasonable efforts to make the software it provides on the Dedicated Space accessible to Users who have disabilities. Client is responsible for ensuring that all other elements of the MOOC are accessible to Users who have disabilities.

## **6 Commercial Terms; Payment**

6.01 Subject to section 6.02, D2L will make the Dedicated Space available to Client at no cost to Client on the understanding that Client (i) is offering the MOOC free of charge to the Users; (ii) agrees that the MOOC shall not be used for or equivalent to degree or academic or professional credit(s) whether transferable or non-transferable; (iii) Client agrees to abide by D2L's then-current no-cost offering as set out in the relevant D2L Statement of Work and/or Order Form; and (iv) submits a duly-completed Desire2Learn Open Courses Order Form accepting this Agreement and the Terms of Use as published.

6.02 Notwithstanding section 6.01, should Client (i) charge any Users for the MOOC, or for any certifications or other products, services or features related to the MOOC; (ii) offer the MOOC for any type of credit to Users; or (iii) not abide and continue to abide by the criteria in section 6.01, then Client shall pay to D2L the amounts set out in the Order Form, and such other fees (a) as may be negotiated in advance in writing between Client and D2L, and/or (b) determined by D2L.

6.03 If any fees are due under section 6.02 above, D2L shall email invoices to the address first listed above, or such other address as may be provided in advance by Client to D2L. Payment is due on receipt of an invoice. Late payments are subject to an interest charge of 1.5% per month or 19.56% APR or the maximum allowable by law.

6.04 If D2L incurs costs in collecting overdue invoices, Client is responsible for reimbursing D2L for collection costs, including reasonable legal fees.

6.05 Client shall pay taxes promptly to D2L if D2L is required by law to collect them, except for taxes payable upon the income or capital of D2L. If Client is tax

exempt, Client shall furnish to D2L its certificate upon request.

6.06 If D2L employs a payment system as part of the Site to collect payments directly from Users, D2L shall remit to Client any portions of fees owed to Client in accordance with the Order Form.

6.07 If Client employs a payment system as part of the course to collect payments directly from Users, or any other form of revenue to support the execution or ongoing delivery of the course (including crowdsourcing), Client shall remit to D2L a portion equivalent to 50% of gross revenues or otherwise negotiated prior to the course registration date.

## **7 Term & Termination**

7.01 *Agreement.* This Agreement shall continue until the date set out in the Order Form unless otherwise agreed between the Parties, or may be terminated as specified elsewhere in this Agreement or as follows:

7.01.1 by Client for any reason, upon 30 days prior written notice to D2L;

7.01.2 by D2L for any reason, upon 30 days prior written notice to Client;

7.01.3 by D2L for cause at any time without penalty. Cause may include violation of any foreign, federal, state, or local law; breach of this Agreement; and violation of any other D2L policy; and

7.01.4 by either Party in the event the other Party ceases conducting business in the normal course, become insolvent, makes a general assignment for the benefit of creditors, seeks creditor protection, suffers or permits the appointment of a receiver for its business or assets, or becomes bankrupt.

## **8 DISCLAIMER OF WARRANTIES**

8.01 THE SITE AND ALL RELATED PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT BY D2L ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE WARRANTY OF NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, D2L MAKES NO WARRANTY THAT (I) THE SITE WILL MEET CLIENT'S OR ITS USERS' REQUIREMENTS, (II) THE SITE OR ACCESS TO IT WILL BE SECURE, UNINTERRUPTED, TIMELY, OR ERROR-FREE, (III) ANY DATA THAT MAY BE OBTAINED FROM THE USE OF THE SITE WILL BE EFFECTIVE, ACCURATE OR RELIABLE, OR (IV) THE SITE WILL MEET CLIENT'S OR ITS USERS' EXPECTATIONS OR BE FREE FROM MISTAKES, ERRORS OR DEFECTS.

8.02 THE SITE MAY INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES OR ERRORS. D2L RESERVES THE RIGHT TO MAKE CHANGES TO THE SITE AT ANY TIME WITHOUT NOTICE, BUT MAKES NO COMMITMENT TO UPDATE THE SITE. THE USE OF THE SITE OR THE UPLOADING OR DOWNLOADING OF ANY MATERIALS TO OR FROM THE SITE IS DONE AT CLIENT'S OWN DISCRETION AND RISK AND WITH CLIENT'S AGREEMENT TO BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CLIENT'S OR ITS USERS' COMPUTER SYSTEMS, OR FOR LOSS OF DATA FOR ANY REASON.

8.03 BECAUSE SOME JURISDICTIONS MAY NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THESE EXCLUSIONS MAY NOT APPLY TO CLIENT.

## **9 D2L LIMITATION OF LIABILITY**

9.01 IN NO EVENT SHALL D2L, ITS AFFILIATES, EMPLOYEES, OFFICERS, REPRESENTATIVES, SUPPLIERS, LICENSORS, AND AGENTS BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (I) THE USE OR INABILITY TO USE THE SITE; OR (II) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE SITE; (III) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES FOR ANY REASON; (IV) UNAUTHORIZED ACCESS TO OR ALTERATION OF THE SITE; (V) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE; OR (VI) DELAY OR FAILURE IN PERFORMANCE RESULTING FROM AN ACT OF FORCE MAJEURE, INCLUDING ACTS OF GOD, DISASTERS, COMMUNICATIONS FAILURES, WARS, STRIKES, LABOR DISPUTES, RIOTS, TERRORISM, NON-PERFORMANCE OF THIRD PARTIES OR ANY REASONS BEYOND D2L'S REASONABLE CONTROL; OR (VII) ANY OTHER MATTER RELATING TO THE SITE, EVEN IF D2L WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT'S SOLE REMEDY FOR DISSATISFACTION WITH THE SITE IS TO STOP USING THE SITE.

9.02 APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OF LIABILITY OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION OF LIABILITY MAY NOT APPLY TO CLIENT. IF ANY PART OF THIS LIMITATION ON LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF D2L UNDER SUCH CIRCUMSTANCES FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED SHALL NOT EXCEED ONE HUNDRED DOLLARS (US\$100).

## **10 Liability**

10.01 Client is liable to the maximum extent permitted by law to D2L and its third party service providers for any damages associated with or resulting from Client's acts, omissions, use or misuse of the Site, and for the acts omissions, use or misuse of the Site by Users if Client fails to timely notify D2L of such acts, omissions, use or misuse. D2L reserves the right, at our own expense, to assume the exclusive defense and control of any matter related to such claims, in which event Client will cooperate with D2L in asserting any available defenses.

## **11 Assignment**

11.01 Neither this Agreement nor any rights hereunder may be assigned or transferred by Client, whether directly or by operation of law, without the prior written consent of D2L. D2L's consent may be conditioned upon the payment of additional fees to D2L in amounts determined by D2L.

11.02 *Deemed Assignment.* A change of control of Client, sale of substantially all of the assets of Client, merger or consolidation involving Client or any affiliate of Client effecting a change of control of Client, is deemed an assignment or transfer of this Agreement and the rights under it by operation of law requiring the prior

written consent of D2L.

**11.03 Assignment Void.** Any assignment or transfer of this Agreement or the Product without the prior written consent of D2L shall constitute a material breach of this Agreement. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns. Any attempted transfer or assignment prohibited by this Agreement is null and void.

## 12 General

**12.01 Governing Law.** The law governing this Agreement shall depend on the specific D2L entity identified in the relevant Order Form, and shall be determined as follows:

If the Order Form between Client and D2L specifies the following D2L entity:	The law governing this Agreement is:	The courts having exclusive jurisdiction over this Agreement are located in:
Desire2Learn Incorporated	The laws of the province of Ontario and the relevant Canadian federal laws	Toronto, Ontario, Canada
D2L Ltd.	The laws of the State of Maryland and the relevant United States federal laws	Baltimore, Maryland, U.S.A.
Desire2Learn UK Limited	The laws of England and Wales	London, England
Desire2Learn Australia Pty Ltd	The laws of the State of New South Wales, Australia	Sydney, New South Wales, Australia
Desire2Learn Singapore Pte. Ltd.	The laws of Singapore	Singapore
D2L Brasil Soluções de Tecnologia para Educação Ltda.	The laws of Brazil	São Paulo, state of São Paulo, Brazil

**12.02 Conflict between Agreement and Order Form or Statement of Work.** The Agreement shall supersede the provisions of an Order Form or Statement of Work, unless the Order Form or Statement of Work refers to the provision of the Agreement it supersedes.

**12.03 Remedies Cumulative.** All rights and remedies under this Agreement are cumulative and in addition to all other rights and remedies of either Party at law or in equity.

**12.04 Notices.** All notices shall be in writing and delivered (a) by hand, (b) by registered mail, postage prepaid, return receipt requested, (c) reputable overnight delivery service, (d) by facsimile, provided that the sender retains proof of successful transmission, or (e) by e-mail. All notices shall be deemed received, if delivered by hand, on the date of delivery; if mailed, on the date of receipt appearing on the return receipt card; if sent by courier, on the date recorded by the courier company as having been received by the addressee; or, if sent by facsimile, on the date of receipt by the facsimile machine when it reports that the transmission is complete, or if sent by e-mail, upon receipt of an e-mail delivery receipt. Notices shall be sent or faxed to the names, addresses and numbers set forth below the signature lines to this Agreement.

**12.05 Import/Export Controls.** Client shall comply with all applicable export, re-export and foreign policy laws that may be imposed by the United States government.

**12.06 Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to its subject matter. All prior agreements, representations, inducements and negotiations, and any and all existing contracts previously executed between the Parties with respect to this subject matter are superseded hereby.

**12.07 Amendment/Waivers.** No amendment, modification, termination or waiver of any provision of this Agreement is effective unless it is in writing and signed by both Parties. Any waiver or consent shall be effective only in the specific instance and purpose for which it was given. Terms or conditions that Client purports to include in a purchase order or similar instrument are void and of no force and effect.

**12.08 Severability.** If a court declares void or unenforceable any term of this Agreement, the remaining terms and provisions of this Agreement shall remain unimpaired and the invalid term shall be replaced by a valid term that comes closest to the intention underlying the invalid term.

**12.09 Independent Parties.** Neither Party is an agent, employee, partner, joint venturer or legal representative of the other.

END OF AGREEMENT TERMS