

TERMS AND CONDITIONS:

SELLER'S ACCEPTANCE OF THIS ORDER, BY EXECUTION OF THIS ORDER FORM, PERFORMANCE OR OTHERWISE, SHALL CONSTITUTE ITS AGREEMENT TO BE BOUND BY AND TO COMPLY WITH ALL TERMS AND CONDITIONS OF THE PURCHASE ORDER AS SET FORTH BELOW.

TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

- 1.1 In these Terms and Conditions of Purchase (together with the Order Form, the "Agreement"), the following definitions apply:
- (a) "Company" means Modulated Imaging Inc. (DBA Modulim), a Delaware corporation, and purchaser of the Goods, Services or Deliverables.
 - (b) "Company Personnel" means Company's employees, consultants, agents, independent contractors, and subcontractors.
 - (c) "Deliverables" means any tangible materials, content, sales leads, marketing or advertising materials, Software (including software integrations or customizations), technical data, intellectual property, drawings, documentation, or any other items identified and/or listed in the Order Form or described in the Specifications, any of which are provided for Company's internal use or integration into Company's commercial offerings for sale or resale.
 - (d) "Delivery Date" means the date of delivery specified in the Order Form.
 - (e) "Goods" means any tangible products or physical goods, including wholly assembled materials ready for Company's consumption and use, component parts, or materials provided for Company use or integration into its commercial offerings, as specified on the Order Form, to be delivered or otherwise made available to Company on or before the Delivery Date. As used in this Agreement, "Goods" shall also mean and include any Deliverables or Services, as applicable.
 - (f) "Harmful Code" means any software program, code, API, or component that is designed to: (i) disrupt, disable, harm, or impede operation; or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.
 - (g) "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) service marks, trademarks, trade name rights, and similar rights; (iii) trade secret rights; (iv) patents, inventions, designs, algorithms, utility models, and other industrial property rights, together with all improvements thereto; (v) all other intellectual property rights of every kind and nature throughout the world and however designated, whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
 - (h) "Laws" means rules, regulations, orders or other pronouncement of any government or quasi-governmental authority.
 - (i) "Order Form" means the Order Form immediately preceding of these Terms and Conditions of Purchase.
 - (j) "Personal Data" means any personally identifiable information ("PII") that may be used to identify an individual, and may include (without limitation) any combination of name, address, email address, phone number, race, nationality, ethnicity, origin, religion, political beliefs, age, gender, sexual orientation, marital status, family status, social

security number, government issued ID number, employee number, or any other identifying number, code or symbol, individual health care information, educational, financial, criminal or employment history.

- (k) "Place of Delivery" means the place of delivery specified in the Order Form.
- (l) "Seller" means the person, corporation, partnership, company, or other business entity selling Goods, Services or Deliverables to the Company and identified as Seller on the above Order Form.
- (m) "Seller Personnel" means Seller's employees, consultants, agents, independent contractors, and subcontractors.
- (n) "Services" means personal or professional services, consulting services, implementation, installation assistance, or any other type of intangible services that Seller agrees to perform for Company as specified on the Order Form.
- (o) "Software" means the source code, object code, applications, components, or computer-operating programs provided by Seller in connection with any Goods or Services (including any Deliverables) under the Order Form.
- (p) "Specifications" means the specifications, samples, drawing or other descriptions of the manufacturing quality or other requirements concerning the Goods, Services or Deliverables, delivered by Company to Seller in connection with the Order Form or otherwise approved by Company and Seller in writing.
- (q) "Total Amount Due" means the total amount due for the purchase of the Goods, Services or Deliverables as specified in the Order Form.

2. CONSTITUTION OF CONTRACT

- 2.1. ALL PURCHASES OF GOODS BY COMPANY SHALL BE EXCLUSIVELY GOVERNED BY AND SUBJECT TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. ANY TERMS OR CONDITIONS PROPOSED BY SELLER WHICH ADD TO, VARY FROM, OR CONFLICT WITH, THIS AGREEMENT ARE EXPRESSLY REJECTED AND CAN BE MADE EFFECTIVE ONLY IF SUBSEQUENTLY APPROVED IN A WRITTEN DOCUMENT SIGNED AND DATED BY BOTH SELLER AND AN AUTHORIZED SIGNATORY OF COMPANY SPECIFICALLY REFERENCING THIS AGREEMENT AND THE ORDER FORM TO WHICH THEY RELATE AND THE PARTICULAR ADDITIONAL OR CONFLICTING TERMS OR CONDITIONS TO BE MADE EFFECTIVE.
- 2.2. The particulars appearing on the Order Form, read with the terms and conditions of this Agreement and the Specifications constitute Company's offer to purchase Goods and are binding on Company only if executed by an authorized representative of the Company. Seller's acceptance of such offer, by signing the above Order Form, by written acknowledgement, by performance or otherwise, shall constitute its acceptance of such offer and its agreement all the terms and conditions of this Agreement. Seller acknowledges that upon acceptance of the offer, it has or will request from Company, all applicable specifications, drawings, documents, or requirements necessary for Seller to perform its obligations under this Agreement.
- 2.3. Without limiting the generality of Paragraph 2.1 hereof, Company shall not be bound by any oral or written offers or representations made by its employees or agents, or by any course of dealing, course of performance, or trade usage.

3. PRICES AND PAYMENT

- 3.1. The prices stated in the Order Form include all applicable taxes, duties, shipping and delivery charges, import or export fees, or other charges, except state and local sales and use taxes, value added taxes, or goods and services taxes ("Transaction Taxes") that by statute may be passed on to Company. Transaction Taxes shall be separately itemized in Seller's invoice. Unless different payment terms are expressly stated on the Order Form, payment terms shall be net 30 days from the later of: (i) the Delivery Date; (ii) the date of Company's

acceptance of the Goods; or (iii) Company's receipt of Seller's correctly presented invoice. A "correctly presented invoice" will contain the Order Form number sent to the billing address specified on the Order Form. Payment will be U.S. dollars (USD).

- 3.2. Company will be entitled at any time to set off any amount owing from Seller to Company against any amount payable at any time by Company to Seller, including but not limited to amounts owed by Seller for credits, refunds, returns, or other charges, fees, or expenses that Seller is obligated to pay.

4. DELIVERY

- 4.1. The Delivery Date is firm and Seller acknowledges and agrees that TIME IS OF THE ESSENCE. Seller shall use its best efforts to meet the Delivery Date and will promptly notify Company in writing if Seller anticipates any delays. Company shall not be obligated to accept deliveries of Goods made after the Delivery Date. If Seller fails to meet a Delivery Date, Company may procure replacement goods without obligation to purchase the Goods, Services or Deliverables. Seller will be responsible for all of Company's costs incurred as a result of late deliveries and procurement of replacement goods.
- 4.2. Delivery of Goods will occur and title and risk of loss will transfer, upon the arrival of the Goods at the Place of Delivery.
- 4.3. Seller shall use the Company's specified delivery method or if no delivery method is specified, then the least expensive commercially reasonable method of delivery. Company's Order Form number must be plainly marked on all packages, bills of lading, and shipping orders. Seller shall: (i) be responsible on a replacement cost basis for all loss or damage to Goods or materials while in its possession or in transit, and shall insure its risk with adequate commercial general liability insurance; (ii) at Company's election, credit or refund all fees paid or payable by Company, or re-perform at no additional cost, any Services that are delivered in a manner that fails to comply with Seller's warranty obligations herein.
- 4.4. Payment for Goods does not constitute acceptance. Company reserves the right to inspect and test all Goods as a condition of Company's acceptance, regardless of the time, place, stage of production or distribution. Company's payment shall not constitute Company's final acceptance of any Goods found to be defective or deficient in any material respect due to any flaw, defect, or latent deficiency that was not reasonably apparent to Company at the time of the Delivery Date or inspection. Company expressly reserves the right to exercise any remedies available to it, at law or in equity, for incomplete, deficient, or defective Goods, including the right to rescind its acceptance, or to require Seller to cure any defect or deficiency in a commercially reasonable time, or to require Seller to re-perform deficient Services at no additional cost to Company. Any rejected Goods may be returned to Seller or held by Company, both at Seller's risk and expense, subject to Seller's disposal instructions.

5. QUANTITY TERMINATION; ORDER CHANGES

- 5.1. Company may, in writing to Seller, terminate its purchase of any quantity of Goods for convenience, provided that, in the event of such termination, Company will pay Seller termination charges equal to the cost of materials and labor incurred on ordered Goods prior to the date of Company's termination notice, provided Seller uses best efforts to mitigate its costs. Seller must notify Company in writing of the actual termination charges within ten (10) days after termination.
- 5.2. Without limiting any other remedy available to Seller hereunder or under applicable Law, if termination is due to breach of any material term of the Order Form (including the Delivery Date) and any of the terms and

conditions of this Agreement, no termination charges will apply and Company may procure substitute goods or deliverables and Seller will be liable to Company for any excess costs incurred by Company.

- 5.3. Prior to shipment or completion, Company may request changes with respect to the Goods to be provided, including, changes in shipping, packing, Delivery Date, Place of Delivery, ordered quantity or changes to the Specifications. Seller will promptly, but no more than fifteen (15) days of the receipt of such request, notify Company in writing of any resulting increase or decrease in cost and Company and Seller must agree on any price adjustment before implementing any change. To be enforceable, all adjustments in price timely submitted by Seller must be agreed to in writing by Company.

6. REPRESENTATIONS AND WARRANTIES

- 6.1. Seller represents and warrants that: (i) it has the full authority to accept the Order Form and to perform all of its obligations; (ii) it has taken all necessary precautions for the safety and protection of persons and property, and has provided all warnings related to the Goods; (iii) all Services will be performed in a professional and workmanlike manner, consistent with prevailing industry standards; (iv) the Goods conform in all material respects to the Specifications or other intended use; (v) all Goods are of new material, merchantable, free from defects, and unreasonable hazards, in design, material, and workmanship; (vi) it has the right and unrestricted ability to transfer and assign all Intellectual Property Rights in any Deliverables to Company, including, without limitation, the right to transfer and assign any Intellectual Property Rights arising from work performed by Seller Personnel; (vii) the Goods provided to Company do not, and will not, infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary or property rights, whether contractual, statutory, or common law; (viii) Seller will not disclose to Company, bring onto Company's premises, or induce Company to use any confidential or proprietary information that belongs to anyone other than Company or Seller unless such information is covered by a non-disclosure agreement or other agreement including confidentiality protections permitting such disclosure by Seller to Company; and (ix) any Software supplied by Seller will not contain any Harmful Code.
- 6.2. If any Goods provided under a purchase order do not meet the warranties specified herein, Company may, at its option, return to Seller (at Seller's expense) the defective or nonconforming items for credit, refund, or set-off, or require Seller to correct or replace, at no cost to Company, any defective or nonconforming items, including, without limitation, reperforming any Services and providing new Deliverables for any deficient performance. Return shipping to Company of corrected or replacement Goods shall be at Seller's expense. Any Goods required to be fixed or replaced (including, without limitation, the re-performance of any Services) shall be subject to the warranty provisions in this section, and Company's rights of inspection, in the same manner and to the same extent as originally delivered under this Agreement. Seller's warranties shall run to Company, its affiliates, subsidiaries, and any ultimate customers, clients, or users of the Goods and shall not be deemed to be exclusive of any other remedy at law or in equity available to Company, its affiliates, subsidiaries, customers, clients, or users. Company's inspection, approval, acceptance, use of, or payment for all or any part of the Goods shall in no way affect or waive its warranty rights. Seller shall, at its expense, indemnify, defend and hold harmless Company, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users, from any and all losses, damages, or liability (including, without limitation, reasonable legal fees and costs) arising out of or resulting from any deficiency in delivery of Goods or from any act or omission of Seller or Seller Personnel in connection therewith.

7. QUALITY CONTROL; CORRECTIVE ACTION

- 7.1. Seller agrees to advise the Company in writing, at least one hundred eighty (180) days in advance, of any changes in the manufacture of the Goods that would materially affect the fit, form, function, finish and/or appearance of the Goods .
- 7.2. Seller shall not outsource the (i) design, manufacture or assembly of the Goods or Deliverables or any materials, parts or components thereof, or (ii) the design or coding of any Software to another supplier or vendor without the prior written approval of the Company.
- 7.3. Seller shall calibrate and take all reasonable steps to insure the accuracy of all test equipment used to test the Goods or measure their conformance to the Specifications.
- 7.4. Seller shall permit all governmental authorities, and certification agencies and Company or its agents the right to inspect Seller's facilities at which the Goods or any components thereof are handled, stored, or shipped, and all records related thereto. Seller shall assist such governmental authorities and certification agencies and the Company or its agents with such inspections. Seller shall promptly notify the Company of all such inspections by governmental authorities or certification agencies related to or affecting the Goods or Deliverables and shall provide the Company the opportunity to be present at such inspections. Seller shall provide to Company, within five (5) days of its submission or receipt by Seller, a copy of all letters, documents, and similar instruments related to the products, which Seller submits to or receives from any governmental authority or certification agency, including all audit observations of the International Organization for Standardization (commonly referred to as "ISO"), U.S. Federal and Drug Administration ("FDA") warning letters and FDA Form 483s or any other governmental or quasi-governmental authority or political sub-division thereof Seller shall immediately correct any deficiencies identified by any governmental authority or certification agency.
- 7.5. If the quality of parts or material provided by the Seller demonstrate a declining trend, Company may initiate a supplier corrective action request ("SCAR"). The Seller shall investigate and propose the required corrective action and/or preventive action to Company within 30 days of the Company's initiation of the SCAR for approval by the Company. Seller shall implement such approved corrective and/or preventive action within 30 days of the approval by the Company.
- 7.6. Seller shall promptly notify the Company of any product complaint, report, or recall concerning the Goods or any component thereof. Seller shall promptly provide to Company any information received by Seller regarding real or potential deficiencies or defects in the Goods and any information that might otherwise constitute a complaint about the Goods or would reasonably be considered material to the safety of them for their intended use. Each party shall reasonably cooperate with the other in sharing any information that may constitute a complaint related to the Goods or Deliverables and shall designate a representative responsible for the exchange of such information and all other regulatory information required to be shared under this Agreement. Seller shall always reasonably cooperate with any investigation, inspection, or inquiry by the Company regarding the Goods.

8. COMPLIANCE WITH LAWS; DATA PRIVACY

- 8.1. Seller certifies and covenants that: (i) Seller will comply with all applicable Laws of any government or quasi-governmental authority in connection with its manufacturing, maintenance, marketing, sale of the Goods, Services or Deliverables, including but not limited to environmental, health and safety, immigration, customs, employment and data privacy related Laws.
- 8.2. Without limiting the generality of Section 8.1, Seller certifies and covenants that all Goods delivered will be manufactured, maintained, sold in compliance with applicable "Restriction on the use of Hazardous Substances" ("ROHS") Laws, including but not limited to such Laws codified in the California Health and Public Safety Code sections 25214.9 – 25214.10.2, and related regulations prescribed in the California Code of

Regulations, Title 22, Section 66260.202, and, that unless otherwise agreed to in writing by the Company, restricted hazardous substances shall not exceed the following levels at the homogenous level:

| | Substance | Max Level |
|---|---|------------|
| 1 | Lead (Pb) | <1,000 ppm |
| 2 | Mercury (Hg) | <1,000 ppm |
| 3 | Cadmium (Cd) | <100 ppm |
| 4 | Hexavalent chromium (Cr VI) | <1,000 ppm |
| 5 | Polybrominated biphenyls (PBB - a flame retardant used in several plastics) | <1,000 |
| 6 | Polybrominated diphenyl ether (PBDE - a flame retardant used in several plastics) | <1,000 |

- 8.3 From time to time, at Company's request, Seller shall provide certificates to Company relating to compliance with any applicable legal requirements, including ROHS, the Registration, Evaluation, Authorization and Restriction of Chemicals regulations of the European Union (commonly known as "REACH"), and the North America Free Trade Agreement and any successor or superseding laws and regulations.
- 8.4 Seller certifies and covenants that (i) Seller will not use, transmit, or disclose any Personal Data that is handled or processed by Seller for or on behalf of Company, except to the extent necessary to perform under this Agreement, and Seller will comply at all times with all Laws concerning the handling of Personal Data; (ii) to the extent that Seller actually processes Personal Data it will: (a) implement and maintain appropriate technical and organizational measures and other protections for handling Personal Data including, without limitation, not loading any Personal Data provided to Seller on any laptop computers or portable storage media that can be removed from Seller's premises unless such Personal Data has been encrypted and is stored or transmitted solely as necessary for Seller to perform Services under this Agreement; (b) report to Company any loss or breach of security of Personal Data ("Security Incident") promptly after discovery and in no event later than is required under any/all privacy and data security laws and regulations in any jurisdiction where Seller provides Goods to Company; (c) cooperate fully with Company in investigating any Security Incidents; (d) cooperate fully with Company's requests for access to, correction of, and destruction of Personal Data in Seller's possession; (e) comply with all instructions or other requirements provided or issued by Company from time to time relating to Personal Data; (f) collect all consents necessary to transmit, process, or store any Personal Data on Company's behalf in performing any Services; (iii) Seller will not transfer Personal Data across any country border unless it is strictly necessary and unavoidable for the proper performance of any Services, and Seller first provides notice to Company prior to allowing any cross-border transfer; (iv) upon Company's request, Seller shall enter into such other arrangements with Company as Company considers reasonable or appropriate in order to ensure that Seller's handling of Personal Data is lawful; (v) Seller will not provide Company with Personal Data of any third party or Seller Personnel unless necessary to perform the Services; and (vi) Seller will record all consents required for handling Personal Data in fulfilling any legitimate purpose in performance of Services hereunder.
- 8.5 Seller represents that it shall use best efforts to prevent its directors, officers, managers, employees, independent contractors, representatives or agents to, promise, authorize or make any payment, or otherwise provide any item of value, directly or indirectly, to any foreign official or any foreign political party or official thereof or candidate for foreign political office in violation of the U.S. Foreign Corrupt Practices Act (FCPA), the U.K. Bribery Act 2010, or any other applicable anti-bribery or anti-corruption law. The Seller further represents that it shall use best efforts to cease any ongoing actions and remediate any prior actions taken by the Seller, its subsidiaries or affiliates, or any of their respective directors, officers, managers, employees, independent contractors, representatives or agents in violation of the FCPA, the U.K. Bribery Act 2010, or any other applicable anti-bribery or anti-corruption law. The Seller further represents that it maintains systems of internal controls to ensure compliance with the FCPA, the U.K. Bribery Act 2010, or any other applicable anti-bribery or anti-corruption law.

9. CONFIDENTIAL INFORMATION; OWNERSHIP OF DOCUMENTS & MATERIALS


- 9.1. Seller shall not disclose to any third party or use any confidential information or Personal Data of Company concerning this Agreement, or disclose any materials intended for use in connection with this Agreement, without Company's prior written consent. Any knowledge or information which Seller may disclose to Company in connection with the purchase of any Goods or Deliverables shall not be confidential information, unless agreed to in writing.
- 9.2. Unless otherwise provided in an agreement signed by Seller and Company, Seller agrees that Company is the sole and exclusive owner of all Goods provided by Seller; and Seller hereby irrevocably assigns and transfers to Company all of its worldwide right, title to, and interest in any Goods or other materials created for Company, including all associated Intellectual Property Rights therein. Upon the request of the Company and at Company's expense, Seller shall execute such further assignments, releases of any liens or other security interests, and any other documents or instruments that may be desirable or necessary to fully and completely assign all associated Intellectual Property Rights to Company, and to assist Company in applying for, obtaining, and enforcing its Intellectual Property Rights therein with the relevant United States of American or foreign registrars (e.g., the United States Patent & Trademark Office or the U.S. Copyright Office for registrations in the United States). All Deliverables and any other materials provided in connection with any Services provided by Seller shall be the sole and exclusive property of the Company, and where applicable shall be deemed "Works Made For Hire" under the U.S. Copyright Act (Title 17, United States Code) and any similar or related foreign laws.
- 9.3. Seller shall, at its expense, indemnify, defend, and hold harmless, Company, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users, from any and all loss, damages, or liability (including, without limitation, reasonable legal fees and costs) resulting from any claim of infringement or violation of any existing or future Intellectual Property Rights with respect to any of the Goods or Deliverables. The fact that Company furnishes specifications to Seller with respect to any of the Deliverables shall neither relieve the Seller from its obligations hereunder, nor limit Seller's liability in connection with this section, nor constitute an undertaking by Company to hold Seller harmless against any infringement claim that arises out of compliance with the specifications. If a third party enjoins or interferes with Company's use of any Goods or Deliverables because of any Intellectual Property Rights alleged by such third party, then Seller will use its best efforts to: (i) obtain any licenses or rights necessary to permit Company to continue to use the Goods or Deliverables; (ii) replace or modify the Goods or Deliverables as necessary to permit Company's continued use; or, if (i) and (ii) are not commercially reasonable, then (iii) Seller will promptly refund to Company all amounts paid for which a third party enjoins or interferes with Company's use of the Goods or Deliverables. Nothing in this Section shall limit any other remedy available to either of the parties.

10. GENERAL PROVISIONS

- 10.1. Neither the Order Form nor any rights or obligations under this Agreement may be delegated, assigned, or subcontracted by Seller without Company's prior written consent. Any assignment not made in accordance with these terms and conditions is void. Company may assign this Agreement and the Order Form at its discretion on the condition that any successor-in-interest following an assignment of this Agreement and the Order Form hereunder agrees to continue to be bound by this Agreement.
- 10.2. Seller agrees at its expense to indemnify, defend, and hold harmless Company, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users from any and all loss, claims and liability, including, without limitation, reasonable legal fees and costs, for death, injury or disability of any person, or damage to or destruction of any property interest (including, without limitation, the loss of use of any property or the presence of hazardous substances at any property) caused by or resulting from the acts or omissions of Seller or Seller Personnel in connection with the performance of this Agreement, including, without limitation, those relating to a Security Incident. During its performance, Seller shall maintain in full force and

effect, at its sole cost and expense, sufficient insurance coverage as more fully described in Section 10.3 of this Agreement, to cover personal injury and property damages losses caused by or resulting from the acts or omissions of Seller or Seller Personnel.

- 10.3. During its performance hereunder, Seller shall maintain in full force and effect, at its sole cost and expense, commercial general liability insurance (CGL) coverage of at least \$1,000,000 for covered losses in connection with any activities performed under this Agreement. In addition, if any Seller Personnel are assigned to deliver professional consulting services as part of the Services provided to any Company client or customer on Company's behalf (including the performance of any consulting work, or provision of any content or Deliverables to be incorporated into any of Company's commercial software products, or as a part of Company's delivery of consulting services to any Company client or customer), then Seller will be required to secure and keep in full force an "Errors and Omissions" insurance policy from an insurance company of established reputation and an A.M. Best issuer rating of at least "A" covering the Services to be provided in an amount of at least \$2,000,000 per occurrence. Upon written request, Seller will provide Company with a certificate naming Company as an "additional insured" under Seller's CGL and E&O policy/policies. All policies shall provide that coverage may not be materially changed, canceled, or nonrenewed without thirty (30) days' prior written notice to Company. The insurance requirements set forth herein are not intended, and shall not be construed, to modify, limit or reduce any of Seller's indemnification obligations to Company, or to limit Seller's liability under this Agreement in any manner.
- 10.4. As used herein, a "Claim" is any claim, demand, loss, damage, liability, cost or expense (including professional fees and costs as incurred) for which one party (the "Indemnifying Party") may be obligated to defend, indemnify and hold the other party (the "Indemnified Party") harmless. Seller shall defend, indemnify and hold Company harmless from and against any and all Claims as incurred, arising out of, or in connection with: (i) any act or omission of Seller or Seller Personnel in the delivery of any Goods or Deliverables, or performance of any Services; and (ii) any and all third party Claims incurred, arising out of, or in connection with Seller's gross negligence or willful misconduct in performing its obligations under this Agreement; and (iii) any alleged infringement of a third party's Intellectual Property Rights, or other proprietary rights as described in Section 9.3.
- 10.5. Each party will indemnify and hold the other party harmless from and against any and all third-party Claims, as incurred, arising out of any negligent or willful acts or omissions of the Indemnifying Party that result in personal injury (including death) or damage to tangible property, or loss or breach of Personal Data. For all obligations arising under this section, the Indemnified Party will provide the Indemnifying Party with prompt written notice of the Claim and permit the Indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnified Party's behalf.
- 10.6. The Seller and Company are independent contractors. Nothing in this Agreement shall be deemed to create a partnership, joint venture, franchise, employment, or agency relationship between the parties. Neither party shall have the power or authority to bind or obligate the other party.
- 10.7. Any failure or delay by either party in exercising any right or remedy will not constitute a waiver of its rights hereunder.
- 10.8. This Agreement (including the Order Form and the Specifications) constitutes the entire agreement and understanding of Company and Seller concerning the subject matter hereof. This Agreement supersedes all prior and contemporaneous agreements or understandings, oral or written between Company and Seller.
- 10.9. This Agreement shall be governed by, and construed and interpreted in accordance with, California's version of the Uniform Commercial Code. All rights and remedies of Company hereunder are in addition to all other

| | | |
|---------------|--|---|
| QR-018 | Purchase Order Terms and Conditions |  |
|---------------|--|---|

rights and remedies available to Company, whether existing under the Uniform Commercial Code or otherwise, and all such rights and remedies shall be deemed cumulative and not exclusive.

- 10.10. Venue for any action or proceeding arising from this Order Form or agreement shall be in a court of competent jurisdiction in Orange County, California and in no other jurisdiction.
- 10.11. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in no other jurisdiction.
