

**Collection**

**Purchase Agreement**

 **THIS AGREEMENT** is entered into effective as of       by and between the Regents of the University of Minnesota (“University”), a Minnesota constitutional corporation, and      ,      , located at       (“Seller”). This Agreement is entered into by the University through its Libraries.

**1.** The “Collection” as used in this Agreement means and includes those materials described in Exhibit A.

**2.** Subject to compliance with the terms and conditions of this Agreement, Seller agrees to transfer all ownership title in the Collection, including any and all copyrights related thereto owned by the Seller, to the University and University agrees to purchase the Collection from Seller.

**3.** In exchange for the unconditional transfer of ownership title by Seller, University agrees to pay Seller a total purchase price of       and   /100 U.S. dollars ($     ) (the “Purchase Price”). The Purchase Price shall be payable as follows:

 i.) Upon execution of this Agreement:       and   /100 U.S. dollars ($     )

 ii.) Upon University’s receipt and acceptance of the Collection:       and   /100 U.S. dollars ($     )

**4.** Seller, at its sole expense, shall deliver the Collection to the University within thirty (30) days after both parties have signed this Agreement. The University shall have a reasonable time (but not less than sixty (60) days) after receipt to inspect the Collection and reject any or all items that are, in the University's sole judgment, nonconforming or defective. The University reserves the right to refuse the Collection and cancel this Agreement if Seller fails to deliver all or any part of the Collection in accordance with the terms and conditions of this Agreement. Risk of loss shall not pass to University until the Collection has been actually received and accepted by University at the destination specified by the University. Seller assumes full responsibility for packing, crating, marking, transporting and liability for loss or damage in transit.

**5. Seller represents and warrants that:**

 5.1 Seller has good and marketable title to all of the Collection, free and clear of any liens, security interests, charges, claims, adverse interests and encumbrances of any kind whatsoever owed to, owned by, accruing to or in favor of any person or entity whatsoever (collectively “Liens”). Seller owns and has the right to convey and assign all rights in and to the Collection.

 5.2 There are no actions, suits, claims, investigations or proceedings (legal, administrative or arbitrative) pending or threatened against or otherwise involving the Seller (i) which relate to the Collection, or (ii) which seek to prohibit, restrict or delay consummation of the transactions contemplated hereby.

 5.3 The Collection complies with the highest warranties and representations expressed by Seller orally and in any written advertisement, correspondence, and response to University.

 5.4 No material contained in the Collection is libelous or otherwise unlawful or infringes any rights at common law or any statutory right and makes no unlawful invasion of privacy.

 5.5 Seller has full power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. This Agreement is a valid and binding obligation of Seller, enforceable in accordance with its terms.

 5.6 Neither the execution and delivery of this Agreement nor compliance with the material terms and provisions hereof will conflict with or result in a breach of any of the terms of, or result in any modification of the effect of any agreement to which Seller is a party or by which Seller is or may be bound or constitute a default there under, or result in the creation of any lien, security interest, claim or encumbrance or other restriction of any kind or nature or give any third party any interest or right in, or with respect to, any of the Collection. Neither the execution and delivery of this Agreement by Seller nor the compliance by Seller with the terms and provisions of this Agreement will materially violate any law, regulation, order, judgment, injunction or decree of any federal, state or local court, regulatory or governmental authority to which Seller is subject.

**6. University represents and warrants that:**

 6.1 University has full power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. This Agreement is a valid and binding obligation of University, enforceable in accordance with its terms.

 6.2 Neither the execution nor delivery of this Agreement nor compliance with the terms and provisions hereof will conflict with or result in a breach of any of the terms of, or result in any modification of the effect of, any agreement to which University is a party or by which University is or may be bound. Neither the execution and delivery of this Agreement by University nor the compliance by University with the terms and provisions of this Agreement will violate any law, regulation, order, judgment, injunction or decree of any federal, state or local court, arbitrator, regulatory or governmental authority.

**7.** This Agreement shall be amended only in a writing duly executed by all the parties to this Agreement.

**8.** This Agreement may not be assigned without the prior written consent of the non-assigning party. This Agreement shall be binding upon the Seller, and its successors. Any assignment attempted to be made in violation of this Agreement shall be void.

**9.** No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party.

**10.** It is expressly understood that University and Seller are independent contractors and not the agent, partner, or employee of the other. Neither party shall have the authority to enter into any contract or agreement to bind the other and shall not represent to anyone that it has such authority.

**11.** This Agreement (including all addenda, exhibits, and schedules) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements among the parties, whether oral or written, relating to the subject matter of this Agreement. To the extent the scope of work, addenda, exhibits, and schedules contain any terms and conditions that conflict with the terms and conditions of this Agreement or which materially change or add to the terms and conditions contained in this Agreement, such changes will be ignored and given no effect.

**12.** The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hennepin County, Minnesota.

**13.** No provision of this Agreement, express or implied, is intended to confer upon any person other than the parties to this agreement any rights, remedies, obligations, or liabilities.

**14.** All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

 If to the University: University of Minnesota

 Attn: University Librarian

 499 Wilson Library

 309 19th Avenue South

 Minneapolis, MN 55455

 Facsimile No: (612) 624-1805

 With a copy to: University of Minnesota

 Office of the General Counsel

 Attn: Transactional Law Services Group

 360 McNamara Alumni Center

 200 Oak Street SE

 Minneapolis, MN 55455-2006

 Facsimile No.: (612) 626-9624

 E-mail: contracts@mail.ogc.umn.edu

 If to the Seller:

 Attn:

 Facsimile No.:

 E-mail:

**15.**University may terminate this Agreement or any of its parts for cause upon seven (7) days written notice if Seller fails to comply with any material term or condition of this Agreement, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Agreement. Late delivery of goods or performance of services that are defective or do not conform to the Agreement shall, without limitation, be causes allowing the University to terminate for cause. In this event, University will not be liable for any amounts; but Seller shall be liable to the University for all losses, damages, and expenses, including costs of cover, resulting from the default that caused the termination. If a determination is made that University improperly terminated the Agreement for Cause, then such termination shall be deemed to have been for the University's convenience.

 **IN WITNESS WHEREOF,** this Agreement has been duly executed by the respective parties as of the day and year written above.

**Regents of the University of Minnesota**

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| --- | --- |
| By:  | By:  |
| Name: Lisa German | Name:       |
| Title: University Librarian and Dean of Libraries | Title:       |
| Date:  | Date:  |

**Exhibit A**

**Collection**