UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AINET CORPORATION,

Plaintiff,

15-cv-3772 (PKC)

-against-

FINDINGS OF FACT AND CONCLUSIONS OF LAW

XEROX STATE & LOCAL SOLUTIONS, INC.,

Defendant.

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CASTEL, U.S.D.J.

Plaintiff AiNet Corporation ("AiNet") brings breach of contract and other common-law claims against defendant Xerox State & Local Solutions, Inc. ("Xerox"). Xerox and AiNet entered into a subcontract under which AiNet was to house and maintain backup computer servers for the benefit of the Maryland Department of Human Resources ("DHR"). Under the subcontract, Xerox delegated work to AiNet through a task order, which Xerox purported to terminate for its convenience in July 2014. The previous January, Xerox separately instructed AiNet to cancel a purchase order for additional power.

AiNet asserts that Xerox's termination of the task order and cancellation of the purchase order were inconsistent with the agreements' provisions allowing for termination and cancellation. Its seeks damages for work actually performed under the task order and purchase order, as well as benefit-of-the-bargain damages for payments it was to receive under the Task Order. AiNet also brings equitable claims of unjust enrichment and account stated as to the purchase order.

This Court presided over a bench trial as to liability only, which began on June 13, 2017 and was continued on June 21, 2017. It now sets forth its findings of fact and conclusions of law pursuant to Rule 52(a)(1), Fed. R. Civ. P. For the reasons that will be explained, the Court finds that Xerox's termination of the task order and its cancellation of the purchase order were consistent with the relevant termination and cancellation provisions of the parties' agreements. The Court therefore finds in favor of Xerox on all claims.

OVERVIEW OF TRIAL.

As the trial of the liability phase, plaintiff called two witnesses: Pamela Sweeney, vice president of compliance and capital projects at AiNet (Docket # 58), and Deepak Jain, CEO of AiNet (Docket # 60). Their direct testimony was presented by declaration and they were cross-examined by Xerox.

Xerox called Vishnu Nanan, vice president and managing director of Xerox (Docket # 75), and Althea Cross, manager for global procurement of Xerox (Docket # 76), whose direct testimony was presented by declaration and who were cross-examined by AiNet. Xerox also called Patricia Bischoping, a project manager of non-party Xerox Corporation who managed company-wide procurement systems (Docket # 77). Bischoping's direct testimony was received at trial, and AiNet waived cross-examination of Bischoping. (Trial Tr. 96-97.)

The Court received into evidence Defendant's Exhibit A, e-mail correspondence and an attached January 22, 2014 purchase order sent from Xerox to AiNet; Defendant's Exhibit B, a version of the January 22, 2014 purchase order reflecting its cancellation, along with Xerox's related database records; Defendant's Exhibit C, a task order executed by AiNet and Xerox; Plaintiff's Exhibit A1, the subcontract executed by AiNet and Xerox; Plaintiff's Exhibit A5, the January 22, 2014 purchase order sent from Xerox to AiNet; Plaintiff's Exhibit A6, a July

15, 2014 letter from Xerox to AiNet; Plaintiff's Exhibit A7, a second letter of July 15, 2014 from Xerox to AiNet, which announced Xerox's cancellation of the task order; Plaintiff's Exhibit P, the terms and conditions governing the purchase order; Plaintiff's Exhibit A8, a July 3, 2014 letter from the DHR to AiNet; Plaintiff's Exhibit H, the Prime Contract between the DHR and Xerox; and Plaintiff's Exhibit R, the January 22, 2014 purchase order, with related e-mail correspondence.

AiNet and Xerox submitted pretrial and post-trial memoranda, as well as proposed findings of fact and conclusions of law. (Docket # 95-98, 100, 118-21.)

FINDINGS OF FACT.

A. The Parties' Subcontract and the Task Order.

On or about November 1, 2008, Xerox and the Maryland Department of Human Resources ("DHR") entered into an "Outsourcing of Hosting Services Contract (OTHS/OTHS 08-002)" (the "Prime Contract").[1] (Joint Stip. ¶ 1 & PX H.) Under the Prime Contract, Xerox was to provide information technology services to the DHR, including data back-up and hosting work. (Id.)

On October 14, 2013, Xerox entered into a subcontract with AiNet, titled "Definitive Subcontract Agreement By and Between Xerox State & Local Solutions, Inc. and AiNet Corporation to Provide Services in Support of Outsourcing of Hosting Services Contract (OTHS/OTHS-08-002)" (the "Subcontract"). (Joint Stip. ¶ 2 & PX A1.) The Subcontract had a one-year term, beginning October 14, 2013. (Joint Stip. ¶ 7 & PX A1 § 6.) AiNet's performance under the Subcontract was to include the physical housing of the DHR's back-up servers, along

[1] At the time that the Prime Contract was entered into, Xerox was known as ACS State & Local Solutions, Inc. (See PX H.)

with providing electricity, cooling and security for those servers. (Joint Stip. ¶ 3.) Such services are known as "colocation." (Joint Stip. ¶ 3.)

Section 3 of the Subcontract is headed "WORK," and states that AiNet "shall fully provide, complete and deliver on time all the tasks, deliverables, goods, services and other work as set forth in the Task Order Award documents . . . ." (PX A1.) On December 3, 2013, AiNet and Xerox executed Task Order number AIN-201 (the "Task Order"), with a 69-month term running from October 13, 2013 to June 30, 2019. (DX C.) Under the Task Order, AiNet was to provide services related to Xerox's Prime Contract with the DHR, including the colocation services of hosting, backup, recovery, monitoring and security. (Task Order § 5(a).) Pamela Sweeney of AiNet signed the Task Order on AiNet's behalf. (Joint Stip. ¶ 4.)

In or around late May or early June 2014, following an incident in which AiNet denied server access to a firm sent by Xerox, Xerox consulted with the DHR and recommended that the AiNet relationship be terminated, with colocation work reassigned to a company called Tierpoint. (Nanan Dec. ¶ 18; Jain Dec. ¶ 28.) The DHR agreed to the recommendation. (Nanan Dec. ¶ 18.)

In a letter dated July 3, 2014, Kenyatta Powers of the DHR wrote to Jain, the CEO of AiNet, and stated in part:

> DHR has instructed Xerox to relocate the DHR owned equipment currently situated at your facility to another location to better meet the needs of the State. It is our understanding that AiNet is impeding progress and refusing to release state owned equipment. This is adversely affecting the State. AiNet should immediately release DHR's equipment to Xerox no later than July 7, 2014.

(Joint Stip. ¶ 19 & PX A8.)

Section 7.1(b) of the Subcontract and section 9(a) of the Task Order each contains a provision that permits Xerox to terminate for convenience each agreement with AiNet. The provisions will be discussed in more detail as part of the Court's conclusions of law.

In a letter dated July 15, 2014, Xerox's senior corporate counsel wrote to Jain, stating that Xerox was terminating the Task Order for convenience. The letter stated in part:

> The purpose of the letter is to notify AiNet of the termination of Task Order Award AIN-201, in its entirety, for convenience. The termination shall take effect immediately. . . . As you know, the parties' customer, the [DHR], has directed that the work currently being performed under the Task Order be reassigned. (See Exhibit A attached.) On this basis, Xerox is hereby terminating the Task Order for convenience in accordance with Paragraph 9 of the Task Order and Paragraph 7.1(b) of the Definitive Subcontract. . . . This letter will confirm that AiNet is to immediately stop all work under the Task Order, terminate all associated lower-tier subcontracts, and place no further orders hereunder except as may be specifically directed by Xerox.

(PX A7.)

B. The Purchase Order.

1. The Role of the Purchase Order.

From time to time, Xerox obtained services from AiNet through individual purchase orders. The term "purchase order" does not appear in the Subcontract or the Task Order. Xerox's purchase orders included a link to a web page that set forth governing Terms and Conditions. (Joint Stip. ¶ 15 & PX A5.) Section 1 of the Terms and Conditions stated that the purchase order was "subject solely to the Terms and Conditions set forth herein unless otherwise agreed to in a written document executed by both parties." (PX P.) The Terms and Conditions included a termination provision stating that Xerox "may terminate this PO, in whole or in part, at any time upon written notice to" AiNet. (PX P § 16(a).)

2. AiNet Received the Purchase Order on June 22, 2014.

On the morning of January 22, 2014, Xerox sent AiNet a purchase order for "Additional Power Requirement for Dual 30 AMP 208 Volt A B Feeders Oty (2)" (the "Purchase Order"). (Joint Stip. ¶ 14 & PX A5.) Xerox transmitted the Purchase Order to AiNet via e-mail. (Trial Tr. 36.) At trial, Sweeney testified that she believed that she received the original Purchase Order via an e-mail from Xerox on the morning of January 22. (Trial Tr. 36-37.) Neither party moved into evidence a copy of the e-mail that transmitted the Purchase Order, but its successful transmittal is undisputed. (Joint Stip. ¶ 14; Trial Tr. 36-37.)

3. AiNet Received Althea Cross's E-mail Instructing Cancellation of the Purchase Order.

Later that same morning, at 11:29 a.m., Althea Cross of Xerox sent an e-mail to Pamela Sweeney of AiNet that stated, "Hi team, Please cancel the following we will be reviewing the documentation and updating," with a copy of the Purchase Order attached. (Joint Stip. ¶ 16 & DX A.) Romaine Gordon, a buyer at Xerox, was copied on the e-mail. (DX A.) It is undisputed that the 11:29 e-mail attached a copy of the Purchase Order. (Joint Stip. ¶ 16; DX A.) Cross states that "[t]he purpose of that e-mail was to advise AiNet to cancel the PO, which PO I understood to have been sent to AiNet earlier that day." (Cross Direct ¶ 3.)

Sweeney testified at trial that she is the individual at AiNet who typically would receive and process purchase orders, as well as the individual responsible for processing instructions to cancel a purchase order. (Tr. 37-38.)

An e-mail exchange concerning a different project is included below Cross's e-mail to Sweeney directing her to "[p]lease cancel the following . . . ." In that e-mail, a Xerox employee named Darlene Smith had e-mailed an individual named Robert Taylor stating, "We have a SHERO…Althea Cross! Althea has processed the PO for FiberPlus to complete the

extension! Thanks Althea!!!" (DX A.) Cross testified that she had not worked on the FiberPlus purchase order. (Trial Tr. 59-61.)

The e-mail from Cross to "[p]lease cancel" the Purchase Order circulated within AiNet over the course of the day. At 2:28 p.m., an AiNet executive named George Tully forwarded Cross's e-mail, including the discussion of FiberPlus and the attached Purchase Order, to Jain, who responded to the e-mail at 2:41 p.m. and 7:32 p.m. (PX R.) AiNet's post-trial memorandum identifies Tully as "the AiNet executive who had negotiated the PO with Xerox." (Docket # 119 at 6.) The e-mails between Tully and Jain did not discuss the cancellation of the Purchase Order or its underlying order for additional power, but instead discussed whether AiNet's premises would be made available to FiberPlus. (PX R.)

At trial, Sweeney testified that she understood Cross's e-mail of 11:29 a.m. to be an instruction that the Purchase Order be cancelled. (Trial Tr. 16-19.) Sweeney testified, "I'm – I do believe that I have enough documentation to understand that it was canceled." (Trial Tr. 16.) She also testified, "Based on the emails, based on the documentation of [the exhibit], at the time I would have agreed that it was canceled." (Trial Tr. 17.) Sweeney also testified that she did not review or have knowledge of the 11:29 a.m. e-mail until June 2016, when she reviewed the e-mail in connection with this litigation. (Trial Tr. 26-27.) However, she acknowledged that she received the e-mail. (Trial Tr. 32 ("I will say that, yeah, the papers says I got it.").)

The Court finds that the 11:29 a.m. e-mail was received by AiNet, and was circulated for review by at least three of its employees or executives: Sweeney, the person responsible for processing purchase orders and their cancellations; Jain, the CEO of AiNet; and Tully, the executive who negotiated the Purchase Order on AiNet's behalf. The Court finds that a reasonable person receiving the e-mail and its attachment would have read and understood its

contents, and would have understood the e-mail to be a written instruction from Cross to cancel the Purchase Order.

4. AiNet Separately Received an Automated E-mail Canceling the Purchase Order.

The Court also finds that it is more likely than not that AiNet received a second, automated e-mail on the afternoon of January 22, 2014 that purported to cancel the Purchase Order.

Xerox maintains an automated "iProcurement" system that transmits purchase orders and their cancellations. (Trial Tr. 47-51; Bischoping Dec. ¶ 2.) The system is part of the company's Global Procurement Services Department. (Bischoping Dec. ¶ 2.) Xerox maintains an archive that reflects when messages are sent and received, but it does not retain copies of the messages themselves. (Bischoping Dec. ¶ 3; Trial Tr. 50, 55-56.) Cross and Bischoping have testified that Xerox had a policy of retaining e-mails for approximately 30 to 90 days after transmittal. (Trial Tr. 50, 78; Bischoping Dec. ¶ 5.) In the event that an "iProcurement" e-mail was not delivered to its intended recipient, the iProcurement System would receive a "bounce message." (Bischoping Dec. ¶ 4; Trial Tr. 55.)

Records from the Xerox iProcurement system reflect that at 15:34:49 on January 22, 2014, the system transmitted a message related to Purchase Order AC230990. (DX B.) The transmittal was approved by "511, Buyer," who Cross identified as Romaine Gordon, a Xerox employee with the job title of "buyer." (DX B; Trial Tr. 81.) The Purchase Order also identifies Romaine Gordon as "BUYER 511." (DX A.) Under the heading "Notes," the iProcurement record states, "Cancelled PO as requested." (DX B.) The same record includes a summary history of the Purchase Order's internal approval within Xerox. (DX B.)

The Court also received into evidence a copy of the Purchase Order that purports to reflect its cancellation. (DX B.) This canceled Purchase Order states that its "Transmission Method" was e-mail, and that it was sent to the address aiadmin@ai.net. (DX B.) AiNet has stated that the e-mail address aiadmin@ai.net belonged to Sweeney. (Docket # 119 at 5.) Defendant's Exhibit B includes a revision to the original Purchase Order, with notations on each line reflecting its cancellation. (DX B.) Notations include, "Cancelling as per requester"; "This purchase order CANCELLED on: 22-JAN-14"; "This line CANCELLED on: 22-JAN-14"; "Quantity CANCELLED: 3990"; "This shipment CANCELLED on: 22-JAN-14." (DX B.)

AiNet claims that it has no record of receiving a cancellation e-mail sent at 15:34 on January 22, 2014. (See, e.g., AiNet Post-Trial Mem. (Docket # 119) at 6-7.)

The Court finds that it is more likely than not that Xerox sent an automated e-mail to aiadmin@ai.net that attached the revised Purchase Order reflecting its cancellation. The Court bases this finding on the database records of the e-mail's transmission, the absence of a bounce message and the canceled version of the Purchase Order that was received into evidence. The Court also bases this conclusion on Cross's testimony that Xerox has a practice of submitting and cancelling purchase orders using both personally authored e-mails and automated e-mails generated in the iProcurement system. This finding is based on a positive assessment of Cross's credibility, her work responsibilities within Xerox, and her personal knowledge and experience concerning Xerox's methods of transmitting and canceling the company's purchase orders.

The Court therefore finds that it is more likely than not that AiNet received the 15:34 e-mail attaching the canceled Purchase Order.

CONCLUSIONS OF LAW.

A. Xerox's Termination of the Task Order Was Consistent with Its Rights under the Subcontract and the Task Order.

The Court concludes that Xerox terminated AiNet's work under the Task Order in a manner consistent with the termination-for-convenience provisions contained in the Subcontract and the Task Order. Because Xerox terminated the Task Order, AiNet is not entitled to relief on its breach of contract claim directed to the Task Order.

Section 24 of the Subcontract contains a choice-of-law provision providing that it "shall be governed by, and construed in accordance with, the laws of the State of New York." (PX A1.)

Under New York law, "[w]here the terms of a contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving a practical interpretation to the language employed and reading the contract as a whole." Ellington v. EMI Music, Inc., 24 N.Y.3d 239, 244 (2014); accord Beal Sav. Bank v. Sommer, 8 N.Y.3d 318, 324 (2007) ("Construction of an unambiguous contract is a matter of law, and the intention of the parties may be gathered from the four corners of the instrument and should be enforced according to its terms."). "Courts will give effect to the contract's language and the parties must live with the consequences of their agreement." Eujoy Realty Corp. v. Van Wagner Commc'ns, LLC, 22 N.Y.3d 413, 424 (2013) (quotation marks and alterations omitted).

Section 7.1(b) of the Subcontract states:

> Termination for Convenience. If CONTRACTOR's [Xerox's] Prime Contract under which this Subcontract is issued is terminated for convenience, or SUBCONTRACTOR's [AiNet's] work is de-scoped or re-assigned at the request of the CUSTOMER [the DHR], then CONTRACTOR [Xerox] may, in its sole discretion to the same extent that the Prime Contract is terminated (which may be in its

> entirety, or on a Task Order basis), de-scoped or re-assigned, terminate the Agreement for convenience.

(PX A1; emphasis added.) Section 9(a) of the Task Order states:

> Termination for Convenience: If CONTRACTOR'S [Xerox's] Prime Contract under which this Task Order is issued is terminated for convenience, de-scoped or SUBCONTRACTOR'S [AiNet's] work is re-assigned, then CONTRACTOR may, in its sole discretion, terminate the Task Order, in whole or in part to the same extent that the Prime Contract is terminated, de-scoped, or SUBCONTRACTOR'S work is reassigned for convenience.

(DX C; emphasis added.)

The Court concludes that the DHR reassigned AiNet's work and that Xerox then terminated the Task Order for convenience. The DHR's July 3, 2014 letter to Jain explained that it had "instructed Xerox to relocate the DHR owned equipment currently situated at your facility to another location to better meet the needs of the State." (PX A8.) Xerox's letter of July 15 then stated that it was terminating the Task Order "in its entirety, for convenience," effective immediately, and cited to paragraph 9 of the Task Order and Paragraph 7.1(b) of the Subcontract. (PX A7.) Xerox's letter specifically observed that the DHR "has directed that the work currently being performed under the Task Order be reassigned." (PX A7.) Xerox instructed AiNet "to immediately stop all work under the Task Order," and to terminate any other lower-tier subcontracts. (PX A7.)

These statements from the DHR and Xerox were unambiguous, and Xerox acted consistent with its rights under the Subcontract and Task Order. Although the DHR's letter does not use the word "re-assigned," its letter was an express instruction to facilitate the transfer of work being performed by AiNet under the Subcontract. The DHR's letter effected a reassignment, and section 7.1(b) of the Subcontract and section 9(a) of the Task Order allowed for termination by Xerox in the event that the DHR instructed reassignment of work being

performed by a subcontractor. Consistent with its "sole discretion" under the Subcontract and Task Order, Xerox thereafter terminated the Task Order for convenience, based on the DHR's reassignment.[2]

AiNet argues that Xerox could not terminate either the Subcontract or the Task Order for convenience unless the DHR terminated, de-scoped or reassigned its Prime Contract with Xerox to the same extent. (AiNet Pretrial Mem. at 8; AiNet Post-Trial Mem. (Docket # 121) at 11-15.) This misreads the express language of the Subcontract and Task Order, each of which provides that Xerox may terminate the underlying agreements either to the extent that the DHR terminates its Prime Contract with Xerox, or, alternatively, to the extent that the DHR de-scopes or re-assigns the work to be performed by AiNet. Section 9(a) of the Task Order provides that "[i]f . . . [AiNet's] work is reassigned, then [Xerox] may, in its sole discretion, terminate the Task Order, in whole or in part to the same extent that . . . [AiNet's] work is reassigned for convenience." (DX C.) Section 7.1(b) of the Subcontract similarly provides that if "SUBCONTRACTOR's [AiNet's] work is . . . re-assigned at the request of the CUSTOMER [the DHR], then CONTRACTOR [Xerox] may, in its sole discretion to the same extent that the Prime Contract is terminated (which may be in its entirety, or on a Task Order basis), de-scoped or re-assigned, terminate the Agreement [Subcontract] for convenience." (PX A1.) The Subcontract and the Task Order permit Xerox to terminate the Task Order when the DHR terminates the underlying Prime Contract, "or," alternatively, when AiNet's work is reassigned. The Task Order and the Subcontract thus expressly contemplated that the DHR could instruct

[2] The parties also place much emphasis on section 17 of the Prime Contract, which permitted the DHR to terminate for convenience its contract with Xerox. (PX H § 17.) AiNet correctly observes that section 17 of the Prime Contract is not expressly incorporated into the Subcontract. (AiNet Pretrial Mem. at 8.) Exhibit 1 of the Subcontract incorporates by reference several provisions of the Prime Contract, but Section 17 is not one of them. (PX A1.) The Court concludes that the Subcontract and the Task Order both unambiguously provide that Xerox can terminate its respective agreements with AiNet in the event that the DHR instructs reassignment of AiNet's work. It does not rely on Section 17 of the Prime Contract.

reassignment of AiNet's work, giving Xerox "sole discretion" to terminate the Subcontract for convenience to the same extent. Because the DHR instructed reassignment of AiNet's work, Xerox's termination of the Task Order for convenience complied with the Subcontract and the Task Order.

AiNet raises additional arguments. It contends that the termination was in bad faith because Xerox decided to re-assign work from AiNet to a competitor on May 14, 2014, approximately six weeks before the DHR's letter to AiNet. (AiNet Pretrial Mem. at 12-13.) AiNet also cites an internal Xerox spreadsheet that apparently analyzed re-location savings. (AiNet Pretrial Mem. at 13.) But evidence that Xerox took steps to identify a new co-location subcontractor in advance of the DHR's letter of July 3 is not evidence of bad faith. Moreover, New York law permits a party to invoke a termination-for-convenience clause "without court inquiry into good faith or motive," because "a party has an absolute, unqualified right to terminate a contract on notice pursuant to an unconditional termination clause without court inquiry into whether the termination was activated by an ulterior motive." Watermelon Plus, Inc. v. N.Y. City Dep't of Educ., 76 A.D.3d 973, 974 (2d Dep't 2010) (collecting cases) (quotation marks omitted); accord Minelli Constr. Co. v. WDF Inc., 134 A.D.3d 508, 508 (1st Dep't 2015).

AiNet also challenges the economic wisdom of re-assigning the work and maintains that it could have performed under the Task Order in a cost-effective and competent manner. (AiNet Pretrial Mem. at 13-15.) These business-related arguments do not go toward whether Xerox had authority to terminate the Task Order for convenience.

The Court therefore concludes that Xerox did not breach the Subcontract or the Task Order, and acted consistent with its contractual right to terminate the Task Order for

convenience. The Court finds in favor of Xerox on AiNet's claim alleging breach of the Subcontract.

B. Xerox Canceled the Purchase Order Consistent with the Terms and Conditions.

AiNet brings separate claims of breach of contract, unjust enrichment and account stated, all of which are directed to the Purchase Order that Xerox sent to AiNet on January 22, 2014.

The bottom of the one-page Purchase Order states: "Supplier agrees to be bound by and comply with the Terms and Conditions found in the following link," with the url of a website provided. (PX A5.) Section 1 of the Terms and Conditions provides that "acceptance and resulting agreement [are] subject solely to the Terms and Conditions set forth herein unless otherwise agreed to in a written document executed by both parties." (PX P.) Section 16(a) of the Terms and Conditions is titled "Termination," and states: "Buyer may terminate this PO, in whole or in part, and at any time upon written notice to Seller. Upon receipt of a termination notice and unless otherwise directed by Buyer, Seller shall take all steps to mitigate any loss to itself arising from such termination . . . ." (PX P.)

The Court has found that at 11:29 a.m. on January 22, 2014, the same morning that Xerox transmitted the initial Purchase Order, Sweeney received an e-mail from Cross that attached the Purchase Order, directing AiNet to "[p]lease cancel the following we will be reviewing the documentation and updating." (PX A; Joint Stip. ¶ 16.) This e-mail circulated within AiNet, and was forwarded to Jain, the company's CEO. (PX R.) The Court also has found that at 15:34 on January 22, Xerox transmitted an automated e-mail attaching a version of the Purchase Order that reflected its cancellation. (DX B.)

As noted, section 16(a) of the Terms and Conditions provide that "Buyer may terminate this PO, in whole or in part, and at any time upon written notice to Seller." (PX P.) Under New York law, "[a] party has an absolute, unqualified right to terminate a contract on notice pursuant to an unconditional termination clause . . . ." Big Apple Car, Inc. v. City of N.Y., 204 A.D.2d 109, 111 (1st Dep't 1994).

The Court concludes that Cross's e-mail to Sweeney instructing AiNet to "[p]lease cancel" the Purchase Order was a written notice of cancellation of the Purchase Order, and therefore was effective. The unambiguous language of the Terms and Conditions provide that "[Xerox] may terminate this PO, in whole or in part, and at any time upon written notice to [AiNet]." (PX P.) The Terms and Conditions do not require that the written notice be provided in any particular format. They broadly provide that Xerox "may" cancel the Purchase Order "at any time upon written notice" to AiNet. (Terms and Conditions § 16(a).) Moreover, Sweeney has testified that she was the appropriate recipient for such written notice. (Trial Tr. 37-38.)

Sweeney did not dispute that she received Cross's e-mail, but testified that she never reviewed it until after this litigation commenced. (Trial Tr. 26-27.) At trial, Sweeney testified that when she ultimately reviewed the e-mail, she understood it to have the effect of canceling the Purchase Order. (Trial Tr. 16-19.) Any failure on the part of AiNet's employees or officers to contemporaneously review Cross's cancellation e-mail does not render that written notice ineffective.

AiNet raises various arguments as to why Cross's 11:29 e-mail was not an effective cancellation. At trial, Cross testified that when she sent an e-mail canceling a purchase order, the subject line ordinarily included a word like "cancel" or "cancellation." (Trial Tr. 43-44.) AiNet argues that because Cross generally canceled purchase orders by referencing

cancellation in the subject line, the 11:29 e-mail was inadequate because the subject line was "FW." (AiNet Proposed Findings ¶¶ 91-93; AiNet Pretrial Mem. at 16.) But Cross's testimony described her general practices when sending cancellation notices, and the Terms and Conditions did not prescribe a certain format or method of delivery for sending the written notice of cancellation. The failure to include a variation of the word "cancel" in the subject line does not render a cancellation notice ineffective.

AiNet separately argues that it subjectively misunderstood the cancellation request, and believed that it was directed to an arrangement with FiberPlus. (AiNet Pretrial Mem. at 16.) However, this is contradicted by the contents of the FiberPlus discussion within AiNet, which involved FiberPlus's ability to access equipment on the AiNet premises. (PX R.) The e-mails asked "would FiberPlus be allowed into our building to do a cross connect" and whether it was "an existing customer perchance?" with AiNet's CEO responding that "Fiberplus is not allowed in the building to install anything for Xerox." (Id.) AiNet's CEO and its executive responsible for negotiating the Purchase Order were forwarded Cross's e-mail. Their e-mails reflect an understanding that a FiberPlus arrangement was going forward, not that it had been canceled.

AiNet's contention that it subjectively misinterpreted Cross's e-mail is also contrary to Sweeney's testimony. Sweeney testified that she understood the e-mail to instruct cancellation of the Purchase Order for additional power. (Trial Tr. 16-19.) The Court finds it to be implausible that AiNet believed Cross's e-mail was directed to the cancellation a FiberPlus arrangement, as opposed to the Purchase Order for additional power.

Lastly, AiNet argues that the e-mail was not a valid notice of cancellation because the Purchase Order should be treated as an amendment to the Subcontract. (AiNet Pretrial Mem.

at 17-18.) It argues that as an amendment to the Subcontract, the Purchase Order can only be canceled for cause or for convenience, as set forth in the Subcontract and the Task Order. (AiNet Pretrial Mem. at 17.)

But the Subcontract provides that any amendment to it must be made in writing and signed by both Xerox and AiNet, and approved in writing by the DHR. The Subcontract states: "No changes to this Agreement or the Exhibits thereto shall be valid and effective unless made in the form of a written amendment which is approved in writing by the CUSTOMER [the DHR] and which is formally executed by authorized officials of CONTRACTOR [Xerox] and SUBCONTRACTOR [AiNet]." (PX A1 § 10.) Section 11 of the Task Order contains a similar provision.[3] AiNet does not point to any written approval from the DHR or any agreement formally executed by Xerox and AiNet that governs the subject matter of the Purchase Order, and the Terms and Conditions provide that the Purchase Order "constitutes the entire agreement between the parties . . . ."[4] The Court concludes that there is no basis to treat the Purchase Order as an amendment to the Subcontract.

The Court therefore concludes that Xerox transmitted a written notice of cancellation of the Purchase Order that was consistent with the Terms and Conditions. Because the notice of cancellation was effective, the Court finds in favor of Xerox as to all claims directed toward its obligations under the Purchase Order.

[3] The Task Order provision concerning amendments states: "A written amendment executed by authorized officials of CONTRACTOR and SUBCONTRACTOR will be required for any revisions which affect the scope of work, period of performance, payments, terms and conditions included in this Task Order Award." (DX C § 11.)

[4] The relevant provision states in full: "This PO constitutes the entire agreement between the parties concerning the subject matter hereof, superseding all previous proposals, representations, or understandings, whether oral or written. Modifications of this PO must be in writing and signed by the authorized representatives of both parties." (PX P § 18(j).)

CONCLUSION.

For the reasons explained, the Court finds that Xerox is not liable as to any of AiNet's claims. The Clerk is directed to enter judgment for Xerox.

SO ORDERED.

P. Kevin Castel
United States District Judge

Dated: New York, New York
July 18, 2017