

## Nutrien - Standard Purchase Order Terms and Conditions

### 1. DEFINITIONS:

In this Order, including the recitals hereto, the following words and phrases, and the grammatical variations thereof, shall have the meanings indicated below:

- “Affiliate”** means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such entity or one or more of the other Affiliates of that entity (or a combination thereof). For the purposes of this definition, an entity shall control another entity if the first entity: (i) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity; or (ii) has the ability to elect a majority of the directors of the other entity;
- “Buyer”** means the entity identified on the face of this Order;
- “Buyer Group”** means collectively Buyer, Buyer’s Affiliates, and their respective directors, shareholders, officers, agents, representatives and employees;
- “Goods”** means all goods purchased by Buyer from Supplier (including any part or parts thereof) under this Order including all goods, supplies, materials, deliverables, documentation, machinery, equipment, systems or apparatus;
- “Intellectual Property”** means any right or protection existing from time to time in a specific jurisdiction, whether registered or not, under any patent law or other invention or discovery law, copyright law, performance or moral rights law, trade-secret law, confidential information law, plant breeders law, integrated circuit topography law, semi-conductor chip protection law, trade-mark law or other similar laws and includes legislation by competent governmental authorities and judicial decisions under common law or equity.
- “Order”** means this purchase order between the Buyer and the Supplier for the purchase of the Goods and/or Services specified in any exhibits, attached hereto or referenced herein;
- “Parties”** means Supplier and Buyer, collectively and **“Party”** means either one of them;
- “Person”** means an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators, or other legal representatives of an individual and will include, if in the context requires, a “third party”;
- “Privacy Laws”** means all federal, provincial, state, municipal or other applicable status, laws or regulations of any governmental authority in any jurisdiction governing the collection, use, or disclosure of information about an identifiable individual, including the *Personal Information and Protection of Electronic Documents Act* (Canada) and equivalent provincial, federal, state and foreign legislation;
- “Records”** means all documentation prepared, provided or received by Supplier in connection with this Order and the provision of Goods and/or Services including all books, statements, records and accounts whether in copy or electronic form or otherwise;
- “Representative”** means Supplier’s directors, officers, employees, agents, subcontractors, assignees or other representatives engaged in the provision of the Goods and/or Services;
- “Services”** means any services performed by Supplier (including any part or parts thereof (including deliverables and documentation provided in connection therewith)) under this Order; and

**“Specifications”** means all specifications, drawings, samples, models, formulas or other descriptions of Goods and/or Services attached hereto and approved by Buyer.

**“Supplier”** means the Party identified as Supplier on the face of this Order.

Wherever the words “include”, “includes” or “including” are used in this Order, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list. Words importing the singular number only include the plural and vice versa. “Goods and Services” means “Goods and/or Services”. Except to the extent otherwise provided on the face of this Order: (i) where the Buyer is a Canadian entity, all references to dollars or to “\$” are expressed in Canadian dollars; and (ii) where the Buyer is not a Canadian entity, all references to dollars or to “\$” are expressed in US dollars.

## 2. ACCEPTANCE:

This Order is expressly limited to and is expressly made on Supplier’s acceptance of the terms and conditions herein. Upon the earliest of Supplier’s acknowledgement or statement of intent to furnish any Goods and/or Services described in this Order, or the furnishing or shipment thereof, or the commencement of performance by Supplier pursuant to this Order, Supplier confirms it has read these terms and conditions, this Order shall be deemed accepted subject exclusively to these terms and conditions and Supplier agrees to be bound by all of its terms and conditions, without alteration or addition. Buyer hereby rejects and objects to any modified, additional or different terms and conditions which it has not accepted or does not accept in writing.

## 3. CONFORMANCE:

The provision of all Goods and the performance of all Services pursuant to this Order shall be free from defects in design, material, manufacture and workmanship, in accordance with the description which forms part of this Order, in conformance with the Specifications, , in conformance with all applicable laws, regulations, orders and permits, and in conformance with all applicable industry standards in the jurisdiction where same are delivered to, or performed for, Buyer, and provided and performed in a timely, efficient and workmanlike manner.

## 4. SERVICES:

- (a) Unless otherwise agreed to by Buyer in writing, Supplier shall furnish at its own cost and expense any and all necessary labour, machinery, equipment, tools, transportation and other inputs required to perform the Services. Buyer shall not be liable for any loss of or damage to machinery, equipment or tools furnished by Supplier.
- (b) Supplier shall provide the Services in such manner as to cause minimum interference to Buyer.
- (c) Supplier shall, and shall cause its Representatives to, comply with all Buyer’s policies, procedures, rules and regulations provided to Supplier. Failure to comply with such policies, procedures, rules or regulations shall, in Buyer’s sole discretion, be grounds for immediate termination of the Order and the work in progress, with no further obligation to Supplier other than payment for Services provided prior to the date of such termination.
- (d) If Buyer determines (acting reasonably) the performance of a Representative to be unsatisfactory in any material respect, Supplier agrees to remove that Representative from the provision of the Services promptly upon notice from Buyer. If a Representative is removed in accordance with this Subsection, Supplier shall be responsible for all costs associated with the expeditious restoration of the knowledge, skills or other resources displaced thereby.

## 5. INSPECTION:

- (a) To the extent applicable, Supplier shall ensure that Buyer and Buyer’s representatives at all times have reasonable access, during normal business hours and upon prior notice, to Supplier’s and Supplier’s suppliers’ and subcontractors’ places of business at which Supplier or Supplier’s supplier(s) and subcontractor(s) are performing Supplier’s obligations under this Order. The Supplier shall provide Buyer

with safe and proper facilities for access, testing, and inspection of the Goods and/or Services. Buyer shall have the right to test and inspect the Goods at any time during manufacture and prior to shipment and the Services at any time during their performance or afterward. Upon delivery of the Goods to Buyer as specified in this Order, or upon completion of the performance of the Services, Buyer shall have a reasonable period of time for final testing and inspection of the Goods and Services. The Goods and Services shall not be deemed accepted until after said final testing and inspection. Buyer shall be entitled to reject delivery of any Goods and/or Services determined by Buyer (acting reasonably) to be not in conformance with the requirements of this Order.

- (b) Notwithstanding the foregoing, neither inspection nor failure to inspect nor any acceptance of any Goods or Services by Buyer shall in any way limit or relieve Supplier of any of Supplier's obligations hereunder, including in respect of any of Supplier's representations or warranties set out herein or in law or in equity, or Supplier's obligation to supply such Goods and/or Services strictly in the quantities ordered and otherwise in accordance with this Order.
- (c) Goods delivered in error, rejected hereunder, or overages in excess of trade practice shall be returned to Supplier at Supplier's sole expense and risk. Supplier shall, upon request by Buyer, provide instructions for such return. If Supplier does not provide instructions within a reasonable time, and in any event within thirty (30) days, after being requested, Buyer may dispose of the Goods as it deems appropriate. In no event shall Buyer be liable for any restocking or other charges for Goods returned to Supplier.

6. PRICE:

The price for all Goods and/or Services set forth in this Order is firm.

7. TAXES:

- (a) All taxes shall be disclosed as separate line items on Supplier's invoice. Supplier is exclusively liable for, and shall pay before delinquency, all taxes, levies, duties and assessments imposed or levied in respect of the provision of the Goods and Services contracted for hereunder (other than any applicable sales tax or any other applicable consumption tax payable by Buyer as the purchaser of the Goods and/or Services). SUPPLIER SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS BUYER GROUP FROM AND AGAINST ALL LOSSES THAT ARISE OUT OF, OR ARE ATTRIBUTABLE TO THE IMPOSITION BY A GOVERNMENT AGENCY OF (A) ANY TAXES APPLICABLE TO THE GOODS AND/OR SERVICES, OR ANY TRANSFER OF TANGIBLE PERSONAL PROPERTY PURSUANT TO THIS ORDER, (B) ANY OTHER TAXES ARISING OUT OF SUPPLIER'S OPERATIONS THAT MAY BE IMPOSED ON OR COLLECTED FROM BUYER GROUP OR BECOME AN ENCUMBRANCE AGAINST BUYER OR ITS ASSETS, AND (C) ANY COST FOR COMPLYING WITH APPLICABLE LAWS OF ANY GOVERNMENT AGENCY RELATING TO TAXES.
- (b) If Supplier is or becomes a non-resident for the purposes of applicable law, Supplier shall ensure each invoice issued to Buyer identifies that portion of the Order performed as a non- resident and the value of that portion, and Buyer shall be entitled to withhold that amount from payment of any invoice and remit same to the applicable taxing authority. Such amounts shall be deemed to have been paid to Supplier on their due dates, provided that Buyer shall furnish to Supplier reasonable evidence of such payments.

8. TERMS OF PAYMENT:

- (a) Buyer shall pay Supplier any undisputed amounts owing pursuant to this Order within sixty (60) days of Buyer's receipt of Supplier's correct, conforming and undisputed invoice submitted in accordance with Section 9 unless otherwise noted on the face of this Order.
- (b) Buyer shall be entitled to deduct and retain all such amounts as may be prescribed or permitted pursuant to all applicable lien or equivalent legislation or otherwise prescribed or permitted by applicable laws.

If Buyer should dispute all or part of any invoice submitted by Supplier pursuant to the terms hereof, Buyer shall provide written notice of the reason for the dispute, including any factual or contractual basis to

Supplier within the aforementioned sixty (60) day period. In the event that Supplier provides an updated invoice for the undisputed amount or at Buyer's option, Buyer may remit payment of any undisputed portion of the invoice within sixty (60) days of receipt, but may withhold the disputed portion of the invoice until the dispute has been resolved.

9. INVOICES:

Supplier shall send invoices in accordance with the invoicing instructions noted on the face of this Order. Supplier shall include on the invoice the Order number, the corresponding Order line item, and a full description of the items invoiced. Prices referenced in the invoice must correspond with the prices shown on this Order. To the extent expressly permitted hereunder, invoices for reimbursable charges, expenses, and/or third-party charges shall include adequate supporting documentation as required by Buyer. In the event freight is not included in the Order price, and is prepaid by Supplier, such freight charges shall be invoiced as a separate line item on the invoice with receipted copies of freight bills attached.

The following items shall be listed separately: (a) sales, use, and excise taxes; (b) any portion of the Services performed as a non-resident; (c) applicable surcharges; (d) refundable deposits; (e) any special charges for packing, boxing or crating; and (f) any packaging materials.

10. RESPONSIBILITY FOR PROPERTY:

To the extent that this Order permits or requires property of Buyer to be in the care, custody, and/or control of Supplier, Supplier shall be responsible for all loss and damages to said property from the time such property is received by Supplier or its Representative, and Supplier shall return said property to Buyer in accordance with the terms of this Order or, upon Buyer's request, in a condition at least as good as when said property was received by Supplier, reasonable wear and tear excepted. SUPPLIER ACKNOWLEDGES THAT BUYER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED WITH RESPECT TO THE CONDITION, QUALITY, DURABILITY, OR SUITABILITY OF SUCH PROPERTY.

11. TITLE AND RISK:

Except for property described in Section 10 (Responsibility for Property), title to and risk of any loss of or damage to any Goods shall pass from Supplier to Buyer when such Goods are unloaded and Buyer takes delivery thereof at the delivery point contemplated in this Order (or if no such point is contemplated, upon Buyer's written confirmation of taking delivery). For the avoidance of doubt, (i) passing of title upon such delivery shall not constitute acceptance of the Goods, and (ii) Supplier assumes all risk and liability for loss, damage or injury to Persons, to properties of Supplier or any other Person or in respect of any other liabilities including clean-up costs in respect of any spill or any other claims arising out of the transportation, storage or handling of the Goods while the Goods are in transit until Buyer takes delivery of such Goods as contemplated herein. In the event this Order provides that a delivery of Goods shall be made in accordance with the Incoterms 2010 rules published by the International Chamber of Commerce ("Incoterms"), such Incoterms shall only apply to extent the terms associated therewith do not conflict with the terms of this Section 11. For greater clarity, in the event there is a conflict between any Incoterms set out on the face of this Order and this Section 11, this Section 11 shall prevail.

12. LIENS:

Provided that Buyer has made all payments required pursuant to this Order, other than those which it has disputed in good faith, Supplier shall and shall cause its Representatives to: (i) keep the property and premises of Buyer, its Affiliates and those third parties where Goods are delivered or Services are performed on behalf of Buyer free and clear of all liens, charges and encumbrances arising by reason of having provided labour, materials and equipment relating to the Goods provided or the Services performed hereunder; (ii) not cause or allow to be filed any mechanic's liens, materialmen's liens or other liens or encumbrances arising by reason of having provided labour, materials and equipment relating to the Goods provided or the Services performed hereunder; and (iii) defend, indemnify and hold Buyer Group harmless from and against any and all such liens and encumbrances.

Supplier warrants that upon submittal of an invoice pursuant to the terms hereof, no Person shall have any liens, claims, security interests or encumbrances, and to the best of Supplier's knowledge, have any right to liens, claims, security interests or encumbrances, by reason of having provided labour, materials or equipment relating to the Goods provided or the Services performed hereunder.

13. WARRANTIES:

- (a) For the Goods sold hereunder, Supplier warrants as follows:
  - (i) the Goods shall conform to the provisions of Section 3 above;
  - (ii) the Goods, as described herein, are new and of merchantable quality;
  - (iii) the Goods are fit for the particular purpose stated in this Order or elsewhere in documentation provided by Supplier or Buyer;
  - (iv) the Goods do not infringe the Intellectual Property rights of any third party; and
  - (v) at the time of delivery of the Goods, the Goods shall be free and clear of all liens, claims, security interests or encumbrances.
  
- (b) In the event the Goods, or any portion thereof, do not, in Buyer's reasonable opinion, comply with any of the warranties set out in Section 13(a) above, Buyer may, at Supplier's sole risk and expense, in addition to all other express and implied remedies prescribed by law, elect to:
  - (i) reject or revoke acceptance of the Goods or any portion thereof and receive a full refund for all the Goods so rejected or withhold payments for such Goods if such payments have not been made; provided that rejection or revocation of only a portion of the Goods shall not impact the remaining shipment of Goods, to which the terms of this Order shall apply;
  - (ii) require Supplier to repair or replace the Goods;
  - (iii) repair or replace the Goods and recover from Supplier all expenses reasonably incurred by Buyer for such repair or replacement; or
  - (iv) retain the Goods and assert a right to compensation for breach of contract.
  
- (c) The warranties set out in Section 13(a) above shall survive until the later of the date which is:
  - (i) twelve (12) months from the date of commercial operation of or use of the Goods; or
  - (ii) twenty-four (24) months from date of shipment of the Goods, unless otherwise specified in this Order.
  
- (d) For the Services supplied hereunder, Supplier warrants that:
  - (i) the Services shall conform to the provisions of Section 3 above;
  - (ii) the Services shall be performed in a safe and environmentally sound manner and in performing the Services, Supplier shall exercise the level of skill, care, diligence and workmanship that would be expected of an experienced, skilled, competent and reputable contractor specializing in the provision of services comparable to the Services;
  - (iii) the Services do not infringe the Intellectual Property rights of any third party; and
  - (iv) it has the skills, expertise, experience and resources to properly perform the Services in a timely and efficient manner, without undue interference to Buyer and that it will deploy sufficient resources and personnel to so perform the Services.

- (e) In the event that the Services, or any portion thereof, do not, in Buyer's reasonable opinion, comply with any of the warranties set out in Section 13(d) above, Buyer may, at Supplier's sole risk and expense, in addition to all other express and implied remedies prescribed by law, elect to:
  - (i) require Supplier to re-perform the Services;
  - (ii) perform the Services itself or hire a third party to perform such Services and recover from Supplier all expense reasonably incurred by Buyer in respect of such performance; or
  - (iii) assert a right to compensation for breach of contract.
- (f) The warranties for the Services set out in Section 13(d) above shall survive until the date which is twelve (12) months from the completion of the Services.
- (g) Notwithstanding any termination of this Order, all warranties, whether express or implied, shall continue in full force and effect for the entire term of such warranty. Supplier shall notify Buyer of any manufacturer or subcontractor warranty(ies), and Supplier shall assign to Buyer and, upon written notice from Buyer, enforce for Buyer's benefit, any such warranty(ies) obtained from such manufacturers or subcontractors. Each such warranty shall be in addition to and not in substitution of the warranties set out herein. No acceptance of or payment for the Goods or Services provided hereunder shall operate as a waiver of the warranties and representations in this Section 13, any Supplier standard warranty, or any manufacturer or subcontractor warranty and the rights of Buyer thereunder.
- (h) All Goods repaired or replaced, and all Services re-performed, by Supplier pursuant to the terms of this Section 13 shall conform to the terms of this Section 13 for an additional twelve (12) months from the date of commercial operation of such repaired or replaced Goods, or from the date such Services are re-performed.
- (i) The warranty period for Goods shall be extended by a period equal to the sum of any periods during which the Goods cannot be used for the purpose for which they were intended during the warranty period by reason of a breach of the warranties above.
- (j) Notwithstanding the expiration of any warranty period described herein, Supplier's warranty obligations shall extend to correcting any defects in Goods or Services of which Buyer has given Supplier notice prior to the expiration of such warranty period and to latent defects discovered at any time thereafter. The expiration of any particular warranty period shall not affect any other representation or warranty made hereunder, each of which shall survive, independently, in the manner provided herein.

#### 14. DELIVERY:

TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE SUPPLIER'S OBLIGATIONS. Delivery of Goods and performance of Services shall be made at the location(s), on the date(s) and in the quantity(ies) specified in this Order. No change in the scheduled delivery date or performance will be permitted without Buyer's prior written consent. If Supplier suspects that it cannot deliver the Goods or perform the Services within the time specified in this Order for any reason, Supplier shall give Buyer immediate notice and advise Buyer of the earliest possible delivery date. No Acceptance of Goods or Services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery, and it shall not be deemed a waiver of future compliance. If delivery of conforming Goods or performance of conforming Services is not completed by the time(s) specified in this Order, or if Supplier breaches any other term or condition of this Order, Buyer may, at its option, without liability and in addition to other rights and remedies that it may have: (i) terminate this Order for cause, (ii) refuse to accept the Goods or Services, (iii) reject in whole or in part the Goods or Services not yet rendered, (iv) purchase substitute Goods or Services elsewhere and charge Supplier, (v) hold Supplier liable for any loss, expense or damage incurred, and/or (vi) require Supplier to deliver Goods or Services in the most expeditious means at no additional cost to Buyer. Any provision herein for the delivery in installments shall not be construed as making Supplier's obligations severable.

15. FORCE MAJEURE:

If either Party is unable to, partially or fully, perform or comply with any of its obligations in connection with this Order, (other than obligations regarding the payment of money), by reason of: an act of God, an act of war, or any other cause beyond its reasonable control, including without limiting the generality of the foregoing, expropriation or confiscation of land or personal property, riot, rebellion, sabotage, flood or fire, and the failure to perform or comply could not have been prevented by reasonable foresight or precautions, exercise of reasonable diligence or circumvented through the use of alternate sources, workarounds or other means (any such event being referred to as an "Event of Force Majeure"), such Party shall not be liable for failing to, partially or fully, perform to the extent such failure arises from such Event of Force Majeure. The following are specifically not excused as an Event of Force Majeure: (a) late performance by Supplier or one of its subcontractors caused by a shortage of supervisors or labor, in efficiencies or similar occurrences; (b) late delivery of equipment of materials unless caused by the Event of Force Majeure; (c) lack of finances; or (d) weather conditions that are typical of the location in which the Order is performed. The Party experiencing an Event of Force Majeure will (x) promptly notify the other Party of the Event of Force Majeure; (y) perform the obligations it failed to perform without delay once the Event of Force Majeure has ended; and (z) use all reasonable efforts to minimize and mitigate the impact of the Event of Force Majeure. If any Event of Force Majeure involving Supplier or Supplier's subcontractors (i) disrupts, or threatens to disrupt, Buyer's operations, or (ii) if the Event of Force Majeure lasts for more than twenty (20) days, Buyer may terminate this Order, without liability, immediately by written notice, terminating all obligations and liabilities imposed on it by this Order.

16. COMPLIANCE:

Supplier agrees that, in performing hereunder, Supplier will comply with all applicable laws including all applicable legislation, permits, rules, regulations, and orders including those governing equal and fair employment practices, environmental, safety, health, and vocational rehabilitation, personal information privacy, affirmative action programs, and packing, labelling and carriage of Goods.

17. INTELLECTUAL PROPERTY:

- (a) Subject to Section 17(c), Buyer is and will be the exclusive owner of, and have all Intellectual Property rights in and to:
  - (i) all custom deliverables provided by Supplier to Buyer in connection with this Order excluding, for greater certainty, any standard documentation provided by Supplier to its customers generally; or
  - (ii) all information and data generated by Supplier in carrying out its obligations under this Order or generated by or on behalf of Buyer; and
  - (iii) any other deliverable in which the Intellectual Property is to vest in Buyer as contemplated on the face of this Order,

(collectively, "Work Product"). All right, title and interest, including all Intellectual Property rights, in Work Product will vest in Buyer, immediately upon creation or first reduction to practice and regardless of the state of completion of such Work Product and will, to the extent applicable, be deemed a "work made for hire" (as defined in Title 17 of the United States Code).

- (b) Supplier:
  - (i) will promptly disclose to Buyer the creation or first reduction to practice of any Work Product;
  - (ii) hereby assigns and transfers, agrees to assign and transfer, and agrees to cause its Representatives to assign and transfer, all right, title and interest (including all Intellectual Property rights) in and to all Work Product, as and when created, to Buyer;
  - (iii) will obtain unconditional and irrevocable waivers for the benefit of Buyer, its Affiliates and its assignees, from all individuals involved in the creation or first reduction to practice of any Work Product, of all rights which cannot be assigned, including moral rights; and

- (iv) will execute and cause its Representatives to execute such assignments and other documents as may be necessary to confirm the allocation of ownership of Intellectual Property rights as contemplated in this Section 17.
- (c) Buyer acknowledges that the performance of the Services and the supply of the Goods by Supplier under this Order requires the skills and know-how of Supplier, including all concepts, know-how, ideas, knowledge, methodologies, and techniques developed by Supplier other than Work Product (collectively, the "Know-How").
- (d) Supplier hereby grants to Buyer and its Affiliates a non-exclusive, worldwide, irrevocable, perpetual, royalty free, assignable license (with the right to sublicense to their service providers) to access, use, copy, develop derivative works from, modify, or enhance the Know-How as reasonably necessary for Buyer and its Affiliates to receive and benefit from the performance of the Services and the supply of the Goods and to exercise their rights in any deliverables provided by Supplier to Buyer or any of its Affiliates in connection therewith.
- (e) Nothing contained in this Order prohibits Supplier from using any of the Know-How to perform similar services for others; provided, however, that Supplier will not use any of Buyer's Confidential Information in providing services to others.
- (f) Supplier hereby grants to Buyer and its Affiliates a non-exclusive, worldwide, irrevocable, perpetual, royalty free, assignable license (with the right to sublicense to their service providers) to access, use, copy, develop derivative works from, modify, or enhance any deliverables provided in connection with this Order (excluding Work Product) in connection with the use of such deliverables for the benefit of Buyer and its Affiliates, subject to the terms, conditions and restrictions set forth herein.
- (g) Supplier shall be liable to and in addition shall indemnify and hold harmless Buyer Group and users of said items from and against any and all losses, liabilities, costs, charges or expenses (including legal costs and disbursements on a full indemnity basis) and damages whatsoever arising out of any actual or alleged infringement, misuse or misappropriation of Intellectual Property rights relating to any Goods, Services or deliverables provided hereunder by Supplier or its Representatives or the use thereof by Buyer or any of its Affiliates. If Buyer or any of its Affiliates becomes subject to a claim as set forth above, Supplier, without limiting its obligations set forth in this Section 17, will:
  - (i) procure for itself as agent on behalf of Buyer, the applicable Buyer Affiliate(s) or both, the right to continue to:
    - A. perform or have performed the Services,
    - B. use the infringing deliverable or Good,as applicable; or
  - (ii) modify the Goods and/or the performance of the Services, the deliverable, as applicable, to eliminate the infringement without causing any material adverse change to the Goods, Services or deliverable, as applicable.
- (h) The provisions of this Section 17 shall survive the termination of this Order.

18. CONFIDENTIALITY:

- (a) Definitions
  - (i) "Disclosing Party" means the Party to whom Confidential Information relates.



- (ii) With respect to each Party, “Confidential Information” means all information and data of the Party including information concerning the Disclosing Party’s past, present or future business, operations, technology, customers or suppliers, other than information that is:
  - (A) or has become publicly available through no fault of the Receiving Party, its Affiliates or subcontractors;
  - (B) lawfully received from an independent third party without any obligation of confidentiality;
  - (C) independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information; or
  - (D) already in the Receiving Party’s possession without obligation of confidentiality;

except that Personal Information is not subject to these exclusions and is in all cases Confidential Information; *provided however*, that in order for any information or data of Supplier (including Personal Information) to constitute “Confidential Information,” Supplier must provide advance written notice to Buyer of any information or data subject to the confidentiality provisions of this Order and must expressly label any such information or data as “CONFIDENTIAL”.

- (iii) Confidential Information which is specific shall not be deemed to be within categories in Sections 18(a)(ii)(A), (B), (C), or (D) if it is merely embraced by more general information which is within said categories. Moreover, Confidential Information regarding any combination of features shall not be deemed to be within categories in Sections 18(a)(ii)(A), (B), (C), or (D) unless such combination, and not merely the individual features thereof, is specifically within one of said categories.
- (iv) “Personal Information” means any information about an identifiable individual, other than that individual’s business title or business contact information, when collected, used or disclosed for the purposes of enabling the individual to be contacted in relation to the individual’s business responsibilities.
- (v) “Receiving Party” means the Party receiving or otherwise coming into possession or obtaining knowledge of the other Party’s Confidential Information.

(b) **Use of Confidential Information** Each Party will, in its capacity as a Receiving Party:

- (i) maintain the Confidential Information of the Disclosing Party in confidence using at least the same degree of care as it employs in maintaining in confidence its own Confidential Information, but in no event less than a reasonable degree of care;
- (ii) not use or reproduce Confidential Information of the Disclosing Party for any purpose other than as and to the extent expressly permitted under this Order or as may be reasonably necessary for the exercise of its rights or the performance of its obligations under this Order; and
- (iii) not disclose, provide access to, transfer or otherwise make available any Confidential Information of the Disclosing Party, except as expressly permitted in this Order.

(c) **Disclosure of Confidential Information** A Receiving Party may disclose Confidential Information of the Disclosing Party if and to the extent required by a governmental authority, on condition that, to the extent permitted by applicable law, before disclosing such Confidential Information, such Receiving Party must use reasonable efforts to promptly notify the Disclosing Party of the required disclosure.

(d) **Deemed Breach by Supplier** For clarity, any breach of this Section 18 by any Person to whom Supplier has disclosed Confidential Information of Buyer that would otherwise have been a breach if performed by Supplier, will be deemed to be a breach of this Section 18 by Supplier.

- (e) **Return of Buyer Confidential Information** Supplier shall, upon the expiration or termination of this Order or upon Buyer's request, immediately submit to Buyer, or, if requested by Buyer, destroy all of Buyer's Confidential Information.
- (f) **Personal Information** Supplier acknowledges and agrees that in the course of performing its obligations under this Order it may receive, use or access Personal Information in Buyer's or its Affiliates' possession. Supplier agrees that such Personal Information constitutes Confidential Information of Buyer to which the provisions of Section 18(b) apply, except to the extent such provisions are inconsistent with this Section 18(f), which prevails with respect to Personal Information. In addition to Supplier's obligations in Section 18(b), and despite the disclosure provisions of Section 18(d), Supplier will:
- (i) only share, transmit, disclose, collect, hold or store (even if only transitorily) such Personal Information in accordance with Privacy Laws and for such purposes as are necessary to discharge, complete or fulfill Supplier's obligations under this Order;
  - (ii) perform its obligations in a manner that will ensure Buyer complies with Privacy Laws;
  - (iii) provide reasonable assistance to Buyer in:
    - (A) responding to any access, amendment, correction or similar request in connection with any Personal Information in Supplier's possession;
    - (B) investigating, mitigating or responding to any complaint relating to the receipt, use or disclosure of Personal Information in the course of performance of the Services or the supply of the Goods; and
    - (C) responding to any requests or instructions issued by a governmental authority in connection with such Personal Information;
  - (iv) use all reasonable efforts to protect and safeguard such Personal Information including to protect such Personal Information from loss or theft, or unauthorized access, disclosure, copying, use, modification, disposal or destruction and to promptly notify Buyer of any such known or suspected loss, theft or unauthorized activity, and use all reasonable efforts to prevent any further loss, theft or unauthorized activity;
  - (v) only collect, use, disclose, process or store such Personal Information in Canada or the United States of America, or such other jurisdiction as Buyer may consent to in writing;
  - (vi) only disclose such Personal Information to a third party where such third party, has first agreed to be bound by covenants substantially similar to the provisions of this Section and with the prior consent of Buyer;
  - (vii) immediately:
    - (A) inform Buyer where Supplier is unable or unwilling to comply with any of the foregoing provisions and at the request and option of Buyer return or cause to be returned, or destroy or cause to be destroyed, all of such Personal Information; and,
    - (B) suspend all use or disclosure of the Personal Information disclosed by Buyer to Supplier until such time as Supplier is able and willing to comply with the foregoing provisions; and
  - (viii) ensure and be responsible for the compliance of its subcontractors and employees consistent with this Section.
- (g) **Consent to Injunctive Relief** Supplier acknowledges that any violation of the provisions of this Section 18 may cause irreparable damage or injury to Buyer, the exact amount of which may be impossible to ascertain, and that, for this reason, in addition to any other remedies available to Buyer, Buyer is entitled to proceed immediately to court in order to obtain, and Supplier:

- (i) will consent (without any condition) to, interim, interlocutory, and final injunctive relief restraining Supplier from breaching, and requiring Supplier to comply with, its obligations under this Section 18, without a requirement that a finding of irreparable harm, proof of actual damages or other criteria for the awarding of injunctive relief be made;
- (ii) agrees not to plead sufficiency of damages as a defence; and
- (iii) acknowledges the importance to Buyer of Supplier's strict compliance with the terms of this Section 18, and that Buyer's interest in the strict enforcement of this Section 18 will outweigh the balance of convenience or harm that Supplier may suffer as a result of the strict enforcement of this Section 18.

(h) **Survival** The obligations of confidentiality in this Section 18 shall survive the termination of this Order.

19. ASSIGNMENT/SUBCONTRACTING:

- (a) Buyer may assign, pledge or make other disposition of rights, benefits or entitlements, or delegate any duty, obligation or liability it has under this Order at any time without the written consent of Supplier. Supplier shall not assign, pledge or make other disposition of rights, benefits or entitlements, or subcontract or delegate any duty (subject to Section 19(b) below), obligation or liability it has under this Order without first obtaining the prior written consent of Buyer, which consent shall not be unreasonably withheld. No such approved assignment shall relieve Supplier of its obligations under this Order.
- (b) Should Supplier wish to subcontract any part of the supply of Goods and Services, Supplier shall notify Buyer of such intent prior to engaging the subcontractor, and shall not engage any such subcontractor without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion. All Services and Goods provided by a subcontractor shall be performed pursuant to an appropriate agreement between Supplier and the subcontractor that specifically binds the subcontractor to the terms and conditions of this Order. Nothing contained in this Order shall create any contractual relation between any subcontractor and Buyer. With respect to any portion of the Goods and Services so subcontracted, Supplier hereby guarantees the performance of this Order by each such subcontractor and hereby assumes full responsibility for any of their acts or omissions. Supplier shall remain fully liable to Buyer notwithstanding any such approved subcontract.

20. TERMINATION:

- (a) Notwithstanding anything in this Order to the contrary, Buyer may, at its sole option and without cause, and with immediate effect, upon the provision of written notice to Supplier, terminate this Order as to all or any portion of the Goods not already shipped, or as to all or any portion of the Services not already performed ("**Termination Notice**"). Upon receipt of such Termination Notice, Supplier shall immediately cease performance under this Order and use its best efforts to mitigate any costs associated with such cessation. The liability of Buyer shall be limited to documented and reasonable direct costs and expenses incurred by Supplier in accordance with this Order prior to receipt of such Termination Notice, which shall in no event exceed the price of this Order. No reimbursement shall be made in favour of Supplier with respect to any of the Goods which are Supplier's standard stock.
- (b) In addition to the termination provisions expressed elsewhere in this Order, Buyer may terminate this Order, without liability and with immediate effect, upon its provision of written notice to Supplier, if (i) Supplier is subject to a petition in bankruptcy or insolvency, voluntarily or involuntarily, or other similar proceeding, and such petition is not removed within sixty (60) days after filing; (ii) if a receiver is appointed with or without Supplier's consent; (iii) if Supplier assigns its property to its creditors or performs any other act of bankruptcy; (iv) if Supplier becomes insolvent and cannot pay its debts when they are due; or (v) if there is a change in ownership or control of Supplier .
- (c) Termination of this Order, however and whenever occurring, will not prejudice or affect any right of action or remedy which will have accrued to Buyer under this Order, or in law or in equity, up to and including the date of such termination.

21. INDEMNITY AND LIABILITY:

- (a) To the fullest extent permitted by law, Supplier will hold harmless, indemnify and defend Buyer Group against all losses, liabilities, costs, charges or expenses (including legal costs and disbursements on a full indemnity basis) and damages arising from or incurred by reason of any of the following events (including the defence of such events):
  - (i) any negligent, criminal, or fraudulent act or omission of, or wilful misconduct by, Supplier or any of its Representatives;
  - (ii) any death or injury to Persons or loss or damage to property to the extent caused by any act or omission of Supplier or any of its Representatives (including the Parties to this Order, their employees, agents, representatives and subcontractors and third parties and any property of the foregoing);
  - (iii) any breach of Supplier's warranties contained herein;
  - (iv) any violation of any applicable laws by Supplier or any of its Representatives;
  - (v) any breach of Supplier's Section 17 (Intellectual Property) obligations; and
  - (vi) any breach of Supplier's Section 18 (Confidentiality) obligations.
- (b) Buyer, its Affiliates and their respective directors, officers, employees and agents will not have any liability for, or obligation with respect to, any damages that are for lost income, revenues or profits, multiple of earnings, diminution in value, consequential damages, indirect damages, exemplary damages, incidental damages, punitive damages, special damages, damages not reasonably foreseeable in nature or any other similar damages.
- (c) The provisions of this Section 21 will apply whether the claim arises as a result of contract, tort (including negligence) or any other statutory, legal or equitable grounds.
- (d) The provisions of this Section 21 shall survive the termination of this Order.

22. INSURANCE:

Prior to commencement and throughout Supplier's performance of this Order, Supplier shall procure and maintain at its cost, as applicable, policies in respect of the following insurances:

- (a) Commercial General Liability ("CGL") on an Occurrence form, including liability assumed under contract, Suppliers Protective, Broad Form Property Damage, Products and Completed Operations, Severability of Insureds and Cross Liability and when applicable to the operations on site as determined by Buyer, Sudden and Accidental Pollution Liability. This policy of insurance shall have limits in the amount of Five Million Dollars (\$5,000,000) per occurrence, include Buyer as Additional Insured, and allow subrogation to be waived in favour of Buyer. If such Commercial General Liability Insurance is written on a Claims Made form, then the policy must be kept in full force and effect for a period of two (2) years following termination of this Order. Note: This limit may be achieved through a combination of CGL and umbrella or excess liability.
- (b) Automobile Liability Insurance - covering all vehicles owned or non-owned, operated and/or licensed in connection with the performance of this Order. The insurance to be provided shall include coverage for bodily injury, pollution liability, passenger hazard if applicable, and property damage, in an amount of not less than Two Million Dollars (\$2,000,000) inclusive any one occurrence or accident. This policy of insurance shall include Buyer as Additional Insured (where permitted), and allow subrogation to be waived in favour of . This limit may be achieved through a combination of automobile liability and umbrella or excess liability. Note: Non-owned automobile liability may be provided by the CGL or the automobile liability policy.

- (c) Property Insurance – “All Risk” insurance (including flood and earthquake) upon all property owned by the Supplier or for which the Supplier is legally liable, or which is installed by or on behalf of the Supplier as well as the Supplier’s personal property, and construction machinery and equipment owned or rented and used by the Supplier for the performance of the work, in an amount of at least one hundred percent (100%) of the full replacement cost. This policy shall allow subrogation to be waived in favour of the Buyer. Note: Supplier’s Equipment may be included in the property policy or be in a separate policy.
- (d) Workers’ Compensation and Employer’s Liability Insurance – during the term of this Order, Supplier shall procure and maintain at its cost, the following minimum insurance:
- (i) Supplier shall comply with Employment Insurance and Worker’s Compensation legislation covering all persons employed by Supplier including directors, partners, and proprietors;
  - (ii) Supplier shall procure Workers’ Compensation insurance in accordance with the jurisdictional requirements in which the work is being performed. This policy shall, if allowed, contain a waiver of subrogation in favour of the Buyer;
  - (iii) Employer’s Liability Insurance for employees domiciled in the United States, covering all persons employed by the Supplier including directors, partners and proprietors in the amount of One Million Dollars (\$1,000,000), in a form as required in the jurisdiction in which the work is being performed. This policy shall contain a waiver of subrogation in favour of the Buyer;
  - (iv) Employer’s Liability Insurance for employees domiciled in Canada covering all persons employed by the Supplier who are not required to be covered by Workers’ Compensation, and Contingent Employers Liability Insurance covering all Supplier employees where such employee is covered by Workers’ Compensation. This insurance may be provided on the CGL policy, and shall contain a waiver of subrogation in favour of the Buyer.
- (e) Design Professional Liability Insurance - (if performing design professional services as determined by Buyer), in an amount of not less than Five Million Dollars (\$5,000,000) and a deductible no greater than One Million Dollars (\$1,000,000), to protect Supplier against claims which may arise from its negligence or errors and omissions in connection with this Order. Such Professional Liability Insurance shall be kept in full force and effect by Supplier at all times during the work and for a period of four (4) years following completion date.
- (f) Aircraft Liability – (if applicable when considering the scope of services provided by Supplier as determined by Buyer) covering owned or non-owned aircraft if such are used directly or indirectly in the performance of this Order, including use of aviation premises, in an amount of not less than Five Million Dollars (\$5,000,000) for Aircraft Passenger Hazard. This policy shall include Buyer as Additional Insured, and allow subrogation to be waived in favour of Buyer
- (g) Supplier’s Pollution Liability Insurance - (if applicable when considering the scope of services provided by Supplier as determined by Buyer) covering losses caused by pollution conditions (including sudden and accidental and non-sudden and accidental pollution conditions) arising from the services/operations of Supplier and all sub-suppliers involved in the work, in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence subject to an aggregate limit of not less than Ten Million Dollars (\$10,000,000). Coverage to apply, without limitation, to bodily injury, property damage, loss of use of damaged property, and clean-up costs. Provide coverage for liability arising from the transportation of hazardous waste. This policy shall include Buyer as Additional Insured, and allow subrogation to be waived in favour of Buyer. If such Supplier’s Pollution Liability Insurance is written on a “Claims Made” form, then the policy must be kept in full force and effect for a period of two (2) years following termination of this Order.
- (h) Marine Liability Insurance – (if applicable when considering the scope of services provided by Supplier as determined by Buyer), in an amount of not less than Five Million Dollars (\$5,000,000) including Safe Berth Legal Liability, Towers Liability, Terminal Operation Liability, Stevedores Liability, Wharfingers Liability, Tankermans Liability, and Watercraft Liability. This policy shall include Buyer as Additional Insured, and allow subrogation to be waived in favour of Buyer
- (i) Cyber Liability Insurance – (if applicable when considering the scope of services provided by Supplier as determined by Buyer) appropriate to the Supplier’s profession and work hereunder, in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence. Coverage shall be sufficiently broad to respond to the duties and

obligations as is undertaken by the Supplier in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, loss or suspected loss of confidential information, unauthorized use/access of a computer system, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs, including but not limited to, defence costs, notification costs, identity theft including education/assistance and forensic expenses, as well as regulatory fines and penalties with limits sufficient to respond to these obligations. No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the indemnity or other obligations of the Supplier under this agreement. Buyer shall be named as an additional insured under the aforementioned policies. Policies shall contain no provision that would prevent, preclude or exclude a claim brought by Buyer

- (j) Any other insurance which is required by law in connection with this Order.
- (k) All the policies of insurance shall endeavour to provide Buyer with 30 (thirty) days' notice of cancellation or material change in the form of impairment or reduction of limit or any change to the terms and conditions specified in sections (a) to (i).
- (l) Prior to commencement of the Term, Supplier shall provide the Buyer with a certificate of insurance evidencing the aforementioned insurance policies.
- (m) The aforementioned insurances must be placed with insurers who have an A.M. Best rating of A- or better, and who are licensed to do business in the location in which the work is being performed.
- (n) Buyer reserves all rights to which it may have been entitled, and shall not be precluded nor denied the right to recover because Buyer is named as an additional insured under the insuring policies which will be deemed primary to any other valid and collectible insurance. The obligation to carry insurance as herein provided shall not limit or modify any other obligations assumed by the Supplier under this Order nor shall Buyer be under any duty to examine such policies, certificates, or other evidence of insurance or to advise Supplier in the event that its insurance is not in compliance with this Order.
- (o) If any Services are to be performed by sub-suppliers, Supplier shall require each such sub-supplier to grant indemnification to Buyer and to carry such insurance as is required of Supplier herein, in at least equal form and amount and subject to the terms and conditions as stated herein.

## 23. RECORDS AND AUDIT RIGHTS:

- (a) Supplier shall keep and preserve any Records during Supplier's performance of this Order and for a period of seven (7) years thereafter.
- (b) Supplier shall permit Buyer its representatives and auditors, and regulatory bodies having jurisdiction over Buyer to review any Records at all reasonable times during Supplier's performance of this Order and for a period of seven (7) years thereafter, for the purposes of:
  - (i) determining Supplier's compliance with the terms and conditions of this Order;
  - (ii) evaluating and verifying of any invoices, change orders, payments or claims submitted by Supplier.
  - (iii) ensuring compliance with applicable requirements of government statutes, rules, regulations, and orders.
- (c) Buyer shall report in writing to Supplier any error or discrepancy in respect of Supplier's provision of Goods or Services, or the payment therefor, which is discovered pursuant to any audit. Upon receipt of such notice, Supplier shall:
  - (i) in the event of an error or deficiency in the provision of Goods or Services under this Order, promptly correct such error or deficiency upon receipt of such notice; and

- (ii) in the event of any overpayment by Buyer in connection with any Goods or Services, reimburse Buyer such amount within thirty (30) days of receipt of such notice.
- (d) Supplier shall cause each of its subcontractors to comply with the terms of this Section 23 and Supplier shall provide copies of all Records as set out above, as the same apply to the subcontractors, upon the request of Buyer.
- (e) The provisions of this Section 23 shall survive the termination of this Order.

24. PRESENCE ON BUYER'S PREMISES.

- (a) If Supplier is performing the Services at or on a work site, before Supplier commences Services, Supplier shall obtain full particulars as to the limitations or restrictions on Supplier's activities or rights of occupation under the licenses, permits and rights of entry acquired or provided by Buyer for the Services at a work site and the access thereto.
- (b) Supplier shall perform the Services at a work site in strict compliance with Buyer's policies, procedures, rules and regulations, and shall ensure that all subcontractors comply therewith.
- (c) Supplier shall maintain the work site in a clean and orderly condition, at all times, clear of all tools, equipment, waste materials, rubbish and any obstructions and hazards.
- (d) Supplier shall maintain, and shall require that its subcontractors who perform Services on any work site maintain, a subscription to ISNetworld and a grading of no less than B within ISNetworld. Access to work sites may be denied to any Supplier or subcontractor who fails to comply with this requirement. Compliance with this Subsection shall not relieve Supplier of any of its obligations under this Order.

25. SHIPPING AND PACKING:

- (a) All cases, packages, bundles, etc., to be provided hereunder shall be marked with the Order number. Supplier shall enclose with each box, package, or container, a shipping notice showing contents, together with the name of Supplier and Order number.
- (b) Unless otherwise provided herein, Supplier shall not charge an additional fee for boxing, packing, crating, or for cases, packages, pallets, or boxes.
- (c) Unless otherwise provided in this Order, for customs purposes, Buyer requires the following documents for shipments originating outside the county of destination:
  - (i) invoice (commercial, Canada Customs Invoice "CCI", or Proforma Invoice);
  - (ii) packing lists;
  - (iii) other documents to determine admissibility (such as NAFTA or other Free Trade Agreement Certificate, certificate of analysis, Material Safety Data Sheet, License/Permit).

The above referenced documents shall be sent to Buyer's designated customs broker as stated on the Order. In the event Buyer's designated customs broker is not specified in the Order, documents shall be sent by electronic mail, fax or air mail to the attention of Buyer contact identified on the face of this Order.

26. BUSINESS ETHICS COMPLIANCE:

- (a) Supplier shall conduct, and shall cause any Person acting on behalf of Supplier to conduct, their operations pursuant to this Order and discharge their obligations thereunder, in all respects, in accordance with Buyer's Supplier Code of Ethics available on Buyer's website at <https://www.nutrien.com/suppliers>.

- (b) In performance of its obligations under this Order, neither Supplier nor any Person acting on behalf of Supplier shall:
- (i) authorize the giving of, offer, or give anything of value to anyone for the purpose of influencing or inducing the recipient to obtain, retain, or direct business for or to any Person or for the purpose of securing any improper advantage;
  - (ii) request, agree, receive, or accept any bribe, kickback, or anything of value from anyone with the knowledge or belief that all or a portion of the payment is given with the purpose of improperly influencing Buyer's, its Affiliates' any of their employees, or your actions;
  - (iii) violate any laws where they operate or conduct business on behalf of Buyer including any laws of the United States or Canada or any anti-corruption laws of any country including any corrupt practices act of the United States, United Kingdom, Canada, or the domestic country.
- (c) Notwithstanding any other provisions in the Order, if Buyer reasonably determines that Supplier's performance under the Order is contrary to:
- (i) the *Corruption of Foreign Officials Act* (Canada);
  - (ii) the *United States Foreign Corrupt Practices Act*;
- or any other laws where they conduct business, then Buyer may immediately terminate the Order. Any compensation paid or accrued relating to such violation shall be forfeited and/or refunded to Buyer by Supplier, and no future payments or accruals shall be made by Buyer for Supplier's account. Under no circumstances may Buyer be required to make any payment that could be construed to be in furtherance of a violation of this Section 26 or any anti-corruption laws.
- (d) If Supplier, its Affiliates, shareholders, subcontractors, members, managers, directors, officers, employees, independent contractors, agents or representatives, are made the subject of any claim, charge, or accusation of being, or are found to be, in violation of any anti-corruption legislation in connection with the performance of the Order, Supplier shall reimburse Buyer for any costs, including investigations and any legal/expert fees that arise out of the violations and shall further defend Buyer's Group against any and all threatened or actual claims, suits, actions, or proceedings, and indemnify and hold each and all of them harmless against any costs incurred (including pre-suit investigations, expert fees, legal fees) and any and all sums paid or awarded with respect thereto as penalties, damages, restitutions, or otherwise. Buyer shall have the right to recovery any expense including, attorney fees to enforce the rights conferred in favor of Buyer under Section 26.
- (e) Supplier shall have and shall maintain in place throughout the term of this Order its own policies and procedures regarding anti-bribery and gifts & entertainment, including adequate procedures to ensure compliance with this Section 26.
- (f) Supplier shall maintain accurate books and records necessary to demonstrate compliance with this Section 26 and will execute reasonable certifications and disclosures requested by Buyer in connection with the foregoing. Supplier will cooperate fully in any investigation by Buyer of a potential violation of any of this Section 26. In addition, Supplier shall retain such books and records for a minimum of seven (7) years after the termination of this Order. Failure to do so is a material breach of the Order and grounds for termination. Supplier shall require the same covenant from its suppliers and subcontractors involved in providing the Goods or Services.
- (g) Supplier shall permit Buyer or an independent auditor reasonably acceptable to both Buyer and Supplier to examine and take abstracts from the relevant records of Supplier's and/or examine physical inventory to such extent as may be reasonably necessary to enable Buyer to verify or determine compliance with this Section 26. SUPPLIER'S FAILURE TO MAKE ITS AND ITS' SUBCONTRACTORS' AND SUPPLIERS' RECORDS AVAILABLE AS AND WHEN REQUESTED BY BUYER SHALL BE GROUNDS FOR BUYER TO IMMEDIATELY TERMINATE THIS ORDER.



- (h) This Section 26 shall survive termination of the Order and Supplier shall not destroy any Records relating to the Order without Buyer's prior written consent for seven (7) years after the termination of the Order. Costs associated with the audit/investigation shall be borne by Buyer. However, if Buyer determines that a violation has occurred, Supplier shall reimburse Buyer for all of its investigation/auditing expenses.
- (i) Supplier shall immediately notify Buyer if Supplier becomes aware of any breach of this Section 26 including by any of its subcontractors or suppliers.
- (j) Notwithstanding any other provision in the Order, Buyer shall not be obliged to take any action or omit to take any action that it believes, in good faith, would cause it to be in violation of any law or regulation. Buyer's action or failure to act in reliance upon this Section 26 shall not expose Buyer to liability to Supplier.

27. ENTIRE AGREEMENT/ CHANGES:

This Order contains the entire agreement between the Parties. No oral statements or agreements, and no variations of the terms and conditions of this Order shall be binding on Buyer unless evidenced in a written amendment and executed by the Parties.

28. CONTROLLING TERMS:

To the extent that Supplier, without the prior written agreement of Buyer, attempts to modify the terms of this Order by submitting to Buyer (whether when supplying Goods or Services or at any time before or after such supply) any documents which purport to modify the terms of this Order, or add additional or different terms or conditions, Buyer does not agree to the inclusion of any such additional or different terms or conditions or any attempt by Supplier to vary the terms and conditions of this Order and all such proposed modifications, additional or different terms or conditions shall be deemed rejected and shall form no part of the agreement between Buyer and Supplier regarding the subject matter of this Order. Any modifications to these terms and conditions shall require Buyer's express written or electronic approval.

29. GOVERNING LAW AND DISPUTE RESOLUTION:

Unless otherwise stated on the face of this Order,

- (a) where Buyer is a Canadian entity, this Order is governed by, and will be interpreted and construed in accordance with the laws of the province where the Services will be performed and the federal laws of Canada applicable therein and in the event the Services will be performed in multiple provinces, this Order is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein, and
- (b) where the Buyer is not a Canadian entity, this Order is governed by, and will be interpreted and construed in accordance with the laws of the State of Colorado and the laws of the United States applicable therein,

excluding reference to conflicts of laws principles. The *United Nations Convention for the International Sale of Goods* shall not apply to this Order.

Any dispute relating to this Order shall be resolved by the courts of

- (x) where the Buyer is a Canadian entity, the province where the Services will be performed and in the event the Services will be performed in multiple provinces, the Province of Alberta, Canada and those competent to hear appeals therefrom, and
- (y) where the Buyer is not a Canadian entity, Colorado and those competent to hear appeals therefrom.

In the interpretation of this contract or any part of it, no rule of construction shall apply to the disadvantage of any Party on the basis that that Party (i) prepared this contract or any part of it; or (ii) seeks to rely on this contract or any part of it.

30. UNAUTHORIZED USE OF BUYER'S NAME AND TRADEMARKS:

Supplier shall not, without Buyer's prior written consent:

- (a) make any statement or publish or release to any other Person any photograph, advertisement, testimonial, letter of commendation or approval, or any other document or written matter that might imply Buyer's or any of its Affiliates' approval of the products, actions or performance of Supplier; or
- (b) make any use of Buyer's or any of its Affiliates' trademarks or logos.

31. SEVERABILITY:

In case any provision in this Order or the application thereof is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

32. NO WAIVER:

Buyer may at any time insist upon strict compliance with the terms and conditions of this Order, notwithstanding any previous custom, practice or course of dealing between the Parties to the contrary. The waiver by Buyer of any breach of any term, covenant, condition or agreement contained in this Order shall not be deemed to be a waiver of any subsequent breach of the same or a breach of any other term, covenant, condition or agreement.

33. RIGHTS CUMULATIVE:

The rights, powers and remedies of Buyer in this Order, in law and in equity, are cumulative and in addition to and not in substitution for any right, power or remedy that may be available to Buyer.

34. SET OFF:

Buyer shall have the right to apply any monies due to Supplier hereunder toward the payment of any sums which Supplier or any of its Affiliates may otherwise now or hereafter owe to Buyer or any of its Affiliates. In addition, in the event that Supplier defaults in any other contract between Supplier or any of its Affiliates, and Buyer or any of its Affiliates, Buyer shall have the right to withhold any unpaid sums due under all such agreements with Supplier or its Affiliates.

35. HEADINGS:

Headings are for convenience only and shall not affect the construction of this Order.

36. ENGLISH LANGUAGE:

The Parties agree that this Order and any documents ancillary thereto shall be drafted in English only. Les Parties conviennent que le présent arrêté et tout accessoire de documents s'y rapportant doivent être rédigées en anglais seulement.

37. INDEPENDENT CONTRACTOR:

Supplier shall for all purposes of this Order be an independent contractor and not an agent or partner of Buyer or any of its Affiliates. No provision in this Order shall be deemed or construed to create a joint venture, partnership, agency or other such association between the Parties. Without limiting the Supplier's indemnity obligations under this Order, at law or equity and with respect to the performance of any services procured hereunder at the Buyer's facility located in Louisiana, Supplier acknowledges and agrees that a statutory employer relationship as envisioned by La. R.S. 23:1061 (A) exists between Supplier and Buyer as to the Supplier's direct employees and its statutory employees and that the work to be performed under this Order is an integral part of, or essential to, the ability of the Buyer to generate its own goods, products or services.

To the extent applicable, Supplier shall be responsible for its employees and for their compensation, benefits (including, if applicable, all coverage and reporting obligations under the federal *Patient Protection and Affordable Care Act* (PPACA) (Pub L. No. 111-148) Act, as amended by the *Health Care and Education Affordability Act* and any successor legislation

(the "ACA")) and contributions (and hereby waives and releases Buyer from and against any claim that Buyer owes any of its employees any of the foregoing). Supplier shall indemnify, defend, save and hold harmless Buyer's Group against any against all loss, liabilities and damages (including legal fees on a full indemnity basis) arising out of or relating to a claim by any third party (including any governmental authority) that Buyer is or shall be deemed to be a "joint employer" with respect to any employee, subcontractor, agent or representative of Supplier, including any claim relating to the ACA or employment taxes that should have been paid by Buyer with respect to, or benefits owing to, such employee, subcontractor, agent or representative.