

TERMS AND CONDITIONS OF PURCHASE FOR NON-MERCHANDISE GOODS AND SERVICES

1. Applicability. Each Order and these Terms (defined below) apply to the purchase by the purchasing entity named on the face of the applicable Order (“Company”) for the purchase of the goods, products and materials (collectively, “Goods”) and services (“Services”) specified on the face of this Order from the vendor named on the purchase order (including all of such Vendor’s agents, subcontractors or suppliers) (collectively, “Vendor”). These terms and conditions of purchase (“Terms”) are the only terms and conditions which govern the purchase by Company of the Goods and Services from Vendor. These Terms, together with the terms contained in or incorporated by reference in a written signed contract between the parties, or in an Order accepted by Vendor pursuant to these Terms (the “Order”), comprise the entire agreement between the parties (collectively, this “Agreement”), and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

Notwithstanding anything herein to the contrary, any terms and conditions expressly contained in any written, signed contract between the parties or on the face of any Order shall prevail to the extent they are inconsistent with these Terms. These Terms prevail over any of Vendor’s general terms and conditions of sale regardless whether or when Vendor has submitted its sales confirmation or such terms. This Agreement expressly limits Vendor’s acceptance to the terms of this Agreement. Any different or additional terms in Vendor’s acceptance of the Order are hereby objected to, and Company’s objection to different or additional terms shall not be waived by acceptance of any goods or payment of any invoice. Acceptance of this Order constitutes acceptance of these Terms.

This Order is not binding on Company until it is accepted by Vendor. This Order will be deemed accepted by Vendor upon the earlier of: (i) expiration of five (5) business days from the date of issuance; or (ii) Vendor’s (a) written acceptance of the Order, (b) shipment/delivery of the Goods, (c) commencement of Services, or (d) submission of the first invoice.

Vendor is engaged to provide the Goods and/or Services on a non-exclusive basis, and Company may use other suppliers to provide goods and services similar to the Goods and Services.

2. Delivery of Goods and Performance of Services. Vendor shall deliver the Goods in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties (the “Delivery Date”). If no Delivery Date is specified, Vendor shall deliver the Goods within 10 business days of Vendor’s receipt of the Order. At Company’s direction in its sole discretion, Vendor shall provide Company with a production sample of each type of Good for approval prior to delivery of Goods. Company has the right to return any Goods delivered prior to the Delivery Date at Vendor’s expense and Vendor shall redeliver such Goods on the Delivery Date. Vendor shall provide the Services to Company as described and in accordance with the schedule set forth on the Order and in accordance with these Terms. For purposes of this Agreement, any products or goods resulting from the Services shall be considered Goods. Vendor acknowledges that time is of the essence with respect to Vendor’s obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other

requirements in this Agreement. If Goods are not shipped and/or Services are not performed in accordance with the dates specified, Company may, without any liability, cancel the Order by a written notice to Vendor due to a material breach. In the event the Goods are not shipped and/or Services are not performed exactly as specified in the Order, in addition to all other available remedies, Company may assess Vendor a charge equal to five percent (5%) of the invoice as liquidated damages.

3. Quantity. If Vendor delivers more or less than the quantity of Goods ordered, Company may reject all or any excess Goods. Any such rejected Goods shall be returned to Vendor at Vendor's risk and expense. If Company does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis. Company is not obligated to any minimum purchase or future purchase obligations under this Order. Any estimate or forecasts of Company's future needs for Goods or Services which may be provided to Vendor by Company are for long range planning purposes only, and shall in no way represent a commitment by Company. Company shall have no responsibility or liability for any actions taken by Vendor based on such estimates or forecasts. If this Order is referenced as part of a request for proposal or bidding event, this Order will become binding only if Vendor is expressly awarded business by Company.

4. Delivery and Shipping Terms. All Goods shall be delivered to the address specified in this Order (the "Delivery Location") during Company's normal business hours or as otherwise instructed by Company. Delivery shall be made in accordance with the terms on the face of this Order. Vendor shall be liable for any and all additional shipping costs and related charges arising from its failure to follow such shipping instructions. In addition, Vendor shall pay any shipping charges with respect to any deliveries that are delayed by the Vendor. If no delivery term is specified on the face of the Order, delivery shall be made DDP (Incoterms[®] 2010) Delivery Location. Vendor shall give written notice of shipment to Company when the Goods are delivered to a carrier for transportation. Vendor shall provide Company all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release the Goods to Company within one business day after Vendor delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order. In the event of a delay other than an excused delay, Company will have the right to require Vendor to expedite the shipment of the Goods by means selected by Company or to obtain replacement goods from alternative suppliers.

5. Packaging. Vendor shall pack all Goods for shipment according to Company's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Vendor must provide Company prior written notice if it requires Company to return any packaging material. Any return of such packaging material shall be made at Vendor's risk of loss and expense.

6. Title and Risk of Loss. Title passes to Company upon delivery of the Goods to the Delivery Location. Vendor bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

7. Inspection and Rejection of Nonconforming Goods. Company has the right to inspect the Goods on or after the Delivery Date. Company, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Company rejects any portion of the Goods, Company has the right, effective upon written notice to Vendor, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement or reimbursement of the rejected Goods. If Company requires replacement of the Goods, Vendor shall, at its expense, replace the nonconforming or defective Goods within 5 days (or less, if determined by Company to be a time-sensitive Order) and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. If Vendor fails to timely deliver replacement Goods, Company may replace them with goods from a third party and charge Vendor the cost thereof and terminate this Agreement for cause pursuant to these Terms. Any inspection or other action by Company under this Section 7 shall not reduce or otherwise affect Vendor's obligations under the Agreement, and Company shall have the right to conduct further inspections after Vendor has carried out its remedial actions.

8. Price. The price of the Goods and Services is the price stated in the Order (the "Price"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Company.

9. Cancellation. Company may immediately cancel the Order, in whole or in part, at any time and for any reason, by notifying Vendor. In such event, Company's liability to Vendor shall be limited to the contract Price for the Goods under the Order delivered to and accepted by Company prior to such cancellation. Company may cancel the Order prior to shipment/delivery of Goods and/or Services without liability. Company's liability for Services will be limited to the amount due for Services duly performed and accepted to the date of cancellation.

10. Payment Terms. Vendor shall issue an invoice to Company on or any time after the completion of delivery and only in accordance with these Terms. Except as otherwise specified in the Order, Company shall pay all properly invoiced amounts due to Vendor 60 days after Company's receipt of such invoice, except for any amounts disputed by Company in good faith. Without prejudice to any other right or remedy it may have, Company reserves the right to set off at any time any amount owing to it by Vendor against any amount payable by Company to Vendor. Vendor shall continue performing its obligations under this Agreement notwithstanding any payment dispute. If Company decides in its sole discretion to pay for Goods and/or Services purchased through Company's corporate purchasing credit card whether Mastercard, VISA or Amex, Vendor shall accept payment by such credit card at no additional charge or expense to Company. Fees shall be considered paid in full once charged. The parties agree that Company's credit card numbers, account numbers, as well as all information relating to Company's purchases with such credit cards, is Company's Confidential Information.

11. Taxes. Company shall pay applicable federal, state, local, and provincial sales taxes due for payment of Goods and Services, and all other taxes, duties or levies of any kind shall be the responsibility of, and shall be paid by, Vendor. If Company is required to withhold taxes from

any amounts due hereunder, Company shall remit such taxes directly to the appropriate government authority and provide evidence of payment of same to Vendor. In the event Company is required to withhold taxes from any amounts due hereunder, Company shall remit such taxes directly to the appropriate government authority and provide evidence of payment of same to Vendor.

12. Vendor's Performance Obligations. Vendor shall, and shall ensure that its permitted subcontractors:

(a) comply with Company's "HBC's Social Compliance Manual", which a copy of which Vendor acknowledges it has received, together with the policies located at <http://www3.hbc.com/hbc/vendors>, as such policies may be amended or replaced from time to time;

(b) unless otherwise specified in the applicable Order, furnish all materials, supplies, equipment and labor necessary to complete the Services or provide the Goods which are the subject of that Order;

(c) before the date on which Services are to start, obtain, and at all times during the term of this Agreement, maintain, at Vendor's expense, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services, and pay all inspection fees necessary to complete the Services and/or provide the Goods;

(d) comply with all rules, regulations and policies of Company, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Company to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;

(e) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Vendor in providing the Services in such form as Company shall approve. During the term of this Agreement and for a period of one year thereafter, upon Company's written request, Vendor shall allow Company to inspect and make copies of such records and interview Vendor Personnel in connection with the provision of the Services;

(f) obtain Company's written consent, which may be given or withheld in Company's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Vendor, other than Vendor's employees, to provide any Services to Company. Company's approval shall not relieve Vendor of its obligations under the Agreement, and Vendor shall remain fully responsible for the performance of each such permitted subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Vendor's own employees. Nothing contained in this Agreement shall create any contractual relationship between Company and any Vendor subcontractor or supplier;

13. Warranties for Goods. Vendor warrants to Company that for a period specified in the Order or one year from the Delivery Date, whichever is longer, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings,

designs, samples and other requirements specified by Company; (c) be fit for their intended purpose and operate as intended; (d) be merchantable, if intended to; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other Intellectual Property Rights (as that term is defined below in Paragraph 13(d)). If Goods contain manufacturers' warranties, Vendor assigns such warranties to Company, and as applicable, Company's customers.

14. Warranties for Services. Vendor warrants to Company that:

(a) the Services will be performed using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Order;

(b) Vendor is in compliance with, and shall perform the Services in compliance with, all applicable laws;

(c) Company will receive good and valid title to all in and to all documents, work product and other materials that are delivered to Company under this Order or prepared by or on behalf of Vendor in the course of performing the Services (collectively, the "Deliverables"), free and clear of all encumbrances and liens of any kind;

(d) (i) none of the Services, Deliverables and Company's use thereof infringe or will infringe any intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") of any third party, and, (ii) as of the date hereof, there are no pending or, to Vendor's knowledge, threatened claims, litigation or other proceedings pending against Vendor by any third party based on an alleged violation of such Intellectual Property Rights, in each case, excluding any infringement or claim, litigation or other proceedings to the extent arising out of (x) any customer materials or any instruction, information, designs, specifications or other materials provided by Company to Vendor, (y) use of the Deliverables in combination with any materials or equipment not supplied or specified by Vendor, if the infringement would have been avoided by the use of the Deliverables not so combined, and (z) any modifications or changes made to the Deliverables by or on behalf of any party other than Vendor; and

(e) the Services and Deliverables will be in conformity in all respects with all requirements or specifications stated in the Order.

15. Warranties Cumulative. The warranties set forth in Sections 13 and 14 are cumulative and in addition to any other warranty provided by law or equity, and survive any delivery, inspection, acceptance or payment of or for the Goods or Services by Company. Any applicable statute of limitations runs from the date of Company's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Company gives Vendor notice of noncompliance pursuant to this Section 15, Vendor shall, at its own cost and expense, within 5 days (or less, if

determined by Company to be a time-sensitive Order) (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Vendor and the delivery of repaired or replacement Goods to Company, (ii) repair or re-perform the applicable Services, or (iii) reimburse Vendor for the purchase price and any related expenses.

16. Related Software

(a) License. Vendor grants to Company a perpetual, nonexclusive, royalty-free, transferable license to use the Related Software (as defined) installed on, associated with or delivered with the hardware purchased by Company. “Related Software” means any microcode, licensed internal code, firmware (programmable or otherwise) or any programs delivered for use of the Goods and all modifications made to same to allow the Goods to operate in accordance with the Vendor documentation and specifications.

(b) Ownership; Authority. Vendor warrants that it has full power and authority to grant the rights granted by this Agreement to Company with respect to the Software without the consent of any other person; and that the license to and use by Company of the Software and related documentation (including the copying thereof) will not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure or other rights of any third party.

17. Intellectual Property. Unless expressly set forth in the Order, all Intellectual Property Rights in and to all Deliverables shall be owned exclusively by Company. Vendor agrees, and shall cause its employees and permitted subcontractors (collectively, “Vendor Personnel”) to agree, that with respect to any Deliverables that may qualify as “work made for hire” as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a “work made for hire” for Company. To the extent that any of the Deliverables do not constitute a “work made for hire,” Vendor hereby irrevocably assigns, and shall cause the Vendor Personnel to irrevocably assign to Company, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Vendor shall cause Vendor Personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such Vendor Personnel may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to the Deliverables. Upon Company’s request, Vendor shall, and shall cause Vendor Personnel to assist Company in obtaining any and all legal protection for Company’s Deliverables.

18. Company Intellectual Property. Vendor agrees that it will not use any trademark, service mark or trade name, patent or trade dress owned or controlled by or licensed to Company or any of its affiliates, or used by Company or its affiliates in connection with any products, lines, departments or other goods or services of Company or its affiliates except as expressly permitted in writing by Company in connection with Goods delivered to Company in accordance with a valid Order. Vendor agrees that all trademarks and trade names of Company belong to or are licensed to Company or its affiliates and Vendor will make no claim or right to the use or of ownership nor will Vendor attempt to register any such trademarks or trade names.

19. Compliance with Laws. Vendor represents and warrants that (a) Vendor (including its subcontractors and suppliers) has complied and will comply with all Applicable Laws relevant to Vendor's performance under this Order; (b) all Goods and Services purchased pursuant to this Order are produced, processed, manufactured, tested, represented, described, packaged, labeled, advertised, sold, performed, invoiced and transported in full compliance with all applicable laws and regulations; and (c) neither Company's purchase of the Goods or Company's utilization of the Services shall violate and applicable laws or regulations. As to Goods manufactured outside Canada or United States, Vendor shall also comply with all applicable laws of the country where the Goods were manufactured.

20. Confidential Information. All non-public, confidential or proprietary information of Company, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by Company to Vendor, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of this Order is confidential, and shall not be disclosed or copied by Vendor without the prior written consent of Company. Confidential Information does not include information that is: (a) in the public domain; (b) known to Vendor at the time of disclosure; or (c) rightfully obtained by Vendor on a non-confidential basis from a third party. Vendor shall use the Confidential Information only for the purpose of providing Good or Services under this Order. Company shall be entitled to injunctive relief for any violation of this Section.

21. General Indemnification. Vendor shall defend, indemnify and hold harmless Company and Company's parent company, their subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Goods and Services purchased from Vendor or Vendor's negligence, willful misconduct or breach of the Terms. Vendor shall not enter into any settlement without Company's prior written consent.

22. Intellectual Property Indemnification. Vendor shall, at its expense, defend, indemnify and hold harmless Company and any Indemnitee against any and all Losses arising out of or in connection with any claim that Company's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Vendor enter into any settlement without Company's or Indemnitee's prior written consent.

23. **LIMITATION OF LIABILITY.** EXCEPT FOR AMOUNTS DUE HEREUNDER, COMPANY'S LIABILITY TO VENDOR FOR ANY AND ALL DIRECT DAMAGES WILL NOT EXCEED THE AMOUNTS PAID UNDER THIS ORDER. COMPANY IS NOT LIABLE TO VENDOR FOR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT

VENDOR'S LIABILITY, INCLUDING BUT NOT LIMITED TO, VENDOR'S LIABILITY FOR FRAUD, PERSONAL INJURY OR DEATH.

24. Insurance. During the term of this Agreement, at its own expense, Vendor shall maintain and carry insurance in full force and effect, including, but not limited to, (a) commercial general liability and comprehensive automobile liability insurance, each in the amount of at least \$2 million dollars for each separate occurrence (b) employer's liability in the amount of at least \$1 million dollars for each separate occurrence, (c) worker's compensation covering its employees for statutory limits and to the full extent required by all states or provinces in which the Vendor delivers Goods and/or performs the Services for Company, and (d), if Vendor is performing services on the Company's premises, third party fidelity insurance in the amount of at least \$500,000 for each separate occurrence, each with financially sound and reputable insurers. Each of the limits in subsection 23(a) above can be met through any combination of primary and excess/umbrella coverage and must include coverage for products. Each insurance policy shall: (a) include Company, Hudson's Bay Company, and/or all affiliated companies, as they now exist, previously existed, or are thereafter acquired or constituted as additional insureds; (b) not contain cross liability or severability of interest clauses; (c) contain a waiver of subrogation in favor of Company and its affiliates, agents, directors, officers and employees; and (d) be placed with carriers who have an AM Best rating of A-/VIII or above. Vendor shall, upon acceptance of this Order, furnish Certificates of Insurance to Company by sending such certificates to Vendor's contact at Company as well as Michael.peace@hbc.com for Orders in Canada and the U.S. Vendor shall immediately notify the foregoing persons of any changes to or cancellation of such insurance.

In the event Vendor's insurance providing the coverage required under this Section 24 is canceled and replacement insurance is not obtained prior to the effective date of such cancellation or if Vendor fails to procure the insurance required herein, Company, at its option, shall have the right to procure such coverage and charge the expenses incurred to Vendor or terminate these Terms or any outstanding Orders.

25. Termination. In addition to any remedies that may be provided under these Terms, Company may terminate this Agreement with immediate effect upon written notice to the Vendor, at any time and for any reason. In addition, if Vendor becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Company may immediately terminate this Agreement. If Company terminates the Agreement for any reason, Company's liability to Vendor is limited solely to the payment for the Goods received and accepted and Services duly provided and accepted by Company prior to the time of such termination.

26. Waiver. No waiver by Company of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Company. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

27. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused

by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, war, invasion, hostilities, terrorist acts, riots, embargoes or industrial disturbances. Vendor's economic hardship or changes in market conditions are not considered Force Majeure Events. Vendor shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Vendor from carrying out its obligations under this Agreement for a continuous period of more than 10 business days (or less, if determined by Company to be a time-sensitive Order), Company may terminate this Agreement immediately by giving written notice to Vendor.

28. Assignment. Vendor shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Company. Any purported assignment or delegation in violation of this Section 28 shall be null and void. No assignment or delegation shall relieve the Vendor of any of its obligations hereunder. Company may at any time assign or transfer any or all of its rights or obligations under this Agreement without Vendor's prior written consent to any affiliate or to any person acquiring all or substantially all of Company's assets. Vendor acknowledges that the Services may also be used by Company's affiliates.

29. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

30. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

31. Governing Law. Unless otherwise specified on the face of the Order, with respect to any Company entity located in the United States, all matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York. With respect to Company and any Company entity located in Canada all matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without giving effect to any choice or conflict of law provision.

32. Submission to Jurisdiction. Unless otherwise specified on the face of the Order, any legal suit, action or proceeding arising out of or relating to this Agreement with respect to any Company entity located in the United States shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the City of New York and County of New York, and each party irrevocably submits to the exclusive jurisdiction of such

courts in any such suit, action or proceeding. With respect to the Company and any Company entity located in Canada, any legal suit, action or proceeding, arising out of or relating to this Agreement shall be instituted in the Supreme Court of Ontario in each case located in the City of Toronto, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

33. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 33.

34. Electronic Records and Signatures. Vendor agrees that Company, in its sole discretion, may convert these Terms into an electronic record and that in the event of any dispute involving these Terms, a copy of such electronic record may serve as the exclusive original. The parties consent to conducting business via electronic transactions and recognize the validity, enforceability and admissibility of any electronic record created in connection with these Terms or the relationship contemplated by it. An electronic record of these Terms made in connection with these Terms shall be deemed to have been signed by hand by the parties.

35. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

36. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.

37. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party. The Order and all documents incorporated therein may not be modified by course of dealing or course of performance. Any oral communication between Company and Vendor or any response by Vendor, whether oral or in writing, to modify or supplement the terms of the Order issued by Company shall be ineffective unless such response is in writing executed by Company.