

## ARIBA TERMS AND CONDITIONS OF PURCHASE

### 1. Definitions.

“Buyer” means Southern Glazer’s Wine and Spirits, LLC.

“Confidential Information” means information (whether disclosed orally, visually, in writing, electronically or in any other tangible or intangible format) that is confidential and proprietary to Buyer, its affiliates or their respective directors, officers, employees, agents or other representatives, including, but not limited to, customer information, techniques, know-how, processes, strategies, formulae, documentation, drawings, specifications, software, technical or engineering data, business information, reports, analyses, studies, financial information or other materials, whether prepared by Seller or otherwise, that contain, or are based upon, Confidential Information covered by an Order or these Terms and Conditions. Confidential Information may also include software, documentation, processes, financial and other information of third parties that Buyer is required to maintain as confidential.

“Convention” means the United Nations Convention on Contracts for the International Sale of Goods.

“Goods” means the purchase of any items, materials, articles, goods and any packaging or components ordered by Buyer under an Order.

“Indemnified Party” means Buyer, its affiliates and their respective directors, officers, employees and agents (including their respective successors and assigns).

“Intellectual Property Rights” means patent, trade secret, know-how, trademark (together with the goodwill symbolized thereby), copyright or other intellectual property or proprietary rights.

“Laws” means all applicable executive orders, federal, state, municipal and/or local laws, rules, orders and regulations (including, but not limited to, codes laid down on a self-regulatory or voluntary basis and laws, orders, regulations and codes regarding labor and employment, production, purchase, sale and use of material).

“Losses” means any and all liabilities, damages, losses, expenses, demands, suits or judgments, including all attorneys’ fees, costs and incidental expenses, including, but not limited to, court costs and expert witness fees.

“MSDS” means a material safety data sheet.

“Order” means any Purchase Order between Buyer and Seller whereby Buyer contracts for Goods and/or Services from Seller.

“Security Breach” means any act or omission that materially compromises either: (a) the security, confidentiality, or integrity of Confidential Information; or (b) the physical, technical, administrative, or organizational systems or safeguards put in place by a party to protect from unauthorized access its Technology Systems.

“Seller” means the party that an Order is placed with.

“Services” means the purchase of any kind of services ordered by Buyer under an Order.

“Technology Systems” means computers, technology, data storage devices, servers, networks, communication systems, or data.

“Terms and Conditions” means these Purchase Order Terms and Conditions.

## 2. Orders.

2.1 Orders. No Order is binding on Buyer until Seller accepts the Order in writing. If Seller does not accept the Order within five business days of Seller's receipt of the Order, such Order will lapse. Buyer may withdraw an Order at any time before it is accepted by Seller. Except as set forth in Section 16.1, these Terms and Conditions prevail over any terms or conditions contained in any other documentation, including, but not limited to, Seller's general terms and conditions of sale or any other document issued by Seller in connection with any Order.

2.2 Performance. Seller will deliver Goods in the quantities and on the date(s) specified in an Order, and Seller will provide Services as described and in accordance with an Order.

2.3 No Purchase Obligations. Nothing in these Terms and Conditions obligate Buyer to make any minimum purchase or future purchase obligations from Seller.

3. Acceptance and Rejection. All shipments of Goods and/or performance of Services covered by an Order are subject to inspection and acceptance, or rejection, by Buyer at any time on or after delivery of the Goods or performance of the Services. Buyer, at its sole option, may inspect all or a sample of the Goods or Services, and may reject all or any portion of the Goods or Services if it determines the same are nonconforming or defective. If Buyer rejects any portion of the Goods or Services, Buyer has the right, effective upon written notice to Seller, to: (a) rescind any and all Orders with Seller in their entirety; (b) accept the Goods and/or Services at a reasonably reduced price; or (c) reject the Goods and/or Services and require replacement of the rejected Goods and/or Services. If Buyer requires replacement, Seller will, at its expense, promptly replace the nonconforming or defective Goods and reperform the nonconforming Services and pay all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods and increased costs incurred by Buyer in connection with obtaining replacement services. Any inspection or other action by Buyer, including payment, will not reduce or otherwise affect Seller's obligations under an Order or

these Terms and Conditions, and Buyer will have the right to conduct further inspections after Seller has carried out its remedial actions.

#### 4. Termination.

4.1 Termination. Buyer has the right to cancel any Order for Goods and/or Services, in whole or in part, for any reason, at any time, by written notice.

4.2 Payments upon Termination for Convenience. If Buyer elects to terminate any Order for its convenience, then Seller's sole remedy is payment for the Goods or Services accepted by Buyer prior to the date of termination.

4.3 Insolvency. If the Seller 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 Buyer may terminate any and all Orders upon written notice to Seller.

#### 5. Delivery, Shipping and Risk of Loss.

5.1 Delivery Delays. Seller acknowledges that time is of the essence with respect to Seller's obligations under each and every Order, and acceptance of any part of the Goods or Services will not constitute a waiver of claims, which Buyer may have for delay in delivery of Goods or the performance of Services. Goods will be delivered to Buyer or Services completed on, or (subject to the remainder of this Section 5.1) before, the delivery/completion date specified in an Order. If Buyer specifies a delivery or completion date in the Order, then it reserves the right to cancel the Order if the delivery or completion date is not met by Seller, or if Buyer has reason to believe that the date will not be met by Seller. If no date has been specified by Buyer in the Order, a commercially reasonable time will be allowed for delivery of the Goods or completion of the Services. If Seller, at any time, has reason to believe that the Goods will not be delivered or the Services will not be rendered as scheduled, then Seller will immediately notify Buyer, in writing, of the cause of the delay, or anticipated delay, and will indicate the new estimated delivery/completion date. Unless otherwise provided in an Order, or in another written agreement between the parties, delivery in whole or in part will not be made more than 15 days prior to the agreed delivery date or dates, and earlier deliveries may be returned at Seller's risk and expense.

5.2 Force Majeure. Notwithstanding the foregoing, neither party will be responsible for failure to perform its obligations under the an Order or these Terms and Conditions due to fire, flood, war, labor disputes, shortages, riots, insurrections, explosions, earthquakes, epidemics or any other cause beyond its reasonable control. The nonperforming party must promptly notify the other party of its nonperformance, the cause of its nonperformance and the nonperforming party's reasonable estimation of the duration of its nonperformance. The nonperforming party must exercise reasonable efforts to commence fulfillment of its obligations under all applicable Orders

and these Terms and Conditions and proceed to perform with diligence once the causes of the nonperformance are removed or cease. The non-affected party may terminate any and all Orders if the failure or delay continues for a period of 60 days and, if the non-affected party is Buyer, receive a refund of any amounts paid to Seller in advance for the affected Goods or Services.

5.3 Packing and Shipment. Goods will be suitably packed to secure lowest transportation costs, and to conform to the requirements of common carriers and any applicable specifications. Order numbers and part numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Buyer's count or weight will be final and conclusive on shipments not accompanied by packing lists. Buyer reserves the right to reject deliveries at Seller's expense and/or charge Seller a penalty in the event that order numbers and part numbers do not appear on the documentation. Unless otherwise agreed, Seller must use Buyer's designated corporate contract carriers.

5.4 Risk of Loss and Title Passage. Title and risk of loss pass to Buyer upon receipt of any Goods at the delivery point designated in an applicable Order.

## 6. Invoice, Price and Payment.

6.1 Invoices. All invoices issued by Seller will contain the date of purchase, unit price of the Goods or Services, quantity of the Goods shipped, part number (if any), order number, and any other information as may, from time-to-time, be requested by Buyer.

6.2 Price. Unless otherwise specified in the applicable Order, the price payable by Buyer includes all packaging, transportation costs, insurance, customs duties, and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. If there has been no previous price or quotation from Seller, and Buyer sets no price in the Order, to the extent Buyer considers Seller's price to be unreasonable, Buyer may return the Goods to Seller at Seller's expense and/or reject the Services. Under no circumstances will the prices and fees set forth in any Order be increased without Buyer's prior written consent. Seller will defend, indemnify, release, and hold Buyer harmless from any claims or assessments in connection with any taxes or fees described above, and Seller will comply with all applicable employer's liability laws and Worker's Compensation acts and, upon request, will furnish Buyer with evidence of compliance.

6.3 Payments. All payments to be made by Buyer to Seller for the Goods shipped or Services contracted pursuant to an Order will be made in accordance with the terms set forth in such Order, or, in the event that an Order does not specify the payment terms, payment will be made within 45 days following receipt of an invoice from Seller for the applicable Goods and Services associated with such Order. Cash discount periods, if applicable, will commence on the date of Buyer's receipt of Seller's invoice, provided that Goods conforming to an Order have been received by Buyer at or prior to the date of such invoice.

## 7. Changes, Substitutions and Extra Charges.

7.1 Changes. Buyer has the right, at any time and from time to time, by written change notice to Seller, to make changes in, or additions to, any drawings, specifications, instructions, designs, quantity, and or delivery schedules for the Goods or Services covered by an Order. Seller will comply with the change notices; provided that, if the changes cause a material increase or decrease in Seller's cost or in the time for performance of an Order, then an equitable adjustment in the price and time for performance may be made if mutually agreed upon between Buyer and Seller, and the applicable Order will be modified in writing accordingly. Any claim for adjustment must be asserted by Seller within a reasonable time not to exceed 10 days after the date of notice of such change from Buyer.

7.2 Substitutions. No substitutions of Goods or Services may be made by Seller without the prior written consent from Buyer.

7.3 Extra Changes. No extra charges or fees other than those specified in an Order will be paid by Buyer unless the same have been ordered in writing by Buyer and agreed to by the parties in accordance with Section 7.1.

8. Intellectual Property. Seller does not have and will not assert any rights in, and to, any Intellectual Property Rights of Buyer. Seller will not reproduce, display, or in any other manner use, nor cause to be reproduced, displayed, or in any other manner used, the Buyer's Intellectual Property Rights, except with Buyer's prior written consent, which may be granted or withheld in Buyer's sole and absolute discretion. Buyer's Intellectual Property Rights are, and will remain, the sole and exclusive property of Buyer, and every use of Buyer's Intellectual Property will inure solely to its benefit. All Goods manufactured pursuant to an Order will be sold only to Buyer.

9. Seller's Representation and Warranties. These representations and warranties are in addition to any other warranties provided by law, equity or otherwise provided in any applicable Order.

9.1 Quality Assurance. Seller represents and warrants that: (a) Seller will convey to Buyer good title to the Goods sold under any Order and that at the time of delivery, the Goods will be free and clear of all security interests, liens and encumbrances; (b) all Goods and Services are free from any defects in material or workmanship, whether apparent or hidden and comply with Buyer's specifications; (c) the Goods are of merchantable quality, suitable for the purposes intended, and fit and safe for the anticipated use to which any consumer could put the Goods; (d) the Goods and Services, including, but not limited to any and all labeling, tagging, manufacturing and testing conform strictly to all Laws, and to all specifications, quality standards, drawings or samples specified or furnished by Buyer; (e) Seller has the full right and authority to fulfill each Order and to perform and discharge its obligations under each Order without the consent or approval of any third party; (f) each applicable Order and the Services or Goods provided by Seller in fulfillment of such Order, and Buyer's use of the same, do not and will not interfere with or violate any agreements with, rights of, or obligations to any third

parties; (g) fabrication, manufacture, lettering, graphics and finishing of all Goods conform in all respects to the specifications accompanying each Order; and (h) all labels and tags contain adequate and accurate information with respect to use, safety and treatment and will not be misleading. Seller will, at its expense, execute and furnish Buyer with appropriate written certificates of compliance with Laws. In addition, Seller waives its right to any lien for labor performed or materials furnished in connection with any Order.

9.2 Status of Seller's Employees. Seller represents and warrants that: (a) all workers, including any subcontractors, performing Services pursuant to an Order are legally authorized to work in the United States according to federal and state law, where applicable; (b) none of the Services provided are with forced or sweatshop labor; and (c) Seller and its subcontractors, if any, are in compliance with all labor, employment and all other applicable laws.

9.3 Subcontractors. If Seller, with the prior written consent of Buyer, subcontracts any of the work under an Order, then Seller will: (a) fully maintain quality standards; (b) protect Buyer's Confidential Information and intellectual property rights, as provided in these Terms and Conditions; and (c) pass through all of Seller's obligations to the subcontractor, including, but not limited to waivers of any and all lien rights, so that Buyer will have rights enforceable directly against the subcontractor as well as against Seller. The responsibility and liability of Seller under any Order and these Terms and Conditions will not be diminished on account of any subcontract. Seller will be fully responsible and liable for payment to any subcontractor and the subcontractor's performance and work. Seller will indemnify, defend and hold Buyer harmless from and against any and all acts, errors or omissions by any subcontractor that cause harm to any Indemnified Party.

9.4 Intellectual Property Rights. Seller represents and warrants to that there are no Intellectual Property Rights of any third party that would be infringed by the manufacture, use or sale of the Goods supplied or Services rendered to Buyer under any Order.

10. Disclosure of Chemicals. Whenever Goods include or are chemicals, chemical substances or chemical materials, and as otherwise required under 29 CFR §1910.1200, Seller will deliver to Buyer, together with the delivery of the Goods, a MSDS disclosing all of the following information with regard to the Goods: (a) the chemical identity; (b) the regulatory information; (c) the physical characteristics; (d) the physical hazards; (e) the health hazards; (f) the emergency first aid; (g) the permissible exposure limit; (h) the precautions for use and safe handling; (i) any applicable spill, leak and disposal procedures; and (j) the identity of any applicable protective equipment. Seller represents and warrants that the information provided on any applicable MSDS will be accurate and complete. Buyer may rely completely on such information disclosed and use such information to advise its employees and agents as to the nature of the Goods and as to the precautions and/or safety measures to be observed when handling the Goods.

11. Indemnification.

11.1 Indemnification. Seller will indemnify, defend and hold harmless each Indemnified Party from any Losses related to: (a) any claim of personal injury or death; (b) any claim of damage to or loss of any property where those claims are a result of, directly or indirectly, the acts or omissions of Seller, its agents, employees, or subcontractors; (c) any claim by a third party that Buyer's use of Goods or Services infringes the intellectual property or other proprietary rights of that third party; (d) any claim arising from, or as a result of, a breach by Seller of its confidentiality or data security obligations under these Terms and Conditions, or any covenant, warranty or representation under any Order or these Terms and Conditions; or (e) all federal, state and local taxes or contributions imposed upon, or required of, Buyer under unemployment insurance, social security, income tax, and workers' compensation statutes relating to the Goods or Services and Seller's obligations under these Terms and Conditions. Seller will make no settlement of an indemnified claim specifically naming, or directly affecting, an Indemnified Party, without the prior, written approval of that Indemnified Party.

11.2 Limitations. Except as set forth in these Terms and Conditions, under no circumstances, and under no theory of liability, will Buyer be liable for lost profits, lost savings, loss of information or data or any other special, indirect, consequential or incidental damages, or any liability or damages to Seller or to any third party, however caused, arising in any way out of any performance or failure to perform under any Order or these Terms and Conditions, the sale, license, use or inability to use any Goods, Service or other deliverables, even if Buyer has been advised of the possibility of damages, and despite any failure of essential purpose of any limited remedy.

12. Seller's Insurance. Seller's insurance coverage requirements set forth in this Section 12 are not intended to, and will not, in any manner, limit or qualify the obligations and liabilities of Seller under any Order or these Terms and Conditions.

12.1 General. During the term of any Order, Seller will maintain, at its own expense, with an insurer or insurers having a current rating by AM Best of A-VIII or higher, the following insurance coverages:

12.1.1 Commercial General Liability. Commercial General Liability, or other comparable broad form general liability coverage that includes coverage for personal injury (including death), property damage, advertising, products-completed operations and liquor liability (if applicable) and contractual liability in the minimum amount of \$1,000,000 per occurrence/\$2,000,000 general aggregate.

12.1.2 Workers' Compensation. Workers' Compensation insurance in amounts equal to the statutory limits as required by the laws in the state which the Services are performed or the Goods are to be provided and Employer's Liability insurance in the amount of \$1,000,000/\$1,000,000/\$1,000,000 or lower limits that are adequate to meet underlying limits requirements of Seller's Umbrella or Excess Liability policy.

12.1.3 Automobile Liability. If Seller uses a vehicle to perform its obligations under any Order, then Seller will maintain automobile liability insurance covering owned, non-owned, leased, hired or borrowed vehicles with a bodily injury and property damage combined single limit in the amount of no less than \$1,000,000 per occurrence; or, if limits are obtained on a per person and per accident basis, not less than \$1,000,000 per person and per accident for bodily injury and \$1,000,000 per accident for property damage.

12.1.4 Umbrella Liability. Seller must also provide follow form Umbrella/Excess Liability with limits of no less than \$5,000,000.

12.1.5 Professional Liability. If applicable, Professional Liability insurance covering liability arising out of negligent acts, errors or omissions including, without limitation, trademark and copyright infringement in the rendering of the professional services to be provided under any Order with policy limits in amounts no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

12.2 Required Limits. Seller may meet insurance requirements through separate, combination or package policies if those policies meet the required limits and the required scope of coverage. Umbrella and/or Excess Liability policy limits may be accepted to meet the required limits and the required scope of insurance. The insurance coverage and limits required to be maintained by Seller will be primary and non-contributory to insurance coverage, if any, maintained by Buyer.

12.3 Additional Insured. Buyer, its affiliates, subsidiaries and their respective directors, officers, employees, agents and, when applicable, Buyer's landlords (including their respective successor and assigns) will be an additional insured, by specific endorsement, for Seller's Commercial General Liability coverage, Automobile Liability coverage, and Umbrella or Excess Liability coverage.

12.4 Certificates of Insurance. 15 days prior to the start date for performance under any Order, Seller will furnish to Buyer certificates of insurance that evidence the required insurance. Within 30 days before the expiration of the insurance coverage required by any Order, Seller will provide to Buyer certificates of insurance that evidence renewal or continuation of the required insurance policies.

12.5 Waiver of Subrogation. It is expressly understood and agreed that the insurer waives and releases all rights of subrogation and or recovery for all damages against Buyer and its officers, directors, board members, affiliates, subsidiaries and employees in connection with any payments made under the Workers' Compensation, General Liability, Automobile Liability and Umbrella policies. Seller will require similar waivers from its respective subcontractors and consultants. Seller will require that each of its insurance policies required under any Order and any applicable documentation in connection an Order, include an express waiver of subrogation as set forth in this Section 12.5.



12.6 Change in Insurance. All insurance policies will contain a provision stating that coverage will not be cancelled, non-renewed or materially changed until at least 30 days' prior, written notice has been given to Buyer.

12.7 Maintenance of Insurance. The insurance provisions of these Terms and Conditions are of the essence. Failure of Seller to maintain the insurance coverages constitutes a material breach of these Terms and Conditions and will give Buyer the right to terminate all outstanding Orders immediately.

13. Taxes. Seller will be solely responsible for the filing of any applicable tax returns and the payment of all property, excise, municipal license and income taxes arising in connection with any Order and any and all taxes applicable to the revenues or fees received by Seller as a result of an Order. Seller represents and warrants to Buyer that Seller's invoices pertaining to an Order comply with all applicable Laws.

14. Confidentiality.

14.1 General. In performing the Services and/or providing Goods under an Order, Seller will have access to Confidential Information.

14.2 Exclusions. Confidential Information does not include any information that is: (a) generally available to the public, through no fault of Seller, at the time of use or disclosure; (b) known by Seller prior to the receipt of the Confidential Information from Buyer; (c) lawfully obtained by Seller from a third party with no obligation or duty of confidentiality to Buyer; (d) independently developed by Seller without the use of Confidential Information; or (e) required to be disclosed by a government body or court of law, subject to Section 14.4 below.

14.3 General Treatment of Confidential Information. Seller will not accumulate, store, publish, disseminate, distribute, disclose, sell, assign, copy, commercially exploit, communicate or make use of any Confidential Information for the benefit of Seller or any other person, firm, corporation or entity, except to Seller's employees, authorized agents or approved subcontractors who agree to be bound by the obligations of this Section 14, and then only on a need-to-know basis for the purpose of fulfilling Seller's obligations under an applicable Order. Seller will treat Confidential Information with at least the same degree of care that it treats its own confidential information, but in no event less than a reasonable degree of care, and will exercise reasonable precautions to prevent disclosure of Confidential Information to unauthorized parties. Seller will notify Buyer immediately of any loss or unauthorized disclosure or use of Confidential Information.

14.4 Disclosure. If Seller, or anyone to whom Seller transmits Confidential Information pursuant to these Terms and Conditions, becomes legally compelled to disclose any of the Confidential Information, then Seller will promptly notify Buyer, in writing, to enable Buyer to: (a) seek a protective order or other appropriate remedy; or (b) waive compliance with the provisions of an

Order. If Buyer is unable to obtain a protective order or other remedy, or if Buyer waives compliance with the non-disclosure provisions of this Section 14, then Seller may disclose only that portion of the Confidential Information legally required, as advised by Seller's legal counsel, in writing, and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

14.5 Return of Confidential Information. Following the expiration or termination of any Order, or earlier if requested by Buyer, Seller will promptly return to Buyer all Confidential Information in Seller's possession or under Seller's control, without retaining any copies, extracts or other reproductions of the Confidential Information. Any oral Confidential Information will continue to be subject to these Terms and Conditions. Seller will not be required to delete electronic file fragments or data fragments once the related active file containing Confidential Information has been deleted. Seller will not be required to destroy or delete electronically stored information from sources that are not reasonably accessible due to undue burden or cost. Electronically stored information on back-ups made primarily for disaster recovery and maintained in the ordinary course of business are not considered reasonably accessible for purposes of this Section 14.5.

14.6 Remedies. Due to the remedies at law being inadequate to protect against a breach of this Section 14, Buyer will be entitled to specific performance and injunctive or other equitable relief as a remedy for any breach, and the parties waive any requirement for securing or posting of any bond regarding any remedy.

## 15. Data Security.

15.1 Security Breach. A Security Breach will be considered to have occurred upon the introduction to either party's Technology System of: (a) viruses, Trojan horses, worms, authorization strings and other similar malicious code; (b) any self-destruction mechanism; (c) malware, spyware, ransomware, or similar software; (d) any other computer software code or instructions or hardware components designed to erase, destroy, corrupt, disable, damage, or impair the operation of a party's Technology Systems.

15.2 Information Security. Each party will: (a) implement and maintain a written information security program including appropriate policies, procedures, and risk assessments that are reviewed at least annually; (b) implement administrative, physical, and technical safeguards to protect its Technology Systems against a Security Breach that are no less rigorous than the following standards: the National Institute of Standards and Technology (NIST) Cybersecurity Framework; International Organization for Standardization's standards: ISO/IEC 27001 – Information Security Management Systems – Requirements and ISO/IEC 27002 – Code of Practice for Information Security Management; or, the Control Objectives for Information and related Technology (COBIT) standards; (c) provide the other party with the name and contact information for an employee of such party who will serve as primary security contact in resolving obligations associated with a Security Breach; and (d) respond to reasonable requests

from the other party for information with respect to the matters set forth in (a) and (b) of this Section 15.2.

### 15.3 Security Breach Procedures.

15.3.1 Seller will notify Buyer of any actual or suspected Security Breach as soon as practicable, but no later than 24 hours after becoming aware of it, unless notification would potentially further compromise security or violate applicable law.

15.3.2 Seller will use commercially reasonable efforts to investigate the cause of and remediate the Security Breach.

15.3.3 If either party experiences a Security Breach, both parties will take, and will be permitted to take, all reasonable steps to immediately contain the Security Breach and prevent any further Security Breach, including discontinuing access to any Technology Systems of either party that may be susceptible to a Security Breach, such as data feeds, email, file transfer, etc., for so long as either party reasonably believes a risk of Security Breach or potential damage from the Technology Systems exists.

15.3.4 The Parties will coordinate with each other to investigate a Security Breach experienced by either party that impacts the other party, including, without limitation: (a) cooperating with any reasonable investigation of the Security Breach; (b) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise reasonably required by the other Party regarding the Security Breach; and (c) making knowledgeable employees available to communicate regarding the Security Breach.

15.3.5 A party experiencing a Security Breach will have the right to determine: (a) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as may be required by law; (b) the contents of the notice; and (c) whether any type of remediation may be offered to affected persons, provided that, if Buyer's Confidential Information has been compromised by a Security Breach experienced by Seller, then Buyer will be permitted to make its own determination as to (a), (b), and (c) of this Section 15.3.5 with respect to its Confidential Information.

### 16. Miscellaneous.

16.1 Entire Agreement. These Terms and Conditions will except to the extent that Seller and Buyer have entered into a master services agreement prior to or in conjunction with an Order, in which case the terms of such master services agreement will control the relationship between the parties with respect to each Order: (a) govern each Order between Seller and Buyer; (b) constitute the sole agreement between the parties with respect to the subject matter of these Terms and Conditions; and (c) supersede any prior, written or oral agreements or

communications between the parties with respect to the subject matter of each applicable Order.

16.2 No Public Statements. Seller will not: (a) use any of the corporate names, trade names or trademarks of Buyer or any affiliates of Buyer including, without limitation, in any customer lists or marketing, promotional or advertising materials; or (b) make any public statement or issue any press release relating to any Order, Buyer or any affiliate of Buyer, without first obtaining the prior, written consent of Buyer as to the specific form, substance and timing of each use.

16.3 No Exclusive Relationship. Each Order is non-exclusive and nothing in an Order or these Terms and Conditions prevents Buyer from entering into the same or similar relationship with others, or from marketing or developing similar competing relationships with others, or from pursuing any business opportunities or concepts independently of Seller.

16.4 Buyer's Rights Cumulative. The rights and remedies of Buyer under these Terms and Conditions are cumulative and will not exclude any other remedies to which Buyer may be lawfully entitled.

16.5 Severability. If any part of these Terms and Conditions is, for any reason, held to be unenforceable, then the remainder of the Terms and Conditions will remain fully enforceable.

16.6 Amendment. No modifications or additions to an Order will be binding upon Buyer unless agreed to in writing by an authorized representative of Buyer. Modifications and termination may be effected by electronic exchanges. These Terms and Conditions may be amended, in whole or in part, from time to time by Buyer in its sole discretion.

16.7 Independent Contractor; No Agency. Buyer and Seller acknowledge that their relationship is that of independent contractors, and nothing in these Terms and Conditions, or in any Order, will be considered to create any relationship of employment, partnership, joint venture, or agency between the parties. Neither party, unless expressly and duly authorized in writing to do so, has any power or authority to bind, or act on behalf of, the other in any way, to execute any instrument on its behalf or to render it liable for any purpose.

16.8 Assignment. Seller may not assign or subcontract its rights in connection with any Order or these Terms and Conditions without Buyer's prior written consent.

16.9 Set Off. Buyer is entitled to set off, recoup or otherwise deduct from any amounts due or owing to Seller in connection with an Order any outstanding liabilities of Seller to Buyer, whether or not they are related to an Order. In addition, to secure Seller's obligation to Buyer under each Order, including, without limitation, damages for breach, Buyer will have, and Seller grants to Buyer, a security interest in any Goods rejected by Buyer under an Order.

16.10 Waiver by Buyer. A failure or delay of Buyer to enforce any of the provisions of these Terms and Conditions will not be construed as a waiver of that provision in any respect.

16.11 Survival. The terms, covenants, conditions and obligations of the parties which are set forth in these Terms and Conditions survive the termination or expiration of any Order. Without limitation, the representations and warranties of Seller set forth in an Order, and in these Terms and Conditions, and inure to the benefit of Buyer and its successors and assigns, and will survive acceptance of the Goods or Services by Buyer.

16.12 Governing Law. At all times during which Seller has any outstanding Order with Buyer, Seller will comply with, and will cause any subcontractor approved in accordance with these Terms and Conditions to comply with, all Laws now in force or enacted during the term of any Order. Florida law applies to each Order and these Terms and Conditions procedurally and substantively (including statute of limitations) without regard to any choice-of-law rules that might direct the application of the laws of any other jurisdiction. Any dispute arising under, relating to, or in connection with, an Order or these Terms and Conditions or related to any matter which is the subject of, or incidental to, an Order or these Terms and Conditions (whether or not that claim is based upon breach of contract or tort) will be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Miami-Dade County, Florida. This provision is intended to be a “mandatory” forum selection clause and governed by, and interpreted consistently with, Florida law. Further, neither the Convention, nor any domestic legislation which has, or purports to have, adopted the Convention into law in the jurisdiction concerned, will apply to any Order or these Terms and Conditions. The parties make the exclusions pursuant to the appropriate provisions in any legislation which adopted the Convention into law in each jurisdiction concerned.

16.13 Attorneys’ Fees. If any dispute between the parties results in litigation or arbitration, then the prevailing party will be entitled to receive from the other party, in addition to all other damages to which it may be entitled, the costs incurred by the prevailing party in conducting the suit, action or proceeding, including all actual attorneys’ fees, costs and expenses and court costs.

16.14 Notices. All notices and other communications required or permitted under an Order must be in writing and must be sent to the party at the party’s address shown in the Order, or whatever other address the Party specifies in writing. For Buyer, a copy must also be sent to 14911 Quorum Dr., Suite 150, Dallas, Texas 75254, Attention: General Counsel – Contracts.

16.15 Construction. References in in these Terms and Conditions or in any Order to codes, regulations, rulings, statutes or laws include all amendments, modifications or replacements of them. Headings are for convenience only and do not affect the interpretation of these Terms and Conditions. If any party asserts any conflict, omission or ambiguity in these Terms and Conditions or an Order, no presumption or burden of proof or persuasion will be implied by virtue of the fact that these Terms and Conditions or such Order were prepared by, or at the request of, a party or its counsel.

16.16 Additional Actions. Each party will execute and deliver any additional documents and

instruments, and will perform any additional acts, as may be necessary or appropriate to perform all the terms and conditions in these Terms and Conditions, or in any Order.

#### 16.17 No Liens.

16.17.1 Any interest of the owner (the "Owner") in: (a) the real property where any Services are performed; or (b) any personal property of the Owner located on the real property (collectively, the "Property") may not be subject to, or chargeable with, any liens for labor performed, or material supplied, in connection with the Services. Buyer has no right, power or authority to create, or allow to be created, any liens against Owner's interest in the Property, regardless of whether the Owner has approved or consented to the Services. Neither Seller nor its subcontractors may file any liens against the Owner's interest in the Property. Any liens filed by Seller or any of its subcontractors against Owner's interest in the Property will be of no effect as to Owner's interest in the Property. Seller will file any documentation necessary to release any liens against Owner's interest in the Property within 30 days after Buyer's request.

16.17.2 As a condition precedent to both periodic and final payment due under any Order, Seller will furnish to Buyer: (a) affidavits affirming that no liens have attached against the work described in the applicable Order or the materials furnished in connection with such Order; and (b) releases or waivers of lien in a form reasonably satisfactory to Buyer and in compliance with applicable law from Seller and each subcontractor for work performed. Notwithstanding the foregoing sentence, any required lien releases or waivers may be conditioned upon receipt of payment.