

1. Terms of Order

This purchase order is an offer by the company identified on the face of this purchase order ("**Company**") for the procurement of the services specified (the "**Services**") from the party to whom the purchase order is addressed ("**Provider**") in accordance with and subject to the following terms and conditions, together with the terms and conditions on the face of this purchase order or contained in any attachments, statements of work, exhibits, specifications, drawings, notes, instructions or other information, whether physically attached hereto or incorporated herein by reference (collectively, this "**Order**"). Except as otherwise provided in this sentence, this Order constitutes the entire and exclusive agreement of the parties with respect to Company's procurement of the Services from Provider and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and communications, both written and oral, with respect to the subject matter of this Order; provided, however, in the event Company and Provider are parties to a separate written agreement executed by both Company and Provider with respect to the Services to be provided (the "**Separate Agreement**") these terms and conditions shall supplement the terms and conditions of the Separate Agreement, but in the event any provisions of the Separate Agreement conflict with these terms and conditions such provisions of the Separate Agreement shall control and shall supersede such conflicting provisions of these terms and conditions. Company's submission of this Order is conditioned on Provider's agreement that any terms different from or in addition to the terms of this Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence issued by or on behalf of Provider, irrespective of the timing (other than any Separate Agreement as provided above), shall not form a part of this Order, even if Provider purports to condition its acceptance of this Order on Company's agreement to such different or additional terms. This Order will be deemed accepted by Provider upon the first of the following to occur: (a) Provider making, signing or delivering to Company, whether in electronic format or in written form, any letter, form or other writing or instrument acknowledging acceptance; (b) the commencement of performance of the Services by Provider under this Order; or (c) the passage of five (5) business days after Provider's receipt of this Order without written notice to Company that Provider does not accept. This Order may be revoked by Company at any time prior to

acceptance by Provider. The terms of this Order also apply to any Corrective Action required by Company pursuant to Section 3 hereof.

2. Performance of Services

Provider shall perform the Services: (a) in accordance with the representations and warranties contained in Section 7 hereof; (b) at the location specified in the Order, if any; and (c) in accordance with the performance schedule set forth in the Order, if any (the "**Performance Schedule**"). If no Performance Schedule is specified, Provider shall perform the Services in full within a reasonable time after of receipt of this Order. Provider acknowledges that time is of the essence with respect to Provider's obligations hereunder and that prompt and timely performance of the Services is strictly required. Provider will immediately notify Company if Provider's timely performance under this Order is delayed or is likely to be delayed. Company's acceptance of Provider's notice will not constitute Company's waiver of any of Provider's obligations hereunder. If Provider fails to perform the Services in full in accordance with the Performance Schedule (or if no Performance Schedule is specified, then within a reasonable time after receipt of this Order), Company may terminate this Order immediately by providing written notice to Provider and Provider shall indemnify and reimburse Company from and against any claims, losses, damages, and reasonable costs and expenses directly attributable to Provider's failure to perform the Services in accordance with the terms of this Order.

3. Inspection

Company reserves the right to inspect the results of the Services (including any Deliverables to be provided by Provider as part of the Services and as defined in Section 10 hereof) on or after the date of completion. Company, at its sole option, may reject all or any portion of the Services if Company determines the Services are non-conforming with the terms of this Order (including, without limitation, the representations and warranties in Section 7 hereof). If Company rejects all or any portion of the Services, Company has the right, at its option, to: (a) require Provider to perform such additional or corrective action as shall be necessary for the Services to conform to the terms of this Order ("**Corrective Action**"); or (b) accept the non-conforming Services conditioned on Provider providing a refund or credit in an amount Company reasonably determines to represent the diminished value of the non-conforming Services. If Company requires Corrective Action on the part of Provider, Provider shall promptly perform the Corrective Action at no additional cost to

Company beyond the Service Fee specified in Section 5 hereof. If Provider fails to perform the Corrective Action, Company may obtain substitute Services from a third party and charge Provider the cost thereof and terminate this Order pursuant to Section 8 hereof. Any such termination shall not preclude the exercise by Company of its rights as a result of the non-performance of Provider's obligations. Any inspection or other action by Company under this Section shall not affect Provider's obligations under this Order, and Company shall have the right to further inspection after Provider performs any Corrective Action.

4. Provider Obligations

Provider shall: (a) observe the insurance and legal compliance requirements set forth in Sections 12 and 13 hereof, respectively; (b) comply with all rules, regulations and policies of Company, including security procedures concerning systems and data and remote access thereto, building security procedures, including restriction of access to certain areas of Company's premises or systems for security reasons or confidentiality reasons, and general health and safety practices; (c) maintain complete and accurate records relating to the provision of the Services, including records of time spent and materials used by Provider in performing the Services and, upon request by Company, make such records available to Company for review; (d) 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 subcontractors and affiliates of Provider to provide the Services to Company ("**Permitted Subcontractors**"), although Company's approval shall not relieve Provider of its obligations under this Order, and Provider shall remain fully responsible for the performance of each Permitted Subcontractor and its employees and for their compliance with the terms of this Order to the same extent as if they were Provider's own employees; (e) require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property assignment or license provisions of this Order; (f) ensure that all persons, whether employees, agents, Permitted Subcontractors or anyone acting for or on behalf Provider, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services; and (g) ensure that all of its equipment used in the performance of the Services is in good working order and suitable for the purposes for which it is used and conforms to any standards specified by Company.

5. Service Fee and Payment

The fee for the Services is the dollar amount stated on the face of this Order (the "**Service Fee**"). If no dollar amount is included in this Order, the Service Fee shall be Provider's standard fee then being charged for similar services to similar customers. Unless otherwise specified in this Order or expressly approved in writing in advance by Company, the Service Fee shall include and cover all costs and expenses incurred by Provider to perform the Services (including, without limitation, the cost of equipment, supplies, materials, personnel, general overhead, travel and related expenses), as well as all applicable taxes (including, without limitation, all sales, use, service or excise taxes) and Company shall not be responsible for reimbursing Provider for any such costs, expenses or taxes. No increase in the Service Fee is effective, whether due to increased costs incurred by Provider in performing the Services or otherwise, without the prior written consent of Company. Provider shall invoice Company for this Order within thirty (30) days of completion of the Services or as otherwise stated in this Order. Unless otherwise stated in this Order or unless otherwise provided in a Separate Agreement, Company shall pay all properly invoiced amounts due to Provider within forty-five (45) days after receipt of such invoice, except for any amounts disputed by Company. The parties shall seek to resolve all such disputes expeditiously and in good faith. Provider shall continue performing its obligations under this Order notwithstanding any such dispute. Without prejudice to any other right or remedy, Company reserves the right to set off any amount owing to it by Provider against any amount payable by Company to Provider. Payment of an invoice is not evidence or admission that the Services meet the requirements of the Order.

6. Revisions

Company may, from time to time, initiate revisions to this Order by issuing to Provider written notices (each, a "**Revised Order**") that alter, add to or deduct from the Services, but that are otherwise subject to the terms of this Order. Provider will promptly comply with the terms of any Revised Order, provided that Provider may, within five (5) business days after receiving a Revised Order, submit a request for equitable adjustment specifying the adjustment in the Service Fee or time for performance, or both, resulting from the Revised Order. In such event, the parties shall in good faith negotiate an amendment to this Order to provide for an equitable adjustment to the Service Fee, time for performance, or both with respect to the Revised

Order, provided Provider shall continue its performance under this Order as modified by the Revised Order during the course of such negotiations and this Order as modified by the Revised Order shall become this Order.

7. Representations and Warranties

Provider represents and warrants to Company that: (a) Provider shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with industry standards for similar services and shall devote adequate resources to meet its obligations under this Order; (b) Company will receive good and valid title to any Deliverables provided as part of the Services, free and clear of all encumbrances and liens of any kind; (c) none of the Services (including any Deliverables) and Company's use thereof infringe or will infringe any Intellectual Property Rights (as defined in Section 10 hereof) of any third party and, as of the date of this Order, there are no pending or, to Provider's knowledge, threatened claims, litigation or other proceedings pending against Provider by any third party based on an alleged violation of such Intellectual Property Rights; (d) the Services (including any Deliverables) will be in conformity with all requirements or specifications of this Order and (e) the Services (including the Deliverables) will be in conformity with all applicable laws, rules, regulations and ordinances. The warranties set forth in this Section 7 are cumulative and in addition to any other warranties provided by law or equity. All warranties shall survive the acceptance and inspection of, and payment for, the Services by Company. Any applicable statute of limitations shall run from the date of Company's discovery of the non-compliance of the Services with all of the warranties.

8. Termination

Company may terminate this Order with respect to unperformed Services, in whole or in part, at any time for any reason upon ten (10) days' prior written notice to Provider. In addition to any remedies provided herein, Company may terminate this Order with immediate effect upon written notice to Provider, if Provider has breached or failed to comply, in whole or in part, with any of the terms of this Order. If Provider becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then Company may terminate this Order. If Company terminates this Order for any reason, Provider's sole

and exclusive remedy is payment for that portion of the Services received and accepted by Company prior to the termination.

9. Indemnification

Provider shall defend, indemnify and hold harmless Company and its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders, and employees (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "**Losses**") arising out of or occurring in connection with: (a) Provider's performance of the Services; (b) Provider's negligence, willful misconduct or breach of the terms of this Order (including, without limitation, any non-compliance with the representations and warranties contained in Section 7 hereof); or (c) any claim that Company's receipt of the Services (including its use or possession of any Deliverables) infringes or misappropriates the Intellectual Property Rights of any third party. Provider shall not enter into any settlement without the Indemnitee's prior written consent.

10. Intellectual Property

All intellectual property rights, including, but not limited to, 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 goodwill associated therewith, derivative works and other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to Company pursuant to this Order or prepared by or on behalf of Provider in the course of performing the Services (collectively, the "**Deliverables**") shall be owned exclusively by the Company. Provider agrees, and shall cause its employees and all Permitted Subcontractors and their employees (collectively, "**Provider Personnel**") to agree, that with respect to any Deliverables that may qualify as "work made for hire," such Deliverables are deemed a "work made for hire" for Company. To the extent that any of the Deliverables do not constitute a "work made for hire," Provider hereby irrevocably assigns, and shall cause the Provider Personnel to irrevocably assign to Company, in each case without additional consideration, all right, title and interest in and to the Deliverables, including all Intellectual Property

Rights therein. Upon Company's request, Provider shall, and shall cause the Provider Personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance as may be necessary to assist Company to prosecute, register, perfect or record its rights in and to any Deliverables. Provider and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to all documents, data, know-how, methodologies, software and other materials provided or used by Provider in connection with performing the Services, in each case developed or acquired by Provider prior to commencing performance of the Services, including all Intellectual Property Rights therein. Provider hereby grants Company a license to any such pre-existing materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables for any and all purposes.

11. Confidential Information

All non-public, confidential or proprietary information of Company, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations (including, but not limited to, processes), pricing, discounts or rebates, usually observed by Provider or disclosed by Company to Provider, 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 this Order is confidential, solely for the use of performing the Services and may not be disclosed or copied unless authorized by Company in writing and may not be used by Provider for any purpose other than performing the Services. Upon Company's request, Provider shall promptly return all documents and other materials received from Company and shall destroy all materials containing confidential and proprietary information of the Company and delete all electronically stored confidential and proprietary information of the Company. Company shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to Provider at the time of disclosure; or (c) rightfully and legally obtained by Provider on a non-confidential basis from a third party.

12. Insurance

Provider shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes: (a) commercial general liability (including product liability) in a sum no less than \$1,000,000 for

each occurrence and \$2,000,000 in the aggregate; (b) workers' compensation insurance in compliance with the applicable laws of each jurisdiction affected by this Order; (c) if Provider will use or provide for use of motor vehicles in providing and/or performing the Services, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000. Upon Company's request, Provider shall provide Company with a certificate of insurance evidencing the coverage specified in this Order.

13. Compliance with Law

Provider warrants and represents to Company that it is in compliance with and shall remain in compliance during performance of this Order and ensure that its employees, agents and any Permitted Subcontractors comply with all applicable laws, regulations and ordinances, including, without limitation, the Occupational Safety and Health Act, Toxic Substances Control Act, and Foreign Corrupt Practices Act. Provider has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under this Order. If Provider or any Permitted Subcontractor fails to comply with the laws, orders, rules, ordinances and regulations and as a result Company is fined, or otherwise incurs any costs or expenses,, Provider agrees to pay the fine and costs and expenses incident thereto or, if applicable, reimburse Company for payment of any such fine, costs or expenses.

14. Taxes

Unless specified otherwise on the face of the Order, the Service Fee is inclusive of, and Provider shall be solely responsible for and pay, all federal, state and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of this Order by Company.

15. Force Majeure

Neither party shall be liable to the other for any delay or failure in performing its obligations under this Order 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,

explosion, epidemic, war, invasion, terrorist acts, riots, strike or embargoes. Provider's economic hardship or changes in market conditions are not considered Force Majeure Events. Provider 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 Order. If a Force Majeure Event prevents Provider from performance for a continuous period of more than fifteen (15) business days, Company may terminate this Order immediately by giving written notice to Provider.

16. LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ORDER OR OTHERWISE, COMPANY WILL NOT BE LIABLE TO PROVIDER WITH RESPECT TO THE SUBJECT MATTER OF THIS ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THIS ORDER, WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THIS ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

17. Waiver and Release of Liens

Upon Provider's receipt of payment for amounts properly invoiced, Provider hereby waives and releases all rights to, for itself and its Permitted Subcontractors, and at its sole cost shall obtain prompt removal of any lien fixed against Company for the Services (including any Deliverables) provided pursuant to this Order.

18. Relationship of the Parties

The relationship between the parties is that of independent contractors. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

19. Governing Law

All matters arising out of or relating to this Order shall be governed by and construed in accordance

with the internal laws of the State of Iowa without giving effect to any choice or conflict of law provision or rule (whether of the State of Iowa or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Iowa. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted exclusively in the federal courts of the United States or the courts of the State of Iowa, in each case located in Polk County, Iowa, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. Notices

All notices, consents, claims, demands, waivers and communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of this 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 (all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (return receipt requested, postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section 20.

21. Inconsistent Terms

The terms found on the face of this Order shall govern over the terms and conditions herein. As noted in Section 1 above, the terms of any Separate Agreement shall govern over any conflicting or inconsistent terms of this Order.

22. Cumulative Remedies

The rights and remedies under this Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise.

23. Survival

Provisions of this Order which by their nature should apply beyond the performance, expiration or termination of this Order shall remain in full force and effect and survive such performance, expiration or termination, including, without limitation, the obligations of Provider under Sections 9, 10 and 11 hereof.

24. Severability

If any term or provision of this Order is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of this Order or invalidate or

render unenforceable such term in any other jurisdiction.

25. Miscellaneous

Provider shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Order without Company's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment shall relieve Provider of any of its obligations hereunder. No modification, alteration or amendment of the Order shall be binding unless agreed to in writing and signed by Company. No waiver by any party of any of the provisions of this Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Order by

Company shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy or privilege hereunder preclude any other exercise of any additional right, remedy or privilege. This Order 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 Order. **BUYER AND SELLER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO AND IN ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, DEMAND, DISPUTE OR OTHER MATTER WHATSOEVER ARISING OUT OF THIS ORDER.**