



**MG&E Niagara Entertainment ULC, to be continued into Ontario as MGE Niagara Entertainment Inc., Operator of Casino Niagara and Niagara Fallsview Casino Resort (“Purchaser”)**

**Purchase Order Standard Terms and Conditions**

These terms and conditions (“**Terms and Conditions**”), together with any contracts or agreements resulting or arising from the issuance and acceptance of this purchase order, and all attachments, exhibits, specifications, drawings, notes and instructions applicable to the purchase of the products and/or services described herein or in subsequent discussions between the parties or other purchase orders are hereby incorporated and made a part of this purchase order (collectively the “**Purchase Order**”).

**1. Acceptance:** Vendor’s acknowledgment of this Purchase Order or commencement of performance hereunder shall constitute Vendor’s acceptance of all of the Terms and Conditions herein. Any acknowledgment which states terms additional to or different from those set forth in this Purchase Order will not operate as an acceptance unless such terms are agreed to in writing by Purchaser. This Purchase Order constitutes the entire agreement between Purchaser and Vendor with respect to the products and/or services described herein and cancels, supersedes and replaces any prior negotiations, representations, communications, understandings and agreements, oral or written, between the parties with respect thereto. No other agreement, understanding or proposal which modifies or changes any term or condition of this Purchase Order shall be binding unless accepted in writing by Purchaser. Purchaser may insist upon strict compliance with the terms of this Purchase Order despite any previous custom, practice or course of dealing to the contrary.

**2. Price and Terms of Payment:** The purchase price specified on the Purchase Order shall, unless otherwise expressly stated: (a) be firm through delivery for the quantity of material specified or for the term of the contract, whichever is greater; (b) be stated in Canadian dollars; and (c) include all charges, fees and duties required with respect to the material specified or performance of the work. This Purchase Order shall not be billed at higher prices than specified and all invoices must correspond exactly to the prices herein. Unless authorized in writing by Purchaser, no extras will be allowed over the price shown on this Purchase Order, including but not limited to extras for packing, reels, boxes, crating or cartage. Any discrepancy in pricing and/or miscellaneous charges must be communicated in writing to Purchaser (Purchasing Department) and agreed to by Purchaser prior to shipment. Terms of payment are as specified in this Purchase Order. The time period allowed for payment and any discount period shall commence upon the later of: (a) Purchaser’s receipt of an acceptable invoice from Vendor; (b) confirmation of receipt of the products or services by Purchaser; and (c) the date any applicable discrepancy is resolved. Drafts will not be honoured under any circumstances. Vendor represents and warrants to Purchaser that the prices for products or services provided herein are the lowest prices for which Vendor has sold or is selling such products or services, taking into account any differences in quantities, schedule and other material terms. Purchaser shall be entitled to receive from Vendor any price reduction which Vendor makes to others for comparable products or services as of the later of: (a) the date of actual delivery of the products or the date upon which Vendor commences the services; or (b) the date of Purchaser’s receipt of an acceptable invoice from Vendor. Purchaser shall not be obligated to make any payment, may withhold any payment, set-off any payment and/or nullify the whole or a part of any payment: (a) if any lien, restriction, reservation, security interest, claim or encumbrance shall arise, be filed or attach in respect of or in connection with the products or services; and (b) to such extent necessary to protect against any expense, cost or loss because of: (i) defective work not remedied; (ii) failure of Vendor to make payments properly to subcontractors or for material or labour; (iii) damage to Purchaser or others to whom it may be held liable; or (iv) unauthorized deviations by Vendor from this Purchase Order. No payment for, or use of the products or services by Purchaser (either partial or full) shall excuse any failure by Vendor to comply fully with this Purchase Order. Vendor’s invoices must be sent directly to the attention of: Niagara Casinos, Accounts Payable Department; P.O. Box 300, 4200 Montrose Road, Niagara Falls, Ontario L2E 6T3. Vendor’s GST/HST registration

number and all applicable sales, excise and goods and services taxes must be indicated separately on Vendor's invoices.

**3. Shipment and Inspection:** All products must be delivered to Purchaser as directed in this Purchase Order. Packing slips must accompany all shipments. Written approval from Purchaser to bypass the designated receiving point must be received prior to delivery. Freight or express charges must be prepaid by Vendor when price is F.O.B. destination. Purchaser shall have the right to inspect, test and reject any of the products upon Purchaser's receipt or within a reasonable time of receipt. Products not in accordance with specifications or defective products may be rejected and held awaiting disposal or returned to Vendor for full credit and/or replacement at Vendor's risk and expense. Purchaser, by reason of its failure to inspect or test the products, shall not be deemed to have accepted defective products or products which do not conform to specifications, or to have waived any of Purchaser's rights or remedies arising by virtue of such defect or non-conformance. When Purchaser's inspection is specified before shipment, Vendor will promptly notify Purchaser when material is ready for inspection, and in no case will Vendor ship the material without obtaining Purchaser's approval or release. Where Vendor fails to deliver the products on or before the delivery date set out, Purchaser may, at its sole option and without liability or prejudice to its other rights, cancel this Purchase Order and return, at Vendor's risk and expense, part or all of any shipment of material received after the delivery date. If this Purchase Order is cancelled, Purchaser may charge Vendor with any loss or expense sustained as result of the late delivery or failure to deliver and any sums paid by Purchaser to Vendor shall be immediately returned to Purchaser.

**4. Delivery:** This Purchase Order's number must appear on all packing slips, invoices, packages, shipping cases, bills of lading, express receipts, customs documentation, acknowledgements and correspondence. Delivery of products without the Purchase Order's number being referenced on the packing/delivery slips will be deemed invalid and delivery will not be accepted.

**5. Risk of Loss:** Notwithstanding any provision to the contrary, title to and risk of loss of products covered by this Purchase Order shall remain with Vendor until the products are delivered at the F.O.B. point specified in this Purchase Order or, if no such point is specified, when the products are delivered to Purchaser as directed herein.

**6. Representations and Warranties:** Vendor represents and warrants to Purchaser as follows and acknowledges that Purchaser is relying upon these representations and warranties which shall survive all inspections and acceptance of the products and services covered by this Purchase Order: (a) all materials comply with applicable federal, state, provincial and municipal laws, regulations, by-laws, orders, directions and policies including those affecting the production, processing, packaging, labeling, contents, adulteration or shipment of food products in Canada and the U.S.A. from time-to-time. Without restricting the generality of the foregoing, such materials: (i) are not adulterated or misbranded within the meaning of applicable law, including the *Food and Drugs Act*, R.S.C. 1985, c. F-27, as amended or replaced; (ii) are not an article which may not be introduced into inter-provincial or international trade; and (iii) are not adulterated or misbranded within the meaning of the food or drug laws or the ordinances of any province, state or city which are applicable to such shipment or delivery; (b) the products do not infringe any patent, trademark, trade name, copyright or other intellectual property rights; (c) Vendor has good and marketable title to all products and the products are free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or other claims whatsoever; (d) Vendor represents and warrants that it is (i) not a non-resident of Canada for purposes of the *Income Tax Act* (Canada), *Excise Tax Act* and legislation of any legislature of any province or territory of Canada (including the *Taxation Act* (Québec)) and any regulations thereunder in force of like or similar effect or (ii) is a non-resident and agrees to withhold and pay, without charge to Vendor, any federal, state, provincial or local tax or other government charge, tax or assessment relating in any way to the production, provision, sale or shipment of any of the products sold or services rendered hereunder pursuant to the provisions of Section 8; and (e) the products shall be free from defects (patent and latent) in material and workmanship, in good operating condition and in a state of good repair and maintenance, shall be merchantable, shall conform to all applicable plans, specifications, requirements and samples and shall be suitable for the use intended. Vendor further warrants that all services shall be rendered in a good and workmanlike manner by skilled personnel in accordance with all applicable laws. If at any time prior to thirteen (13) months from the date of delivery of the products or substantial completion of the services it appears that the products or services, or any part thereof, do not conform to the warranties above, Vendor shall promptly correct such non-conformity to the full satisfaction of Purchaser. Without limiting the generality of the foregoing, Vendor shall promptly repair or replace (including, without limitation, dismantling, removal, shipping, delivery and reassembly) any product that is defective during the

warranty period, without cost to Purchaser. In all aspects of the performance of this Purchase Order, Vendor shall comply with and be bound by all applicable federal, provincial and local laws, orders, rules, regulations, ordinances, by-laws, guidelines, standards, limitations, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to such laws.

**7. Indemnification and Remedies:** Notwithstanding any breach, whether fundamental or otherwise, Vendor assumes the entire responsibility and liability for and agrees to indemnify, defend and hold harmless Purchaser, its associated and affiliated companies, together with their respective officers, directors, agents, employees, consultants, contractors or subcontractors, customers and users of the products or services purchased hereunder from and against any and all losses, expenses (including, without limitation, legal and professional fees), costs, damages (including direct, indirect, consequential and incidental damages), demands, liabilities, suits and claims (including those in connection with or arising out of any actual or alleged personal injury, including death) or damage or destruction to property (including loss of use) by whomsoever suffered, sustained, or alleged to have been sustained by reason of: (a) any act, error or omission, whether negligent or not, of Vendor and its agents, employees, consultants, contractors or subcontractors; (b) any defect, whether latent or patent, in any product of Vendor sold to Purchaser hereunder; (c) any warranty, term, condition or obligation of Vendor in this Purchase Order; (d) any injury, loss or damage of any nature or kind sustained by Vendor's employees, consultants, contractors or subcontractors, arising from the use of any material covered by this Purchase Order; or (e) any suit or action against Purchaser or against those selling or using the material covered by this Purchase Order for alleged infringement of patent or invention rights arising from the sale or use of said material. The parties agree that any legal fees payable pursuant to this indemnification shall be calculated on a substantial indemnity basis. The remedies provided to Purchaser herein are cumulative and in addition to other rights or remedies provided by law or in equity.

**8. Taxes:** Should Purchaser be required by applicable law to withhold tax from any amount paid or credited to Vendor, Purchaser shall withhold the tax as required, unless and until a waiver from the withholding requirement is obtained by Vendor from the relevant taxing authority in a form satisfactory to Purchaser. Vendor shall have no right to recover any tax withheld from Purchaser. Vendor agrees to accept and does hereby assume exclusive liability for the payment of any and all payroll taxes and/or contributions of employment insurance, old age pensions and/or annuities which are now or hereafter may be payable in respect of the wages, salaries or other remuneration paid or payable to Vendor's employees. Vendor shall pay, without charge to Purchaser, any federal, state, provincial or local tax or other government charge, tax or assessment relating in any way to the production, provision, sale or shipment of any of the products sold or services rendered hereunder.

**9. Foreign Suppliers:** Foreign Vendors are responsible for complying with all requirements of the Canada Border Services Agency and other government departments, as the case may be, respecting the importation of goods and services into Canada, including but not limited to the requirement that all incoming shipments have, at minimum: a commercial invoice; proof of origin or Certificate of Origin; currency for valuation; and a detailed description of the merchandise, its value and number of pieces. Foreign Vendors are responsible to provide or obtain a Certificate of Origin as may be required to obtain preferential treatment under any applicable free trade agreement. By providing or obtaining a Certificate of Origin and the consequential fulfillment of this Purchase Order, Vendor affirms its compliance with the applicable free trade agreement requirements, and hereby indemnifies and saves Purchaser harmless with respect to its use of same. Documentation that is missing, incomplete or inaccurate may result in a shipment being detained, forfeited, or returned, at the time of importation or at any time thereafter, at Vendor's expense. Vendor shall be solely responsible for compliance with all immigration laws and requirements applicable to non-permanent residents entering Canada to work on a temporary basis in fulfillment of this Purchase Order, including but not limited to obtaining all necessary approvals and/or employment authorizations necessary to enter Canada. Vendor shall be solely responsible for all costs incurred as a result of non-compliance with said immigration laws and requirements.

**10. Designs, Data, Drawing and Procedures:** When articles to be furnished under this Purchase Order are to be produced in accordance with designs, plans, drawings or procedures to be furnished by Vendor, approval of same by Purchaser shall in no way reduce or modify Vendor's obligation to meet performance and other requirements of this Purchase Order. By such approval, Purchaser in no way assumes any part of Vendor's responsibility for acceptable designs or procedures, or the satisfactory performance of items manufactured in accordance with same. All specifications, drawings, designs or data, whether furnished by Purchaser or Vendor, become or remain the property of Purchaser and must be returned upon request. Material produced for Purchaser's specific requirements

as detailed in this Purchase Order shall not be produced for, sold, leased or otherwise conveyed by Vendor to any party other than Purchaser without Purchaser's prior written consent.

**11. Use of Samples:** Purchaser reserves the right to use samples of products provided by Vendor under this Purchase Order for quoting requirements by third parties.

**12. Miscellaneous:** (a) Vendor shall not insure the products on Purchaser's account unless the terms of this Purchase Order so require; (b) stenographic and clerical errors, whether in mathematical computations or otherwise, made by Purchaser on this Purchase Order or any other forms delivered to Vendor shall be subject to correction without liability to Purchaser; (c) Notwithstanding any other provision contained in this Purchase Order including any terms and conditions attached hereto or incorporated by reference herein, the contracting parties to this Purchase Order acknowledge and agree that Purchaser: (i) shall have the right to terminate this Purchase Order, in whole or in part, for convenience, without cause and without liability, upon thirty (30) days' prior written notice to Vendor; and (ii) may assign this Purchase Order in whole or in part, to any other person or entity without Vendor's consent, whereas Vendor may not assign this Purchase Order without the written consent of Purchaser; (d) Vendor represents and warrants that it has not offered or given and will not offer or give any employee, agent or representative of Purchaser any gratuity or economic benefit with the intent of securing business or favourable treatment under any agreement with Purchaser; and (f) this Purchase Order and all documents related hereto shall be drawn up in the English language only.

**13. Order of Precedence:** In the event of a conflict in terms or inconsistency between or among the Terms and Conditions of this Purchase Order, the following order of precedence shall be used to resolve same: (a) these Terms and Conditions; (b) documents incorporated by reference on the face of this Purchase Order; (c) additional terms and conditions provided with this Purchase Order by Vendor and accepted in writing by Purchaser; (d) Statement of Work; and (e) drawings, designs, plans and/or specifications incorporated by reference (Purchaser's specifications shall prevail over Vendor's specifications).

**14. Gaming Control Act, 1992:** Vendor must obtain and maintain, at its sole expense, the applicable registration (or exemption) with the Alcohol and Gaming Commission of Ontario ("AGCO") under the *Gaming Control Act, 1992*, S.O. 1992, c.24 and the Regulations thereto, as amended (collectively the "*Act*"). Notwithstanding any other provision of this Purchase Order, Purchaser shall have no liability toward Vendor, and no payments shall be made to Vendor pursuant to this Purchase Order (or otherwise) unless it is validly registered in the appropriate category under the *Act*. Vendor will have no recourse of any kind against Purchaser, its subsidiaries, affiliates, successors or assigns, nor their respective directors, officers, employees and agents if nonpayment or nonperformance by Purchaser is due to the fact that Vendor is not validly registered in the appropriate category under the *Act*.

**15. Termination:** Notwithstanding any other provision of this Purchase Order and in addition to Purchaser's rights of termination contemplated herein, Purchaser may at any time by written order terminate the Purchase Order as to all or any portion of the products undelivered or services then incomplete, subject only to Purchaser paying Vendor for the products delivered or services completed prior to such date of termination based upon the portion of the purchase price equal to the percentage which the products or services completed prior to the date of termination by Vendor bears to the total purchase price. No such termination shall relieve Purchaser or Vendor of any of their obligations as to any of the products or services completed as of the date of termination. The provisions of this section shall not limit or affect the right of Purchaser to terminate this Purchase Order for default by Vendor. In the event that Purchaser requests that Vendor stop work, Vendor shall enact all possible measures to minimize the costs allocable to this Purchase Order. Purchaser may at any time request written confirmation that Vendor will complete the work called for hereunder on time. If Vendor: (a) fails to give Purchaser adequate confirmation of performance after written demand; (b) becomes bankrupt, or if a receiver is appointed on account of insolvency of Vendor; (c) has given or made any representation in this Purchase Order that is not true or correct in any material respect; or (d) is in default of any of its obligations under this Purchase Order, then Purchaser shall by written notice to Vendor be entitled to cancel the Purchase Order forthwith, in whole or in part, without liability for cancellation charges as to products unshipped or services not completed at the time of such cancellation, and without prejudice to its other rights or remedies. In that event, Purchaser may procure elsewhere substitute goods similar to those to which this Purchase Order applies, or finish the work by whatever method it chooses. Purchaser may then withhold further

payments to Vendor and Vendor shall be liable for the difference between the cost of such substitute goods or the cost of finishing the work and the price set forth in Purchase Order for the products or services involved.

**16. Access:** Where services or on-site activities are being performed hereunder, Vendor shall comply at all times and in all respects with the Sensitive Area Access requirements of the AGCO (where applicable) and with the rules and regulations applicable to Purchaser's premises or those of its affiliates or associated entities.

**17. Set-Off:** If Purchaser becomes obligated or liable to pay any money to Vendor under this Purchase Order or any document delivered under this Purchase Order, that sum may, at the election of Purchaser, and without limiting or waiving any right or remedy Purchaser may have against Vendor, be set-off against and applied to any amounts which are due and owing by Vendor to Purchaser on any account whatsoever.

**18. Limitation of Liability and Damages:** IN NO EVENT SHALL PURCHASER, ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS OR ASSIGNS, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL COSTS OR DAMAGES OF ANY NATURE OR KIND, HOWEVER CAUSED, WHETHER ARISING FROM THIS PURCHASE ORDER, CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO DAMAGES TO PERSONS OR PROPERTY, LOSS OF PROFITS, LOSS OF REVENUE, COST OF CAPITAL, LOSS OF USE OF ANY FACILITIES, PROPERTY OR EQUIPMENT, GOODWILL, OVERHEAD COSTS, PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY OTHER LIKE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES.

**19. Workplace Safety:** When services or on-site activities are being performed on Purchaser's premises or those of its affiliates or associated entities by employees of Vendor, Vendor acknowledges and agrees that it is the employer of such employees for all purposes, including but not limited to the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16 (the "WSIA"), as amended, and Vendor shall take such steps as are reasonably necessary to prevent personal injury or property damage by any employee, agent or subcontractor of Vendor.

**20. Construction Work:** Purchaser shall require and Vendor agrees to maintain, at Vendor's sole cost and expense, a valid clearance number under the WSIA or Workplace Safety and Insurance Board ("WSIB") as applicable, when applicable construction work is being performed on Purchaser's premises by employees or subcontractors of Vendor. In case of failure by Vendor to maintain a valid WSIB clearance number, or to comply with Purchaser's safety programs and any other Ontario health and safety guidelines, Purchaser may terminate this Agreement forthwith, without liability. Vendor will have no recourse of any kind against Purchaser, its subsidiaries, affiliates, successors or assigns, nor their respective directors, officers, employees and agents if nonpayment or nonperformance by Purchaser is due to the fact that Vendor does not have a valid clearance number, as required.

**21. Confidentiality and Privacy:** Vendor agrees, on behalf of its directors, officers, employees, agents and contractors, that any confidential information or processes received from Purchaser which in any way relate to the performance of this Purchase Order shall be the property of Purchaser, shall be preserved in strict confidence by Vendor and shall not be disclosed by Vendor to third persons, except: (a) to professional advisors of Vendor on a need-to-know basis; (b) if such information has entered the public domain (other than through the actions of Vendor) or is Vendor's own confidential information; (c) with the prior written consent of Purchaser; or (d) as required by applicable law. Vendor warrants that it conducts its business in accordance with applicable laws, regulations and industry guidelines relating to privacy, including (where applicable) the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, as amended, to ensure the proper collection, use and disclosure of personal information and agrees not to use or disclose personal information collected from or provided by Purchaser in connection with this Purchase Order for any reason, except with Purchaser's prior written consent, or as required by applicable law.

**22. Rights of Vendor:** Except as expressly provided, this Purchase Order does not limit Vendor's rights to enter into contracts or transactions with third parties, provided such contracts or transactions will not require Vendor to act in a manner which is inconsistent with its obligations hereunder or adversely affect the performance of such obligations. Notwithstanding that Vendor may from time-to-time be party to other agreements with Purchaser, nothing in any such other agreement, and no exercise of any right thereunder, restricts or otherwise affects any obligation or liability of Vendor under this Purchase Order and no notice, consent, approval or other communication

or decision under or in relation to any such other agreement shall constitute or be relied upon as notice, consent, approval, communication or decision hereunder.

**23. Authority:** Vendor represents and warrants to Purchaser that: (a) it is duly formed, in good standing and validly subsisting under the laws of its jurisdiction of incorporation/formation; (b) it possesses all necessary authority and regulatory approvals to perform all of its obligations hereunder; and (c) the execution and performance of this Purchase Order has been approved by all necessary action on its part and this Purchase Order constitutes a legal and binding obligation of Vendor, enforceable against it in accordance with its terms.

**24. Heirs, Successors and Assigns:** This Purchase Order shall enure to the benefit of and be binding on the respective heirs, executors, administrators, successors and (permitted) assigns of each of the parties.

**25. No Agency or Partnership:** This Purchase Order does not make either party an agent or legal representative of the other for any purpose whatsoever, and no partnership, franchise or joint venture is intended to be created hereby. No party is granted any right or authority to assume or create any obligation, express or implied, on behalf of or in the name of the other, or to bind the other in any manner whatsoever. Vendor is acting as an independent contractor of Purchaser in connection with this Purchase Order and persons retained by Vendor as employees, agents or contractors shall not be deemed to be employees, agents or contractors of Purchaser for any purpose whatsoever.

**26. Assignment and Delegation:** Vendor shall not assign any of its rights or interest (including the right to receive monies due) or delegate any of its duties or obligations under this Purchase Order without the prior written consent of Purchaser, and unless and until the proposed assignee or delegate is validly registered with the AGCO in the appropriate category under the *Act*. No assignment or delegation by Vendor (with or without Purchaser's consent) shall relieve Vendor of any of its obligations under this Purchase Order or prejudice any of Purchaser's rights against Vendor, whether arising before or after the date of any assignment or delegation.

**27. Governing Law:** Regardless of the place of execution or performance, this Purchase Order shall be governed by, interpreted and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario without giving effect to the principles of conflicts of laws thereof and the parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any dispute arising between them in relation to this Purchase Order.

**28. Non-Waiver:** No waiver by Purchaser of any breach of any of the covenants, provisos, conditions, restrictions or stipulations contained in this Purchase Order will take effect or be binding upon Purchaser unless the same be expressed in writing, and any waiver so given will extend only to the particular breach so waived and will not limit or effect any rights with respect to any other or future breach. No failure by Purchaser to take action in the event of any breach of any of the covenants, provisos, conditions, restrictions or stipulations contained in this Purchase Order will be construed as a waiver of Purchaser's right to take such action as this Purchase Order or applicable law permits and will not limit or affect any rights with respect to any other or future breach. Purchaser's rights hereunder are in addition to its rights and remedies at law or in equity.

**29. Severability:** It is intended that all provisions of this Purchase Order shall be fully binding and effective between the parties, but in the event that, in any jurisdiction, any provision of this Purchase Order or its application to any party or circumstance is restricted, prohibited or unenforceable, that provision will, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Purchase Order, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to the other parties or circumstances.

**30. Survival:** Any covenant, term, condition or provision which, in order to be effective, must survive the termination or expiration of this Purchase Order shall survive and remain in force notwithstanding termination (for any reason whatsoever) or expiration. Without limiting the generality of the foregoing, provisions regarding representations, warranties, confidentiality, privacy, indemnification, limitation of liability and damages, jurisdiction and venue shall remain in full force and effect and shall survive any termination or expiration.

**31. Interpretation:** Except as otherwise expressly provided, or as the context otherwise requires, the singular number shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter grounds, and words importing persons shall include firms and corporations and vice versa. The headings contained in this Purchase Order are for convenience of reference only. The language used herein shall be deemed to be the language chosen by the parties to express their mutual intent and shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted, or in favour of the party receiving a particular benefit under this Agreement. Vendor acknowledges having obtained its own independent legal advice with respect to the terms of this Purchase Order prior to its acceptance of same.

**32. Time of the Essence:** Time is of the essence of this Purchase Order and all provisions of it.

**33. Notices:** All notices and other communications between the parties shall be given in writing at the address set forth in this Purchase Order, or any subsequent address timely given in writing. Notice shall be deemed to be given: (a) via personal delivery, on the date of actual delivery; (b) via registered mail (return receipt requested), four (4) business days after deposit in the mail; (c) via facsimile transmission, upon transmission and receipt of confirmation thereof by the sender; (d) via internationally recognized international courier services, upon notice of the receipt; and if sent in any other manner, on the date of actual receipt.

- **Insurance:** At all times during the term of this Agreement, Vendor shall maintain the following insurance at their sole cost and expense. Insurance must be for the mutual benefit of Vendor and Purchaser Comprehensive or commercial general liability insurance of not less than Five Million Dollars (\$5,000,000.00) for each occurrence against all claims for personal injury, death, or property damage arising out of the performance, products and services provided by Vendor of its obligations pursuant to this Agreement.
- Product liability/completed operations insurance of not less than Five Million Dollars (\$5,000,000.00) for each occurrence against all claims for personal injury, death, or property damage occurring as a result of the use, services, delivery or other utilization of any Vendor products sold or transferred by Vendor pursuant to this Agreement. The policy shall contain a cross-liability and severability of interest clause and shall be on an occurrence basis. Vendor shall name Purchaser as an additional insured on such policy or policies.
- Errors and omissions insurance to a limit of at least one million dollars (\$1,000,000) per claim (if applicable).
- Automobile insurance of not less than Two Million Dollars (\$2,000,000.00) for each occurrence and policy will be on an occurrence basis (if applicable).
- Workers Compensation coverage as required by applicable law in the jurisdiction or province in which Vendor is operating (if applicable).

Coverage will be evidenced in the form of a certificate of insurance or certified copy of the policy to be furnished by Vendor to Purchaser automatically on an annual basis or at the request of Purchaser. Any acceptance of delivery of said certificates does not constitute approval or agreement by Purchaser that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements and shall not diminish Purchaser's rights under this Agreement.

All policies are to be taken out, and on forms with an insurer licensed to do business in the province of Ontario and with an AM Best rating of A-, VII or better and will be on a primary and non-contributory basis and not in excess of any insurance Purchaser has available to it. All policies shall contain a provision that precludes invalidation as respects to the interests of Purchaser by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies. All policies shall contain an undertaking by the insurers that no material changes, non-renewals, cancellations or terminations of any policies will be made unless Purchaser has received not less than thirty (30) days prior written notice of the change, delivered according to the provisions of this Agreement.

In the event that Vendor does not meet the above obligations, then Purchaser shall have no obligation to pay Vendor for products or services delivered until Vendor meets the outstanding obligation.

Vendor will also provide any other forms of coverage or limits required from time to time by Purchaser, acting reasonably, in amounts and for insurance risks against which a prudent Supplier of the same nature or business would insure. Any dispute concerning the amount or types of any of the foregoing coverage shall be conclusively determined by an independent qualified insurance broker appointed by both Vendor and Purchaser.

**34. No Discrimination / Accessibility:** Vendor shall not engage in discriminatory treatment of any kind in connection with, or to any person or class of persons for any reason whatsoever including discriminatory treatment based on race, creed, religion, or sex. In addition, Vendor shall comply with accessibility standards applicable to Vendor pursuant to the *Accessibility for Ontarians with Disabilities Act, 2005. S.O. 2005, c.11*.

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