



# Standard Terms and Conditions of Purchase

## 1. TERMS OF AGREEMENT

1.1 The Purchase Order, together with these Standard Terms and Conditions of Purchase (the "Terms and Conditions"), and any attachments, exhibits, specifications, drawings, notes, instructions, and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between ColdSnap, Corp. ("ColdSnap") and the supplier ("Supplier") identified in the Purchase Order. Subject to these Terms and Conditions, Supplier agrees to sell, and ColdSnap agrees to purchase from Supplier, the Products and/or Services described in the Purchase Order.

1.2 ColdSnap's submission of the Purchase Order is conditioned on Supplier's acceptance of these Terms and Conditions and agreement that any terms different from or in addition to the Terms and Conditions, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance, or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on ColdSnap's agreement to such different or additional terms.

1.3 Supplier's electronic acceptance or other acknowledgement of the Purchase Order, commencement of performance on the Products or Services, or shipment of the Products, whichever occurs first, constitutes Supplier's acceptance of these Terms and Conditions. Notwithstanding the foregoing, if a master agreement covering procurement of the Work described in the Purchase Order exists between Supplier and ColdSnap, the terms of such master agreement shall prevail over any inconsistent terms herein.

1.4 No change, modification or revision of the Purchase Order shall be effective unless in writing and signed by ColdSnap's duly authorized purchasing representative or officer. The relationship between the parties is that of independent contractors. Nothing contained in the Purchase Order shall be construed as

creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Purchase Order.

## 2. DEFINITIONS

2.1 "Deliverables" means the deliverables specified in the Purchase Order (and any Statement of Work) to be delivered on or before the Delivery Date.

2.2 "Delivery Date" means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Work.

2.3 "Harmful Code" means any software intentionally designed to (i) disrupt, disable, harm, or impede operation; or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.

2.4 "Innovations" means any and all inventions, discoveries, designs, developments, original works of authorship, modifications, improvements, and derivative works in any form.

2.5 "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

2.6 "Preexisting Materials" means any Intellectual Property Rights or tangible personal property of Supplier or ColdSnap created before the date of the Purchase Order or outside the scope of the Purchase Order.

2.7 "Products" means tangible goods specified in the Purchase Order to be delivered on or before the Delivery Date.

2.8 "Services" means the services that Supplier is to perform for ColdSnap specified in the Purchase Order.

2.9 "Statement of Work" or "SOW" means the document specifying, without limitation, the scope, objective, and time frame of the Work that Supplier will perform for ColdSnap.

2.10 "Subcontractor" means a third party performing Work under an agreement (a "Subcontract") with Supplier.

2.11 "Supplier Personnel" means Supplier's employees, directors, officers, consultants, agents, independent contractors, and Subcontractors.

2.12 "Third Party Intellectual Property" means the Intellectual Property Rights of a third party which Supplier uses or incorporates into the Work.

2.13 "Work" means the Deliverables, Products, and Services specified in the Purchase Order, including any SOW.

2.14 "Counterfeit Part" means an unauthorized copy, imitation, substitute, or modified part, material, or component, which is knowingly misrepresented as a specified genuine part of an original or authorized manufacturer.

## 3. DELIVERY

3.1 Time is of the essence in Supplier's performance of its obligations under the Purchase Order. Supplier will immediately notify ColdSnap if Supplier's timely performance under the Purchase Order is delayed or is likely to be delayed. ColdSnap's acceptance of Supplier's notice will not constitute ColdSnap's waiver of any of Supplier's obligations.

3.2 If Supplier delivers Work after the Delivery Date, ColdSnap may reject such Work.

3.3 ColdSnap will hold any Work rejected under the Purchase Order at Supplier's risk and

expense, including storage charges, while awaiting Supplier's return shipping instructions. Supplier will bear all return shipping charges, including without limitation, insurance charges ColdSnap incurs on Supplier's behalf. ColdSnap may, in its sole discretion, destroy or sell at a public or private sale any rejected Work for which ColdSnap does not receive return shipping instructions within a reasonable time, and apply the proceeds, if any, first toward any storage charges.

3.4 Supplier will preserve, pack, package, and handle the Deliverables and Products so as to protect the Deliverables and Products from loss or damage and in accordance with (i) ColdSnap's specifications, or (ii) best commercial practices in the absence of specifications from ColdSnap. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage, and disposal.

3.5 Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, the ColdSnap part number for each of the Products (if applicable), lot number or numbers (if applicable), a description and the quantity of each of the Products, and the date of shipment.

3.6 Unless ColdSnap expressly instructs otherwise, Supplier will deliver all Work to or (for Services) at ColdSnap's plant at the address set forth in the Purchase Order. Risk of loss for the Deliverables and Products does not pass to ColdSnap until acceptance in accordance with Section 6.

3.7 ColdSnap reserves the option to return at Supplier's expense any shipment of Products in excess of the amount stated on the face of the Purchase Order. Such shipments will be held at Supplier's risk and expense including reasonable storage charges while waiting for shipping instructions. Material for which return shipping instructions are not received within a reasonable time may be destroyed or sold by ColdSnap at public or private sale and the

proceeds, if any, applied toward storage charges.

#### **4. PRICE AND PAYMENT**

4.1 Unless otherwise specified in the Purchase Order or a quotation referenced therein, or otherwise mutually agreed to by the parties, the price for the Work ("Price") includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts, insurance, and government-imposed surcharges. Supplier will, at ColdSnap's request, break out from the price all such taxes and other charges, in its invoices. Supplier shall use its best efforts to assist ColdSnap in all legal efforts to minimize the taxes resulting from the performance of the Purchase Order.

4.2 No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of ColdSnap.

4.3 Supplier represents and warrants that the Price for the Products or Services is the lowest price charged by Supplier to any of its external buyers for similar volumes of similar Products or Services. If Supplier charges any other buyer a lower price, Supplier must immediately notify ColdSnap thereof and apply that lower price to all Products and Services under the Purchase Order. If Supplier fails to meet the lower price, ColdSnap, at its option, may terminate the Purchase Order without liability pursuant to Section 10.

4.4 ColdSnap will pay Supplier the Price in accordance with the payment terms set forth in the Purchase Order following the later of:

(i) the Delivery Date;

(ii) the date of ColdSnap's acceptance of all of the Work under that Purchase Order; or

(iii) ColdSnap's receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Supplier's certification of conformance of the Work to the requirements. Payment will be in the currency of the country in which the ColdSnap entity or affiliate identified in the Purchase Order is located, and if the Price set forth in the Purchase Order is not in the local currency, then ColdSnap will determine the local currency equivalent of the Price as of date of payment.

ColdSnap may, at any time, set-off any amounts Supplier owes ColdSnap against any amounts ColdSnap owes to Supplier or any of its affiliated companies.

#### **5. OWNERSHIP AND LICENSE**

5.1 Unless otherwise specified in an SOW or a separate license agreement to which ColdSnap assents (a "License"), and except as provided in Section 5.3, ColdSnap shall be the sole and exclusive owner of all Deliverables. Supplier hereby irrevocably assigns and transfers to ColdSnap all of its worldwide right and title to, and interest in, the Deliverables, including, with respect to Deliverables created by Supplier Personnel pursuant to the Purchase Order or an SOW, all associated Intellectual Property Rights.

5.2 For avoidance of doubt, any and all Intellectual Property Rights and Innovations created by Supplier Personnel pursuant to the Purchase Order or an SOW, or which otherwise utilize or are derived from ColdSnap Proprietary Information or Intellectual Property Rights, including without limitation any software code, will be deemed to have been specifically ordered and commissioned by ColdSnap and shall belong exclusively to and are hereby assigned to ColdSnap. In contrast, with respect to Intellectual Property Rights in Deliverables not created by Supplier Personnel, ColdSnap shall receive such rights as are set forth in Section 5.4.

5.3 Unless otherwise specified in an SOW, each party owns all right, title, and interest in and to any of its Preexisting Materials. Supplier hereby grants ColdSnap a perpetual, irrevocable, worldwide, transferable, royalty-free, non-exclusive license, with the right to sublicense and authorize the granting of sublicenses, to use and reproduce Supplier's Preexisting Materials in the Deliverables to the extent necessary for ColdSnap's exercise and use of its rights in the Deliverables.

5.4 Supplier will identify in writing all Third Party Intellectual Property Rights that it incorporates into, are required to use, or are delivered with the Work. Unless otherwise specified in an SOW or License, Supplier will obtain and assign to ColdSnap a nonexclusive, royalty-free, worldwide, perpetual, irrevocable, transferable, sub-

licensable license to use all such Third Party Intellectual Property Rights. Supplier will deliver copies of the above releases and licenses to ColdSnap upon ColdSnap's request.

5.5 If the Deliverables include software developed by Supplier, the Intellectual Property Rights in which shall be owned by ColdSnap pursuant to Section 5.2, then unless otherwise specified in the SOW, Supplier shall deliver the programs to ColdSnap in source code and object code form together with all programs, objects, components, compilers, interpreters, templates, tools, libraries and any other software necessary to support the runtime execution and modification of the software and all relevant technical specifications and documentation, including, without limitation, flow charts, algorithms and subroutine descriptions, and other documentation of the source code, all in English and in sufficient detail to enable a trained English-speaking programmer to maintain and modify the Deliverables without undue experimentation.

#### **6. INSPECTION AND ACCEPTANCE**

ColdSnap may reject any or all of the Work which does not conform to the specifications or any other applicable requirements, provided that if ColdSnap does reject any Work, ColdSnap shall notify Supplier within a reasonable period of time after delivery by Supplier and provide the basis for rejection in sufficient detail to allow Supplier to evaluate the claim, and, if necessary, modify the Work in a manner sufficient to make it conforming to the specifications or other applicable requirements. If, in ColdSnap's sole judgement, Supplier fails to make the Work conforming within thirty (30) days after such rejection notice, at ColdSnap's option, ColdSnap may (i) return the non-conforming Work to Supplier for a refund or credit, (ii) require Supplier to replace the non-conforming Work with Work that conforms, or (iii) repair the non-conforming Work so that it meets the requirements. As an alternative to (i) through (iii), ColdSnap may accept the non-conforming Work conditioned on Supplier providing a refund or credit in an amount ColdSnap reasonably determines to represent the diminished value of the non-conforming Work. ColdSnap's payment to Supplier for Work

prior to ColdSnap's timely rejection of such Work as nonconforming will not be deemed as acceptance by ColdSnap.

#### **7. CHANGES**

7.1 As used in this Section 7, "Change" (and different inflections, such as "Changed") refers to a change ColdSnap directs or causes to the Purchase Order; applicable SOW; applicable drawings, designs, or specifications; method of shipment or packing; place of delivery; or general scope of these Terms and Conditions.

7.2 ColdSnap, by written order ("Change Order"), may make Changes in accordance with this Section 7.

7.3 If Supplier asserts that a Change directed or caused by ColdSnap has resulted in a change to the cost of or time for performance for which ColdSnap has not issued a Change Order, Supplier will promptly notify ColdSnap in writing of the Change, providing (i) a description of the action or inaction asserted to have caused the Change, (ii) an estimate of the equitable adjustment that would be required for Supplier to perform the Changed Work, and (iii) a date no less than 15 days from the date of notice by which ColdSnap must respond to Supplier's notice so that Supplier may proceed with the Work unchanged. ColdSnap will evaluate Supplier's notice of Change in good faith, and if ColdSnap agrees that it has made a constructive change, ColdSnap will issue a Change Order to Supplier.

7.4 Supplier shall, as promptly as practicable, after giving notice of the Change, or within 10 days of receiving a Change Order, submit a request for equitable adjustment specifying the adjustment in the price or time for performance resulting from the Change.

7.5 The parties shall negotiate an amendment to the applicable SOW to incorporate a Change Order providing for an equitable adjustment to the price, time for performance, or both.

7.6 Upon agreement in principle to the equitable adjustment, Supplier will proceed with the Changed Work as directed, notwithstanding that the parties have not finalized the amendment to these Terms and Conditions or the applicable SOW to incorporate the equitable adjustment.

7.7 Notwithstanding Section 7.6, Supplier agrees that it will not proceed with or invoice for any Changes in process or method of manufacturing during the term of the Purchase Order without ColdSnap's written consent. Supplier further agrees that any contemplated Changes in process or method of manufacturing will be submitted to ColdSnap in sufficient time to enable ColdSnap a reasonable opportunity in which to evaluate such Changes.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 Supplier represents and warrants that:

- (i) it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order;
- (ii) it has the right and unrestricted ability to assign all rights, title and interest in the Work to ColdSnap, as further provided in Section 5, including, without limitation, the right to assign any Work performed by Supplier Personnel and Subcontractors;
- (iii) the Work, and ColdSnap's use of the Work, do not and will not infringe upon or misappropriate any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory, or common law;
- (iv) it will not disclose to ColdSnap, bring onto ColdSnap's premises, or induce ColdSnap to use any confidential or proprietary information that belongs to anyone other than ColdSnap or Supplier which is not covered by a non-disclosure agreement between ColdSnap and Supplier;
- (v) software supplied by Supplier does not contain any Harmful Code;
- (vi) Supplier's Work will be free from defects in workmanship and will conform to ColdSnap's specifications, Supplier's quotation or proposal, and Supplier's brochures or catalogs, and if none of the foregoing is applicable (i.e., there are no specifications or details in quotations, brochures or the like to define the Work), then Supplier represents and warrants that such Work is suitable for the intended use;
- (vii) all Products are free from liens, royalties, and encumbrances on title;
- (viii) if Services are being provided, Supplier shall perform the Services using personnel of required skill, experience, and qualifications in

accordance with best industry standards for similar Services and shall devote adequate resources to meet its obligations under the Purchase Order.

(ix) it will not knowingly supply any Counterfeit Parts or suspected Counterfeit Parts and will institute appropriate controls to prevent counterfeit or suspected counterfeit part use and/or inclusion in Products delivered to ColdSnap.

8.2 Delivery, inspection, test, acceptance or use of, or payment for, the Products or Services furnished hereunder shall not affect Supplier's obligation under this Section 8. All of the Section 8.1 representations and warranties, and all other warranties of Supplier, express or implied, shall survive delivery, inspection, test, acceptance, payment, and use.

8.3 ColdSnap warrants and represents to Supplier that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.

8.4 TO THE EXTENT ALLOWED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

## **9. ASSIGNMENT AND SUBCONTRACTING**

9.1 Supplier may not assign any of its rights or delegate any of its obligations under the Purchase Order without ColdSnap's prior written consent, which ColdSnap will not unreasonably withhold. ColdSnap may, at its option, void any attempted assignment or delegation undertaken without ColdSnap's prior written consent.

9.2 Supplier may not subcontract any of its rights or obligations under the Purchase Order without ColdSnap's prior written consent. If ColdSnap consents to the use of a Subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify ColdSnap for all damages and costs of any kind, subject to the limitations in Section 12 (Indemnification), incurred by ColdSnap or any third party and caused by the acts and omissions of Supplier's Subcontractors; and (iii)

make all payments to its Subcontractors. If Supplier fails to timely pay a Subcontractor for work performed, ColdSnap will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to Supplier by any amount paid to the Subcontractor. Supplier will defend, indemnify, and hold ColdSnap harmless for all damages and costs of any kind, without limitation, incurred by ColdSnap and caused by Supplier's failure to pay a Subcontractor.

9.3 To the extent allowed by applicable law, no person who is not a party to the Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

## **10. TERM AND TERMINATION**

10.1 The Purchase Order will remain in effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Work is completed and accepted.

10.2 ColdSnap may terminate the Purchase Order, any SOW, or both at any time, for no reason or for any reason, upon 15 days written notice to Supplier. Upon receipt of notice of such termination, Supplier will inform ColdSnap of the extent to which it has completed performance as of the date of the notice, and Supplier will collect and deliver to ColdSnap whatever Work then exists. ColdSnap will pay Supplier for all Work performed and accepted through the effective date of the termination, provided that ColdSnap will not be obligated to pay any more than the payment that would have become due had Supplier completed and ColdSnap had accepted the Work. ColdSnap will have no further payment obligation in connection with any termination.

10.3 Either party may terminate the Purchase Order, any SOW or both, immediately by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences proceedings under any bankruptcy, insolvency, or debtor's relief law, or a party has such proceedings commenced against it that are not dismissed within

60 days; or (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course.

10.4 ColdSnap may immediately terminate the Purchase Order upon written notice to Supplier if there is a change in ownership representing 20 percent or more of the equity ownership of Supplier.

10.5 Either party may terminate the Purchase Order, any SOW or both, immediately, by delivering written notice to the other party for any material breach not cured within 30 days of receipt of notice of the breach. ColdSnap shall have no further payment obligation to Supplier under any terminated SOW if ColdSnap terminates the SOW under this Section 10.5 or under Section 10.3 above (except to the extent required by law).

10.6 Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

## **11. CONFIDENTIAL INFORMATION AND PUBLICITY**

11.1 If ColdSnap and Supplier have entered into a Non-Disclosure Agreement ("NDA"), that NDA shall cover disclosure of confidential information under the Purchase Order. If the term of the NDA expires before the expiration or termination of the Purchase Order, then the term of the NDA shall be automatically extended to match the term of the Purchase Order. Except as expressly provided in the NDA, Supplier shall maintain each item of ColdSnap Confidential Information as confidential and proprietary until one of the exceptions stated in Section 11.5 below applies.

11.2 Supplier shall treat the terms, conditions, and existence of the Purchase Order as ColdSnap's Confidential Information in accordance with the NDA, or in the absence of an NDA, in accordance with Section 11.3 below.

11.3 If ColdSnap and Supplier have not entered into an NDA, Supplier may only use ColdSnap's Confidential Information for the purpose of fulfilling its obligations under the Purchase Order. Supplier must keep secret and shall never disclose, publish, divulge, furnish or make accessible to anyone any Confidential

Information, other than furnishing such Confidential Information to Supplier Personnel who are required to have access to such Confidential Information in connection with the Purchase Order, provided that such individuals or entities are bound by written agreements to respect and not disclose the Confidential Information. Supplier shall use at least reasonable care and adequate measures to protect the security of the Confidential Information and to ensure that any Confidential Information is not disclosed or otherwise made available to other persons or used in violation of this Section. Such measures shall be at least the equivalent of measures which the Supplier uses to protect its own most valuable proprietary information. Supplier shall not embody any of ColdSnap's Confidential Information in any of the Supplier's products, processes or services, or duplicate or exploit any of such Confidential Information in the Supplier's business, or otherwise use any of the Confidential Information for any purpose except in connection with the Purchase Order.

11.4 For the purposes of these Terms and Conditions, including this Section 11, "Confidential Information" means, subject to the exceptions set forth below, any information or data, regardless of whether it is in tangible form, that is disclosed by ColdSnap to Supplier, and that ColdSnap (a) has marked as confidential or proprietary, or (b) identifies as confidential at the time of disclosure; provided, however, that reports and/or information related to or regarding ColdSnap's business plans, business methodologies, strategies, technology, specifications, development plans and/or term sheets, customers, prospective customers, billing records, products, proposed new products, designs, services, the existence of the Purchase Order or the business partnership between the parties hereto, legal strategies, marketing and/or roll out plans, will be deemed ColdSnap Confidential Information even if not so marked or identified, unless such information is the subject of any of the exceptions set forth below.

11.5 "Confidential Information" shall not include any information which: (a) Supplier can show by written record was in its possession

prior to disclosure by ColdSnap, provided that Supplier must promptly notify ColdSnap of any such prior knowledge; (b) appears in issued patents or printed publications in integrated form or which otherwise is or becomes generally known in the trade other than through Supplier's failure to observe any or all terms and conditions hereof; provided that the foregoing shall not be interpreted to create any express or implied license, or the right to obtain a license, to any patents which may be issued to ColdSnap; (c) subsequent to disclosure to Supplier by ColdSnap, is obtained by Supplier from a third person who is lawfully in possession of such information, and who is not in violation of any contractual, legal or fiduciary obligations to ColdSnap in making such disclosure to Supplier and does not require Supplier to refrain from disclosing such information to others; or (d) ColdSnap expressly agrees in writing that the information is not Confidential Information.

11.6 Supplier shall obtain ColdSnap's written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a supplier to ColdSnap.

## **12. INDEMNIFICATION**

12.1 As used in this Section 12, a "Claim" is any claim, demand, loss, damage, liability, cost, or expense (including professional fees and costs as incurred) for which one party (the "Indemnifying Party") may be obligated to defend, indemnify, and hold the other party (the "Indemnified Party") harmless.

12.2 Supplier shall defend, indemnify, and hold ColdSnap and its respective directors, officers, employees, successors and assigns harmless from and against any and all Claims as incurred, arising out of or in connection with any (i) act or omission of Supplier (including its Sub-contractors) in the performance of the Work; or (ii) any infringement of a third party's Intellectual Property Rights or any other rights.

12.3 ColdSnap shall indemnify and hold Supplier harmless from and against any and all Claims as incurred, arising out of or in connection with third-party claims resulting from: (i) Supplier's proper use of ColdSnap's products or services in connection with the Work, (ii)

Supplier's proper use of information or materials provided to Supplier by ColdSnap, or (iii) infringement of a third party's Intellectual Property Rights or any other rights resulting from Supplier's adherence to ColdSnap's written instructions.

12.4 Each party will indemnify and hold the other party harmless from and against any and all Claims, as incurred, arising out of any negligent or willful acts or omissions of the Indemnifying Party which results in personal injury (including death) or damage to tangible property (not including lost or damaged data).

12.5 The Indemnified Party will provide the Indemnifying Party with prompt written notice of the Claim and permit the Indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnifying Party's behalf; the Indemnifying Party will have no authority to settle any Claim in a manner that imposes material obligations or restrictions on the Indemnified Party (other than to cease using infringing material) without the Indemnified Party's consent, which shall not be unreasonably withheld.

12.6 If a third party enjoins or interferes with ColdSnap's use of any Work, then in addition to Supplier's obligations under Section 12.2, Supplier will use its best efforts to (i) obtain any licenses necessary to permit ColdSnap to continue to use the Work, (ii) replace or modify the Work as necessary to permit ColdSnap to continue to use the Work, or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to ColdSnap the amount paid for any Work the use of which a third party enjoins or interferes with.

12.7 Nothing in this Section shall limit any other remedy of the parties.

## **13. LIABILITY**

13.1 NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER OR OTHERWISE, EXCEPT FOR DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR FOR INDEMNIFICATION UNDER SECTION 12, NEITHER PARTY WILL BE LIABLE TO THE OTHER

PARTY WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT COLDSNAP PAID TO SUPPLIER IN THE TWELVE MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.

13.2 EXCEPT FOR DAMAGES CAUSED BY PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR BY SUPPLIER'S DISCLOSURE OF COLDSNAP CONFIDENTIAL INFORMATION, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PURCHASE ORDER, WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

13.3 THE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE PURCHASE 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.

## **14. INSURANCE**

Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect ColdSnap in the event of such injury or damage, and will be in compliance with any and all laws, regulations, or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place. Upon ColdSnap's request, Supplier will furnish a certificate confirming the amounts and coverages of such insurance and, if reasonably requested by ColdSnap, shall increase or otherwise modify its policies.

## 15. COMPLIANCE WITH LAWS

Supplier represents and warrants that it will comply with all applicable local and national laws and regulations, including without limitation export control, environmental and privacy laws, pertaining to its performance of its obligations under the Purchase Order and will defend and hold ColdSnap harmless from all damage, loss, cost, and expense (including reasonable attorneys' fees) suffered or incurred as a result of any such actual or alleged violation. In particular and without limitation, Supplier shall not act in any fashion or take any action that will render ColdSnap liable for a violation of any applicable anti-bribery legislation (including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010), which prohibits the offering, giving, or promising to offer or give, or receiving, directly or indirectly, money or anything of value to any third party to assist it or ColdSnap in retaining or obtaining business or in performing the Work. Without limiting the foregoing, to the extent that Supplier is a US federal contractor or covered subcontractor as contemplated in accordance with the applicable laws and regulations, then Supplier agrees that the Purchase Order will be subject to the requirements of 41 CFR 60-1.4 and 29 CFR part 471, Appendix A to Subpart A, and the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which are incorporated herein by reference. The latter two regulations prohibit discrimination against qualified individuals on the basis of protected veteran status and disability and require affirmative action to employ and advance in employment protected veterans and qualified individuals with disabilities. Supplier's failure to comply with this provision shall constitute a material breach of the Purchase Order.

## 16. GOVERNING LAW

The Purchase Order will be construed in accordance with, and all disputes will be governed by, the laws of the Commonwealth of Massachusetts, USA, without regard to its conflict of laws rules. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Supplier irrevocably consents to the personal

jurisdiction of the state and federal courts in and for Massachusetts, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum. Pending the final determination of any dispute arising in connection with a Purchase Order, Supplier will proceed with performance to the extent directed by ColdSnap.

## 17. COLDSNAP-FURNISHED PROPERTY

All tools or other materials furnished by ColdSnap for use in the performance of the Purchase Order shall remain the property of ColdSnap; shall be used by Supplier only in the performance of the Purchase Order and strictly in accordance with the requirements of the PO relating to such use; and shall be returned to ColdSnap when requested upon the completion or termination of the PO to the extent not previously delivered to ColdSnap. Supplier agrees to exercise reasonable care in the safeguarding and preservation of all ColdSnap-furnished property and assumes all responsibility for loss, damage or destruction with such property that is within its possession or control. Supplier shall properly insure such ColdSnap-furnished property against all risks.

## 18. PROVISIONS FOR FOOD-RELATED PRODUCTS AND SERVICES

18.1 Supplier represents, warrants and guarantees that Products and Services which are food-related, including the contents, packaging, and labeling, sold to, constituting or being a part of any shipment or other delivery now or hereafter made by Supplier to ColdSnap, and their manufacture, branding and sale, will at the time of such shipment or delivery: (a) comply with the Federal Food, Drug and Cosmetic Act ("FFDCA"), as amended, including, without limitation, the Food Additives Amendment and the Food Safety Modernization Act, and any other amendment thereto (collectively, and as applicable, the "Acts"); (b) be manufactured in accordance with all applicable current Good Manufacturing Practices, including those set forth in 21 C.F.R. Section 110, and any specifications for the Products or Services to be delivered under the Purchase Order; (c) not be adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act as

amended, or any similar state or municipal law, preventing its introduction into intrastate or interstate commerce; (d) be free from organisms or chemicals which would make the materials unsuitable for their intended use; and (e) comply with all other applicable federal and state laws. None of ColdSnap's inspection, acceptance, utilization or payment for any Products or Services shall be construed to represent acknowledgement by ColdSnap that Supplier has complied with any of the representations or warranties set forth in this Section 18.1

18.2 Supplier will notify ColdSnap both by telephone immediately and in writing or email promptly thereafter if it learns of anything that may indicate a Product quality, safety, or labeling problem affecting the Product or ColdSnap's finished products. Furthermore, if at any time Supplier is notified by any state, federal or other governmental entity, or otherwise becomes aware, that Products sold to ColdSnap are the subject of any regulatory inquiry or action, Supplier will immediately notify ColdSnap, and, in such event, ColdSnap may, in its absolute discretion, cancel the Purchase Order.

18.3 ColdSnap may initiate a recall, withdraw the Products, or suspend the sale or distribution of the Products (collectively, a "Recall") if (i) ColdSnap believes or has reason to believe that the Products create a risk of personal injury or public safety, or (ii) ColdSnap reasonably anticipates that the Products will adversely affect ColdSnap, the ColdSnap brand, and/or the goodwill associated with ColdSnap and the ColdSnap brand. In the event that ColdSnap conducts any recall, ColdSnap shall coordinate, control, and make all decisions with respect to such recall, and Supplier shall cooperate with ColdSnap in connection therewith and provide such assistance and documentation as may be reasonably requested by ColdSnap. Supplier will not contact any third parties or make any public statement regarding any investigation, notification or Recall without the prior written consent of ColdSnap.

18.4 ColdSnap and/or its agents or representatives shall have the right, from time to time, to audit Supplier's fields, facilities,

manufacturing processes and products, provided that such audit activities are related to an issued or unissued but pending Purchase Order. In addition, upon request, Supplier shall provide ColdSnap with a copy of any food production-related documentation or records associated with a Purchase Order.

## 19. GENERAL

19.1 Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery; (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.

19.2 If there is a conflict between or among the Purchase Order and any documents attached to and incorporated by reference, the conflict will be resolved as follows:

19.2.1 A conflict between the terms of the Purchase Order and those set forth in an exhibit or hyperlink will be resolved in favor of the Purchase Order.

19.2.2 A conflict between the terms of the Purchase Order and those set forth in an SOW will be resolved in favor of the SOW.

19.2.3 A conflict between the terms of an exhibit or hyperlink and those set forth in an SOW will be resolved in favor of the SOW.

19.3 If any court of competent jurisdiction holds that any provision of the Purchase Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of the Purchase Order remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.

19.4 A party's election not to insist on strict performance of any requirement of the Purchase Order will not operate or be construed to waive any future omission or breach, or any other provision of the Purchase Order.