

# Silver Lake Ontario Inc

## Purchase Order Standard Terms and Conditions

### TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATIONS .....	2	12.	RECORDS AND AUDIT.....	8
2.	NATURE OF AGREEMENT.....	4	13.	INSURANCE .....	8
3.	SUPPLIER'S OBLIGATIONS.....	4	14.	INDEMNITY .....	10
4.	PRICE AND PAYMENT .....	5	15.	CONFIDENTIALITY .....	11
5.	EXTENSION OF TIME.....	6	16.	INTELLECTUAL PROPERTY .....	11
6.	DELIVERY, TITLE AND RISK .....	7	17.	BUSINESS STANDARDS.....	11
7.	PACKING, DESPATCH AND TRANSPORT .....	7	18.	FORCE MAJEURE .....	12
8.	INSPECTION .....	7	19.	DISPUTE RESOLUTION.....	13
9.	COMMISSIONING .....	7	20.	TERMINATION.....	13
10.	SUPPLIER'S WARRANTIES .....	8	21.	NOTICES .....	13
11.	DEFECTS LIABILITY PERIOD .....	8	22.	GENERAL .....	14

## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

In these Purchase Order Standard Terms and Conditions (**Terms and Conditions**), unless the context otherwise requires:

**Affiliate** has the meaning given in the Corporations Act.

**Agreement** means the agreement between Silver Lake and the Supplier comprising the Purchase Order, these Terms and Conditions and any attachments or annexure specifically referred to in the Purchase Order.

**Agreement IP** means all IP Rights (present or future) created, discovered or coming into existence as a result of, for the purposes of, or in connection with, the provision of the Supply.

**BIA** means the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3.

**Business Day** means a day on which banks are open for business in Toronto, Ontario, excluding a Saturday, Sunday or public holiday.

**Claim** means any claim, action, proceeding, demand, cost damage, loss, expense (including legal expenses on a solicitor/client basis), liability or other outgoing of any nature, whether arising during or after the term of the Agreement.

**Commencement Date** means the date specified in the Purchase Order or if no commencement date is specified, the date the Supplier commences the Supply.

**Commissioning or Commissioned** includes checking the operational availability of each item, checking all manual and automatic contacts and interlocks, no-load commissioning, full load-commissioning, testing to demonstrate performance in accordance with the Specifications and any other actions which are described in the Purchase Order or any attachment or annexure to the Purchase Order and forming part of the Agreement as being part of Commissioning.

**Confidential Information** means any information regardless of its form concerning the business activities or affairs of Silver Lake and includes, without limitation, the Agreement and any information, documentation, trade secrets, know-how, scientific, technical, product, market and pricing information relating to the Supply and the current or future business interests, methodology, business process or affairs of Silver Lake (or any Affiliate of Silver Lake) that:

- (a) is reasonably regarded as confidential or which is identified as being confidential, but excluding information that is in the public domain otherwise than by breach of obligations owed by the Supplier or third parties; and
- (b) which is disclosed to the Supplier or third parties by Silver Lake.

**Corporations Act** means the *Ontario Business Corporations Act*.

**Defective Supply** means Goods, or the results of any Services, which are not in conformity with the Agreement (including the Specifications), are of inferior quality, design, materials or workmanship or are otherwise unsatisfactory or of unmerchantable quality or unfit for any intended purpose.

**Defects Liability Period** means the period specified as such in the Purchase Order or, if no period is specified, then 12 months after the Delivery Date.

**Delivery Date** means the date on which:

- (a) in respect of Goods, the Goods must be delivered and (if applicable) Commissioned; and
- (b) in respect of any Services, the Services must be completed and the Supplier must have demobilised all Supplier Personnel and its equipment from Site as required under the Agreement (as applicable).

**Delivery Point** means the place specified in the Purchase Order as the address for delivery.

**Good Operating Practices** means the exercise of that degree of diligence, competence, prudence and foresight reasonably and ordinarily expected from a reputable, prudent, skilled and experienced professional engaged in performing obligations similar to the Supplier's obligations under the Agreement.

**Goods** means (if any) the goods, materials, supplies, equipment or other items identified as such in the Purchase Order.

**GST** means the goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada).

**Indemnitees** means Silver Lake and its directors, officers, employees, agents and contractors (other than the Supplier and Supplier Personnel).

**Input tax credit and supply** have the meaning set out in the *Excise Tax Act* (Canada).

**Insolvency Event** means, in respect of a party:

- (a) the party generally not paying, or admits in writing its inability to pay, its debts as they become due, or committing any other act of bankruptcy as defined in the BIA;
- (b) the commencement of a proceeding, whether by or against the party, under any federal or provincial Canadian law from time to time in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtor, including the BIA, the *Companies' Creditors Arrangement Act* RSC 1985 c C-36, the *Canada Business Corporations Act* and any other applicable corporations legislation;

- (c) the delivery to a party of a notice of intention to enforce security pursuant to section 244 of the BIA in respect of that party;
- (d) the making of an assignment for the benefit of its creditors;
- (e) the consent to the appointment of a custodian, receiver, manager and receiver, interim receiver, trustee, proposal trustee, liquidator custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property,
- (f) being adjudicated as insolvent or to be liquidated; or
- (g) taking corporate action for the purpose of any of the foregoing.

**Invoice** is defined in clause 4.2.

**IP Rights** means any and all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trademarks, service marks, designs, semiconductors, circuit layouts and performance protection (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such right or renewals.

**Price** means the total amount payable by Silver Lake to the Supplier for the Supply as specified in the Purchase Order.

**Purchase Order** means the document titled 'Purchase Order' issued by Silver Lake to the Supplier for the provision of the Supply in accordance with the Agreement.

**Services** means the services (if any) to be performed by the Supplier under the Agreement, as described in the Purchase Order.

**Silver Lake** means Silver Lake Ontario Inc. or its Affiliates as specified in the Purchase Order.

**Silver Lake IP** means Silver Lake's IP Rights which:

- (a) are in existence at the date of the Agreement; or
- (b) come into existence after the date of the Agreement including in connection with the Agreement.

**Site** means any premises occupied by Silver Lake where the Supply is performed.

**Specifications** means the specifications and descriptions given in the Purchase Order or any attachment or annexure to the Purchase Order form in part of the Agreement.

**Supplier** means the person, firm or company named in the Purchase Order as the supplier.

**Supplier IP** means the Supplier's IP Rights which:

- (a) are in existence at the date of the Purchase Order; or

- (b) come into existence after the date of the Purchase Order other than for the purposes of or in connection with the provision of the Supply.

**Supplier Personnel** means any and all persons engaged or used by the Supplier (including its directors, officers, employees, agents, consultants and sub-contractors) or any of its sub-contractors (including directors, officers, employees, agents or consultants of any sub-contractor) in performing the Supply and/or any of the Supplier's other obligations under the Agreement.

**Supply** means the supply of Goods and/or the performance of Services in accordance with the Agreement.

**Tax invoice** means an invoice containing all of the information necessary to claim an input tax credit as required by paragraph 169(4)(a) of the *Excise Tax Act* (Canada) and the Input Tax Credit Information (GST/HST) Regulations.

**Variation** means a change in any part of the Supplier's obligations to provide the Supply, but does not include any change in the Supplier's obligations under the Agreement arising from:

- (a) a reasonable direction made by Silver Lake regarding the Supplier's performance of its existing obligations under the Agreement; or
- (b) any matters expressed to be at the Supplier's own cost.

## 1.2 Interpretation

In these Terms and Conditions, headings are for convenience only and do not affect the interpretation of these Terms and Conditions and, unless the context otherwise requires:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, these Terms and Conditions;
- (c) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (d) specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;
- (e) references to time are to local time in Ontario, Canada;
- (f) if an act must be done on a specified day which is not a Business Day, that act must be done instead on the next Business Day; and
- (g) If a party to the Agreement is made up of more than one person, or a term is used in the Agreement to refer to more than one party:
  - (i) an obligation of those persons is joint and several;
  - (ii) a right of those persons is held by each of them severally; and

- (iii) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

## 2. NATURE OF AGREEMENT

- (a) The Supplier agrees to:
  - (i) commence the Supply by the Commencement Date;
  - (ii) complete the Supply to Silver Lake's satisfaction by the Delivery Date; and
  - (iii) provide the Supply in accordance with the terms of the Agreement.
- (b) If there is any conflict, ambiguity, inconsistency or discrepancy between any term in the documents which the Agreement comprises, the documents will rank in order of precedence as follows:
  - (i) the Purchase Order;
  - (ii) these Terms and Conditions; and
  - (iii) any attachments or annexure specifically referred to in the Purchase Order.
- (c) No terms or conditions submitted by the Supplier (including in any form of tender, quote, purchase order, correspondence, order acknowledgement, acceptance or other instrument), that are in addition to or inconsistent with those contained in the Agreement, will bind Silver Lake unless agreed to in writing by Silver Lake and the Supplier.

## 3. SUPPLIER'S OBLIGATIONS

### 3.1 General

In performing the Supply, the Supplier shall (and shall ensure that Supplier Personnel and any approved sub-contractors):

- (a) act in a skilful, diligent, workmanlike, careful, safe and proper manner;
- (b) comply with any applicable laws, regulations, by-laws and orders and with the lawful requirements of public, municipal and other authorities affecting or applicable to the Agreement and/or the Supply;
- (c) act in accordance with Good Operating Practices;
- (d) use equipment and materials of merchantable quality and fit for their use or intended use;
- (e) use only Supplier Personnel to perform the Supply who have the required levels of skill, experience, competence and, where necessary, qualifications;
- (f) obtain and maintain at its cost all approvals, permits and licences necessary or desirable for it and each of its Supplier Personnel to perform the Supply;
- (g) comply with Silver Lake's applicable policies and procedures as amended from time to time and as provided to the Supplier; and

- (h) provide a safe system of work for all Supplier Personnel and, where applicable, Silver Lake personnel.

### 3.2 Supplier Personnel

- (a) This clause 3.2 applies if any part of the Supply is to be performed by the Supplier or any Supplier Personnel at the Site.
- (b) Silver Lake may at any time by notice in writing to the Supplier require that the Supplier should cease to permit a particular person or persons employed by it to be engaged in performing the Supply for Silver Lake, and in such event the Supplier shall as soon as is practicable cease to provide the services of such person or persons in or about Silver Lake's business, or at any Site, and shall provide the services of such alternative persons or persons as may be acceptable to Silver Lake.
- (c) The Supplier must ensure that Supplier Personnel, third parties and visitors to the Site are aware of and comply with Silver Lake's drug and alcohol policies.
- (d) The Supplier must ensure that Supplier Personnel, third parties and visitors to the Site seek permission before entering the property of land owners on and surrounding the Site, that gates are left as found, and that stock and water sources are not interfered with.
- (e) The Principal may require the Supplier, at the Supplier's cost, to obtain a police clearance for nominated Supplier Personnel, third parties and visitors where the nature of the attendance at the Site justifies an enquiry into a person's criminal record.

### 3.3 Subcontracting

The Supplier must not subcontract the whole or any part of the Supply unless it first obtains the written consent of Silver Lake. Subcontracting does not relieve the Supplier from any of its obligations under the Agreement.

### 3.4 Silver Lake Directions and Approvals

- (a) Silver Lake may from time to time issue directions to the Supplier in connection with the Supply or the Agreement. The Supplier must in a timely manner (and ensure that all Supplier Personnel also):
  - (i) comply with any direction of Silver Lake's general manager of the Site relating to the safety of persons or property, or to the proper compliance with any laws which it is the general manager's duty to enforce; and
  - (ii) otherwise comply with all reasonable directions of Silver Lake. If the Supplier thinks any direction is unreasonable, wrong or does not comply with applicable law it must promptly convey this to Silver Lake.
- (b) Unless the Agreement expressly provides otherwise, the Supplier shall have no additional entitlement to compensation as a consequence of any such direction.

- (c) Any direction or approval given by Silver Lake to the Supplier in respect of the Supply or the Agreement shall not in any way reduce or lessen, or constitute an assumption by Silver Lake of, any of the Supplier's duties, obligations or liabilities incurred or arising under the Agreement except to the extent expressly stated in, or necessarily arising from, the direction or approval.
- (d) The Supplier acknowledges that Silver Lake is relying on the skill and expertise of the Supplier and the Supplier Personnel in relation to the provision of the Supply and that any direction or approval given by or on behalf of Silver Lake does not (and will not) alter that reliance.

### 3.5 Variations

- (a) Silver Lake may, at any time, request a Variation to the Supply provided under the Agreement by written notice to the Supplier (**Variation Notice**).
- (b) Within 5 Business Days of receiving the Variation Notice, the Supplier must advise Silver Lake in writing of:
  - (i) any proposed addition or reduction to the Price in carrying out the proposed Variation, including any delay or disruption costs connected with the Variation; and
  - (ii) the proposed impact the Variation will have on the Supplier providing the Supply by any dates specified for completion.
- (c) If:
  - (i) Silver Lake does not accept the Supplier's proposed change to the Price or any dates specified for completion due to the proposed Variation; and
  - (ii) the Parties are unable to agree on the change to the Price or any dates specified for completion within 5 Business Days after the Supplier's informs Silver Lake of the estimated impact of the Variation under clause 3.5(b),

Silver Lake must advise the Supplier whether it wishes to proceed with the Variation detailed in the Variation Notice. If Silver Lake:

- (iii) confirms in writing to the Supplier that it wishes to proceed with the Variation, the Agreement will be amended by the terms of the Variation agreed by the parties; or
- (iv) fails to confirm in writing to the Supplier that it wishes to proceed with the Variation or advises that it does not wish to proceed with the Variation, the terms of the Agreement will remain unaltered.

### 3.6 Suspension of Supply

- (a) The Supplier must:

- (i) suspend the whole or any part of the Supply on receipt of notice from Silver Lake (which notice must specify that it is given pursuant to this clause 3.6) to do so; and
  - (ii) do all things possible to reduce any expense or cost consequent upon the suspension.
- (b) A suspension will not affect the validity of the Agreement. Unless the Agreement expressly states otherwise, Silver Lake must pay the Supplier all reasonable costs arising from any suspension of the Supply pursuant to this clause 3.6 unless the suspension is caused by an act or default of the Supplier. The suspension will not vitiate the Agreement.

## 4. PRICE AND PAYMENT

### 4.1 Price

- (a) In consideration of the Supplier providing the Supply to Silver Lake, Silver Lake must pay the Supplier the Price on the basis and terms stated in the Purchase Order and otherwise contained in the Agreement. Unless the Agreement expressly states otherwise:
  - (i) all sums or other expressions of money are in Canadian currency; and
  - (ii) the Price is not subject to rise and fall and is exclusive of all GST, unless and to the extent stated otherwise in the Purchase Order.

### 4.2 Invoices

- (a) Promptly following performance of the Supply or, if the Supply is of a continuous nature, after the end of each month in which the Supply is provided, the Supplier may provide Silver Lake with a GST compliant tax invoice for completed Supply (**Invoice**). All Invoices should be forwarded to Silver Lake at its address for notices under clause 21 (or such other address as notified by Silver Lake from time to time).
- (b) Each Invoice must:
  - (i) set out the Purchase Order number to which the Invoice relates;
  - (ii) the Supplier's name and, where applicable, GST registration number;
  - (iii) set out a description of the Supply undertaken during the relevant period and (if applicable) details of the hours spent by the Supplier Personnel on any Services; and
  - (iv) include all documentation that Silver Lake reasonably requires:
    - (A) to establish the value of the Supply performed by the Supplier; and
    - (B) regarding payment of employees and sub-contractors of the Supplier, including confirmation that all employees and sub-

contractors have been paid all monies and entitlements owing to them; and

- (v) not include a claim for payment in respect of any work required for the re-performance or making good of any Defective Supply.
- (c) If Silver Lake disputes any item or items in an Invoice, Silver Lake will:
  - (i) notify the Supplier specifying reasons for the dispute;
  - (ii) withhold payment of the disputed item or items until settlement of the dispute; and
  - (iii) pay the undisputed portion of the Invoice in accordance with clause 4.3.

#### 4.3 Payment

- (a) Subject to clauses 4.2(c) and 4.4, Silver Lake will pay the Supplier within 30 days of the end of the month in which the Supplier submits a Tax Invoice which complies with clause 4.2.
- (b) All payments shall be in Canadian dollars unless otherwise specified.

#### 4.4 Set off

In addition to any other rights that it may have under the Agreement or otherwise, Silver Lake may deduct from any monies due or that become due to the Supplier under the Agreement from time to time:

- (a) all costs, damages and expenses which Silver Lake may have paid for or incurred in connection with the Agreement for which the Supplier is liable and which remain unpaid by the Supplier; and
- (b) any debts owed or amounts payable by the Supplier to Silver Lake under or in respect of the Agreement which remain unpaid.

#### 4.5 GST

- (a) Where a party (**supplier**) that is registered for GST makes any supply under or in connection with the Agreement to the other party (**recipient**) the recipient shall pay to the supplier an amount equal to any GST which the supplier is or becomes liable to pay in respect of the supply.
- (b) Any amount payable under paragraph (a) of this clause 4.5 shall be paid at the same time as payment for the supply giving rise to the obligation to pay GST, or if no amount is payable for the supply within 7 days of the issue of a valid tax invoice by the supplier to the recipient.
- (c) Where Silver Lake is liable to collect and remit any tax or impost in the nature of a GST in respect of any indemnity payment made by the Supplier to Silver Lake under the Agreement, the Supplier shall, in addition to any other payment required by the Agreement, pay Silver Lake GST imposed in addition to the indemnity payment.

- (d) If under the Agreement Silver Lake is required to pay or reimburse the Supplier in respect of an acquisition from a third party for which the Supplier is entitled to claim an input tax credit, the amount required to be paid or reimbursed by Silver Lake will be the GST-exclusive value of the acquisition. If the recovery from Silver Lake is a taxable supply Silver Lake will pay, in addition to the GST-exclusive value of the acquisition, any GST payable in respect of that supply.

#### 4.6 Other Taxes

Subject to clause 4.5, the Supplier shall be solely responsible for and indemnify Silver Lake against the payment of all taxes (other than applicable GST), levies and charges imposed on the Supplier or Silver Lake in relation to the Supply or in respect of the payments made under the Agreement or in respect of personnel used by the Supplier to perform the Supply. Silver Lake may deduct from the whole or part of payments due to the Supplier any amount which Silver Lake is required to withhold or deduct by any taxing authority.

### 5. EXTENSION OF TIME

#### 5.1 Extension of time

- (a) If the Supplier at any time is of the opinion that, despite all reasonable steps having been taken, it will not be able to complete the Supply by the Delivery Date due to:
  - (i) a breach of any provision of the Agreement by Silver Lake;
  - (ii) a Force Majeure Event; or
  - (iii) Silver Lake directing in writing a Variation,the Supplier must, within 14 days of such event, give notice to Silver Lake applying for an extension of time to the Delivery Date setting out in detail the reasons for the application and clearly establishing the delay in question.
- (b) Silver Lake must, if it considers an application made by the Supplier in accordance with clause 5.1(a) to be reasonable, by notice grant an extension of time to the Delivery Date in such manner as it considers appropriate.
- (c) The Supplier will not be entitled to any increase in the Price (or any aspect of it) or any damages, costs or expenses in connection with any extension granted by Silver Lake under clause 5.1(b) provided that Silver Lake may (in its discretion) reimburse the Supplier for additional costs if it considers that such reimbursement would be fair and equitable in the circumstances.
- (d) Subject to clause 21, unless the Supplier has applied for an extension of time to the Delivery Date in accordance with this clause 5.1 and unless and until Silver Lake has granted an extension, the Supplier will not by reason of any delay arising from any cause be relieved in any way or to any extent from its obligations to proceed with and complete the Supply by the Delivery Date.

- (e) In the event of an extension of time to the Delivery Date, the Supplier will only be relieved from its obligations to proceed with and complete the Supply by the Delivery Date to the extent that it will have until the expiry of the extended Delivery Date, in which to perform and complete the Supply.

## **6. DELIVERY, TITLE AND RISK**

### **6.1 Delivery**

- (a) The Supplier must deliver the Goods to the Delivery Point by the Delivery Date.
- (b) Time is of the essence in the performance of the Supplier's obligations under the Agreement.

### **6.2 Title**

Full unencumbered title to each of the Goods will pass to Silver Lake upon the earlier of:

- (a) Silver Lake making payment in full to the Supplier or for that Good; or
- (b) the Good being delivered to the Delivery Point, (if applicable) inspected and tested in accordance with clauses 8 and 9 and accepted by Silver Lake.

### **6.3 Risk**

Risk in each Good will remain with the Supplier until its delivery to, and acceptance by, Silver Lake.

## **7. PACKING, DESPATCH AND TRANSPORT**

### **7.1 Supplier responsible**

- (a) The Supplier is responsible, at its cost, for packaging and transporting the Goods to the Delivery Point.
- (b) The Supplier must ensure that all Goods must be packed, marked and transported as specified in any delivery terms pursuant to the Agreement and in accordance with requirements pertaining to transportation of dangerous goods (where applicable) and Good Operating Practice.
- (c) The Supplier must notify Silver Lake of the date of despatch of each item and the estimated date of arrival at the Delivery Point.
- (d) The Supplier must ensure that the Goods are adequately protected from damage and deterioration during transportation and short term storage having due regard for the conditions and environment at the Site or other location which is the Delivery Point and areas through which the Goods will traverse, to include climate, roads, and requirement for multiple handling. In packaging, marking and transporting the Goods, the Supplier must abide by applicable laws regarding the transportation of Goods and the protection of safety, health and the environment.
- (e) The Supplier must ensure that all hazardous Goods must be clearly labelled. If the Goods include or constitute dangerous, hazardous or toxic items, the Supplier must include Material Safety Data Sheets and clearly mark or label the Goods with appropriate

information, provide necessary shipping certification and otherwise comply with all applicable laws. Costs arising from failure of the Supplier to follow proper packaging, marking and transporting procedures and instructions as specified in the Agreement or as directed by Silver Lake will be for the account of the Supplier.

## **8. INSPECTION**

### **8.1 Inspection**

Silver Lake has the right to inspect any of the Goods at any time to determine whether the Goods are in accordance with the requirements of the Agreement.

### **8.2 Access**

The Supplier must ensure that Silver Lake has access to the Goods at all times and the Supplier must provide all facilities necessary for the supervision, inspection and testing of all Goods at the Site or wherever the Goods are stored or in the course of manufacture.

### **8.3 Cost of inspections**

If upon inspection after a direction by Silver Lake to dismantle or open up any part of a Good, the Good so inspected is in accordance with the Agreement, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by Silver Lake. If the Good is found not to be in accordance with the Agreement the whole of the expense so incurred, including without limitation, any costs associated with putting that Good into a condition which is in accordance with the Agreement, will be borne by the Supplier.

## **9. COMMISSIONING**

### **9.1 Supplier responsible for Commissioning**

- (a) The Supplier is responsible, unless otherwise provided in the Agreement, for the supervision of any Commissioning required in accordance with the Agreement to be performed to the satisfaction of Silver Lake.
- (b) Prior to the Commissioning, the Supplier must supply to the Site adequate spare parts for the purposes of Commissioning.

### **9.2 Supplier Personnel for Commissioning**

If pursuant to the Agreement, the Supplier is required to provide Silver Lake with the services of one or more of the Supplier Personnel to supervise Commissioning then those Supplier Personnel must be provided as directed by Silver Lake.

### **9.3 Report**

- (a) The Supplier must maintain a diary of all relevant events occurring during Commissioning and record all test results.
- (b) On the completion of Commissioning, the Supplier must prepare and submit a report to Silver Lake

advising on the performance of the Good so Commissioned.

#### 9.4 Prior notice of commencement

The Supplier must advise Silver Lake at least 48 hours before the time of Commissioning any Good and must at all times comply in full with the recommendations of the manufacturer of any Goods in relation to such Commissioning.

### 10. SUPPLIER'S WARRANTIES

#### 10.1 Supplier's Warranties

The Supplier represents and warrants that:

- (a) the Supplier and the Supplier Personnel have the necessary knowledge, skills and experience to perform the Supply in a proper and safe manner in accordance with the Agreement;
- (b) the Supply and the results of the Supply will be performed in accordance with Good Operating Practices, in conformity with the Agreement, of high quality and workmanship and otherwise satisfactory;
- (c) all Goods supplied will be:
  - (i) of merchantable quality and fit for their use or intended use;
  - (ii) free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods;
  - (iii) free of any charge, encumbrance, lien or other security interest (of any kind); and
- (d) it will obtain at its cost all usual trade warranties and any warranties specifically requested by Silver Lake relating to the Goods and that on the Delivery Date it will assign the benefit of any such unexpired warranties to Silver Lake including any warranties obtained from the Supplier's sub-contractors.

#### 10.2 Copies of trade warranties

Copies of trade warranties referred to in clause 10.1(d) must be supplied to Silver Lake with Tax Invoices.

#### 11. DEFECTS LIABILITY PERIOD

- (a) During the Defects Liability Period, Silver Lake may direct the Supplier to rectify any Defective Supply of which Silver Lake becomes aware.
- (b) The Supplier must, at its own cost, rectify, repair or replace as appropriate any Defective Supply:
  - (i) if the Defective Supply exists at the Delivery Date, as soon as possible after the Delivery Date;
  - (ii) if Silver Lake directs the Supplier under this clause 11, within the time directed by Silver Lake (or, if no time is specified, as soon as possible after the Supplier receives Silver Lake's direction); and
  - (iii) if the Supplier becomes aware of the existence of a Defective Supply, as soon as possible after the Supplier becomes aware of the Defective Supply.

- (c) Any Defective Supply that is re-performed or made good by the Supplier under this clause 11 will be subject to the same warranty as the original Supply and Goods, from the date of re-performance or the date on which the Defective Supply was made good.
- (d) The Supplier must ensure that, in carrying out rectification of a Defective Supply it causes as little inconvenience as is reasonably possible to other persons working on or using the Site or the Supply.
- (e) The parties acknowledge and agree that if, in Silver Lake's reasonable opinion, it is necessary to immediately re-perform or make good the Defective Supply then Silver Lake has no obligation to give the Supplier the opportunity to re-perform or make good the Defective Supply before Silver Lake does so.
- (f) If the Supplier fails to comply with any of its obligations under this clause 11, Silver Lake may have any of the rectification work carried out by another contractor. The cost incurred by Silver Lake of any rectification, redesign, or replacement work carried out by another contractor is a debt due from the Supplier to Silver Lake.
- (g) The remedies provided in this clause 11 do not exclude any other remedies provided by law and Silver Lake may exercise such remedies either during or after the expiration of the Defects Liability Period.

### 12. RECORDS AND AUDIT

- (a) The Supplier must maintain adequate and correct records in connection with the Supply. Such records shall be retained for a period of not less than 24 months after the Delivery Date.
- (b) The Supplier agrees that Silver Lake may, at any time before the end of the Agreement and for a period of 2 years thereafter, have access to and the right to audit all books, records, vouchers, receipts and other documents relating to the Supply which are in the possession, power or custody of the Supplier to verify:
  - (i) the Supplier's compliance with the terms of the Agreement; and
  - (ii) any amounts claimed by the Supplier under the Agreement.
- (c) The Supplier shall assist Silver Lake in undertaking any audit.

### 13. INSURANCE

#### 13.1 Insurances required

The Supplier must at its own cost, procure and maintain, and ensure that all sub-contractors procure and maintain, for the term of the Agreement and any additional period specified in this clause 13, the following insurances with reputable insurers (S&P rating or equivalent of "A-" or better) on policy terms acceptable to Silver Lake:

- (a) worker's compensation insurance to be in compliance with the statutory limits required by the Ontario



Workplace Safety and Insurance board or other applicable Provincial or State law (including occupational disease where required by law) in which the work or services provided in accordance with this Agreement are being performed and where reasonably requested by Silver Lake provide evidence of registration with the Workers Compensation Board / Occupational Health & Safety Commission (or Provincial and State equivalent) and that all assessments due have been fully paid and its account or otherwise is in good standing

- (b) comprehensive automotive insurance covering all mechanically propelled vehicles owned, leased, hired, operated or controlled by the Supplier which are required to be licensed in Ontario or the relevant jurisdiction and are at any time used in connection with the Agreement, including:
  - (i) insurance that is compulsory under applicable laws governing the use of automobiles and liability for personal injury or death;
  - (ii) cover for property damage to or fire or theft to the insured vehicle;
  - (iii) third party liability (including for any personal injury or death that is not covered under the compulsory insurance referred to in subparagraph (i)) for an amount of not less than \$5,000,000 in respect of any one accident or series of accidents arising out of one event including Family Protection Coverage (or relevant equivalent); and
  - (iv) cover in respect of any vehicles carrying dangerous goods, any one accident or series of accidents arising out of the one event, for an amount of \$5,000,000.
- (c) commercial general liability insurance for an amount not less than \$5,000,000 for any one occurrence (but limited to \$5,000,000 in the annual aggregate for products liability) and include Employer's liability for an amount not less than \$1,000,000 to cover the Supplier's legal liability in respect of any occurrence resulting in:
  - (i) death of or bodily injury (including illness) to any third party; and
  - (ii) loss of or damage to property belonging to any third party;
  - (iii) products / completed operations;
  - (iv) contractual liability; and
  - (v) sudden and accidental pollution,
 arising out of the performance of or in connection with the Agreement;
- (d) insurance covering all loss and damage to all property for which the Supplier is responsible, or which the Supplier brings to Site for the purpose of performing

the Supply, for an amount of not less than market value (unless otherwise insured to the satisfaction of Silver Lake);

- (e) cover for mobile plant and equipment which the Supplier brings to Site, for an amount of not less than the market value of the mobile plant and equipment; and
- (f) if required by Silver Lake, professional indemnity and errors and omissions insurance for a minimum of \$5,000,000 for any one claim and \$5,000,000 in the annual aggregate. Limit to be specific to the Agreement and policy to be in force from the Commencement Date and maintained for at least 7 years after the end of the Agreement;
- (g) transit insurance covering the Goods with a sum insured of not less than the replacement value of the Goods, with the insurance being maintained up until the Goods are accepted by Silver Lake at the Delivery Point regardless of whether Silver Lake has paid for those Goods; and
- (h) any other insurance which is required by Ontario law or by the law in the jurisdiction where the relevant Services are being offered or the Site is located.

### 13.2 Provisions relating to the insurances

- (a) The worker's compensation insurance referred to in clause 13.1(a) must (except where precluded by law) be endorsed to include:
  - (i) a waiver of subrogation by the insurer in favour of Silver Lake;
  - (ii) a principal's indemnity extension, indemnifying Silver Lake and its Affiliates for statutory and common law claims; and
  - (iii) an extension for employees underground if any of the Supply is to be performed underground.
- (b) The automobile insurance referred to in clause 13.1(b) must (except where precluded by law) be endorsed to include:
  - (i) a waiver of subrogation by the insurer in favour of Silver Lake;
  - (ii) name Silver Lake and its Affiliates as an additional insured; and
  - (iii) include a cross liability clause
- (c) The general commercial liability insurance referred to in clause 13.1(c) must be endorsed to include:
  - (i) a waiver of subrogation by the insurer;
  - (ii) Silver Lake and its Affiliates as an additional insured;
  - (iii) liability for "worker to worker" injury;
  - (iv) explosion, collapse or cover for underground activities (only if applicable to the Agreement);

- (v) cover for goods in the care, custody and control of the Supplier for an amount of not less than the market value of any plant and equipment supplied by Silver Lake or an Affiliate of Silver Lake;
  - (vi) liability arising out of the use of unregistered automobiles and mobile plant; and
  - (vii) a cross liability clause.
- (d) The mobile plant insurance referred to in clause 13.1(e) must be endorsed to include:
- (i) a waiver of subrogation by the insurer;
  - (ii) Silver Lake and its Affiliates as an additional insured; and
  - (iii) a cross liability clause.

### 13.3 Sub-contractors' insurance

The Supplier must ensure that its sub-contractors maintain insurance equal to the insurances required to be maintained by the Supplier under the Agreement.

### 13.4 Evidence of insurances

- (a) The Supplier must lodge with Silver Lake certificates of insurance to evidence the existence of the insurances required to be arranged by the Supplier and entry to Site may be denied or restricted prior to receiving and accepting appropriate certificates.
- (b) The responsibility for ensuring that the required insurances are in force and current will at all times remain with the Supplier. No approval by Silver Lake as to the adequacy in terms of insurance protection nor the sighting of certificates of insurance or copies of policies will be taken as a representation by Silver Lake that such insurance is adequate nor will it be raised or pleaded as a waiver of Silver Lake's rights or in bar to any action against the Supplier for default in performing in any of its requirements under the Agreement.

### 13.5 Notification and compliance

- (a) The Supplier must at all times be responsible for complying with and abiding by the terms of the insurances arranged by them, including the giving of prompt notice of any loss or claim to the Supplier's insurers. The Supplier will also ensure Silver Lake is promptly notified of any loss or claim notified by the Supplier to its insurers.
- (b) The Supplier must immediately advise Silver Lake of any change or cancellation of any of the insurances required to be maintained by the Supplier, prior to any change or cancellation.
- (c) The effecting of the insurances as required will not in any way limit the obligations or responsibilities of the Supplier under the Agreement. If the Supplier fails to effect or to keep in force any of the insurances which it is required to do, Silver Lake may, but will not be

obliged to, effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and may recover, as a debt due from the Supplier, the amount so paid.

### 13.6 Excesses

Whenever a Claim is made under any of the policies of insurance referred to in clause 13.1 the Supplier is liable for any excess or deductible payable as a consequence.

## 14. INDEMNITY

- (a) The Supplier indemnifies the Indemnitees from and against:
  - (i) all Claims of any nature (including whether arising under statute, at common law or in equity) in respect of:
    - A. personal injury (which expression shall include illness or disability) or death of any and all persons; and
    - B. physical loss of or damage to property of the Indemnitees or any third party; and
  - (ii) any Claim made against Silver Lake by any Supplier Personnel in respect of relevant laws concerning income tax, worker's compensation, vacation pay, overtime pay, leaves, benefits or other employment-related entitlements, including without limitation under applicable employment standards legislation, or any applicable award, determination or agreement of a competent industrial tribunal or court,

arising from or in connection with (wholly or in part, directly or indirectly) the performance, purported performance or non-performance of the Agreement by the Supplier or any Supplier Personnel, but the Supplier's liability to indemnify the Indemnitees under this clause 14(a) will be reduced proportionately to the extent that the wilful misconduct or negligence of the Indemnitees contributed to the Claim.

- (b) Except where a party, or its personnel, has committed fraud or an illegal act or omission or wilful misconduct, neither party will be liable to the other for or in respect of any loss of product, interest, earnings, profit or opportunity, reputation, use or any other special, indirect or consequential loss except, in the case of the Supplier, to the extent the Supplier is indemnified for such loss under a policy of insurance it is required to procure and maintain under the Agreement..
- (c) All amounts payable under this clause must be paid in full (without any deduction, withholding, counter-claim or set-off) on notice requiring payment.
- (d) It is not necessary for any of the Indemnitees to incur any expense or make any payment before being entitled to enforce a right of indemnity pursuant to this clause 14.

- (e) The obligations on the Supplier under indemnities in the Agreement are primary to any insurances.
- (f) Each indemnity in the Agreement is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Agreement.
- (g) The Supplier intends to confer a benefit on each Indemnitee in respect of each indemnity given by the Supplier in favour of Silver Lake in the Agreement and Silver Lake holds the benefit of each of those indemnities on trust for the benefit of each Indemnitee.

## 15. CONFIDENTIALITY

- (a) The Supplier must keep secret and confidential and must not disclose to any third party without Silver Lake's prior written consent any Confidential Information supplied or made available by or on behalf of Silver Lake to the Supplier or any Supplier Personnel, or brought into existence by the Supplier or any Supplier Personnel, in connection with the Agreement (and in particular with respect to any operations of Silver Lake and its requirement for Supply from time to time).
- (b) The restriction in clause 15(a) does not apply to any disclosure of Confidential Information:
  - (i) which at the material time is in the public domain (other than as a result of a breach of this clause 15); or
  - (ii) which is required by law to be communicated to the person who receives the Confidential Information.
- (c) Silver Lake may at any time request the return or destruction of any Confidential Information in whatever form it then exists and the Supplier is to comply with any such request.
- (d) The Supplier is to ensure that all Supplier Personnel maintain the confidentiality of the Confidential Information in the same manner as the Supplier is required to do.

## 16. INTELLECTUAL PROPERTY

### 16.1 Supplier IP

- (a) Silver Lake acknowledges that the Supplier remains the owner of all Supplier IP.
- (b) The Supplier grants Silver Lake a non-exclusive, irrevocable, royalty free licence to use all Supplier IP to the extent necessary to enable Silver Lake to exercise its rights in the Agreement IP.

### 16.2 Silver Lake IP

- (a) The Supplier acknowledges that Silver Lake remains the owner of all Silver Lake IP.

- (b) Silver Lake grants the Supplier a non-exclusive, royalty free licence to use the Silver Lake IP for the sole purpose of providing the Supply.

### 16.3 Agreement IP

- (a) The Supplier acknowledges and agrees that all Agreement IP will be vested in Silver Lake and will be Silver Lake's property as and when created.
- (b) The Supplier assigns all rights, title and interest in and to the Agreement IP to Silver Lake. On Silver Lake's request, the Supplier must execute any documents required to give effect to such assignment. The Supplier shall ensure that it obtains from all Supplier Personnel written assignments of any right, title and interest that they may have in or to the Agreement IP, as well as an irrevocable waiver of any and all moral rights in the Agreement IP.
- (c) Silver Lake grants the Supplier a non-exclusive, non-transferable, royalty free revocable licence to use the Agreement IP for the sole purpose of providing the Supply.

### 16.4 Warranties provided by the Supplier

The Supplier warrants that:

- (a) the provision of the Supply does not and will not infringe the rights (including, but not limited to, IP Rights) of any third party;
- (b) the Supplier will, at no further cost to Silver Lake, procure all licences and consents to use any IP Rights of a third party which are necessary to provide the Supply;
- (c) the Agreement IP does not and will not infringe any rights of third parties (including, without limitation, any IP Rights); and
- (d) the Supplier has the right to assign all Agreement IP to Silver Lake in accordance with this clause 16.

### 16.5 Infringement of IP Rights

The Supplier agrees:

- (a) to notify Silver Lake as soon as it becomes aware of any suspected, threatened or actual infringement of any IP Rights in the Agreement IP; and
- (b) provide all reasonable assistance Silver Lake may request to defend any alleged infringement in clause (a) or to protect the IP Rights in the Agreement IP.

## 17. BUSINESS STANDARDS

### 17.1 Modern slavery

- (a) The Supplier acknowledges that Silver Lake works to comply with applicable modern slavery laws (including without limitation child labour laws) and represents and warrants that the Supplier:
  - (i) takes reasonable steps to investigate and address the risk of modern slavery within its operations and supply chains; and

- (ii) will provide all information necessary as reasonably requested by Silver Lake to enable Silver Lake to comply with any applicable modern slavery laws.
- (b) Silver Lake may, at any time during the Term and for a period of 2 years thereafter, conduct an audit (including access to the Supplier's premises) of the Supplier's books, records, standards, policies, procedures and other documents as reasonably required by Silver Lake in order to assess the Supplier's compliance with this clause 17.1.
- (c) The Supplier must ensure that all contracts it enters into with its sub-contractors contain provisions substantially similar to this clause 17.1.
- (d) Without limiting any other rights of Silver Lake under the Agreement or at law, if Silver Lake determines that the Supplier has failed to comply with or has otherwise committed a breach of this clause 17.1, it may treat the non-compliance or breach as a default of the Supplier for the purposes of clause 20.2.

## 18. FORCE MAJEURE

### 18.1 Definition

- (a) In these Terms and Conditions, **Force Majeure Event** means any event or circumstance (or combination of events and circumstances) which:
  - (i) is beyond the control of the party affected by that event or circumstance or both (**Affected Party**);
  - (ii) causes delay in, or prevention of, the performance by the Affected Party of any of its obligations under the Agreement; and
  - (iii) cannot be prevented, overcome or remedied by the exercise by the Affected Party of Good Operating Practices or the expenditure of a reasonable sum of money, including (provided it meets the foregoing conditions):
    - A. any wet or otherwise inclement weather which prevents either party from performing its obligations under the Agreement for more than 24 consecutive hours;
    - B. storms or cyclones, action of the elements, epidemics, landslides, earthquakes, floods, road closures due to washouts or impassability and natural disasters;
    - C. accident, explosion, breakage; or
    - D. a strike or industrial dispute which has national or province-wide application, affects the execution of the Supply under the Agreement at the Site and lasts for more than seven consecutive days, but does not include other industrial-related disputes including strikes, lockouts, industrial

difficulties, labour difficulties, work bans, blockades or picketing,

but does not include:

- (iv) lack of or inability to use funds for any reason;
- (v) any occurrence which results from the wrongful or negligent act or omission of the Affected Party or the failure of the Affected Party to act in a prudent and proper manner and in accordance with Good Operating Practices;
- (vi) any event which would otherwise be considered an event of Force Majeure Event, but which is the result of any breach or infringement of, or non-compliance with, any contract, agreement, covenant, undertaking, promise, law, decree, circular, regulation, decision, directive, enactment, licence, approval, consent, permission, exemption or other obligation whatsoever by the Affected Party;
- (vii) breakdown of plant and equipment used by the Supplier to provide the Supply; or
- (viii) strike or industrial action of the Supplier's employees or those of sub-contractors.

### 18.2 Occurrence of Force Majeure Event

If a Force Majeure Event precludes the Affected Party partially or wholly from complying with its obligations (except its payment obligations) under the Agreement, then:

- (a) as soon as reasonably practicable after that Force Majeure Event arises, the Affected Party must notify the other party of:
  - (i) the Force Majeure Event;
  - (ii) which obligations the Affected Party is precluded from performing (**Affected Obligations**);
  - (iii) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations (**Precluded Extent**); and
  - (iv) the expected duration of the delay arising directly out of the Force Majeure Event;
- (b) the Affected Party's obligation to perform the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event or until it fails to comply with the requirements of clause 18.3, whichever is the earlier (**Actual Delay**); and
- (c) the other party's obligations to perform any obligations dependent on the Affected Obligations will be suspended until the Affected Party resumes performance.

### 18.3 Benefit conditional

The rights of an Affected Party under clause 18.2(b) exist provided the Affected Party:

- (a) takes all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay; and
- (b) maintains regular communication with the other party to describe what is being done to remedy the Force Majeure Event.

#### **18.4 Suspension of Fee**

If the Supplier is unable to provide the Supply to Silver Lake due to a Force Majeure Event claimed by either Silver Lake or the Supplier, Silver Lake's obligation to pay the Price will be reduced on a pro rata basis so that the relevant portion of the price that is attributable to the Supply that the Supplier is unable to supply is not payable by Silver Lake for the duration of the Force Majeure Event.

#### **18.5 Endeavours**

Without limiting clause 18.3(a), the Affected Party must resume performance in full of its obligations under the Agreement as soon as reasonably practicable.

#### **18.6 Termination**

If the Actual Delay continues for more than 30 days, Silver Lake may terminate the Agreement immediately by giving notice to the Supplier without prejudice to any of the rights of either party accrued prior to the date of termination.

### **19. DISPUTE RESOLUTION**

#### **19.1 Procedure for resolving disputes**

- (a) The parties agree that all disputes relating to or arising out of the Agreement must be resolved in accordance with this clause 19.
- (b) If a dispute arises then either party may give notice to the other party that must:
  - (i) be in writing;
  - (ii) state that it is a notice under this clause 19.1(b); and
  - (iii) include or be accompanied by reasonable particulars of the dispute.
- (c) If a notice is given under clause 19.1(b), then a senior management representative or equivalent of each of the parties (who must be capable of binding each party) must meet at least once within five Business Days of receipt of the notice under clause 19.1(b) (or such other time as the parties may agree) and use reasonable endeavours acting in good faith to resolve the dispute.
- (d) If the dispute is not resolved by the senior management representatives within the period referred to in clause 19.1(c), either party may commence proceedings for the resolution of the dispute.

#### **19.2 Continue to perform**

Notwithstanding the existence of a dispute, each party must continue to perform its obligations under the Agreement.

### **20. TERMINATION**

#### **20.1 On Notice**

Without limiting any other clause of the Agreement, Silver Lake may, in its absolute discretion, terminate the Agreement by giving not less than 30 days written notice to the Supplier. In such a case the Supplier shall cease performance of the Supply in accordance with the notice and shall do everything possible to mitigate any costs incurred by it arising from such termination. Silver Lake shall pay the Supplier the value of the Supply performed up to the effective date of the termination, the cost of materials ordered but not delivered for which the Supplier is legally bound to pay, and the reasonable costs of the Supplier demobilising from the Site, but no compensation shall be payable to the Supplier to cover any damages for loss of actual or anticipated profits or for any indirect, contingent or penal damages or loss.

#### **20.2 Default of the Supplier**

If the Supplier fails to comply with or otherwise breaches the Agreement and, following notice from Silver Lake, fails to rectify the non-compliance or breach (or, if it is not capable of remedy, pay adequate compensation in lieu thereof) within 10 Business Days thereafter then Silver Lake may, at its option and without prejudice to any of its other rights immediately terminate all or any part of the Agreement by notice to Supplier.

#### **20.3 Insolvency Event**

Either party may terminate the Agreement immediately, and without prejudice to its rights accrued before the date of termination, upon the happening to the other of any Insolvency Event.

#### **20.4 Other Rights and Remedies**

Any action to terminate taken by a party under this clause 20 shall be in addition to and not prejudice any other rights, remedies, powers, authorities and discretions of the party, and the accrued liabilities and obligations of the other party, under the Agreement or otherwise.

### **21. NOTICES**

#### **21.1 Notices**

A notice required or permitted to be given by a party to the other party under the Agreement must be in writing, addressed to the other party and:

- (a) delivered by hand to that party's nominated address;
- (b) sent by pre-paid post to that party's nominated address; or
- (c) sent by email to the party's nominated email address.

#### **21.2 Addresses of Parties**

For the purpose of clause 21.1, the address of a party is the address set out in the Purchase Order or another address of which that party may from time to time give notice to each other party.

### 21.3 Receipt of Notice

A notice given to a party in accordance with clause 21.1 is treated as having been duly given and received:

- (a) if delivered, when delivered by hand to the nominated address (in the case of its being left at that party's address);
- (b) if posted, at 9am (addressee's time) on the second Business Day after posting;
- (c) if sent by email:
  - (i) at the time shown in the delivery confirmation report generated by the sender's email system; or
  - (ii) if the sender's email system does not generate a delivery confirmation report within 12 hours of the time the email is sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent.

## 22. GENERAL

### 22.1 Governing law and jurisdiction

- (a) The Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Toronto, Ontario and courts of appeal from them in respect of any proceedings arising out of or in connection with the Agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 22.2 Waivers

- (a) Waiver of any right, power, authority, discretion or remedy arising on default under the Agreement must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under the Agreement does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) This clause 22.2 itself may only be waived by written waiver.

### 22.3 Variation

A variation of any term of the Agreement must be in writing and signed by the parties.

### 22.4 Prohibition, enforceability and severance

- (a) Any provision of, or the application of any provision of, the Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

- (b) Any provision of, or the application of any provision of, the Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

- (c) If a clause is void, illegal or unenforceable, it may be severed without affecting the validity, legality or enforceability of the other provisions in the Agreement.

### 22.5 Further assurances

Each party must do or cause to be done all things necessary to give effect to the Agreement and refrain from doing anything which might hinder performance of the Agreement.

### 22.6 Entire agreement

The Agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

### 22.7 Costs

Each party must pay its own costs arising out of the negotiation, preparation and execution of the Agreement.

### 22.8 Counterparts

The Agreement may be executed in any number of counterparts.

### 22.9 Assignment

The Supplier may not assign, novate or transfer any of its rights or obligations arising out of or under the Agreement without the prior written consent of Silver Lake.

### 22.10 Relationship of Parties

The relationship between Silver Lake and the Supplier is a relationship of principal and independent contractor and nothing in the Agreement shall be construed so as to create a relationship of employment, agency or partnership between Silver Lake and the Supplier (or any Supplier Personnel). The Supplier does not have any authority to contract with third parties on behalf of Silver Lake or to otherwise bind Silver Lake without Silver Lake's written agreement

### 22.11 Language.

The parties hereto confirm that it is their wish that this Agreement as well as other documents relating hereto, including notices, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents, y compris tous avis, s'y rattachant, soient rédigés en langue anglaise seulement.