

TERMS AND CONDITIONS  
OF  
LILLY DEL CARIBE, INC.

September 2016

**Notice from Lilly del Caribe, Inc. to its Suppliers:**

These terms, conditions, and instructions ("Terms") shall be applicable to any purchase order and to all subsequent purchase orders received by you ("Seller") from Lilly del Caribe, Inc. ("Buyer") whether received by mail, by telephone, or by electronic means (each a "Purchase Order"), from the date of your receipt of these Terms until such time as you receive a revised edition of these Terms or a revised edition of these Terms is posted on <http://supplierportal.lilly.com>. These Terms shall apply to all transactions between you and Buyer until such further notice, unless your written objections are received by Buyer within thirty (30) days after you receive this document.

Additional or different terms, conditions, or instructions applicable to a particular order may be specified in the body of the Purchase Order, or in an exhibit thereto, and, in the event of a conflict, shall take precedence over these terms, conditions, and instructions with the exception of the Section entitled "ELECTRONIC TRANSACTIONS" below.

Despite anything to the contrary contained herein, if Seller and Buyer have executed an agreement which governs the purchase and sale of the goods, software or services in issue, the terms of such agreement shall be controlling and shall take precedence over these Terms and any additional or different terms contained in any document generated by Seller. Should that agreement defer to these Terms as to the ones to prevail in case of conflict, then these terms shall be controlling and shall take precedence over the agreement.

## 1. DEFINED TERMS:

A. "Applicable Laws" means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate, judgment, decree, injunction, writ, order, subpoena, or like action of a governmental authority that applies, as the context requires, to a Purchase Order or the performance of obligations or other activities related to a Purchase Order.

B. "Buyer's Confidential Information" means all information that Buyer deems confidential or proprietary, including information deemed confidential by virtue of Buyer's obligations to another party and confidential information developed by Seller in connection with any Purchase Order. Buyer's Confidential Information includes, but is not limited to, information about research and development plans and results; new compounds and processes; evaluation procedures (including clinical and field testing); product formulations; manufacturing methods; applications to government authorities; pricing or cost; construction plans; sales, marketing, and advertising studies and plans; customer lists; computer information and software; special techniques unique to Buyer's business; information subject to a right of privacy; and information Buyer maintains under a system of protection against unauthorized access.

C. "Deliverables" means the following: (i) For any order of goods, including software and any computer program, programming, modules, patches, upgrades, new versions and modifications thereto, Deliverables includes any goods or articles specified in Buyer's order that Seller is obligated to furnish to Buyer; and (ii) for any order of services, Deliverables includes all services provided to Buyer, together with all articles, materials, goods, information, works of authorship, trademarks, artwork, drawings, text, specifications, calculations, reports, ideas, inventions, discoveries, processes, improvements, software, data, and other documentation and materials created, developed, conceived or first reduced to practice by Seller, alone or with others, related to services rendered for Buyer under the Purchase Order or derived from information or materials Seller has received from Buyer.

D. "ECCN" means Export Control Classification Number.

E. "EDI" means electronic data interchange.

F. "Existing Intellectual Capital" means any Intellectual Property that Seller invented, created, developed, or acquired outside the course of its performance under this Agreement and without use of Lilly's information or materials

G. "Imported Products" means any foreign-sourced goods or products imported into the United States and/or the Commonwealth of Puerto Rico.

H. "Intellectual Property" means all inventions, original expressions of ideas embodied in a tangible form, copyrights, trademarks, trade secrets, information, know-how, and the like that are afforded (or may be afforded) upon action by a governmental authority, such as the U.S. Patent Office, Intellectual Property Rights.

I. "Intellectual Property Rights" means the property rights or quasi-property rights afforded by patents, copyrights, trademarks, or trade secrets; publicity rights, privacy rights, and moral rights (such as the rights of attribution and integrity).

J. "Personal Information" means any information provided by Buyer and/or its affiliates or collected by Seller for Buyer and/or its affiliates: (i) that identifies, or when used in combination with other information provided by Buyer or processed by Seller on behalf of Buyer identifies, an individual; or (ii) from which identification or contact information of an individual person can be derived. Personal Information can be in any media or format, including computerized or electronic records as well as paper-based files.

K. "Records" means any information of any type (including text, data, code, images, sound, source codes, computer programs, software, databases, or the like) that is either used, created or obtained in the performance of any Purchase Order, inscribed on paper or other tangible medium, or stored on an electronic medium in a perceivable form.

**2. APPLICABLE TERMS AND CONDITIONS:** Offer and acceptance of any Purchase Order issued by Buyer is expressly limited to these Terms and the applicable Purchase Order. Any terms and conditions contained in a proposal, quotation or invoice of Seller shall not constitute a part of the contract of sale resulting from Seller's acceptance of Buyer's order unless such terms and conditions are specifically incorporated or noted as applicable in Buyer's order. Any purported acceptance containing additional or different terms shall be deemed to be an acceptance of these Terms, despite such additional or different terms. Seller's shipment of goods or commencement of services in response to Buyer's order shall constitute acceptance of these Terms and any additional or different terms contained in any acknowledgment or invoice form submitted by Seller shall not constitute any part of the contract of sale resulting from Seller's acceptance.

## 3. ELECTRONIC TRANSACTIONS:

A. If Seller and Buyer have mutually agreed to the use of an EDI system to facilitate purchase and sale transactions, Seller agrees:

i. That it shall not contest:

(i) any contract of sale resulting from an EDI transaction under the provisions of any law relating to whether

agreements must be in writing or signed by the party to be bound thereby; or  
(ii) the admissibility of copies of EDI records under the business records exception to the hearsay rule, the best evidence rule or any other similar rule, on the basis that such records were not originated or maintained in documentary form;

- ii. That it shall use proper security procedures to protect its EDI records from improper access; and
- iii. That the records maintained by Buyer regarding EDI purchase orders issued by Buyer shall be controlling.

B. If Seller and Buyer have mutually agreed to an Automated Clearing House to facilitate purchase and sale transactions, the payment term in the Purchase Order shall be extended by five (5) days.

4. **PRICE AND PAYMENT TERMS:** Each Purchase Order shall be filled at the price specified on the Purchase Order, or at any lower price. If no price is specified, the Purchase Order shall be filled at the lowest of (a) the price last quoted by Seller; (b) the price last paid by Buyer to Seller; or (c) the prevailing market price, unless a higher price is approved in writing by an authorized representative of Buyer's procurement department. Unless otherwise provided in a Purchase Order, payment will be due sixty (60) days after Buyer's Accounts Payable Department receives an invoice that complies with the requirements of these Terms, except that Buyer may withhold payment of any amount that it may reasonably dispute in good faith until such dispute is resolved. Due dates and cash discounts are computed from the date an accurate invoice is received in Buyer's Accounts Payable Department. Buyer may return improper invoices for correction without loss of discount. In the event that Buyer is paying by check, Buyer will mail payment by paper check on the due date. In case of disputes, doubt concerning quality, or where rejections occur, Buyer may defer payment without penalty or loss of discount.
5. **MODIFICATION:** Modification, rescission, or amendment of Buyer's order or the contract of sale resulting from its acceptance shall be ineffective unless approved in writing by an authorized representative of Buyer's procurement department.
6. **INSPECTION:** All Deliverables furnished pursuant to a Purchase Order shall be subject to Buyer's inspection and approval, including acceptance testing by Buyer to verify that the Deliverables satisfy all requirements conveyed by Buyer to Seller, including any specifications or documentation relating to the Deliverables. If Buyer discovers a non-conformity within ninety (90) days following delivery of the Deliverables and Buyer notifies Seller of the non-conformity, despite prior receipt and payment therefore, Seller shall, at Buyer's sole discretion, either (i) correct the non-conformity at no additional charge in a timely, professional manner, or (ii) refund monies paid by Buyer for the non-conforming Deliverables or services attributable to or affected by the non-conforming Deliverables, in which case Buyer shall return such non-conforming Deliverables to Seller at Seller's expense. Nothing in this Section shall be construed to limit or otherwise affect Buyer's indemnification rights, warranty rights or any other common law or statutory remedies.
7. **PACKAGING, DELIVERY, CANCELLATION:** Seller shall box, crate or package the Deliverables for shipment in compliance with Applicable Laws, in accordance with good commercial and industry practice, and without charge to Buyer unless otherwise specified on the applicable Purchase Order. Buyer shall have the right to cancel all or any portion of any Purchase Order without liability if delivery is not made within the time stated in the Purchase Order.
8. **GENERAL REPRESENTATIONS AND WARRANTIES:** Seller represents and warrants:
  - A. That all Deliverables supplied under Buyer's order are free from defects, of merchantable quality, and in accordance with Buyer's specifications.
  - B. That without limiting Seller's liability to Buyer or third parties hereunder, Seller shall maintain Commercial General Liability Insurance to include contractual and products/completed operations coverage to meet its indemnification obligations under this Purchase Order or loss as required by Applicable Law. All such insurance shall be primary and not contributory with regard to any other available insurance to Buyer. Seller represents and warrants that it shall promptly file all claims made under this Purchase Order with its insurance carriers.
  - C. The Deliverables do not and will not infringe the Intellectual Property Rights of any other party, and any use thereof by Buyer consistent with these Terms does not infringe such rights. This representation and warranty does not apply to infringement arising solely from: (i) anything Buyer provides which is incorporated into the Deliverables or Seller's compliance with any designs, specifications, or instructions provided by Buyer or a third party at Buyer's direction; (ii) Buyer's modification of the Deliverables independent of Seller; or (iii) the combination, operation or use of the Deliverables with any product, data, apparatus, or business method that Seller did not provide and could not reasonably anticipate. In addition, with respect to services, all Deliverables produced under the Purchase Order shall be of original development and all Seller property shall be of original development or licensable by Seller.
  - D. That it has enforceable written agreements with all of its employees and subcontractors assigning to Seller ownership of all Intellectual Property Rights created in the course of their employment or engagement, and obligating such employees upon terms and conditions no less restrictive than these Terms, not to disclose any proprietary rights or information learned or acquired during the course of such employment or engagement, including without limitation, any Deliverable and any other

information. Seller shall take appropriate steps to adequately protect Buyer's data in its possession or information derived therefrom, including, without limitation, firewall protection, backup processes and procedures, and disaster recovery plans.

E. That in the performance of its obligations under a Purchase Order, Seller shall comply with all Applicable Laws, regulations, Buyer policies and professional standards, including but not limited to:

- i. Applicable provisions of the Anti-Bribery Commitments for Lilly Procurement Contracts as revised by Buyer from time to time and published at <http://supplierportal.lilly.com> or otherwise made available to Seller;
- ii. Applicable provisions of Buyer's Vendor Privacy and Security Standard as revised by Buyer from time to time and published at <http://supplierportal.lilly.com> or otherwise made available to Seller. In addition, if Seller is processing Personal Information in the United States on behalf of Lilly from EU Member States, European Economic Area countries, or Switzerland, Seller shall have self-certified to the EU-US Safe Harbor or if Switzerland, the Swiss-US Safe Harbor, or if applicable, both certifications. Evidence of this certification shall only be sufficient if Seller is listed on <http://safeharbor.export.gov/list.aspx>. Seller further represents and warrants it shall maintain such compliance throughout the term of any applicable Purchase Order;
- iii. Any instructions or policies set forth by Buyer which relate to compliance by Buyer or its affiliates with any US or other government authority mandates, settlements or adjudications, including the Corporate Integrity Agreement between Buyer and the Office of Inspector General, US Department of Health and Human Services, dated January 14, 2009, and any disclosure requirements set forth there under;
- iv. Applicable clauses set forth in the U.S. Federal Acquisition Regulation ("FAR") FAR 52.244-6(c)(1) as set forth at <http://supplierportal.lilly.com> and such other provisions as may be required by Applicable Law to allow the sale of products to the U.S. Government from time to time by Buyer;
- v. Applicable provisions of Buyer's export and import policies as referenced herein;
- vi. Paragraphs (1) through (3) of 29 C.F.R. Part 471, Appendix A to Subpart A regarding the posting of certain notices pertaining to employee rights under the National Labor Relations Act available at <http://www.gpoaccess.gov/fr/>; and that no Deliverable supplied under Buyer's order is produced in violation of the Fair Labor Standards Act of 1938, as amended, and that the price of any article supplied under Buyer's order does not violate any provision of the Sherman Act or Robinson-Patman Act, as amended.
- vii. That no Deliverable supplied under Buyer's Order and subject to the Federal Food, Drug, and Cosmetic Act, as amended (for purposes of this representation and warranty, the "Act"), is adulterated within the meaning of the Act or is an article which may not, under the provisions of Section 301, 404 or 505 of the Act, be introduced into interstate commerce;
- viii. That no Deliverable supplied under Buyer's Order is produced in violation of the Generic Drug Enforcement Act of 1992, as amended (for purposes of this representation and warranty, the "Act"), that Seller is not debarred and that Seller has not and will not use in any capacity in connection with the filling of this order the services of any individual or person (as defined in the Act) debarred by the United States Food and Drug Administration under the provisions of the Act. If at any time this warranty is no longer accurate, Seller shall immediately notify Buyer of such changed circumstances.
- ix. That all Deliverables supplied under Buyer's Order shall be shipped in full compliance with packaging, labeling, shipping, and documentation requirements, including requirements concerning hazardous materials, substances, and waste of all state, local, national, or international governmental agencies or authorities regulating any segments or modes of transportation employed to effect delivery of such articles to Buyer, and all hazardous materials, substances, and waste shall be packaged, marked, labeled and shipped in accordance with all Applicable Laws;
- x. That any Deliverables shall comply with regulations promulgated under Section 264 of the Health Insurance Portability and Accountability Act (Public Law 104-91 - "HIPAA"). Furthermore, Seller shall in good faith execute any and all agreements that Buyer is required to have Seller execute in order that Buyer may comply with HIPAA;
- xi. That no Deliverable supplied under Buyer's Order is supplied in violation of economic or trade sanctions imposed by the U.S. government against sanctioned countries, entities, or individuals, including but not limited to sanctions imposed by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by Executive Order of the President of the United States; and
- xii. That all Deliverables supplied under Buyer's Order are supplied in full compliance with the Export Administration Regulations, 15 CFR Parts 700-799.

Seller agrees to defend, indemnify, and hold harmless Buyer against all liability, costs, expenses (including attorney fees), damages and judgments occasioned by or resulting from breach of any of the foregoing warranties.

Both parties acknowledge that each maintains its own financial authorization policies on ensuring requisite corporate authority has been given for specific transactions. The parties therefore agree that any communications between the employees of the parties that may impact previously agreed upon financial, economic or legal expectations hereunder must be approved by the authorized individuals of both parties. The parties further agree to meet upon request and/or enter into discussions to identify authorized individuals as well as take any corrective actions necessary for any past discrepancies in order to meet appropriate financial expectations for potential future transactions.

9. **SAFETY & SECURITY:** Seller will comply with, and will cause its affiliates and subcontractors to comply with, all policies and procedures that Buyer establishes to enhance the safety or security of Buyer's facilities or of persons at or near Buyer's facilities, including measures restricting access such as the use of identification badges and passwords. Seller will promptly notify Buyer of any violation of such policies and procedures. Seller will comply with, and will cause its affiliates and subcontractors to comply with, the instructions of any Buyer security official that are reasonably necessary to redress a threat, or to avoid an imminent threat, to the safety or security of such facilities or persons. Buyer retains its right to restrict or refuse any person (including Seller, its affiliates and subcontractors) access to Buyer's facilities, computers, or other information systems. Without limiting the generality of the foregoing, Buyer may restrict or refuse access to any individual who does not do any of the following to Buyer's satisfaction: (i) submit to and pass a drug screen, (ii) pass a background check, or (iii) accept or acknowledge in writing a personal obligation to protect Buyer's Confidential Information. Such restriction or refusal excuses Seller's performance only if it renders Seller's performance impracticable, does not comport with Buyer's written procedures, and is manifestly unreasonable.
10. **REPORTING ADVERSE EVENTS AND PRODUCT COMPLAINTS:** If during the course of performing services under these Terms or a Purchase Order, Seller, Seller's representatives, Seller's affiliates or Seller's subcontractors become aware of an adverse event or product complaint, Seller will report such information to Buyer within one business day of awareness by calling The Lilly Answers Center at 1-800-LillyRx or the appropriate local Buyer affiliate. This reporting obligation does not apply to information that Seller's representatives or subcontractors receive directly from Buyer or from a clinical investigator conducting a clinical trial on behalf of Buyer. For purposes of this section, an adverse event means any undesirable medical occurrence in a patient or clinical investigation subject administered a pharmaceutical product (drug or device), which does not necessarily have a causal relationship with this treatment. A product complaint means a customer's written, oral, or electronic communication that alleges deficiencies related to the identity, quality, safety, purity, durability, reliability, safety, effectiveness, or performance of a distributed drug product, drug/device combination product, medical device, animal health premix, active pharmaceutical ingredient, process intermediate, or fermentation product.
11. **NONDISCLOSURE:** Except to the extent provided in the section entitled "Publicity", Seller shall not disclose any information concerning Buyer's order or the contract of sale resulting from its acceptance, including its existence, without the prior written consent of Buyer.
12. **CONFIDENTIALITY:** Seller will neither (i) disclose Buyer's Confidential Information except as authorized below or by Buyer in writing; nor (ii) use Buyer's Confidential Information for any purpose other than meeting Seller's obligations under any Purchase Order. Seller may disclose Buyer's Confidential Information:
  - A. To its representatives, affiliates and subcontractors who need to know the information for the purpose of meeting Seller's obligations under a Purchase Order; provided that such representatives, affiliates and subcontractors must have contractual obligations that prohibit any disclosure and use of Buyer's Confidential Information in accordance with these Terms. Seller is responsible to Buyer for any unauthorized disclosure or use of Buyer's Confidential Information by Seller's representatives, affiliates or subcontractors.
  - B. To the extent compelled by Applicable Law; provided, however, that Seller will give Buyer reasonable advance notice of the disclosure to the extent such advance notice is permitted by Applicable Law.
  - C. In communications to its attorneys or accountants who have a professional obligation to maintain such information in confidence. Seller is responsible to Buyer for disclosure or use by any such persons of Buyer's Confidential Information not authorized by Buyer.

**Promptly upon Buyer's request, Seller will either return or destroy all Records of Buyer's Confidential Information in Seller's possession or control. With respect to electronic Records, "destroy" includes destroying the physical medium on which a Record is stored or completely and permanently removing a Record from its storage medium.**

13. **PUBLICITY:** Seller shall not disclose any information concerning any Purchase Order or the contract of sale resulting from the acceptance thereof, including its existence, without the prior written consent of Buyer. Seller shall not use the name of Buyer, any employee of Buyer or any product or service of Buyer in any press release, advertising or materials distributed to

prospective or existing customers or any other public disclosure, except as required by law or allowed in this Section. If required by law, Seller shall provide copies of the disclosure for the prior review and comment by Buyer's external corporate communications (public relations) department no less than ten (10) days prior to disclosure. In no event will Seller (i) represent, directly or indirectly, that any Deliverable provided by Seller has been approved, recommended, certified or endorsed by Buyer, or (ii) use Buyer's logos or other trademarks without the prior written consent of Buyer.

14. **INDEMNIFICATION:** Each of Buyer and Seller will indemnify and defend the other (and the other's affiliates and representatives) against all losses, damages, costs or expenses, including interest, penalties, reasonable attorney or accountant fees, and expert witness fees related to disputes between the parties and to third party claims arising from any breach by it of its representations, warranties or obligations under these Terms or any Purchase Order or from any negligence or more culpable conduct by it (or by its affiliates or subcontractors (if any) or any of their respective representatives) in connection with its performance under any Purchase Order.

In addition to the foregoing, in the event Seller breaches any warranty on non-infringement for any Deliverable, Buyer may elect one of the following remedies, in addition to recovering any other damages or indemnification under these Terms:

- a. Require Seller to choose between furnishing either: a non-infringing substitute article or performance reasonably acceptable to Buyer, or obtaining for Buyer's benefit a license or assignment of rights sufficient to afford Buyer the full benefits of the Deliverable, both alternatives being at Seller's expense.
- b. Recover (or withhold) from Seller the portion of Seller's compensation attributable to the infringing Deliverables, with a pro-rata deduction for the months between the effective date and the moment of notice by Buyer of breach of warranty of non-infringement, relative to sixty (60) months after the date of delivery of the Deliverable(s).
15. **LIABILITY INSURANCE:** Seller shall maintain liability insurance policies covering all activities related to any Purchase Order and as otherwise required under Applicable Law (including worker's compensation coverage). Without limiting the generality of the foregoing, Seller shall maintain commercial general liability insurance with minimum limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate.
16. **FEDERAL EEO AND AFFIRMATIVE ACTION LAW:** Buyer's order is subject to and incorporates by reference the provisions of the EEO clause in Section 202 of Executive Order 11246, 41 C.F.R. 60-250 and 41 C.F.R. 60-741, all as amended.
17. **ASSIGNMENT:** To the extent allowed by Applicable Law, Seller shall not in any manner delegate its duty of performance or assign its rights or obligations under Buyer's order or the contract of sale resulting from its acceptance without Buyer's prior written consent. Any attempted assignment in violation of the preceding sentence shall be of no force or effect.
18. **CHOICE OF LAW, FORUM:** Each Purchase Order and any contract of sale resulting from its acceptance shall be governed by and construed according to the laws of the Commonwealth of Puerto Rico. Any suit or action arising out of a dispute under the order or contract of sale, related to these Terms or any Purchase Order shall be brought only in the courts of the Commonwealth of Puerto Rico. Seller and Buyer hereby submit to the jurisdiction of any competent court of the Commonwealth of Puerto Rico.
19. **UCC:** Seller and Buyer hereby expressly agree that the provisions of the Uniform Commercial Code as adopted by the Commonwealth of Puerto Rico apply to this Purchase Order, including, but not limited to, any software purchased under this Purchase Order.
20. **UN CONVENTION:** Despite anything in these Terms, the United Nations Convention on Contracts for the International Sale of Goods shall have no application to, and shall be of no force and effect with respect to, these Terms or any Purchase Order under these Terms.
21. **RECORDS AND AUDITS:**

- A. At its own expense, Seller will create and maintain all Records: (i) required by these Terms, a Purchase Order and Applicable Law that relate to a Purchase Order and to Seller's performance under a Purchase Order; (ii) sufficient to demonstrate that any and all amounts invoiced to Buyer under a Purchase Order are accurate and proper in both kind and amount; (iii) sufficient to demonstrate the accuracy of any representations or reports submitted to Buyer under a Purchase Order; and (iv) sufficient to enable Buyer to comply with Applicable Laws and other legal obligations, to the extent that Seller has or reasonably should have knowledge of those Applicable Laws and other legal obligations.
- B. Seller will maintain all of the Records listed above for the longest of the following retention periods that applies: (i) any period prescribed by Applicable Law or stated expressly in a Purchase Order; (ii) for Records related to invoices, for five (5) years after payment of the invoice by Buyer; (iii) for Records related to reports submitted to Buyer, for five (5) years after the report is submitted; and (iv) for all Records not addressed by one of the above, for five (5) years after the term of

the Purchase Order.

- C. At no additional cost to Buyer, Seller will allow Buyer to inspect (and, upon request, Seller will furnish copies of) Records Seller is required to create or maintain under a Purchase Order for the purposes of evaluating and verifying: (i) compliance with the requirements of the Purchase Order; (ii) compliance with Applicable Law related to the Purchase Order or to Seller's performance under the Purchase Order; (iii) the accuracy and propriety of any invoice submitted to Buyer; and (iv) the accuracy of any representations or reports submitted to Buyer.
- D. At reasonable times and with reasonable advance notice, Buyer may enter and inspect any premises where Records are maintained or services are performed as Buyer deems necessary to accomplish the evaluations and verifications described above. Seller will cooperate with Buyer and provide reasonable assistance to Buyer to facilitate the evaluation and inspection, and Buyer will reasonably cooperate with Seller to mitigate disruption to Seller's operations. In the event that Records are maintained, services are performed, or Buyer's property is kept at premises that Seller does not control, Seller will secure rights of entry and inspection sufficient to allow Buyer to exercise its rights under this section.
- E. Buyer, its employees, or designees may exercise Buyer's rights of entrance and inspection under this section. Examples of persons or designees that Buyer may designate include Buyer's independent auditors and representatives of any state, local or foreign government entity, authority, agency, court, or commission and any applicable arbitrator having jurisdiction over Buyer or its activities related to a Purchase Order.
- F. For Records generated by electronic databases, spreadsheets, programs or the like, Buyer's rights to access and inspection under this section extend to the database, spreadsheet or program that generated the Record as well as the Record itself.
- G. Some Records required by this section may also fall within the definition of Deliverables or within Seller's existing intellectual capital that is incorporated into the Deliverables (as described in Section 36). Seller's obligations under this section do not diminish Seller's other obligations toward, or Buyer's property rights to, such Records. Seller's obligations to maintain Records under this section are extinguished to the extent that Seller properly satisfies another obligation in these Terms or any Purchase Order to deliver or to dispose of such Records.
- H. Buyer will pay its own expenses for any inspection of the Records or Seller's premises. However, if in any audit, Buyer determines that material issues exist that result, resulted or will result in an overcharge of one percent (1%) or more of the invoiced amount for the audited period, Seller will, within thirty (30) days of receipt of Buyer's notice and supporting documentation, reimburse Buyer for its out-of-pocket costs incurred in conducting the audit, in addition to any remedies that Buyer may have for the overcharge (such as a refund). This subsection is intended as a fair allocation of audit expenses, not as damages or a penalty.

## 22. CUSTOMS AND IMPORTS:

- A. CTPAT and other Customs Programs. Regarding any Imported Products, Seller shall provide information to Buyer, in the form, quality and detail reasonably required by Buyer, to enable Buyer to comply with applicable customs requirements, including the Customs-Trade Partnership Against Terrorism. If Seller participates in Customs Industry Partnership Programs, Carrier Initiative Program, Super Carrier Initiative Program, or Business Anti-Smuggling Coalition, Seller shall so notify Buyer.
- B. County of Origin. Imported Products must be clearly marked with the country of origin (for customs purposes) on each container or on the merchandise as applicable.
- C. Invoices for Imported Products. For Imported Products, invoices (both commercial and pro forma) must contain (written in English) sufficient information and detail (as described below) as reasonably required by Buyer to comply with applicable customs requirements. A pro forma invoice is one provided for customs valuation purposes only, is not expected to be directly paid, and should contain the statement: "Value for Customs purposes only." Pro forma and commercial invoices must have consistent valuations for goods.
- D. Classification of Imported Products. At time of purchase of Imported Products, Seller shall provide to Buyer a proposed tariff classification for same as determined from the Harmonized Tariff Schedule of the United States. Buyer will make the final determination of the appropriate tariff classification and provide it to Seller for inclusion in the invoices. Buyer may choose to classify an item of imported goods within a special U.S. customs duty preference program. Such programs may require additional documentation from the supplier of the goods. Seller shall provide reasonable assistance to Buyer, at no additional charge to Buyer, to enable Buyer to comply with such program.
- E. Importer Security Filing. Seller agrees to timely provide Buyer or Buyer's agent with all information necessary for Buyer to submit the importer security filing required by U.S. Customs and Border Protection for relevant shipments to the United States. This information includes, but is not limited to, manufacturer/supplier name, seller name and address, container stuffing location, consolidator name and address (if applicable), country of origin, and tariff classification. Seller's failure to provide the required information in a timely manner will preclude shipment of the goods to the United States and

constitutes a material breach of these Terms.

- F. **Importer of Record.** The parties agree that any materials or Deliverables shipped to the United States and/or the Commonwealth of Puerto Rico in conjunction with Seller's performance of its obligations under any Purchase Order will be imported by Seller and delivered to Seller's US facility before any shipment to Lilly's designated facility. Alternatively, if agreed by Buyer, Seller may "drop ship" Deliverables directly to Buyer's designated facility. In such instance, unless otherwise directed by Buyer, Seller shall be the "importer of record" and shall comply with its obligations as defined in 19 U.S.C. § 1484: including (i) payment of all import related fees or expenses, customs duties and fees, and fees for custom house brokerage; (ii) arrangement of all logistics for importation, including selection of customhouse brokers, carriers and freight forwarders; (iii) obtaining and filing all necessary import documentation, authorizations, and declarations; and (iv) compliance with all Applicable Laws related to the exportation of such materials from the country(ies) of origin. Seller shall retain title and risk of loss or other damage to materials until received by Buyer or its designee.
- G. **Buyer as consignee of Deliverables.** Whenever Buyer will be the Consignee of Deliverables through a contract of Affreightment and Seller is responsible for contracting the Carrier and for payment of the shipping costs, an Express Amendment to Contract of Affreightment will be entered into by the Carrier, the Seller- as Shipper, and the Buyer- as Consignee. The Terms and Conditions of said Agreement are included in the Supplier Portal at <http://supplierportal.lilly.com>.

23. **EXPORT INFORMATION:** For each Deliverable, Seller shall provide to Buyer a proposed ECCN. Buyer will make the final determination regarding the appropriate ECCN. Seller shall provide reasonable assistance to Buyer, at no additional charge to Buyer, to enable Buyer to determine the appropriate ECCN.

**Export Clearance Documentation.** If Seller is authorized by Buyer to file export clearance documentation (such as Electronic Export Information in the United States) with any governmental authority on Buyer's behalf, Seller shall: (i) accurately prepare and timely file such export clearance documentation as required by Applicable Law based on information provided by Buyer or by other parties involved in the transaction; (ii) retain such export clearance filings, whether electronically or otherwise, and documentation to support the information provided in the filing of such clearance documents for a period of at least five (5) years from the date of export; and (iii) upon request, provide Buyer in a mutually agreed format a copy of export clearance documents filed, electronically or otherwise, by Seller on behalf of Buyer. In the event that Seller is uncertain of or is missing specific information required for the filing of export clearance documentation, or has questions about any other legal or factual issue related to an export, Seller shall promptly inquire Buyer concerning such uncertainty, missing information, or question.

24. **TAXES. Payment of Taxes.** Each party will be responsible for its own taxes, including property taxes on property it owns or leases, income taxes on its business and, any other taxes incurred by such party in connection with its business and with performing its obligations hereunder. Buyer will be responsible for any transaction taxes properly collectible from Buyer under Applicable Law. Seller will be responsible for payment of any transaction taxes that are, under Applicable Law, properly borne by Seller; including, but not limited to all export and import taxes. The cost of all such taxes, charges, and duties shall, and are presumed to be, included in the price as set out in the Purchase Order, regardless of statements to the contrary. The calculation of taxes shall not include, and Buyer shall not pay, any taxes that are related to intra-corporate transfers or intermediate supplies of the services between Seller and its affiliates or between Seller's affiliates and related entities. Seller is made aware of sections 1062.03, 1062.08 and 1062.11 of the Puerto Rico Internal Revenue Code of 2011, as amended, and/or any predecessor or successor legislation, regulations, rules, and or administrative determinations or pronouncements regarding certain tax withholding requirements, which the Buyer must and will comply with.
25. **REIMBURSABLE TRAVEL AND EXPENSES:** In the event that travel and other out-of-pocket expenses are included in an approved Purchase Order, Buyer will reimburse Seller only for Seller's actual, reasonable, proper, out-of-pocket expenses, with no additional overhead, profit margin, administrative charges, handling fees, or other markup, directly attributable to the Purchase Order in accordance with Buyer's Travel Policy. Buyer shall provide Seller with a copy of Buyer's Travel Policy upon request.

**If this order involves software or information technology hardware or services,  
the following terms shall apply in addition to any applicable terms set out above:**

26. **LICENSE:** Seller hereby grants to Buyer, and Buyer hereby accepts, on the following terms and conditions, a nonexclusive and nontransferable, fully paid-up, irrevocable, world-wide, perpetual license (unless otherwise specified in the Purchase Order) to use the software for the number of users or copies of the software provided on the Purchase Order (the "License"). Unless specified otherwise on the Purchase Order, the license shall be an enterprise license for all applicable CPUs. All license limitations on use by Licensee (per user, type of user (named, concurrent, etc.), per CPU, per node, per server, etc.) shall be specifically stated in Purchase Order or shall be of no effect. Seller and Buyer expressly agree that any software shrink-wrap and click-through software licensing agreements shall not apply to any software purchased under the Purchase Order unless the Buyer expressly agrees in writing to such shrink-wrap or click-through software licensing agreement.

27. **USE OF SOFTWARE AND DOCUMENTATION:**

- A. Buyer may, as part of the License, make additional copies of the software and documentation to support the licensed software and documentation. Buyer may also make backup and archival copies of the software and documentation. Unless otherwise provided on the Purchase Order, Buyer shall have the right to use the software on or in connection with any CPU that it utilized to fulfill its data processing needs. Buyer reserves the right to use the software at one or more sites and to transfer such software to any location as it may determine.
- B. Buyer, its agents, contractors, assignees and employees shall have the right to unlimited use of the software and to operate and use the software at any time and for any period of time at the convenience of Buyer within the scope of the License. Buyer may use the software acquired hereunder for such purposes and functions as may be necessary or convenient for Buyer's business purposes, including processing third party data, and the use of such shall not be restricted to any particular purpose or function.
- C. The License granted herein or the Purchase Order shall commence upon execution of the Purchase Order.

**28. INFORMATION TECHNOLOGY REPRESENTATIONS AND WARRANTIES:** Regarding software or IT hardware ("IT Products"):

- A. Seller represents and warrants that at delivery and throughout the twelve (12) month period following receipt of the IT Products (or any update thereto) by Buyer (the "Warranty Period") the IT Products shall conform to and will operate in accordance with the Purchase Order and all documentation and specifications supplied by Seller to Buyer. Seller shall not be responsible to the extent failures are caused by: (a) Buyer's failure to use the IT Products in accordance with instructions included in the documentation provided to Buyer by Seller; or (b) the modification of the IT Products by any person other than Seller, its employees, agents, affiliates or subcontractors (unless such modification was authorized or approved by any of the foregoing).
- B. Seller warrants that all tapes, diskettes or other electronic media provided to Buyer hereunder will be free from defects during the Warranty Period. Seller shall, within five (5) days of notification by Buyer of such defect, replace any defective electronic media at no additional cost to Buyer.
- C. Seller represents and warrants that it shall at all times document the operation of the IT Products in a manner consistent with the best practices of the software development industry, and such documentation shall accurately reflect the operation of the IT Products and enable a person reasonably skilled in computer programming and in possession of the IT Products source code to use and maintain the IT Products fully and completely.
- D. Seller represents and warrants that any equipment delivered hereunder shall be delivered to Buyer with the full warranty granted by the original manufacturer of the equipment still effective. Notice regarding warranty claims raised by Buyer due to defects and/or non-conformities in the equipment or in the operation of the equipment shall be given only to Seller, and upon receipt of such a notice, Seller shall take the steps necessary to effect repair of the equipment.
- E. Seller represents and warrants that if maintenance services are elected by Buyer, the maintenance services agreement shall become effective upon installation of the IT Product. Buyer's payment obligations for maintenance services shall begin at the end of the Warranty Period of the IT Products, and shall renew annually unless otherwise terminated by Buyer, provided Seller notifies Buyer in writing thirty (30) days in advance of such renewal date. Notwithstanding the foregoing, Buyer's failure to install or utilize any improvements, enhancements or newly released versions of the IT Product shall have no effect on the Seller's provision of maintenance services. Seller warrants and represents that maintenance services for an IT Product shall be available from Seller for the greater of two (2) years from the Acceptance Date of the IT Product by Buyer or the current version plus the one (1) prior versions. Seller shall provide to Buyer as part of maintenance services, Updates and Upgrades to the IT Product at no additional cost to Buyer.
- F. Seller represents and warrants that the occurrence in or use by any IT Product supplied by Seller of any dates, including without limitation any date with a year specified as "99" or "00", regardless of other meanings attached to these values, and any date before, on or after January 1, 2000 ("Millennial Dates") will not adversely affect its performance with respect to date-dependent data, computations, output, or other functions (including, without limitation, calculating, comparing, and sequencing) and that the IT Product will create, store, process and output information related to or including Millennial Dates without errors or omissions and at no additional cost to Buyer. At Buyer's request, Seller will provide sufficient evidence to demonstrate the adequate testing of the IT Product to meet the foregoing requirements.
- G. Seller warrants: (i) unless authorized in writing by Buyer; or (ii) necessary to perform valid duties under the IT Products Documentation, any IT Products provided to Buyer by Seller for use by Seller or Buyer shall: (a) contain no hidden files; (b) not replicate, transmit or activate itself without control of a person operating computing equipment on which it resides; (c) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides; and (d) contain no key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed

under this Purchase Order, based on residency on a specific hardware configuration, frequency of duration of use, or other limiting criteria ("Illicit Code"). Provided and to the extent any program has any of the foregoing attributes, and notwithstanding anything elsewhere in this Purchase Order to the contrary, Seller shall be in default of this Purchase Order, and no cure period shall apply. In addition to any other remedies available to it under this Purchase Order, Buyer reserves the right to pursue any civil and/or criminal penalties available to it against the Seller.

H. Seller warrants that it shall not use or incorporate Buyer's confidential information, data, or intellectual property in Seller's software or products.

## 29. LICENSE OR MAINTENANCE TERMINATION

- A. In the event of a material breach by Buyer of any of its obligations under the applicable Purchase Order, Seller may terminate the licenses subject to such material breach, upon sixty (60) days advance written notice to Buyer, provided that Buyer has not cured the breach within such notice period. This right to terminate shall not apply to Buyer's breach of any obligation relating to any maintenance services. Sixty (60) days after termination of this Purchase Order pursuant to this Section 29(A), Buyer shall discontinue further use of terminated licenses. Buyer shall, upon written request by Seller, provide Seller with written certification indicating the destruction of such copies of the specific software or hardware **in** Buyer's possession or under its custody or control.
- B. In the event of a breach by Seller of any of its representations, warranties or obligations under the applicable Purchase Order, these Terms or the maintenance agreement, Buyer may terminate either the License, as well as any associated maintenance services, or the maintenance services (if any) alone, upon thirty (30) days notice to Seller, provided that Seller has not cured the breach within such notice period.
- i. If Buyer terminates the License and the maintenance services based on such breach, Seller shall refund any and all amounts paid hereunder by Buyer for the License and shall refund on a pro rata basis any and all amounts paid hereunder by Buyer for the maintenance services. Within sixty (60) days after termination of the License, as applicable, pursuant to this Section 29(B), Buyer shall discontinue further use of such License. Buyer shall, upon written request by Seller, provide Seller with written certification indicating the destruction of such copies of the software in Buyer's possession or under its custody or control.
- ii. If Buyer terminates only the maintenance services, Seller shall refund on a pro rata basis any and all amounts paid hereunder by Buyer for maintenance services. Buyer shall retain all of its rights under the license.
- C. The other provisions of the Purchase Order and these Terms and Conditions shall survive termination of any License.
30. **UCITA:** Seller and Buyer hereby acknowledge and agree that any provisions of any state law adopting exactly or in modified form the Uniform Computer Information Transactions Act ("UCITA") shall not be applicable to this Purchase Order. Furthermore, both Seller and Buyer waive any and all rights arising from any such law.
31. **DATA:** Buyer owns all rights to any data or results generated as a result of the use of the IT Product and may use, execute, display, copy, manipulate and create derivatives of any data or results generated as a result of the use of the IT Product.

**If this order involves performance by Seller of installation, maintenance, or other services, the following terms shall apply in addition to any applicable terms set out above:**

32. **LABOR FURNISHED BY SELLER:** Seller acknowledges and agrees that in performing services, Seller will be acting solely as an independent contractor, and neither Seller nor any of its employees, associated consultants, subcontractors or employees of said consultants or subcontractors shall be deemed to be employees of Buyer for any purpose. Except as allowed by the "Subcontractors" provisions below, all persons employed by Seller in the performance of the services are employees of Seller. Seller shall carry such employees on the payrolls of Seller and make all required payments to state, federal and local authorities covering payroll taxes and any other payments relating to such persons' employment.
33. **SUBCONTRACTORS:** Seller shall not use any subcontractor without the prior written approval of Buyer. Subject to the foregoing, if Seller should use a subcontractor, Seller shall be fully responsible for services performed by the subcontractor to the same extent as if the services were performed directly by Seller and ensure that such subcontractors comply with all of the requirements of these Terms and the applicable Purchase Order. Seller shall not subcontract any performance hereunder to any party that is on the Specialty Designated Nationals and Blocked Persons List available at <http://www.ustreas.gov/offices/enforcement/ofac/> maintained by the U.S. Treasury Department's Office of Foreign Assets Control or to any party who is located in or has its principal place of business in a country subject to economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Asset Controls (as of 1 November 2011, Iran, Sudan, Syria and Cuba). Seller has communicated all necessary terms and obligations to subcontractors, if any, who will be performing work hereunder so that the subcontractor may appropriately carry out its obligations hereunder.

34. **VERIFICATION AND ACCEPTANCE OF SERVICES:** Seller shall document each maintenance or service call with a work order, which shall be signed by Buyer's representative and submitted with Seller's invoice.
35. **LIENS:** Seller agrees and warrants that no mechanics' liens shall attach to Buyer's property by virtue of Seller's default in paying its employees, suppliers or subcontractors.
36. **OWNERSHIP OF DELIVERABLES:** All Deliverables shall be the property of Buyer with Buyer owning the copyright and all other proprietary rights to the Deliverables. All originals and copies of the Deliverables shall be delivered to Buyer upon the earliest of the completion of the services, the termination or suspension of the services, or the written request of Buyer. Any Work Product that constitutes "work made for hire" (within the meaning of United States copyright law) will be treated as such. Seller agrees to execute, without further consideration, assignments or other documents that may be necessary to establish Buyer's ownership of the Deliverables. Seller shall cooperate with Buyer or its designees and execute documents of assignment, declarations, and other documents which may be prepared by Buyer, and take other necessary actions as reasonably directed by Buyer, to effect the foregoing or to perfect or enforce any proprietary rights resulting from or related to these Terms or a Purchase Order. Seller hereby assigns and conveys to Buyer the entire right, title, and interest in and to such work including work created prior to the date of the Purchase Order, including the copyright therein and any copyright renewal thereof. Such cooperation and execution shall be performed without additional compensation to Seller; provided, however, Buyer shall reimburse Seller for reasonable out-of-pocket expenses incurred at the specific request of Buyer. Seller shall cause each of Seller's employees charged with performance of services for Buyer or granted access to confidential information to execute an agreement recognizing Buyer's ownership rights and concurring with the obligations of Seller as set forth herein. Seller hereby grants Buyer a non-exclusive, perpetual license to use, copy, and distribute all Seller property provided to Buyer as part of the Deliverables hereunder.

Despite the preceding clauses, Seller retains all Intellectual Property Rights (other than the following license) to any portion of existing intellectual capital that is incorporated into any Deliverable. Seller grants to Buyer and its affiliates a non-exclusive, world-wide, royalty-free license to such Existing Intellectual Capital sufficient to allow full lawful use of the Deliverables that incorporate it, including the use of the Deliverables by Buyer's agents and independent contractors solely to furnish services to Buyer or its affiliates.

Despite the preceding clauses, if the Deliverables incorporate any Intellectual Property owned or controlled by a third party, then Seller hereby grants to Buyer and its affiliates, or shall acquire on behalf of Buyer and its affiliates, a perpetual, royalty-free, world-wide, non-exclusive license or sublicense sufficient to allow full lawful use of the Deliverables that incorporate it, including the use of the Deliverables by Buyer's agents and independent contractors solely to furnish services to Buyer or its affiliates.

37. **TERMINATION:** Despite any contrary terms contained above, Buyer shall have the right at its absolute discretion, five (5) days following Buyer's written notice to Seller, to cancel, in whole or part, Buyer's order or any contract resulting from its acceptance. In the event of such cancellation, Buyer shall have no obligation to Seller except the obligation to pay all costs actually and reasonably incurred by Seller prior to the date of termination plus a normally accepted trade allowance on such costs as full payment of Seller's overhead and profit, provided, however, that in no event shall Buyer be obligated to pay an amount in excess of the amount set out in Buyer's order for the services; advance payments will be refunded accordingly. If Buyer's order or any resulting contract is canceled as a result of the default of Seller, Buyer shall have no obligation to reimburse Seller for any services performed by Seller pursuant to Buyer's order or any resulting contract.

### **Instructions:**

#### **MARKINGS:**

- Show Buyer's Order number on all packages.
- Each Container must also be plainly identified by:
  - Name of Manufacturer
  - Buyer's Product Title
  - Net Weight
  - Parcel Number of Total Parcels Shipped
  - Country of Origin Marking

#### **ADDITIONAL INSTRUCTIONS FOR SHIPMENTS OF DRUGS, CHEMICALS, AND PACKAGING MATERIALS:**

- Each container must also be plainly identified with the Manufacturer's Control Number, Manufacturing Location, Buyer's Item Code, Lot or Batch Number.
- Keep number of lots to a minimum.
- Comply with ISPM 15 regulations for packaging materials and markings as applicable

## **ADDITIONAL INSTRUCTIONS FOR PRODUCT RECALLS OR TECHNICAL BULLETINS:**

Mail all product recalls using United States Postal Service Certified Mail using the following address format:

Eli Lilly and Company  
Re: Supplier Product Recall  
1 Lilly Corporate Center  
Indianapolis, IN 46285

Mail all Technical bulletins using United States Postal Service Certified Mail using the following address format:

Eli Lilly and Company  
Re: Supplier Technical Bulletin  
1 Lilly Corporate Center  
Indianapolis, IN 46285

**PACKING SLIPS:** A packing slip itemizing contents must be placed on the outside of each shipment in a protective envelope. Buyer's purchase order line number must appear with each item on Seller's packing slip. On shipments of drugs and chemicals, also show number of containers in each batch.

**SHIPPING ADDRESS AND DOCUMENTATION:** Domestic and International Shipments. Inbound Routing Instructions: Prior to shipment, Seller shall meet Lilly requirements regarding the Lilly Inbound Routing Instructions as provided on the Internet at <http://supplierportal.lilly.com> or otherwise made available to Seller.

### **INVOICES:**

A valid invoice must include Buyer's purchase order number, invoice number, invoice date, description, price and quantity of goods/services provided, net weights, transportation terms, and total amount due. Buyer's purchase order line number must appear with each item on Seller's invoice. Improper invoices may be returned for correction without loss of discount. In case of doubt concerning quality or where rejections occur, payment may be deferred by Buyer without loss of discount. Due dates and cash discounts will be computed from the date the invoice is received in Accounts Payable.

Buyer's purchase order currency must match invoice currency in order to be paid by Lilly Accounts Payable. Please refer to additional instructions regarding invoices in the Accounts Payable section on the Internet at <http://supplierportal.lilly.com>.

Vendors submitting invoices via EDI or web enabled EDI process should not submit duplicate paper invoices for this purpose. Further instructions can be obtained in the Lilly supplier portal or calling the Lilly Answer Center 877-511-1529.

For Imported Products, invoices (both commercial and pro forma) must contain (written in English):

- Name and complete address of seller/ manufacturer;
- Accurate and detailed description of the goods (adequate to permit accurate customs classification and clearance);
- The name and contact information of the person receiving the goods at Lilly;
- Quantity, unit of measure and purchase price of each item; tariff classification code from the Harmonized Tariff Schedule of the U.S.; clearly stated terms of sale; Chemical Abstract Service Number (CAS#) and International Non-Proprietary Name (INN), if available, for chemical compounds;
- Currency of purchase;
- Country of origin of goods;
- Separately itemized freight and insurance if to be paid by Buyer and included in the invoice;
- The port of entry to which the Imported Products are shipped; and
- Chemical compounds that are proprietary in nature shall have sufficient description to enable proper classification (e.g. Quinoline (with no other fused ring structure) derivatives including ester and halogens).

### **Invoices including Value Added Tax ("VAT"):**

- Must include the Seller's VAT registration number.
- All VAT charges submitted to Lilly will be shown as a separate line item on all Supplier invoices.
- The invoices which include VAT charges must be delivered to Lilly in original paper invoice for payment or via the buyer's web invoicing system to be considered.
- For instructions regarding Standard of Documentation Required for European VAT Reclaim see: <http://supplierportal.lilly.com>.

**Suppliers that have been pre-approved to mail invoices to Accounts Payable should use the address listed in the Purchase Order.**

**Note:** Invoices submitted on paper that have not been pre-approved may be assessed a \$50 processing fee. Suppliers cannot assess this fee or any other invoice processing fees on their invoice.

Sales and Use Tax (IVU) segregation requirements, as applicable.

**BILLS OF LADING:**

Show Buyer's order number, net weight, gross weight, and/or tare weight where applicable, as well as the number of containers; if drugs or chemicals also show number of containers in each batch. If transportation is F.O.B. origin and transportation charges are for Buyer's account, ship at released value rates that will produce lowest transportation cost via Buyer's designated carrier. When Buyer's carrier is not used and that results in higher transportation charges for Buyer, the excess charges will be deducted from Seller's invoice prior to payment.