

**ELI LILLY CANADA INC.**

**TERMS AND CONDITION**  
**Updated On April 16, 2018**

**1. SCOPE AND PRECEDENCE**

The following terms and conditions (the "Terms") govern this Purchase Order (the "P.O.") issued by Eli Lilly Canada Inc. ("Lilly") whether it is received by you (the "Supplier") by mail, telephone, or by any electronic means from the date of Supplier's receipt of these Terms until such time as the Supplier receives a revised edition of these Terms or until the Supplier receives notification that these Terms were edited and posted on <http://supplierportal.lilly.com>. Supplier agrees to sell and deliver any Deliverables, as defined in Section 3.D, that are subject to this P.O. for Lilly.

Additional or different terms, conditions, or instructions applicable to a particular order may be specified in the body of the P.O., or in an exhibit thereto, and, in the event of a conflict, shall take precedence over these Terms.

Despite anything to the contrary contained herein, if Supplier and Lilly 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 Supplier.

**2. ACCEPTANCE**

Offer and acceptance of any P.O. issued by Lilly is expressly limited to these Terms and the applicable P.O. Any terms and conditions contained in a proposal, quotation or invoice of Supplier shall not constitute a part of the contract of sale resulting from Supplier's acceptance of Lilly's order unless such terms and conditions are specifically incorporated or noted in the P.O. as provided in Section 1 above.

Any purported acceptance containing additional or different terms shall be deemed to be an acceptance of these Terms, despite such additional or different terms.

Supplier's shipment of goods or commencement of services in response to Lilly's order shall constitute acceptance of these Terms and any additional or different terms contained in any acknowledgment or invoice form submitted by Supplier shall not constitute any part of the contract of sale resulting from Supplier's acceptance.

**3. DEFINED TERMS**

- A. "Adverse Event" means any untoward medical occurrence in a patient or clinical investigation subject administered a pharmaceutical product and which does not necessarily have to have a causal relationship with this treatment.
- B. "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 P.O. or the performance of obligations or other activities related to a P.O.
- C. "Lilly's Confidential Information" means all information that Lilly deems confidential or proprietary, including information deemed confidential by virtue of Lilly's obligations to another party and confidential information developed by Supplier in connection with any P.O. Lilly'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 Lilly's business; information subject to a right of privacy; and information Lilly maintains under a system of protection against unauthorized access.
- D. "Deliverables" means: (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 Lilly's order that Supplier is obligated to furnish to Lilly; and (ii) for any order of services, Deliverables includes all services provided to Lilly, together with all articles, materials, goods, information, works of authorship, trade-marks, 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 Supplier, alone or with others, related to services rendered for Lilly under the P.O. or derived from information or materials Supplier has received from Lilly.
- E. "Existing Intellectual Capital" means any Intellectual Property that Supplier invented, created, developed, or acquired outside the course of its performance under the P.O. and without use of Lilly's information or materials.
- F. "Governmental Authority" means (i) any national, federal, state, provincial or local government entity, authority, agency, instrumentality, court, tribunal, regulatory commission or other body, either foreign or domestic, whether legislative, judicial, administrative or executive

and (ii) any arbitrator to whom a dispute has been presented under government rule or by agreement of the parties with an interest in such dispute.

- G. "Intellectual Property" means all inventions, original expressions of ideas embodied in a tangible form, copyrights, trade-marks, trade secrets, information, know-how, and the like that are afforded (or may be afforded upon action by a governmental authority, such as the Canadian Intellectual Property Office) Intellectual Property Rights.
- H. "Intellectual Property Rights" means the property rights or quasi-property rights afforded by patents, copyrights, trade-marks, or trade secrets; publicity rights, privacy rights, and moral rights (such as the rights of attribution and integrity).
- I. "Product Complaint" for drug products means any reports regarding: a) apparent changes in the physical or chemical properties (e.g. color, odor, taste, particles), (b) the packaging or labeling integrity of a product (e.g. identity, fill volume, missing label/information), (c) design issue or patient alleged dissatisfaction (e.g. capsule size, color of product). For medical devices and drug/device combination products means any written, electronic or oral communication that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness or performance of a medical device or accessory to any medical device after its release for distribution.
- J. "Records" means any information of any type (including text, data, code, images, sound, source codes, computer programs, software, databases, or the like) that is used, created, or obtained in the performance of any P.O., inscribed on tangible medium or stored in an electronic or other medium in a perceivable form.

#### **4. ELECTRONIC TRANSACTIONS**

Supplier acknowledges and agrees that the Lilly Supplier eConnect Portal I (eConnect) shall be the only acceptable methods of purchase order dissemination and that invoicing in connection with purchase order shall be done via the eConnect.

#### **5. PRICE AND PAYMENT TERMS**

Each P.O. shall be filled at the price specified on the P.O. Unless otherwise stated herein, this P.O. price includes costs, packing, crating, marking, transportation, bracing and damage, fees or charges of any kind incurred by Supplier in relation to this P.O. If no price is specified, the P.O. shall be filled at the lowest of (a) the price last quoted by Supplier; (b) the price last paid by Lilly to Supplier; or (c) the prevailing market price, unless a higher price is approved in writing by an authorized representative of Lilly's procurement department. Lilly issues payments on a weekly basis. All invoices which have reached their payment term maturity will be accumulated and paid in the next weekly payment. Lilly's standard payment terms are net sixty (60) days after Lilly's Accounts Payable Department receives an invoice that complies with the requirements of these Terms, except that Lilly may withhold payment of any amount that it may reasonably dispute in good faith until such dispute is resolved. Upon launch of the Lilly Supplier eConnect Portal, supplier may offer a discount on individual invoices at the time of invoice entry to the Direct Commerce system; those discounted invoices will be paid on the actual due date. Due dates and cash discounts are computed from the date an accurate invoice is received in Buyer's Accounts Payable Department. Due dates and cash discounts are computed from the date an accurate invoice is received in Lilly's Accounts Payable Department. Lilly may return improper invoices for correction without loss of discount. In case of disputes, doubt concerning quality, or where rejections occur, Lilly may defer payment without penalty or loss of discount.

#### **6. MODIFICATION**

No modification to these Terms is valid unless approved in writing by an authorized representative of Lilly's procurement department.

#### **7. INSPECTION**

All Deliverables furnished pursuant to a P.O. shall be subject to Lilly's inspection and approval, including acceptance testing by Lilly to verify that the Deliverables satisfy all requirements conveyed by Lilly to Supplier relating to the Deliverables, including any specifications or documentation. If Lilly discovers a non-conformity within ninety (90) days following delivery of the Deliverables and Lilly notifies Supplier of the non-conformity, notwithstanding prior receipt and payment thereof, Supplier shall, at Lilly's sole discretion, either: (i) correct the non-conformity at no additional charge in a timely, professional manner, or (ii) refund monies paid by Lilly for the non-conforming Deliverables or services attributable to or affected by the non-conforming Deliverables, in which case Lilly shall return such non-conforming Deliverables to Supplier at Supplier's expense. Nothing in this Section shall be construed to limit or otherwise affect Lilly's indemnification rights, warranty rights or any other common law or statutory remedies.

#### **8. PACKAGING, DELIVERY, TERMINATION**

Supplier shall box, crate or package the Deliverables as required for shipment in compliance with Applicable Laws, in accordance with good commercial and industry practice, and without charge to Lilly unless otherwise specified on the applicable P.O. Lilly shall have the right to terminate all or any portion of any P.O. without liability if delivery is not made within the time stated in the P.O.

#### **9. GENERAL REPRESENTATIONS AND WARRANTIES:** Supplier represents and warrants:

- A. That all Deliverables supplied under the P.O. are free from defects, of merchantable quality, and in accordance with Lilly's specifications.
- B. The Deliverables do not and will not infringe the Intellectual Property Rights of any other party, and any use thereof by Lilly consistent with these Terms does not infringe such rights. This representation and warranty does not apply to infringement arising solely from: (i) anything Lilly provides which is incorporated into the Deliverable or Supplier's compliance with any designs, specifications, or instructions provided by Lilly or a third party at Lilly's direction; (ii) Lilly's modification of the Deliverable independent of Supplier; or (iii) the combination, operation or use of the Deliverable with any product, data, apparatus, or business method that Supplier did not provide and could not reasonably anticipate. In addition, with respect to services, all Deliverables produced under the P.O. shall be of original development and all Supplier property shall be of original development or licensable by Supplier.
- C. That it has enforceable written agreements with all of its employees and subcontractors assigning to Supplier ownership of all Intellectual Property Rights created in the course of their employment or engagement, and obligating such employees and subcontractors 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. Supplier shall take appropriate steps to adequately protect Lilly's data in its possession or information derived therefrom, including, without limitation, firewall protection, backup processes and procedures, and disaster recovery plans.
- D. That in the performance of its obligations under this P.O., Supplier shall comply, and shall require (by written agreement) its subcontractors, representatives and agents to comply, with all Applicable Laws, applicable Lilly policies and professional or good practice standards or codes applicable to the nature of the Deliverables provided, including but not limited to:
  - i. The Anti-Bribery and Anti-Corruption Commitments for Suppliers found below in Section 24 of this P.O.
  - ii. Applicable provisions of federal and provincial laws relating to privacy and personal information and all requirements of Lilly's Vendor Privacy and Security Standard as revised by Lilly from time to time and published at <http://supplierportal.lilly.com> or otherwise made available to Supplier. If applicable, Supplier shall promptly, upon acceptance of the P.O., complete and provide all information that may be requested of Supplier as part of the Vendor Privacy and Security Standard, including completion of Exhibit A to the Vendor Privacy and Security Standard.
  - iii. That all Deliverables supplied under the P.O. shall be shipped in full compliance with packaging, labeling, shipping, and documentation requirements, including requirements concerning hazardous materials, substances, and waste of all provincial, local, national, or international governmental agencies or authorities regulating any segments or modes of transportation employed to effect delivery of such articles to Lilly, and all hazardous materials, substances, and waste shall be packaged, marked, labeled and shipped in accordance with all Applicable Laws.
  - iv. Applicable provisions of federal and provincial laws relating to anti-spam, such as *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act (Canada)*, commonly called "CASL."
- E. Supplier acknowledges that it maintains its own financial authorization policies on ensuring requisite corporate authority has been given for specific transactions and agrees to maintain adequate internal controls. Supplier therefore agrees 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 Supplier. Supplier further agrees 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.
- F. Supplier understands and acknowledges that its requirements under this Section are in addition to all of Supplier's other obligations hereunder.
- G. Supplier acknowledges that, at any time, and without notice to Supplier, Lilly may disclose information relating to a possible violation of law, or of the Terms of this P.O., to a Governmental Authority.
- H. Unless Lilly directs otherwise, Supplier shall procure at its own expense all permits, licenses and other approvals required for the performance of the Services and shall arrange for all required inspections. Unless Lilly directs otherwise, Supplier further warrants that all materials utilized in the Services will be new.
- I. Supplier will perform all Services under this P.O. in a professional best effort basis and in a diligent, worker-like, and expeditious manner.

## 10. SAFETY & SECURITY

Supplier will comply with, and will cause its representatives, affiliates and subcontractors to comply with, all policies and procedures that Lilly establishes to enhance the safety or security of Lilly's facilities or of persons at or near Lilly's facilities, including measures restricting access such as the use of identification badges and passwords. Supplier will promptly notify Lilly of any violation of such policies and procedures.

Supplier will comply with, and will cause its representatives, affiliates and subcontractors to comply with, the instructions of any Lilly 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. Lilly retains its right to restrict or refuse any person (including Supplier and its affiliates, representatives and subcontractors) access to Lilly's facilities, computers, or other information systems. Without limiting the generality of the foregoing, Lilly may restrict or refuse access to any individual who does not do any of the following to Lilly's satisfaction: (i) pass a background check; or (ii) accept or acknowledge in writing a personal obligation to protect Lilly's Confidential Information. Such restriction or refusal excuses Supplier's performance only if it renders Supplier's performance impracticable, does not comport with Lilly's written procedures, and is manifestly unreasonable.

## **11. REPORTING ADVERSE EVENTS AND PRODUCT COMPLAINTS**

In performing services or delivering goods, Supplier and its affiliates, representatives or subcontractors may acquire information regarding Adverse Events or Product Complaints related to Lilly's products. If so, Supplier will report such information to Lilly by contacting Lilly Canada Customer Response Centre immediately, and in no event later than 24 hours, at 1-888-LILLY-RC or 1-888-545-5972 or in accordance with any relevant written instructions that Lilly makes available to the Supplier. This reporting obligation does not apply to information that Supplier or its affiliates, representatives or subcontractors received directly from Lilly or from a clinical investigator conducting a clinical trial on behalf of Lilly.

## **12. NONDISCLOSURE**

Supplier shall not disclose any information concerning this P.O., including its existence, without the prior written consent of Lilly. Supplier shall not use the name of Lilly, any employee of Lilly or any product or service of Lilly in any press release, advertising or materials distributed to prospective or existing customers or any other public disclosure, except with Lilly's prior written consent or as required by Applicable Law. If required by Applicable Law, Supplier shall provide copies of the disclosure for the prior review and comment by Lilly's corporate communications (public relations) department no less than ten (10) days prior to disclosure. In no event, without the prior written consent of Lilly, will Supplier: (i) represent, directly or indirectly, that any Deliverable provided by Supplier has been approved, recommended, certified or endorsed by Lilly; or (ii) use Lilly's logos or other trade-marks.

## **13. CONFIDENTIALITY**

Supplier will neither: (i) disclose Lilly's Confidential Information except as authorized below or by Lilly in writing; nor (ii) use Lilly's Confidential Information for any purpose other than meeting Supplier's obligations under any P.O. Supplier may disclose Lilly's Confidential Information:

- A. To its representatives, affiliates and subcontractors who need to know the information for the purpose of meeting Supplier's obligations under a P.O.; provided that such representatives, affiliates and subcontractors must have contractual obligations that prohibit any disclosure and use of Lilly's Confidential Information in accordance with these Terms. Supplier is responsible to Lilly for any unauthorized disclosure or use of Lilly's Confidential Information by Supplier's representatives, affiliates or subcontractors.
- B. To the extent compelled by Applicable Law; provided, however, that Supplier will give Lilly reasonable advance notice of the disclosure to the extent such advance notice is permitted by Applicable Law.
- C. In communications to its lawyers or accountants who have a professional obligation to maintain such information in confidence. Supplier is responsible to Lilly for disclosure or use by any such persons of Lilly's Confidential Information not authorized by Lilly.

Promptly upon Lilly's request, Supplier will either return or destroy all Records of Lilly's Confidential Information in Supplier'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.

Nothing herein shall prevent the communication to others of any proprietary or confidential information which Supplier can show was known to Supplier or its affiliates, representatives or subcontractors prior to its receipt from Lilly hereunder, was lawfully obtained by Supplier or its affiliates, representatives or subcontractors other than by disclosure from Lilly, or became public knowledge through no fault of Supplier.

At any time, and without notice to Supplier, Lilly may disclose information relating to a possible violation of law, or the existence of these Terms, including the compensation provisions, to a client, to a government or government agency, and to anyone determined by Lilly to have a legitimate need to know.

## **14. INDEMNIFICATION**

Supplier will defend, indemnify, and hold harmless Lilly and its Related Parties (defined below) against and from all liabilities, damages, losses, claims, proceedings, judgments, investigations, settlements, costs and expenses (including reasonable legal fees and disbursements) ("Losses") arising out of any suits, claims, actions or demands ("Claims") related to disputes between the parties or any Claims brought by a third party against Lilly or its Related Parties, arising out of or in connection with any breach of Sections 8.A through 8.D of this P.O. by Supplier or its Related Parties.

Each of Supplier and Lilly will defend, indemnify and hold harmless the other (and the other's Related Parties) against and from all Losses

arising out of any Claims related to disputes between the parties, or any Claims brought by a third party against the other party or its Related Parties, arising out of or in connection with any breach by it of any other representation, warranty, or obligation under this P.O., or any negligence or willful misconduct by it (or by its Related Parties) in connection with its performance under this P.O.

For the purpose of this Section 13, "Related Parties" refers to the subsidiaries, parents, affiliated companies, officers, directors, employees, independent contractors, representatives, shareholders, trustees and agents of the applicable party.

In addition to the foregoing, in the event Supplier breaches any warranty of non-infringement of Intellectual Property Rights for any Deliverable, Lilly may elect one of the following remedies, in addition to recovering any other damages or indemnification under these Terms:

- A. Require Supplier to choose between furnishing either: a non-infringing substitute article or performance reasonably acceptable to Lilly, or obtaining for Lilly's benefit a license or assignment of rights sufficient to afford Lilly the full benefits of the Deliverable, both alternatives being at Supplier's expense.
- B. Recover (or withhold) from Supplier the portion of Supplier'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 Lilly of breach of warranty of non-infringement, relative to sixty (60) months after the date of delivery of the Deliverable(s).

## **15. LIMITATION OF LIABILITY**

Lilly's liability to Supplier for negligence, breach of this P.O. or any other Claim shall not exceed the total amount owed to Supplier by Lilly under this P.O. at the time of breach. In no event shall Lilly be responsible for any indirect, special, consequential or incidental Claim.

## **16. LIABILITY INSURANCE**

Supplier must carry and maintain adequate insurance to cover both Supplier and Lilly for: (i) professional liability; (ii) worker's compensation coverage; (iii) Commercial General Liability Insurance to include contractual and products/completed operations coverage; and (iv) automobile bodily and property damage liability. All such insurance shall be (i) sufficient to meet Supplier's obligations under this P.O.; and (ii) primary and not contributory with regard to any other available insurance to Lilly. Supplier shall promptly file all claims made under the P.O. with its insurance carriers.

## **17. ASSIGNMENT**

Supplier shall not in any manner delegate its duty of performance or assign its rights or obligations under this P.O. without Lilly's prior written consent, except that accounts receivables may be assigned in accordance with Applicable Law. Any attempted assignment in violation of the preceding sentence shall be of no force or effect.

## **18. GOVERNING LAW**

The P.O. shall be governed by and construed according to the laws of the Province of Ontario and the laws of Canada applicable therein, excluding its rules on conflict of law. Both Supplier and Lilly irrevocably agree to the non-exclusive jurisdiction of the courts of Ontario sitting in Toronto for the purposes of any disputes that may arise hereunder.

## **19. RECORDS, AUDITS, AND INSPECTIONS:**

- A. At its own expense, Supplier will create and maintain all Records: (i) required by the Terms of this P.O., or under any Applicable Law that relates to Supplier's performance under a P.O.; (ii) sufficient to demonstrate that any and all amounts invoiced to Lilly under a P.O. are accurate and proper in both kind and amount; (iii) sufficient to demonstrate the accuracy of any representations or reports submitted to Lilly in connection with any P.O.; and (iv) sufficient to enable Lilly to comply with Applicable Laws and other legal obligations, to the extent that Supplier has or reasonably should have knowledge of those Applicable Laws and other legal obligations.
- B. Supplier will maintain all of the Records listed above for the longest of the following retention periods: (i) any period prescribed by Applicable Law or stated expressly in a P.O. or (ii) the term of the P.O. and for a period of five (5) years thereafter.
- C. At no additional cost to Lilly, Supplier will allow Lilly to inspect (and, upon request, Supplier will furnish copies of) Records that Supplier is required to create or maintain pursuant to this Section for the purposes of evaluating and verifying: (i) compliance with these Terms and any P.O.; (ii) compliance with Applicable Law; (iii) the accuracy and propriety of any invoice submitted to Lilly; (iv) compliance with any health, safety and environmental standards based on the Pharmaceutical Industry Principles for Responsible Supply Chain Management; and (v) the accuracy of any representations or reports submitted to Lilly. Supplier agrees to cooperate in good faith to investigate the extent of any potential violations of law in connection with the P.O.
- D. At reasonable times and with reasonable advance notice and subject to compliance with all applicable confidentiality provisions herein, Lilly may enter and inspect any premises where Records are maintained or services are performed as Lilly deems necessary to accomplish the evaluations and verifications described above. Supplier will cooperate with Lilly and provide reasonable assistance to Lilly, including answering questionnaires and narrowly tailored audit inquiries, to facilitate the evaluation and inspection, and Lilly will reasonably

cooperate with Supplier to mitigate disruption to Supplier's operations. In the event that Records are maintained, services are performed, or Lilly's property is kept at premises that Supplier does not control, Supplier will secure rights of entry and inspection sufficient to allow Lilly to exercise its rights under this section.

- E. Lilly, its employees, or designees may exercise Lilly's rights of entrance and inspection under this section. Employees and designees shall be held to the same standards of confidentiality provided in these Terms through the independent contractual obligations he/she has with Lilly. Examples of persons or designees that Lilly may designate include Lilly's independent auditors and representatives of any federal, provincial, local or foreign government entity, authority, agency, court, or commission and any applicable arbitrator having jurisdiction over Lilly or its activities related to a P.O.
- F. For Records generated by electronic databases, spreadsheets, programs or the like, Lilly'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 Supplier's Existing Intellectual Capital that is incorporated into the Deliverable. Supplier's obligations under this section do not diminish Supplier's other obligations toward, or Lilly's property rights to, such Records. Supplier's obligations to maintain Records under this section are extinguished to the extent that Supplier properly satisfies another obligation in these Terms or any P.O. to deliver or to dispose of such Records.
- H. Lilly will pay its own expenses for any inspection of the Records or Supplier's premises. However, if in any audit, Lilly 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, Supplier will, within thirty (30) days of receipt of Lilly's notice and supporting documentation, reimburse Lilly for its out-of-pocket costs incurred in conducting the audit, in addition to any remedies that Lilly 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.
- I. Supplier shall provide Lilly with immediate notice of any governmental or regulatory review, audit or inspection of its facility, processes, or products that might relate to the subject matter of this P.O. Supplier shall provide Lilly with the results of any such review, audit or inspection. Lilly shall be given the opportunity to provide assistance to Supplier in responding to any such review, audit or inspection relating to the Deliverables.

## **20. TAXES**

Any prices stated on the face hereof shall be exclusive of any federal and/or any other provincial sales or services or similar 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. Lilly will be responsible for any transaction taxes properly collectible from Lilly under Applicable Law. Supplier will be responsible for payment of any transaction taxes that are, under Applicable Law, properly borne by Supplier; including, but not limited to all export and import taxes. The calculation of taxes shall not include, and Lilly shall not pay, any taxes that are related to intra-corporate transfers or intermediate supplies of the services between Supplier and its affiliates or between Supplier's affiliates and related entities.

## **21. REIMBURSABLE TRAVEL AND EXPENSES**

In the event that travel and other out-of-pocket expenses are included in an approved P.O., Lilly will reimburse Supplier only for Supplier'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 P.O. in accordance with Lilly's Travel Policy. Lilly shall provide Supplier with a copy of Lilly's Travel Policy upon request.

## **22. SCHEDULES**

With respect to Lilly's purchase of software or information technology hardware or services (collectively, "IT Products"), the provisions in Schedule A shall apply to the P.O., in addition to the terms and conditions set out above.

With respect to Lilly's purchase of installation, maintenance or other services (collectively, "Services") (other than the IT Products covered in Schedule A), the provisions in Schedule B shall apply to the P.O., in addition to the terms and conditions set out above.

## **23. TERMINATION**

Despite any contrary terms contained above, Lilly shall have the right to terminate this P.O. or cancel all or any part of the Deliverables, for any reason including convenience, by giving Supplier five (5) days prior written notice of its intent to so terminate or cancel. Lilly shall have the right to terminate or cancel this P.O. immediately upon notice to Supplier at any time prior to acceptance by Supplier of this P.O. In the event of such termination, Lilly shall have no obligation to Supplier except the obligation to pay all costs actually and reasonably incurred by Supplier prior to the date of termination plus a normally accepted trade allowance on such costs as full payment of Supplier's overhead and profit, provided, however, that in no event shall Lilly be obligated to pay an amount in excess of the amount set out in the applicable P.O.; advance payments will be refunded accordingly. If this P.O. is terminated as a result of the default of Supplier, Lilly shall have no obligation to reimburse Supplier for any services performed by Supplier pursuant to this P.O.

Supplier agrees that breach of Section 24 shall be considered a material breach of this P.O. and that Lilly may immediately seek all remedies available under law and equity including termination of this P.O. if it believes, in good faith, that such a breach by Supplier has occurred.

## 24. REMEDIES

Supplier acknowledges that any violation of Terms of this P.O. would result in damages to Lilly, which may not be adequately compensated by monetary award alone. As such, Lilly shall be entitled as a matter of right to apply to a court of competent equitable jurisdiction for relief, waiver, restraining order, injunction, decree or any other remedy as may be appropriate to ensure compliance with the Terms of this P.O.

## 25. ANTI-BRIBERY AND ANTI-CORRUPTION COMMITMENTS:

### A. Prohibition of Corrupt Payments

- i. **Compliance with Anti-Corruption Laws.** In connection with this Agreement, Supplier has complied and will comply with all applicable local, national, and international laws, regulations, and industry codes dealing with government procurement, conflicts of interest, corruption or bribery, including, if applicable, the U.S. Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, and any laws enacted to implement the Organisation of Economic Cooperation and Development (“OECD”) Convention on Combating Bribery of Foreign Officials in International Business Transactions.
- ii. **Prohibited Conduct.** In connection with this Agreement, Supplier has not made, offered, given, promised to give, or authorized, and will not make, offer, give, promise to give, or authorize, any bribe, kickback, payment or transfer of anything of value, directly or indirectly, to any person or to any Government or Public Official for the purpose of: (i) improperly influencing any act or decision of the person or Government or Public Official; (ii) inducing the person or Government or Public Official to do or omit to do an act in violation of a lawful or otherwise required duty; (iii) securing any improper advantage; or (iv) inducing the person or Government or Public Official to improperly influence the act or decision of any organization, including any government or government instrumentality, in order to assist Supplier or Lilly in obtaining or retaining business.
- iii. For purposes of this P.O., “Government or Public Official” means: (i) any official, officer, employee, representative, or anyone acting in an official capacity on behalf of: (a) any government or any department or agency thereof; (b) any public international organization (such as the United Nations, the International Monetary Fund, the International Red Cross, or the World Health Organization), or any department, agency, or institution thereof; or (c) any government-owned or controlled company, institution, or other entity, including a government-owned hospital or university; (ii) any political party or party official; and (iii) any candidate for political office.

### B. Early Termination

The parties agree that breach of this Section 24 shall be considered a material breach of this P.O. and that Lilly immediately seek all remedies available under law and equity including termination of this P.O. if it believes, in good faith, that the provisions of this Section have been breached by the Supplier without owing to the other any damages or indemnification resulting from such termination. If the P.O. is terminated pursuant to this provision, Lilly may seek reimbursement or refund of any fees, other compensation or expense reimbursement paid by Lilly to Supplier, and no further amounts shall be due to Supplier pursuant to the P.O.

## 26. INTERPRETATION

The illegality or unenforceability of any term of the P.O. shall not affect the legality or enforceability of any other term of the P.O. No waiver of any provision of this P.O. is binding unless it is in writing and signed by Lilly. No failure to exercise, and no delay in exercising, any right or remedy, under the P.O. will be deemed to be a waiver of that right or remedy. No waiver of any breach will be deemed to be a waiver of any subsequent breach. Nothing in the P.O. makes either party the principal, agent, partner or joint venturer of the other party. Neither party has the authority to enter into any agreement on behalf of the other and neither shall act so as to suggest that it has such authority.

## 27. ENGLISH LANGUAGE PURCHASE ORDER CLAUSE (FOR PURCHASE ORDERS MADE WITH QUEBEC-BASED SUPPLIERS)

The parties acknowledge having required that the P.O. and all documentation and notices entered into or given pursuant hereto or relating directly or indirectly hereto are drawn in English. Les parties reconnaissent avoir exigé la rédaction en anglais du présent bon de commande ainsi que de tous les documents et avis qui pourront être exécutés ou donnés à la suite de ou ayant un rapport direct ou indirect avec le bon de commande.

## Schedule A

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

### A INFORMATION TECHNOLOGY HARDWARE OR SERVICES.

A.1 **LICENSE:** Supplier hereby grants to Lilly, and Lilly hereby accepts, on the following terms and conditions, a nonexclusive and nontransferable, fully paid-up, irrevocable, world-wide, perpetual license (unless otherwise expressly specified in the applicable P.O.) to use the software for the number of users or copies of the software provided on the P.O. (the "License"). Unless specified otherwise on the applicable P.O., the License shall be an enterprise license for all applicable central processing units ("CPUs") and available for use by Lilly, its affiliated companies, third party service providers, and other necessary parties. All license limitations on use by Lilly (per user, type of user (named, concurrent, etc.), per CPU, per node, per server, etc.) shall be specifically stated in the applicable P.O. or shall be of no effect. Lilly agrees not to cause or permit the: (i) use, copying, modification, rental, lease, or transfer of the software, except as expressly provided in these Terms; (ii) creation of any derivative works based on the software; or (iii) reverse engineering, disassembly, or recompilation of the software. Supplier and Lilly expressly agree that any software shrink-wrap and click-through software licensing agreements or other such terms shall not apply to any software purchased or licensed under any P.O. unless Lilly expressly agrees in writing to such shrink-wrap or click-through software licensing agreement.

### A.2 USE OF SOFTWARE AND DOCUMENTATION:

- i) Lilly may, as part of the License, make additional copies of the software and documentation to support the licensed software and documentation. Lilly may also make backup and archival copies of the software and documentation. Unless otherwise provided on the applicable P.O., Lilly shall have the right to use the software on or in connection with any CPU that Lilly utilizes to fulfill its data processing needs. Lilly reserves the right to use the software at one or more sites and to transfer such software to any location as it may determine.
- ii) Lilly, 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 Lilly within the scope of the License. Lilly may use the software acquired hereunder for such purposes and functions as may be necessary or convenient for Lilly's business purposes, including processing affiliated companies and third party data, and the use of such software shall not be restricted to any particular purpose or function.
- iii) The License granted herein or the P.O. shall commence upon execution of the applicable P.O.

### A.3 INFORMATION TECHNOLOGY REPRESENTATIONS AND WARRANTIES: Regarding software or IT hardware ("IT Products")

- i) Supplier represents and warrants that at delivery and throughout the twelve (12) month period following receipt of the IT Products (or any update thereto) by Lilly (the "Warranty Period") the IT Products shall conform to and will operate in accordance with the P.O. and all documentation and specifications supplied by Supplier to Lilly. Supplier shall not be responsible to the extent failures are caused by: (a) Lilly's failure to use the IT Products in accordance with instructions included in the documentation provided to Lilly by Supplier; or (b) the modification of the IT Products by any person other than Supplier, its employees, agents, affiliates or subcontractors (unless such modification was authorized or approved by any of the foregoing).
- ii) Supplier warrants that all tapes, diskettes or other electronic media provided to Lilly hereunder will be free from defects during the Warranty Period. Supplier shall, within five (5) days of notification by Lilly of such defect, replace any defective electronic media at no additional cost to Lilly.
- iii) Supplier 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.
- iv) Supplier represents and warrants that any equipment delivered hereunder shall be delivered to Lilly with the full warranty granted by the original manufacturer of the equipment still effective. Notice regarding warranty claims raised by Lilly due to defects and/or non-conformities in the equipment or in the operation of the equipment shall be given only to Supplier, and upon receipt of such a notice, Supplier shall take the steps necessary to effect repair of the equipment.
- v) Supplier represents and warrants that if maintenance services are elected by Lilly, the maintenance services agreement shall become effective upon installation of the IT Product. Lilly'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 Lilly, provided Supplier notifies Lilly in writing thirty (30) days in advance of such renewal date. Notwithstanding the foregoing, Lilly's failure to install or utilize any improvements, enhancements or newly released versions of the IT Product shall have no effect on the Supplier's provision of

maintenance services. Supplier warrants and represents that maintenance services for an IT Product shall be available from Supplier for the greater of two (2) years from the acceptance date of the IT Product by Lilly or the current version plus the one (1) prior versions. Supplier shall provide to Lilly as part of maintenance services, Updates and Upgrades to the IT Product at no additional cost to Lilly.

- vi) Supplier represents and warrants that the occurrence in or use by any IT Product supplied by Supplier of any 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 dates without errors or omissions and at no additional cost to Lilly. At Lilly's request, Supplier will provide sufficient evidence to demonstrate the adequate testing of the IT Product to meet the foregoing requirements.
- vii) Supplier warrants that: (i) unless authorized in writing by Lilly; or (ii) necessary to perform valid duties under the IT Products documentation, any IT Products provided to Lilly by Supplier for use by Supplier or Lilly 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 the applicable P.O., based on residency on a specific hardware configuration, frequency or duration of use, or other limiting criteria ("Illicit Code"). Provided and to the extent any IT Product has any of the foregoing attributes, and notwithstanding anything elsewhere in the applicable P.O. to the contrary, Supplier shall be in default of such P.O., and no cure period shall apply. In addition to any other remedies available to it under this P.O., Lilly reserves the right to pursue any civil and/or criminal penalties available to it against the Supplier.
- viii) Supplier warrants that it shall not use or incorporate Lilly's Confidential Information, data, or intellectual property in Supplier's software or products.

#### **A.4 LICENSE OR MAINTENANCE TERMINATION:**

- i) In the event of a material breach by Lilly of any of its obligations under the applicable P.O., Supplier may terminate the licenses subject to such material breach upon sixty (60) days advance written notice to Lilly, provided that Lilly has not cured the breach within such notice period. This right to terminate shall not apply to Lilly's breach of any obligation relating to any maintenance services. Sixty (60) days after termination of such P.O. pursuant to this Section A.4 (i), Lilly shall discontinue further use of the terminated licenses. Lilly shall, upon written request by Supplier, provide Supplier with written certification indicating the destruction of such copies of the applicable software in Lilly's possession or under its custody or control.
- ii) In the event of a breach by Supplier of any of its representations, warranties or obligations under the applicable P.O., these Terms, or a maintenance agreement, Lilly 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 Supplier, provided that Supplier has not cured the breach within such notice period.
  - (1) If Lilly terminates the License and the maintenance services based on such breach, Supplier shall refund any and all amounts paid hereunder by Lilly for the License and shall refund on a pro rata basis any and all amounts paid hereunder by Lilly for the maintenance services. Sixty (60) days after termination of the License pursuant to this Section A.4(ii)(1), Lilly shall discontinue further use of such License. Lilly shall, upon written request by Supplier, provide Supplier with written certification indicating the destruction of all copies of the applicable software in Lilly's possession or under its custody or control.
  - (2) If Lilly terminates only the maintenance services, Supplier shall refund on a pro rata basis any and all amounts paid hereunder by Lilly for maintenance services. Lilly shall retain all of its rights under the License
- iii) The other provisions of the P.O. and these Terms shall survive termination of any License

**A.5 DATA:** Lilly 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.

## Schedule B

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

### **B INSTALLATION, MAINTENANCE, OR OTHER SERVICES:**

- B.1 LABOUR FURNISHED BY SUPPLIER:** Supplier acknowledges and agrees that in performing services, Supplier will be acting solely as an independent contractor, and neither Supplier nor any of its employees, associated consultants, subcontractors or employees of said consultants or subcontractors shall be deemed to be employees of Lilly for any purpose. Except as allowed by the "Subcontractors" provisions below, all persons employed by Supplier in the performance of the services are employees of Supplier. Supplier shall carry such employees on the payrolls of Supplier and make all required payments to federal, provincial and local authorities covering payroll taxes and any other payments relating to such persons' employment.
- B.2 SUBCONTRACTORS:** Supplier shall not use any subcontractor without the prior written approval of Lilly. Subject to the foregoing, if Supplier should use a subcontractor, Supplier shall be fully responsible for services performed by the subcontractor to the same extent as if the services were performed directly by Supplier and ensure that such subcontractors comply with all of the requirements of these Terms and the applicable P.O.
- B.3 VERIFICATION AND ACCEPTANCE OF SERVICES:** Supplier shall document each maintenance or service call with a work order, which shall be signed by Lilly's representative and submitted with Supplier's invoice.
- B.4 LIENS:** Supplier agrees and warrants that no mechanics liens shall attach to Lilly's property by virtue of Supplier's default in paying its employees, suppliers or subcontractor
- B.5 OWNERSHIP OF DELIVERABLES:** Lilly shall own all right, title and interest, including Intellectual Property Rights, in the Deliverables, and Supplier hereby assigns and conveys such right, title and interest to Lilly. All originals and copies of the Deliverables shall be delivered to Lilly upon the earliest of the completion of the services, the termination or suspension of the services, or the written request of Lilly. Supplier agrees to execute, without further consideration, assignments or other documents that may be necessary to establish Lilly's ownership of the Deliverables. Supplier shall cooperate with Lilly or its designees and execute documents of assignment, declarations, and other documents which may be prepared by Lilly, and take other necessary actions as reasonably directed by Lilly, to effect the foregoing or to perfect or enforce any proprietary rights resulting from or related to these Terms or a P.O. Such cooperation and execution shall be performed without additional compensation to Supplier; provided, however, Lilly shall reimburse Supplier for reasonable out-of-pocket expenses incurred at the specific request of Lilly. Supplier shall cause each of Supplier's employees charged with performance of services for Lilly or granted access to Lilly's Confidential Information to execute an agreement recognizing Lilly's ownership rights and concurring with the obligations of Supplier as set forth herein. Supplier hereby grants Lilly a non-exclusive, perpetual license to use, copy, and distribute all Supplier property provided to Lilly as part of the Deliverables hereunder. If the Deliverable incorporates any intellectual property (including software) that Lilly has purchased or licensed from Supplier pursuant to another written agreement, then such other agreement or provision shall control each party's rights with respect to such intellectual property.
- i) Despite the preceding clauses, Supplier retains all Intellectual Property Rights (other than the following license) to any portion of Existing Intellectual Capital that is incorporated into any Deliverable. Supplier grants to Lilly 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 Lilly's agents and independent contractors solely to furnish services to Lilly or its affiliates.
  - ii) Despite the preceding clauses, if the Deliverables incorporate any Intellectual Property owned or controlled by a third party, then Supplier hereby grants to Lilly and its affiliates, or shall acquire on behalf of Lilly 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 Lilly's agents and independent contractors solely to furnish services to Lilly or its affiliates. Supplier hereby represents and warrants to Lilly that it has or will have the right to grant such license or sublicense and to incorporate such Intellectual Property into the Deliverable.