

## TERMS AND CONDITIONS

### ARTICLE 1

#### PRELIMINARY MATTERS

#### 1.1 THE PARTIES

1.1.1 This Agreement is made in writing by Depositor and Warehouse (each a “Party” and collectively, the “Parties”).

#### 1.2 DEFINITIONS AND INTERPRETATION

1.1.2 Unless otherwise required by their context, capitalized words and phrases in this Agreement have the meaning ascribed to them herein, including Clause 1.1 of Schedule B, and the provisions of this Agreement shall be interpreted and construed on a basis consistent therewith, including Clause 1.2 of Schedule B.

### ARTICLE 2

#### RECEIVING OF GOODS

#### 2.1 TENDER AND ACCEPTANCE

2.1.1 Warehouse reserves the right to refuse to accept for storage (or, upon thirty (30) Days prior notice, to refuse to continue to store) any tangible personal property (or any Goods) which Depositor tenders (or has tendered) for storage by Warehouse and Warehouse may exercise such right at any time and from time to time in its sole, absolute and arbitrary discretion and subject to Section 7.2.1(a), Warehouse shall not be liable or responsible for any loss, injury or damage of any nature to or related to such property (or such Goods) as a consequence of the exercise of such right.

2.1.2 At or prior to the time that any tangible personal property is tendered by Depositor for storage by Warehouse, Depositor shall furnish to Warehouse: (a) a bill of lading or other manifest describing all such property (including the description and number of each type of property and relevant marks, brands or sizes thereof) and (b) instructions, if any, concerning the storage, services, segregation or any other requirements relating to the tendered tangible personal property.

2.1.3 All tangible personal property tendered by Depositor for storage by Warehouse at a Warehouse Facility shall be delivered to that Warehouse Facility by or on behalf of Depositor in a segregated manner, properly marked and packaged for handling and storage and must be duly consigned to Depositor, care of Warehouse at Warehouse Facility, on the bill of lading or other contract of carriage, freight prepaid.

2.1.4 Depositor agrees that it shall not tender for storage by Warehouse any tangible personal property that is Excluded Property without the prior written acceptance of Warehouse, which acceptance Warehouse may withhold, or withdraw at any time, in its sole, absolute and arbitrary discretion.

2.1.5 Depositor agrees that Warehouse is not under any circumstances a guarantor of the condition of any personal property tendered by Depositor for storage by Warehouse, including hidden, concealed or latent defects in the property and any concealed shortages, damage, inherent vice or tampering will not be the responsibility of Warehouse.

2.1.6 All tangible personal property tendered by Depositor in accordance with the provisions of this Agreement shall constitute “Goods” under this Agreement but only if and when such property is accepted by Warehouse for Storage and only while such property is in the custody of Warehouse.

2.1.7 Unless the Parties otherwise agree in writing:

- (a) all charges imposed by Warehouse for receiving Goods are computed based on a “per container”, “per pallet”, “per carton” and/or “per label” rate as more particularly described in the Agreement, as revised from time to time; and

- (b) all Third-Party costs pertaining to either the delivery of tangible personal property or Goods to a Warehouse Facility are the sole responsibility of Depositor.

**ARTICLE 3**  
**STORING GOODS**

**3.1 STORAGE**

3.1.1 Unless otherwise agreed in writing by the Parties, all charges imposed by Warehouse for Storage of Goods are computed based on a “per pallet” or “per square footage” rate as more particularly described in the Agreement, as revised from time to time, applied on a calendar month or calendar week basis without pro-rating for a partial month or a partial week, as the case may be, except that, if the duration of Storage of any Goods is two consecutive Days or less, Warehouse shall not levy any charge for the Storage of such Goods except those charges, if any, levied for the provision of any Services in respect of such Goods.

3.1.2 Warehouse reserves the right, exercisable at any time and from time to time at Warehouse’s sole cost, to re-locate Goods from a particular location within a Warehouse Facility to another location within the same Warehouse Facility or from a Warehouse Facility to another Warehouse Facility.

**3.2 REMOVAL OF GOODS**

3.2.1 Warehouse reserves the right, exercisable at any time and without stated reasons, to require Depositor, upon notice of thirty (30) Days given to Depositor and to any other Person known to Warehouse to have an interest in Goods, to remove from a Warehouse Facility the Goods specified in such notice which may include any Goods which, in the opinion of Warehouse, are, or may become, of a dangerous, explosive, flammable, radioactive, hazardous (including biohazardous), toxic (including cytotoxic) or environmentally damaging nature notwithstanding that:

- (a) Depositor may have previously notified Warehouse of the nature of such Goods in accordance with Section 7.1.1(b); and
- (b) Warehouse may have accepted such Goods in writing,

and for greater certainty, if Warehouse has discovered any such Goods and if Depositor has not previously notified Warehouse of such nature of the Goods in accordance with Section 7.1.1(b), Warehouse may destroy, dump, sell or otherwise dispose of such Goods as Warehouse reasonably sees fit, the whole at the risk and expense of Depositor and without liability on the part of Warehouse.

**ARTICLE 4**  
**SHIPPING GOODS**

**4.1 RELEASE OF GOODS**

4.1.1 Subject to Section 4.1.2, the Goods for shipment specified in a Notice that is issued by Depositor to Warehouse will be released by Warehouse from the Warehouse Facility where the Goods are located for shipment either to Depositor or to another Person identified in such Notice.

4.1.2 A Notice issued by Depositor requiring the shipment of Goods specified in such Notice is not effective until the Notice is delivered to, and accepted by, Warehouse.

**4.2 SHIPPING COSTS**

4.2.1 Warehouse reserves the right to require advance payment of all past and current charges owed or owing by Depositor prior to the release of any Goods by Warehouse from the Warehouse Facility where the Goods are located.

4.2.2 Unless the Parties otherwise agree in writing, all Third-Party costs pertaining to the shipment of Goods from a Warehouse Facility are the sole responsibility of Depositor.

**ARTICLE 5**  
**INVOICING AND PAYMENT**

5.1 **INVOICING**

5.1.1 Warehouse shall invoice Depositor on a monthly basis for all applicable charges and taxes for which the Depositor is responsible under the Agreement. Unless the Parties otherwise agree in writing, all such charges invoiced by Warehouse shall conform to the Schedule of Charges stipulated on the first page of the Cover Sheet, as revised from time to time.

5.1.2 All charges stipulated in the Schedule of Charges are exclusive of applicable taxes.

5.2 **PAYMENT**

5.2.1 Each invoice issued by Warehouse pursuant to Section 5.1.1 shall be:

- (a) deemed to be unconditionally and irrevocably accepted by Depositor unless no later than thirty (30) Days after the Due Date of that invoice, Depositor notifies Warehouse in writing of the fact and nature of any dispute raised by Depositor in respect of that invoice and the Parties agree to cooperate with each other to diligently resolve each such dispute; and
- (b) due and payable by Depositor on the Day (the “**Due Date**”) that is thirty (30) Days after the later of the Date of the Invoice and the Day that the invoice is issued to Depositor by Warehouse.

5.3 **PERMITTED LIEN**

5.3.1 Subject to Applicable Law, Warehouse shall have a lien upon, right of retention and security interest in the Goods at all times while they are located at a Warehouse Facility or otherwise under control of Warehouse. Such lien, right of retention and security interest shall be for all charges, expenses and taxes due to Warehouse in relation to the Goods, including the Storage of the Goods. In the event of nonpayment of any such amounts, Warehouse, in addition to its other rights hereunder, has the right exercisable at law and in equity and upon reasonable notice to Depositor but subject to Applicable Law, to sell or otherwise dispose of the Goods in any manner that it may reasonably think fit to satisfy the nonpayment.

5.4 **ARREARS INTEREST**

5.4.1 Any invoice issued by Warehouse which is not disputed by Depositor in accordance with Section 5.2.1(a) and which is not paid on or before the Due Date applicable to such invoice shall bear interest computed at the rate of 10% per annum.

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES**

6.1 **REPRESENTATIONS AND WARRANTIES OF DEPOSITOR**

6.1.1 Depositor hereby represents and warrants that:

- (a) Depositor is duly incorporated, and is validly existing, under Applicable Law;
- (b) Depositor has due and sufficient right, authority and capacity to enter into, and to perform its obligations under, this Agreement and has taken all necessary actions, and obtained all necessary approvals, to enter into this Agreement and to perform its obligations under this Agreement in accordance with its provisions;
- (c) this Agreement is duly authorized, executed and delivered for and on behalf of Depositor and, when delivered in accordance with the terms hereof, will constitute a valid and binding agreement of Depositor; and

- (d) the execution and delivery of this Agreement by Depositor, and the performance by Depositor of its obligations set forth in this Agreement, do not violate any agreement to which Depositor is subject.
- 6.1.2 Subject to Section 6.1.3, Depositor hereby represents and warrants that at the time that Goods are tendered by, or on behalf of, Depositor to Warehouse and at all other times during the Term of this Agreement while the Goods are in the possession or control of Warehouse:
- (a) Depositor is and shall be lawfully possessed of the Goods;
  - (b) if Depositor is not the owner of the Goods, the owner of the Goods has expressly authorized Depositor to tender the Goods to Warehouse for Storage as herein contemplated;
  - (c) Depositor has the right and authority to tender the Goods to Warehouse for possible acceptance and Storage in accordance with the terms of this Agreement;
  - (d) the Goods do not constitute, and do not include, any Excluded Property unless Depositor has notified Warehouse of such Excluded Property, and Warehouse has accepted such Excluded Property, in accordance with Section 7.1.1(b);
  - (e) there are no known potential health, safety and/or environmental hazards associated with the Storage and handling of the Goods which Depositor has not otherwise disclosed in writing to Warehouse prior to Warehouse's acceptance of such Goods; and
  - (f) the Goods and the packaging and marking thereof comply in all respects with the provisions of Applicable Law governing the handling, storage, transportation and use thereof.
- 6.1.3 Depositor shall immediately notify Warehouse in writing if at any time during the Term of this Agreement any of Depositor's representations and/or warranties in Section 6.1.1 or Section 6.1.2 are untrue or inaccurate.
- 6.1.4 In addition to Warehouse's right to exercise any of its other remedies hereunder or at law or in equity, if any representation and/or any warranty in Section 6.1.2 is untrue or inaccurate at any time during the Term of this Agreement,
- (a) Warehouse may take any action that a prudent custodian of property would take to ameliorate or eliminate any risk associated therewith including, where appropriate in the circumstances, the removal of the relevant Goods from the Warehouse Facility;
  - (b) Depositor shall reimburse Warehouse for all costs incurred by Warehouse as a consequence of any action taken by Warehouse pursuant to Section 6.1.4(a); and
  - (c) Warehouse shall incur no liability hereunder or at law or in equity by reason of any action taken by Warehouse pursuant to Section 6.1.4(a).
- 6.2 **REPRESENTATIONS AND WARRANTIES OF WAREHOUSE**
- 6.2.1 Warehouse hereby represents and warrants that:
- (a) Warehouse is duly incorporated, and is validly existing, under Applicable Law, and the certificate attached hereto as Schedule A evidences Warehouse's incorporation;
  - (b) Warehouse has due and sufficient right, authority and capacity to enter into, and to perform its obligations under, this Agreement and has taken all necessary actions, and obtained all necessary approvals, to enter into this Agreement and to perform its obligations under this Agreement in accordance with its provisions;
  - (c) this Agreement is duly authorized, executed and delivered for and on behalf of Warehouse and, when delivered in accordance with the terms hereof, will constitute a valid and binding agreement of Warehouse;

- (d) the execution and delivery of this Agreement by Warehouse, and the performance by Warehouse of its obligations set forth in this Agreement, do not violate any agreement to which Warehouse is subject; and
  - (e) Warehouse is registered under Subdivision d of Division V of the Excise Tax Act and the registered number assigned to Vendor thereunder is 754354405.
- 6.2.2 Warehouse shall immediately notify Depositor in writing if at any time during the Term of this Agreement any of Warehouse's representations and/or warranties in Section 6.2.1 are or become untrue or inaccurate.

**ARTICLE 7  
COVENANTS**

**7.1 OTHER COVENANTS OF DEPOSITOR**

- 7.1.1 In addition to its other covenants set forth in this Agreement:
- (a) if Depositor is not the owner of any Goods deposited with the Warehouse and if Depositor has not been expressly authorized by the owner of such Goods to tender the Goods to Warehouse for Storage, Depositor shall notify Warehouse of the name, address and contact information of the owner of the Goods within five (5) Business Days of the deposit and Depositor hereby authorizes Warehouse to notify the owner of such Goods, and any other Person which holds a registered security interest in such Goods, for purposes of section 3(2) of the Warehouse Lien Act;
  - (b) Depositor shall notify Warehouse of all Excluded Property, and all other property that may constitute Excluded Property, which Depositor proposes to tender for storage by Warehouse together with all relevant detailed, written information and instructions in regard thereto and Depositor shall concurrently request Depositor's written acceptance of such property in accordance with Section 2.1.4.

**7.2 OTHER COVENANTS OF WAREHOUSE**

- 7.2.1 In addition to its other covenants set forth in this Agreement:
- (a) Warehouse shall exercise the care and diligence in regard to the Goods to the same degree that a careful and vigilant owner of similar goods would exercise while in the custody of such Goods in similar circumstances ("**Due Care**"); and
  - (b) Warehouse shall not permit any lien or other encumbrance (other than a Permitted Lien) to be placed against the Goods while they are in the possession or under the control of Warehouse.

**ARTICLE 8  
INDEMNIFICATIONS**

**8.1 INDEMNIFICATION FOR IMPROPER CONSIGNMENT OF GOODS**

- 8.1.1 Irrespective of whether Warehouse accepts or refuses to accept tangible personal property tendered for storage by Warehouse at a Warehouse Facility, Depositor agrees to indemnify, defend and hold Warehouse harmless from all claims, damage, demands, expenses (including legal costs and disbursements), liability, loss and penalties of whatever type or nature by or on behalf of any Person incurred by Warehouse for transportation, storage, handling and all other expenses related to Goods, including but not limited to undercharges, rail demurrage, truck/intermodal detention and other charges, incurred as a consequence of such contravention.

**8.2 INDEMNIFICATION FOR THIRD-PARTY CHARGES**

- 8.2.1 Depositor agrees to indemnify, defend and hold Warehouse harmless from all claims, damage, demands, expenses (including legal costs and disbursements), liability, loss and penalties of whatever type or nature by

or on behalf of any Person incurred by Warehouse for transportation, storage, handling and all other expenses related to Goods, including but not limited to undercharges, rail demurrage, truck/intermodal detention and other charges, asserted by any other Person.

8.3 **INDEMNIFICATION FOR STORAGE OF EXCLUDED PROPERTY**

8.3.1 Depositor agrees to indemnify, defend and hold Warehouse and each of its Representatives harmless from any and all claims (including claims for injury to, and death of, any individual), damage (including damage or destruction of property), demands, expenses (including legal costs and disbursements), liability, loss and penalties of whatever type or nature by or on behalf of any Person incurred by Warehouse as a direct or indirect consequence of the Storage of any Excluded Property whether or not Warehouse accepted such Excluded Property for Storage.

8.4 **INDEMNIFICATION FOR DEFAULT OR BREACH**

8.4.1 If either Party is in default of, or has breached, any provision of this Agreement and if that particular Party fails to cure the default or breach within fifteen (15) Days of its receipt of a demand from the other Party, then in addition to the other Party's remedies hereunder, that particular Party shall indemnify and hold the other Party harmless from:

- (a) any and all claims (including claims for injury to, and death of, any individual), damage (including damage or destruction of property), demands, expenses (including legal costs and disbursements), liability, loss and penalties of whatever type or nature by or on behalf of any Person incurred by the other Party resulting, directly or indirectly, from that default or breach; and
- (b) all costs, expenses (including legal costs and disbursements) and liabilities incurred by the other Party in enforcing the provisions of this Agreement.

**ARTICLE 9**

**INSURANCE**

9.1 **INSURANCE**

9.1.1 Depositor acknowledges and agrees that Warehouse is not obligated to procure or maintain any insurance coverage for any Goods that are in Warehouse's possession or under its control and that it is Depositor's sole responsibility to procure and maintain such insurance coverage.

**ARTICLE 10**

**CONFIDENTIALITY**

10.1 **THE NON-APPLICATION OF THIS ARTICLE**

10.1.1 This ARTICLE 10 (other than Section 10.1) shall have no application to the Parties whatsoever at any particular time if the Parties have entered into a Confidentiality Agreement and that agreement is in effect at the particular time, it being the Parties' collective intention that the provisions of that Confidentiality Agreement shall prevail and control all matters pertaining to the non-disclosure and protection from disclosure of each Party's Confidential Information.

10.2 **NON-DISCLOSURE AND RESTRICTED USE**

10.2.1 Except as otherwise expressly permitted hereby, Receiving Party shall maintain all Confidential Information of Disclosing Party in strict confidence during the Term of this Agreement and for a period of five (5) years following the expiry or termination of this Agreement (the "**Confidentiality Period**") using the same or greater standard of care that it uses to protect its own Confidential Information and Receiving Party shall not:

- (a) disclose such Confidential Information to any Person; or

- (b) directly or indirectly:
  - (i) use, or facilitate the use of, any such Confidential Information for any purpose other than for the purpose of complying with Receiving Party's obligations hereunder (the "**Particular Purpose**"); or
  - (ii) communicate or disclose, or facilitate the communication or disclosure of, such Confidential Information to any Person; or
- (c) disclose to any Person that such Confidential Information has been made available to Receiving Party or any of its Affiliates; or
- (d) duplicate, replicate, modify, reverse-engineer or create derivative works from, or otherwise take any benefit from, any such Confidential Information;

without Disclosing Party's prior written consent which consent may be arbitrarily withheld, delayed and conditioned and Receiving Party shall use its best endeavours to protect the Confidential Information of Disclosing Party from any use, access, disclosure or duplication by any Person except as otherwise permitted hereby.

10.2.2 Notwithstanding Section 10.2, Receiving Party may communicate or disclose Confidential Information of Disclosing Party to each Representative of Receiving Party or of any of its Affiliates if such Representative has a need to know such Confidential Information and is subject to a covenant of confidentiality and non-disclosure in favour of Receiving Party in respect of such information provided that such communication or disclosure is only in relation to the Particular Purpose and Receiving Party informs each Representative to whom such Confidential Information is to be communicated or disclosed that such information is confidential pursuant to the terms and conditions of this Agreement. Moreover, Receiving Party shall be responsible for any violations of the provisions of this Agreement caused by any Representatives of Receiving Party or any of its Affiliates.

10.2.3 Nothing in this Agreement shall give Receiving Party or any of its Affiliates any rights, title, license or interest whatsoever in the Confidential Information of Disclosing Party. All Confidential Information of Disclosing Party shall be and remain the sole and exclusive property of Disclosing Party or of its Affiliates, as applicable, except to the extent that the Parties otherwise expressly agree in writing.

10.2.4 Disclosing Party represents and warrants that it possesses all necessary powers, rights and authority to lawfully communicate and disclose the Confidential Information to Receiving Party. This Agreement does not constitute any representation, warranty, or guarantee to Receiving Party by Disclosing Party with respect to the non-infringement of patents or other rights of any Person or to the Confidential Information's completeness, accuracy or suitability for any purpose. Disclosing Party will not, to the extent that it disclosed the Confidential Information, be held liable for any errors or omissions in the Confidential Information and for the use and the results of the use of the Confidential Information by Receiving Party, its Affiliates or any of their respective Representatives. The Parties agree that the provisions of this Section 10.2.4 shall survive the termination or expiry of this Agreement.

10.2.5 As between the Parties:

- (a) all Confidential Information of Disclosing Party;
- (b) all modifications or improvements to any such Confidential Information including all work product derived from, or based upon, any Confidential Information whether developed, created or reduced to practice by or for Receiving Party or any of its Affiliates or otherwise, (collectively "**Improvements**");
- (c) all copies, notes and recordings of any Confidential Information or Improvements made by or for Receiving Party or any of its Affiliates; and
- (d) all proprietary rights or interests in, to or associated with the Confidential Information and Improvements,

are exclusively owned by Disclosing Party or its Affiliates, as the case may be, and the Parties agree that no interest therein shall transfer to Receiving Party or any of its Affiliates pursuant to this Agreement. Moreover, Receiving Party agrees that it will hold all such Confidential Information and Improvements it receives or accesses in trust for the sole benefit of Disclosing Party and its Affiliates. No license under any patent and no copyright of Disclosing Party, or any other right respecting the Confidential Information or Improvements, other than expressly set out herein, is granted to Receiving Party or any of its Affiliates under this Agreement whether by implication or otherwise. To the extent that Receiving Party acquires any rights or interest in or to any Improvements, Receiving Party hereby absolutely and irrevocably assigns and agrees to assign to Disclosing Party all of Receiving Party's rights, title and interest throughout the world (including intellectual property rights) in, to or associated with the Improvements for Disclosing Party's own benefit absolutely, free and clear of all liens, encumbrances and Third-Party interests. Receiving Party will, promptly on request, assist in every proper way to effect, perfect, register, record, enforce, defend and establish ownership, validity and registerability of Disclosing Party's right, title and interest in and to any Improvements and any related intellectual property rights or other proprietary rights.

10.2.6 All information disclosed by Disclosing Party to Receiving Party is disclosed on an "as is" basis without any express or implied warranties including, but not limited to, a warranty that such information is accurate or complete and a warranty that such information does not infringe upon any other Person's proprietary rights or otherwise and the Disclosing Party shall not be liable for damages of any kind as a result of the Receiving Party's use or reliance upon such information.

### 10.3 RETURN OF CONFIDENTIAL INFORMATION

10.3.1 Upon expiration of the Term of this Agreement or upon written request by Disclosing Party, Receiving Party shall return to Disclosing Party or shall permanently destroy, to the extent reasonably practicable, all copies of the Confidential Information of Disclosing Party, whether in written, electronic, digital or tangible form, that is in its possession or under its control; provided, however, that:

- (a) one copy of Confidential Information and documentation prepared solely by or on behalf of Receiving Party in connection with the Particular Purpose may be retained by the legal function of such Party, subject to the covenants of confidentiality and non-disclosure herein, for regulatory purposes, to satisfy professional requirements or to comply with internal policies or guidelines; and
- (b) if Receiving Party's computer systems automatically backs-up Confidential Information communicated or disclosed to it under this Agreement and to the extent that such computer back-up procedures create copies of the Confidential Information, Receiving Party may retain such copies in its archival or back-up computer storage for the period it normally archives and backs-up computer records; and

Receiving Party agrees that each such copy of Confidential Information shall be subject to the provisions of this Agreement until the same are destroyed, and they shall not be accessed by any of the Representatives of Receiving Party during such period of archival or back-up storage except when necessary for computer maintenance.

### 10.4 DISCLOSURE BY REQUIREMENT OF LAW

10.4.1 The Parties agree that with respect to Confidential Information of Disclosing Party which is required or permitted to be disclosed by law, regulation or otherwise by judicial or Governmental Authority, Receiving Party and its Representatives may disclose, without violating any obligations hereunder, only so much of that Confidential Information as is legally required to be disclosed; provided, however, that Receiving Party shall, if legally permitted, first

- (a) promptly give Disclosing Party as much prior notice of any proposed disclosure of any such Confidential Information as is reasonably practicable in the circumstances, and is permitted by Applicable Law, so that Disclosing Party, at its sole expense, may seek such protective orders or other confidentiality protection as Disclosing Party, in its sole discretion, may elect; and
- (b) reasonably cooperate with Disclosing Party, at Receiving Party's sole expense, in protecting such information which must be disclosed (with such duty of cooperation not requiring Receiving Party to



initiate or participate in any litigation or incur more than the minimum costs or expenses, which costs and expenses, if incurred by Receiving Party or any of its Representatives shall be promptly reimbursed by Disclosing Party upon its receipt of a written statement thereof from Receiving Party).

- 10.4.2 Notwithstanding the foregoing, notice to Disclosing Party pursuant to Section 10.3.1(a) shall not be required in the event any Confidential Information is required to be disclosed during any routine regulatory examination or audit of Receiving Party or any of its Affiliates provided that neither Disclosing Party nor any of its Confidential Information is the target of such examination or audit; provided, however, the Receiving Party or any of its Affiliates shall be obligated to limit their respective disclosures of Disclosing Party's Confidential Information to the minimum amount required to satisfy the regulatory examination or audit described in this subclause.

#### 10.5 ENFORCEMENT

- 10.5.1 The Parties agree that (a) disclosure or unauthorized use of, or access to, the Confidential Information of Disclosing Party could damage Disclosing Party or its Affiliates, (b) the amount of resulting damages could be difficult to ascertain, and (c) Disclosing Party and its Affiliates may not reasonably or adequately be compensated in damages alone for the loss arising from such use or access to such information. Without prejudice to any other rights and remedies that are otherwise available to Disclosing Party and its Affiliates, Disclosing Party and its Affiliates shall be entitled, without proof of special damage and notwithstanding Section 15.2.1, to apply to any court of competent jurisdiction and seek the remedies of injunction, specific performance and any other equitable relief for any actual or threatened breach of any provision hereof by Receiving Party, any of its Affiliates, any of their respective Representatives or other Person. If Receiving Party or any of its Affiliates breaches any of that Receiving Party's obligations hereunder or otherwise fails to comply with any such obligations, that Receiving Party shall be liable to Disclosing Party for any and all direct losses, costs, damages and expenses which such Disclosing Party and any of its Affiliates has suffered, sustained, paid or incurred, and resulting or arising, directly from or directly by reason of such breach or such failure.
- 10.5.2 Receiving Party shall indemnify Disclosing Party, each of its Affiliates and their respective Representatives and save and hold them harmless from and against any and all damages, losses, liabilities, costs and expenses (including legal fees and disbursements) which arise from or result out of (a) any breach of this Agreement by Receiving Party, any of its Affiliates or any of their respective Representatives or (b) the enforcement of this Agreement or any of its provisions.

### ARTICLE 11 INTELLECTUAL PROPERTY

#### 11.1 NO ASSIGNMENT OF INTELLECTUAL PROPERTY

- 11.1.1 Each Party agrees that no provision in this Agreement is intended to result in the assignment by a Party of any of its Intellectual Property to the other Party or to any other Person.

### ARTICLE 12 IMPACT OF FORCE MAJEURE EVENT

#### 12.1 FORCE MAJEURE

- 12.1.1 Subject to Section 12.2, Warehouser shall not be in breach of, nor liable for any failure to perform or delay in the performance of, any of its obligations under this Agreement, to the extent that its performance is prevented, impeded or delayed by an act, event or circumstance, whether of the kind described herein or otherwise, which is not reasonably within the control of Warehouser, acting reasonably (a "Force Majeure Event") and for clarity, a Force Majeure Event includes the following:
- (a) fire, flood, atmospheric disturbance, lightning, storm, tempest, hurricane, cyclone, typhoon, tornado, earthquake, landslide, perils of the sea, soil erosion, subsidence, washout, epidemic or other acts of God;

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- (b) war (whether declared or undeclared), riot, civil war, blockade, insurrection, acts of terrorism or public enemies;
- (c) strikes (to the extent that Warehouse is acting reasonably) and general strikes or other industrial disturbances; or
- (d) loss of, serious accidental damage to, or inoperability of, the Warehouse Facility.

**12.2 EXCLUSIONS**

12.2.1 Neither Party shall be entitled to rely on a Force Majeure Event to excuse the non-performance of its obligations under this Agreement on the basis of:

- (a) financial hardship or the inability of a Party to make a profit or achieve a satisfactory rate of return from the performance or the failure to perform under this Agreement;
- (b) changes in market conditions;
- (c) the necessity for compliance with any court order, law, statute, ordinance or regulation promulgated by a Governmental Authority having jurisdiction on either Party which does not prevent performance under this Agreement on a timely basis but renders such performance more costly;
- (d) any event caused directly or indirectly by the gross negligence or Wilful Misconduct of any Party or any of its Representatives; and
- (e) breakdown, failure, freezing or breakage of, or the necessity for making repairs or alternations to, any facilities or equipment caused by normal wear and tear or by failure to properly maintain such facilities or equipment.

**12.3 NOTIFICATION**

12.3.1 If Warehouse intends to claim relief from its obligations under this Agreement due to a Force Majeure Event, Warehouse shall promptly notify Depositor of such Force Majeure Event and thereafter Warehouse shall with diligence from time to time furnish Depositor such relevant information as is available to it pertaining to the Force Majeure Event and shall give an estimate of the period of time required to overcome such Force Majeure Event and the extent and nature of the Services that Warehouse is reasonably expected to perform during such period.

**12.4 RIGHTS AND OBLIGATIONS FOLLOWING FORCE MAJEURE**

12.4.1 Warehouse shall as soon as reasonably possible take reasonable measures to bring the Force Majeure Event to an end and to overcome and/or minimise the effects and consequences thereof which prevent, impede or delay Warehouse's ability to resume performance hereunder.

12.4.2 If Warehouse is entitled to relief from its obligations under this Agreement due to a Force Majeure Event and Depositor is unable to perform any of its obligations hereunder as a consequence thereof, Depositor is entitled to relief from such obligations under this Agreement.

**12.5 DUTY TO MITIGATE**

12.5.1 If Warehouse notifies Depositor of a Force Majeure Event pursuant to Section 12.3.1, Depositor shall take all action that is reasonable in the circumstances to mitigate its damages.

**ARTICLE 13  
SUSPENSION AND TERMINATION**

**13.1 SUSPENSION**

13.1.1 If either Party is in default of, or has breached, any provision of this Agreement and if that particular Party fails to cure the default or breach within thirty (30) Days of its receipt of a Notice from the other Party describing the nature of the default or breach and demanding that the default be cured, then in addition to the other

Party's remedies hereunder, the other Party may suspend the performance of any of its obligations hereunder until the default or breach is cured by the particular Party.

13.2 **TERMINATION**

13.2.1 Either Party may terminate this Agreement at any time by giving the other Party at least thirty (30) Days prior notice of the termination.

**ARTICLE 14**

**LIABILITY AND COMPLIANCE WITH APPLICABLE LAW**

14.1 **LIABILITY FOR CARE OF GOODS**

Subject to Section 14.3 and to the other provisions of this Agreement, Warehouse shall be liable for any loss of, or damage to, Goods which are in Warehouse's possession or under its control but only to the extent that such loss or damage is caused by Warehouse's failure to exercise Due Care in regard to such Goods and provided that Depositor notifies Warehouse of its Claim within thirty (30) Days of the Claim's genesis and Warehouse has a reasonable opportunity to investigate and consider the merits of that Claim.

14.2 **LIABILITY FOR MIS-SHIPMENT OF GOODS**

Subject to Section 14.3 and to the other provisions of this Agreement, Warehouse shall be liable for reasonable transportation costs incurred (a) to return Mis-shipped Goods to the Warehouse Facility from the location to which they were shipped or (b) to deliver Mis-shipped Goods to the Person to whom the Mis-shipped Goods were to have been shipped by the Warehouse; provided that Depositor notifies Warehouse of its Claim within thirty (30) Days of the Claim's genesis and Warehouse has a reasonable opportunity to investigate and consider the merits of that Claim but in no event shall Warehouse bear any other liability for or in respect of any Mis-shipped Goods.

14.3 **LIMITATION OF LIABILITY**

14.3.1 Except as stipulated in Sections 14.1 and 14.2 or as otherwise imposed by Applicable Law, Warehouse shall not bear any liability to Depositor under this Agreement in relation to any tangible personal property or Goods that Warehouse receives from or on behalf of Depositor or the Storage and/or shipment of Goods including the performance of the Services.

14.3.2 Under no circumstances is either Party liable to the other Party for any Consequential Loss that may be suffered or incurred by that other Party or by any of its Affiliates in connection with or arising out of or under this Agreement or the Storage or shipment of Goods including the performance of the Services.

14.3.3 Notwithstanding any provision herein to the contrary, Warehouse's aggregate liability to Depositor under this Agreement for any and all loss or damage to Goods occurring at any time during the Term of this Agreement shall not exceed the lesser of:

- (a) one hundred thousand dollars (\$100,000); and
- (b) fifty percent (50%) of the aggregate of each amount (net of applicable tax) which Warehouse invoiced Depositor hereunder for the Services performed by Warehouse during the twelve consecutive months preceding the date that Depositor first notified Warehouse of any loss or damage to Goods.

14.3.4 Notwithstanding any provision herein to the contrary, Sections 14.3.1 and 14.3.3 shall not limit the liability of Warehouse in any case of Wilful Misconduct by or on behalf of such Party.

14.4 **COMPLIANCE WITH APPLICABLE LAW**

14.4.1 Each Party and its Representatives performing any of the obligations of that Party under this Agreement shall comply with all Applicable Law at all relevant times during the Term of this Agreement.

14.4.2 Notwithstanding any other provisions in this Agreement to the contrary, a Party shall be deemed to be in default hereunder if the conduct of that Party during the Term of this Agreement, or the conduct of any of its

Representatives in the performance of any of that Party's obligations under this Agreement, is found, held or admitted to be contrary to any Anti-Corruption Law.

**14.5 LIMITATION OF ACTIONS**

14.5.1 No legal action, Claim, suit or other proceeding regardless of its form, arising out of this Agreement may be brought by a Party:

- (a) in the case of non-payment, more than two (2) years after the date of the delivery of the first demand for payment; and
- (b) in any other case, more than one (1) year after the cause of action arises.

**ARTICLE 15  
GENERAL PROVISIONS**

**15.1 TIME OF THE ESSENCE**

15.1.1 Time is of the essence of this Agreement and no extension or variation of this Agreement operates as a waiver of this provision.

**15.2 GOVERNING LAW AND JURISDICTION**

15.2.1 The Parties agree that the provisions of this Agreement regarding the Storage of any Goods shall be governed exclusively by the prevailing laws of the Province in Canada where the Goods are situated and the laws of Canada applicable therein and the Parties hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of such Province and all courts competent to hear appeals therefrom.

**15.3 AMENDMENTS AND WAIVER**

15.3.1 This Agreement may not be amended, modified, extended, renewed, replaced, restated or supplemented except by an instrument in writing signed by Warehouse and Depositor which is expressed to be an amendment, modification, extension, renewal, replacement, restatement and supplement to this Agreement.

15.3.2 Failure or delay by either Party to exercise any of its rights, powers, authorities or remedies conferred hereunder or by law or in equity does not impair or constitute a waiver of any of those rights, powers, authorities or remedies.

15.3.3 Each right, power, authority and remedy conferred on a Party, whether hereunder or by law or in equity, is separate and in addition to every other such right, power, authority and remedy. Any one or more rights, powers, authorities and remedies so conferred on a Party may be exercised by that Party from time to time and no such exercise exhausts all rights, powers, authorities or remedies of that Party or precludes that Party from exercising any one or more of such rights, powers, authorities or remedies, or any combination thereof, from time to time thereafter or simultaneously.

**15.4 SEVERABILITY**

15.4.1 The Parties intend that all provisions of this Agreement are fully binding and legally effective as between the Parties, but in the event that any particular provision (or provisions), or part (or parts) of a particular provision is (or are) found to be void, voidable or unenforceable for any reason whatever, then that particular provision (or provisions), or that part (or parts) of a particular provision shall be deemed severed from the remainder of the Agreement and all such other provisions thereof shall remain fully binding and legally effective.

**15.5 EXPENSES**

15.5.1 Subject to any provision of this Agreement to the contrary, each Party shall pay all costs and expenses which that Party has incurred in the performance of that Party's obligations hereunder.

15.6 **ASSIGNMENT**

15.6.1 Except as provided in Section 15.6.2, neither Party may assign or transfer any or all of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld, delayed or conditioned.

15.6.2 Any or all of the rights and obligations of a Party under this Agreement may be transferred and/or assigned:

- (a) if such Party is Warehouse and if such rights and obligations are transferred and/or assigned by way of security to any lender; and
- (b) by such Party if such rights and obligations are transferred and/or assigned to an Affiliate of such Party provided that:
  - (i) such Affiliate has the legal and financial capacity, and (whether by virtue of its own resources or by virtue of resources made available to it by the assigning Party or another Affiliate of the assigning Party) the technical and organisational capability, to perform the obligations to be assigned; and
  - (ii) the assigning Party shall remain liable under this Agreement, jointly and severally with its Affiliate, for the performance of all of its obligations including those assigned to an Affiliate even if the Affiliate ceases to be an Affiliate of the assigning Party.

15.7 **FURTHER ASSURANCES**

15.7.1 Each Party agrees that it shall, upon reasonable request of the other Party, do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the provisions of this Agreement.

15.8 **NO INDUCEMENT AND NO RELIANCE**

15.8.1 Each Party acknowledges and agrees that it has not been induced to enter into this Agreement in reliance upon, nor as a result of, any statements, representations, warranties, promises or inducements whatsoever, whether written or oral and whether directly related to the contents hereof or collateral thereto, given or made by the other Party, any of its Representatives or any other Person.

15.8.2 Each Party further acknowledges and agrees that in performing its obligations under this Agreement, it has not in any way relied, and will not in any way rely, upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, express or implied, not specifically set forth in this Agreement.

15.9 **BINDING EFFECT AND ENUREMENT**

15.9.1 This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

15.10 **NO THIRD-PARTY BENEFICIARIES**

15.10.1 Nothing in this Agreement shall convey any rights upon any Person which is not a Party or a successor or a permitted assignee of a Party.

15.11 **INDEPENDENT CONTRACTOR**

15.11.1 The relationship between the Parties constituted by this Agreement is intended and is to be construed as that of independent contracting parties only and not that of partnership, joint venture, agency, employment or any other association whatsoever.

15.11.2 At all times during the Term of this Agreement Warehouse shall perform each of its obligations under this Agreement through its officers, other employees and contractors which Warehouse alone shall direct, control and supervise.

15.12 **DISCLAIMER OF AGENCY**

15.12.1 Except as otherwise expressly provided hereunder, this Agreement does not constitute either Party as the agent, partner or legal representative of the other Party for any purpose whatsoever, and neither Party shall have any express or implied right or authority to assume or to create any obligation or responsibility on behalf of or in the name of the other Party.

15.13 **JOINT DRAFTING**

15.13.1 Each Party acknowledges that this Agreement is the product of their joint efforts, that it expresses their mutual agreement, and that, if there is any ambiguity in any of its provisions, no rule of interpretation favouring one Party over the other Party based on authorship will apply.

15.14 **PUBLIC ANNOUNCEMENTS**

15.14.1 Except as required by Applicable Law, neither Party may issue any press release, or make any announcement or disclosure publicly, in relation to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party, which consent may not be unreasonably withheld, delayed or conditioned.

15.15 **SURVIVAL**

15.15.1 To the extent that any covenant, representation and warranty of a Party has not been fully performed at or before the Termination Date, that covenant, representation and warranty shall survive the Termination Date.

15.16 **CURRENCY AND LANGUAGE**

15.16.1 Unless otherwise stipulated, all references herein to “dollars” (“\$”) and to dollar amounts are in lawful money of Canada and any amount advanced, paid or calculated herein is to be advanced, paid or calculated in lawful money of Canada.

15.16.2 The Parties confirm that it is their wish that this Agreement as well as all other documents relating to this Agreement, including Notices, be drawn up in English only.

Les Parties aux présentes confirment que c’est leur volonté que la présente convention de même que tous les documents, y compris les avis, s’y rattachant, soient rédigés en anglais seulement.

15.17 **EXECUTION IN COUNTERPARTS AND DELIVERY**

15.17.1 This Agreement and any amendment, modification, extension, renewal, replacement, restatement and supplement of this Agreement may be executed and delivered by the Parties in any number of identical counterparts, each of which when executed and delivered is deemed to be an original thereof and all of which taken together shall constitute one and the same instrument, and delivery thereof by facsimile, telecopier, or electronic means constitutes valid and effective delivery of same.

## SCHEDULE B – DEFINITIONS AND INTERPRETATION

### 1.1 DEFINITIONS

For the purposes of the Agreement, the following capitalized words and phrases have the meaning ascribed thereto as follows:

- 1.1.1 "Affiliate" of any Person at a particular time means any Person that, at that particular time, either directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, the particular Party;
- 1.1.2 "Agreement" has the meaning ascribed thereto on page 1 of the Agreement;
- 1.1.3 "Anti-Corruption Law" includes: (a) the Canadian Corruption of Foreign Public Officials Act and the Criminal Code; (b) the United States Foreign Corrupt Practices Act of 1977; (c) the United Kingdom Bribery Act 2010; (d) the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions as ratified by various member states of the Organisation for Economic Co-operation and Development and (e) all applicable national, regional, provincial, municipal or local laws and regulation that prohibit money laundering or otherwise dealing in the proceeds of crime or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any Governmental Authority or any other Person;
- 1.1.4 "Applicable Law" means, in relation to any Person, property, transaction, event or other matter, any domestic or foreign law (including the Anti-Corruption Law), statute, regulation, code, ordinance, principle of common law or equity, constitution or treaty, rule, municipal or local by-law, judgment or order of a court of competent jurisdiction or other imperative having the force of law, in each case relating or applicable to such Person, property, transaction, event or other matter;
- 1.1.5 "Business Day" means any Day that is not a Saturday, Sunday or a Day that is a statutory holiday in the Province of British Columbia;
- 1.1.6 "Claim" means any claim, counterclaim, dispute, complaint or cause of action of any kind or nature arising under or in connection with this Agreement, whether present, future or unascertained, actual or contingent;
- 1.1.7 "Commencement Date" has the meaning ascribed thereto on page 2 of the Agreement;
- 15.17.2 "Confidential Information" of Disclosing Party means each of the following which is directly or indirectly communicated or disclosed to (or received or acquired by) Receiving Party, any of its Affiliates, or any of their respective Representatives prior to the expiry or termination of this Agreement, irrespective of whether the communication or disclosure occurred before, on or after the Commencement Date or how the communication or disclosure occurred, including whether the communication or disclosure was made by Disclosing Party or a Third-Party or was in writing, by electronic or other physical delivery of items, by initiation of access to a website, database or electronic storage, by oral or visual presentation or otherwise:
- (a) all information concerning Disclosing Party or any of its Affiliates, including each of their respective activities, inventions, research, endeavours, products, services, strategies and similar matters;
  - (b) the identity of, and all information concerning or relating to, each Person with whom Disclosing Party or any of its Affiliates is in negotiations or discussions, or with whom Disclosing Party or any of its Affiliates has entered into a contract or similar arrangement, whether such Person is a beneficiary, borrower, customer, guarantor, investor, lender, participant, partner, supplier or otherwise and the terms of such negotiations or discussions and such contacts and other arrangements, as the case may be;
  - (c) all information in the possession or knowledge of Disclosing Party or any of its Affiliates which is subject either to a non-disclosure covenant or a statutory obligation of non-disclosure that is imposed on Disclosing Party or any of its Affiliates, directly or indirectly; and
  - (d) any document or communication, regardless of the form (whether written, digital, electronic, oral or otherwise), which (i) is marked or otherwise identified in writing as "confidential" by or on behalf of

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Disclosing Party or any of its Affiliates either at the time of its disclosure or within a reasonable time thereafter, or (ii) if not so marked, a reasonable person ought to know would be confidential given the circumstances surrounding such disclosure,

and including, without limitation, all related or relevant agreements, analyses, business plans, computer programs, compilations, constituent ingredients, contracts, costs and pricing, data (including sales data), diagrams, discoveries, disks, drawings, documents, emails, files, financial or marketing data, firmware, flowcharts, formulae, formulations, instruments, intellectual properties, instructions, inventions, know-how, letters, materials, methods (including manufacturing), models, notes, patent applications, photographs, plans, presentations, procedures, processes, products, product applications, programs, protocols, prototypes, quality control, research, reports, samples, sketches, software, solutions, specifications, studies, summaries, technical information, techniques, term sheets, test methods and test data and trade secrets and all descriptions, modifications, variations, updates, enhancements and improvements thereof, and all copies or recordings thereof, (whether or not made in accordance with this Agreement), regardless of the form (whether written, digital, electronic, oral or otherwise) in which it appears or is discernible, or the circumstances under which it is communicated or disclosed to (or is received or acquired by) Receiving Party, any of its Affiliates or any of their respective Representatives and Confidential Information may include unique combinations of separate items which individually may or may not be confidential; but notwithstanding the aforementioned, the term "Confidential Information" excludes information which:

- (e) is published, or is generally available to the public, through no wrongful or inadvertent communication or disclosure by Receiving Party, any of its Affiliates, any of their respective Representatives or any Person to whom any of them have communicated or disclosed such Confidential Information;
- (f) is independently developed by, or is known to, Receiving Party, any of its Affiliate or any of their respective Representatives, as established by documentary evidence, without breach of the terms of this Agreement;
- (g) is expressly approved for disclosure to a particular Person by the written authorization of or on behalf of Disclosing Party unless Disclosing Party expressly requires that the particular Person be bound by a covenant of confidentiality and non-disclosure;
- (h) is or has been in the possession of Receiving Party, any of its Affiliates or any of their respective Representatives, as established by documentary evidence, prior to the time that it was communicated or disclosed to (or received or acquired by) Receiving Party, any of its Affiliates or any of their respective Representatives, and which was not actually known by Receiving Party, any of its Affiliates or any of their respective Representatives to then be subject to any restriction in its use or disclosure; or
- (i) is disclosed or becomes available to Receiving Party, any of its Affiliates or any of their respective Representatives, as established by documentary evidence, by another Person who is not a Party hereto and to the knowledge of Receiving Party, any of its Affiliate and any of their respective Representatives, was not in violation of any covenant of confidentiality or non-disclosure given to Disclosing Party or any of its Affiliates with respect to such information;

1.1.8 "Confidentiality Agreement" means the non-disclosure and confidentiality agreement, if any, made by Depositor and Warehouse, as amended, modified, extended, renewed, replaced, restated or supplemented from time to time;

1.1.9 "Confidentiality Period" has the meaning ascribed thereto by Section 10.2.1 of the Terms and Conditions;

1.1.10 "Consequential Loss" means any direct or indirect loss of any of the following:

- (a) loss of production;
- (b) loss of use;
- (c) loss of revenue or (anticipated) profit; and



(d) loss of contract or business opportunity,  
and includes all other indirect, incidental or consequential loss under Applicable Law;

1.1.11 "Control" means one or more of the following:

- (a) a body corporate is controlled by a Person if: (i) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned, directly or indirectly, by such Person; and (ii) the votes attached to those securities are sufficient to elect a majority of the directors of the body corporate;
- (b) an association, partnership, limited liability company, trust or other organization is controlled by a Person if: (i) more than 50% of the ownership interests, however designated, into which the association, partnership, limited liability company, trust or other organization is divided are beneficially owned, directly or indirectly, by such Person; and (ii) the Person is able to direct the business and affairs of the association, partnership, limited liability company, trust or other organization;
- (c) a body corporate, association, partnership, limited liability company, trust or other organization is controlled by a Person if such Person has, directly or indirectly, control in fact of the body corporate, association, partnership, limited liability company, trust or other organization; or
- (d) a body corporate, association, partnership, limited liability company, trust or other organization that controls (within the meaning of this definition) another body corporate, association, partnership, limited liability company, trust or other organization is deemed to control (within the meaning of this definition) any body corporate, association, partnership, limited liability company, trust or other organization that is controlled or deemed to be controlled (within the meaning of this definition) by the other body corporate, association, partnership, limited liability company, trust or other organization;

and each variation of "Control" has a correlative meaning;

1.1.12 "Controlled Drugs and Substances Act" means the *Controlled Drugs and Substances Act*, S.C. 1996, c 19, as amended;

1.1.13 "Cover Sheet" has the meaning ascribed thereto on page 1 of the Agreement and includes Schedule A;

1.1.14 "Criminal Code" means the *Criminal Code*, R.S.C. 1985, c C-46, as amended;

1.1.15 "Day" means a calendar day in the Province of British Columbia;

1.1.16 "Depositor" means the Person which is identified as "Depositor" on page 1 of the Agreement and includes that Person's successors and permitted assigns;

1.1.17 "Disclosing Party" means a Party in respect of any Confidential Information of such Party which is directly or indirectly communicated or disclosed to (or received or acquired by) Receiving Party, any of its Affiliates or any of their respective Representatives;

1.1.18 "Due Care" has the meaning ascribed thereto by Section 7.2.1(a) of the Terms and Conditions;

1.1.19 "Due Date" has the meaning ascribed thereto by Section 5.2.1(b) of the Terms and Conditions;

1.1.20 "Effective Date" has the meaning ascribed thereto on page 1 of the Agreement;

1.1.21 "Excise Act, 2001" means the *Excise Act, 2001*, S.C. 2002, c 22, as amended;

1.1.22 "Excise Tax Act" means the *Excise Tax Act*, R.S.C. 1985, c E-15, as amended;

1.1.23 "Excluded Property" means any tangible personal property or other item that is, or that includes:

- (a) an "alcohol" as defined by the Excise Act, 2001;
- (b) a product that contains any type of asbestos, including any of actinolite, amosite, anthophyllite, chrysotile, crocidolite, cummingtonite, fibrous erionite and tremolite, (an "asbestos product");

- (c) a "controlled substance" as defined by the Controlled Drugs and Substances Act and any other drug or substance of any kind possessing potential hallucinogenic effect, including any paraphernalia associated therewith or with the use or consumption thereof;
  - (d) any "dangerous goods" as defined by the Transportation of Dangerous Goods Act;
  - (e) an "explosive substance" as defined by the Criminal Code;
  - (f) a "firearm" or "ammunition", each as defined by the Criminal Code;
  - (g) a food or drink of any kind or any perishable item;
  - (h) a "hazardous product" as defined by the Hazardous Products Act;
  - (i) a "human pathogen" as defined by the Human Pathogens and Toxins Act;
  - (j) human tissue of any kind;
  - (k) a "nuclear material" as defined by the Criminal Code;
  - (l) any property or item the possession or transportation of which is contrary to any Applicable Law;
  - (m) a "radioactive material" as defined by the Criminal Code;
  - (n) a "toxin" as defined by the Human Pathogens and Toxins Act;
  - (o) a "tobacco product" as defined by the Tobacco and Vaping Products Act;
  - (p) a "valuable mineral" as defined by the Criminal Code;
  - (q) a "vaping product" as defined by the Tobacco and Vaping Products Act; or
  - (r) a "weapon" as defined by the Criminal Code;
- 1.1.24 "Force Majeure Event" has the meaning ascribed thereto by Section 12.1.1 of the Terms and Conditions;
- 1.1.25 "Goods" has the meaning ascribed thereto by Section 2.1.6 of the Terms and Conditions;
- 1.1.26 "Governmental Authority" means any federal, state, provincial, territorial, municipal or local government or any department, agency, board, authority or court of law of such government;
- 1.1.27 "Hazardous Products Act" means the *Hazardous Products Act*, R.S.C. 1985, c H-3, as amended;
- 1.1.28 "Human Pathogens and Toxins Act" means the *Human Pathogens and Toxins Act*, S.C. 2009, c 24, as amended;
- 1.1.29 "Improvements" has the meaning ascribed thereto by Section 10.2.5(b) of the Terms and Conditions;
- 1.1.30 "Intellectual Property Rights" means, in relation to a Party, any and all legal protection for the intellectual and industrial property of the Party and its Affiliates recognized by the law (whether by statute, common law or otherwise, in Canada or any other country) in respect of the Party's business, the Party's works and the Party's Confidential Information, including trade secret and confidential information protection, patents, copyright, industrial design, trade dress, trade names and trade-marks, and all other rights analogous thereto;
- 1.1.31 "Mis-shipped Goods" means Goods which Warehouse shipped to a particular location contrary to the instructions of Depositor;
- 1.1.32 "Notice" has the meaning ascribed thereto on page 2 of the Agreement;
- 1.1.33 "Particular Purpose" has the meaning ascribed thereto by Section 10.2.1(b)(i) of the Terms and Conditions;
- 1.1.34 "Party" and "Parties" have the meaning ascribed thereto by Section 1.1.1 of the Terms and Conditions;
- 1.1.35 "Permitted Lien" means a lien in favour of Warehouse which is placed on the Goods pursuant to the Warehouse Lien Act;

- 1.1.36 "Person" is to be interpreted broadly, and includes any individual and body corporate (including any corporation, limited liability company, unlimited liability corporation, private limited corporation and public limited corporation) and any society, firm or partnership (including any limited partnership and limited liability partnership), trust, trustee, executor or fiduciary, beneficiary, legal representative, fund, association, syndicate, joint venture or other entity, whether or not incorporated, and includes any government and Governmental Authority;
- 1.1.37 "Proposal" has the meaning ascribed thereto on page 1 of the Agreement;
- 1.1.38 "Receiving Party" means a Party which has received or acquired, either directly or indirectly, Confidential Information of Disclosing Party or of any of its Affiliates;
- 1.1.39 "Representative" of a Person and each of its Affiliates, if any, means each of the directors, officers, employees, agents, contractors and consultants, lawyers and other professional advisors of such Person and its Affiliates or any one of them;
- 1.1.40 "Schedule A" means this Schedule A attached to the Cover Sheet;
- 1.1.41 "Schedule B" means this Schedule B attached to the Terms and Conditions;
- 1.1.42 "Services" means the services which Warehouser is required to perform hereunder including where applicable transloading, cross-docking, destuffing and palletizing loose loads, pallet put-away, pallet retrieval, pallet storage, drayage, offsite yard storage, loading for transport, shipping, including linehaul shipping, and transportation;
- 1.1.43 "Storage" includes the performance of the Services;
- 1.1.44 "Term of this Agreement" means the period commencing on the Commencement Date and ending on the Termination Date;
- 1.1.45 "Termination Date" means the Day that this Agreement is terminated or otherwise expires in accordance with the provisions of the Agreement;
- 1.1.46 "Terms and Conditions" has the meaning ascribed thereto on page 1 of the Agreement and includes Schedule B;
- 1.1.47 "Third-Party" means any Person other than the Parties, their respective Affiliates and the Representatives of the Parties or any of their respective Affiliates;
- 1.1.48 "Tobacco and Vaping Products Act" means the *Tobacco and Vaping Products Act*, S.C. 1997, c 13, as amended;
- 1.1.49 "Transportation of Dangerous Goods Act" means the *Transportation of Dangerous Goods Act, 1992*, S.C. 1992, c 34, as amended;
- 1.1.50 "Warehouse Facility" in relation to Goods at a particular time means the premises of Warehouser where the Goods are stored by or on behalf of Warehouser at that time;
- 1.1.51 "Warehouse Lien Act" means the *Warehouse Lien Act*, R.S.B.C. 1996, c 480, as amended;
- 1.1.52 "Warehouser" means Certain Logistics Inc. and includes its successors and permitted assigns; and
- 1.1.53 "Wilful Misconduct" in relation to the performance or non-performance by a Party of an obligation, requirement or duty in connection with any provision of this Agreement means an intentional and conscious or a reckless disregard by such Party of any provision of this Agreement but not any omission, error of judgement or mistake made by any Representative of such Party in the exercise, in good faith, of any duly conferred function, authority or discretion.

## 1.2 INTERPRETATION

In this Agreement, unless a contrary intention is otherwise expressed herein or the context otherwise requires:

- 1.2.1 each capitalized word, and each phrase consisting of two or more capitalized words, in this Agreement has the meaning ascribed to it by this Agreement and any word that is derivative thereof shall have a correlative meaning to that ascribed meaning;
- 1.2.2 words importing the singular number only shall include the plural and vice versa and words importing any gender shall comprise the feminine, masculine and neuter genders;
- 1.2.3 the computation of any period of time referred to herein shall exclude the first Day, and shall include the last Day, of such period;
- 1.2.4 any reference to time refers to the time in the Province of British Columbia;
- 1.2.5 any reference to "dollars" or "\$" refers to lawful currency of Canada unless as otherwise stipulated herein;
- 1.2.6 each reference to an Article or to a Section in the Agreement shall be a reference to that Article or to that Section, as the case may be, contained in the Agreement (other than any Schedule) and each reference to a Schedule shall be a reference to that Schedule forming part of the Agreement and each reference to a Clause in any Schedule forming part of the Agreement shall be a reference to that Clause contained in such Schedule;
- 1.2.7 the words "hereby", "herein", "hereof", "hereto", "hereunder", "herewith" and other words of similar import are references to this Agreement taken as a whole and not to any particular Article, Section, Clause, Schedule or other subdivision of this Agreement;
- 1.2.8 the words "include" and "including" when used herein shall be deemed to mean "include, without limitation" and "including, without limitation", respectively, and consequently each such word, when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters but rather such general statement, term or matter is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- 1.2.9 the division of this Agreement into Articles, Sections and Clauses and the insertion herein of Recitals, headings and a table of contents are for convenience only and in no way define, describe, extend or limit the scope or intent of this Agreement or of any of the provisions herein and shall not be taken into consideration in the interpretation of this Agreement or any of the provisions herein;
- 1.2.10 the rule of contractual interpretation known as *contra proferentem* or any similar such rule shall not apply to the construction or interpretation of this Agreement or to any of the provisions hereof such that in interpreting this Agreement or any such provision, the Parties each acknowledge and agree that it shall be irrelevant which Party drafted any particular provision hereof;
- 1.2.11 each reference herein to an agreement, document, instrument, published data or published information is a reference to it as amended, supplemented, restated, superseded or novated at any time or from time to time;
- 1.2.12 each reference herein to any Applicable Law is a reference to that Applicable Law as amended, supplemented, restated, consolidated, replaced or re-enacted at any time and from time to time and each reference herein to any statute includes the regulations and schedules enacted thereunder;
- 1.2.13 the terms "in writing" and "written" include a transmission made by email or any other electronic means agreed by the Parties;
- 1.2.14 any reference herein to a Person in a particular capacity is, and is deemed to be, a reference to that Person in that capacity and not in any other capacity;
- 1.2.15 when any payment is to be made, or any notice is to be given, on or as of a Day that is not a Business Day, then, unless otherwise expressly stated herein, such payment is to be made, or such notice is to be given, as applicable, on or as of the next following Business Day;
- 1.2.16 any reference to a Day that does not fall on a Business Day, shall be deemed to fall on the next Business Day following the Day first referenced; and

1.2.17 where in this Agreement a Party is stated as giving its consent, approval or agreement, this means that such consent, approval, or agreement shall not be conditioned or arbitrarily or unreasonably withheld or delayed unless otherwise expressly stipulated.

1.3 **LIST OF SCHEDULES**

1.3.1 This Agreement includes Schedule A and Schedule B.

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