

**GENSOURCE POTASH CORPORATION**

**- and -**



May 1, 2018

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## OFFTAKE AGREEMENT

THIS AGREEMENT is made as of the 1<sup>st</sup> day of May, 2018 (the “**Execution Date**”)

### **BETWEEN:**

**GENSOURCE POTASH CORPORATION**, a corporation incorporated under the laws of the Province of Ontario, having its head office at 1100 - 201 1st Avenue South, Saskatoon, Saskatchewan, S7K 1J5 (the “**Seller**”)

### **AND**



(the “**Buyer**”)

WHEREAS the Seller is a mineral resource company focused on the development of potash in the Province of Saskatchewan, and proposes to develop a potash production project in the mineral lease area KL 245 in Saskatchewan specifically to meet the Product and production requirements of this Agreement (the “**Project**”);

AND WHEREAS the Buyer has, on the basis of this Agreement, agreed to purchase a certain amount of the Product (as defined herein) produced from the Project;

AND WHEREAS the Parties hereto have entered into this Agreement to provide for the purchase by the Buyer from the Seller, and the sale by the Seller to the Buyer, of Product to be produced by the Seller from the Project (except in limited circumstances);

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties, the Parties hereby covenant and agree as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement capitalized terms shall, unless defined elsewhere in this Agreement, have the following meanings:

“**ADR Institute**” means the ADR Institute of Saskatchewan or its successor;

“**Affected Party**” has the meaning set out in Section 9.1;

“**Affiliate**” has the meaning set out in *The Securities Act, 1988* (Saskatchewan);

“**Agreement**”, “**this Agreement**”, “**herein**”, “**hereby**”, “**hereof**”, “**hereunder**” and similar expressions mean or refer to this Agreement and any and all agreements in writing between the Parties hereto amending this Agreement or supplemental or ancillary hereto and, unless the context otherwise requires, the expressions

“**Article**”, “**Section**” or “**Schedule**” followed by a number or letter mean and refer to the specified Article or Section of or Schedule to this Agreement;

“**Aggregate Quantity**” means the minimum aggregate quantity of Product agreed to be purchased and sold under this Agreement, being 2,250,000 tons (determined, for calculation purposes only, by multiplying 225,000 ton/a by ten years);

“**Analytical Methods**” means the procedures set out in Schedule “A”;

“**Annual Quantity**” means, in respect of a Contract Year:

- (A) consisting of 365 days or 366 days, as the case may be, 250,000 Ton/a plus or minus 10% or
- (B) consisting of less than 365 days, a pro rata portion on the applicable amount in Section (A), above, based on the portion that the number of days in such Contract Year bears to 365.

“**Annual Quantity Shortfall**” has the meaning set out in Section 2.6.3, and is, further, limited to a maximum of 10,000 tons in any Contract Year;

“**Benchmark Price**” has the meaning set out in Section 5.1;

“**Business Day**” means any day on which commercial banks are generally open for business in Saskatoon, Saskatchewan other than a Saturday, Sunday or statutory holiday;

“**CFR**” has the meaning set out in INCOTERMS;

“**Commencement of Commercial Production**” means, and shall be deemed to have been achieved on the date that the Project has completed its commissioning phase, and meets production design capacity of 250,000 ton/a plus or minus 10%, and has achieved the consistent production of product that meets the product specifications contained herein;

“**Competent**” means in respect of a Person, that Person having the necessary technical, financial and operational capabilities to operate and manage the Project and comply with the terms of this Agreement;

“**Confidential Information**” has the meaning set out in Section 13.1;

“**Contract Quarter**” means each quarterly period of a Contract Year;

“**Contract Year**” means:

- (a) firstly, the period from Commencement of Commercial Production until the following 31 December;
- (b) thereafter, a period commencing on 1 January until the following 31 December before the termination of this Agreement; and

(c) then the period ending on the End Date and beginning on the last preceding 1 January;

“**Default Costs**” has the meaning set out in Section 2.5.1;

“**Delayed Commencement of Production**” has the meaning set out in Section 2.1.3;

“**Deliver**” means delivery of the Product by the Seller into the rail cars designated by the Buyer at the Project site; and “**Delivery**” and “**Delivered**” have comparable meanings;

“**Delivery Point**” means the location at which Delivery of the Product is made, namely the Loading Point at the Project Site;

“**Delivery Schedule**” has the meaning set out in Section 2.3.2;

“**Delivery Product Samples**” has the meaning set out in Section 8.2.1;

“**Delivery Representative Samples**” has the meaning set out in Section 8.2.1;

“**Disclosing Party**” has the meaning set out in Section 13.1;

“**Discount**” has the meaning set out in Section 5.2;

“**End Date**” has the meaning set out in Section 2.7.1;

“**Execution Date**” has the meaning set out on page 2 of this Agreement;

“**FOB**” has the meaning set out in INCOTERMS;

“**Final Invoice**” has the meaning set out in Section 6.2.2;

“**Fixed Start Date**” means the date that is five years after the Execution Date;

“**FM Notice**” has the meaning set out in Section 9.2.1;

“**Force Majeure Event**” has the meaning set out in Section 9.1;

“**INCOTERMS**” means the *INCOTERMS 2010, ICC Rules for the Use of Domestic and International Trade Terms*, published by the International Chamber of Commerce, as may be amended from time to time;

“**Insolvency Event**” means:

- (a) an application is made to a court for an order (and is not stayed, withdrawn, or dismissed within 30 Business Days) or an order is made that a body corporate be wound up or dissolved;
- (b) an application is made to a court for an order appointing a liquidator, provisional liquidator, receiver, interim receiver, receiver and manager, trustee or administrator in respect of a body corporate (and is not stayed, withdrawn or dismissed within ten Business Days) or one of them is

appointed in any manner whatsoever, whether or not under an order of a court;

- (c) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent, or is otherwise wound up or dissolves;
- (d) the enforcement of security interests over all or a material part of the relevant body corporate's assets; or
- (e) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate;

**"Initial Invoice"** has the meaning set out in Section 6.2.1;

**"ISO"** means International Organization for Standardization;

**"Loading Point"** means the point, as designated by the Seller, for loading the Product for a Shipment;

**"Loading Point Product Samples"** has the meaning set out in Section 8.1.1;

**"Loading Point Representative Samples"** has the meaning set out in Section 8.1.1;

**"Loading Point Surveyor"** has the meaning set out in Section 7.1.1;

**"Non-Conforming Product"** has the meaning set out in Section 3.2.1;

**"NOR"** has the meaning set out in Section 2.4.3(ii);

**"Notice of Non-Conformity"** has the meaning set out in Section 3.2.1;

**"Parties"** means the Seller and the Buyer collectively, and **"Party"** means either of them as the context requires;

**"Payment Due Date"** has the meaning set out in Section 6.3.1;

**"Person"** means and includes an individual, general partnership, limited partnership, corporation, company, limited liability company, unincorporated association, unincorporated syndicate, unincorporated organization, joint venture, governmental authority, trust, trustee, executor, administrator or other legal representative;

**"Product"** has the meaning set out in Section 2.2.3;

**"Product Specifications"** means the specifications for the Product set out in Section 2.2.3;

**"Prohibited Characteristics"** means with respect to any specified element or compound in the Product Specifications, an element or compound contained in the

Product in quantities outside the acceptable range for that element or compound as expressly specified in the Product Specifications;

“**Project**” has the meaning set out in the recitals;

“**Project Disposal**” means the direct or indirect sale by the Seller of substantially all of the assets of the Project;

“**Project Lender**” has the meaning set out in Section 15.5.1;

“**Project Lock In Period**” has the meaning set out in Section 15.4.1;

“**Project Site**” means the geographical location of the processing plant producing the Product;

“**Receiving Party**” has the meaning set out in Section 13.1;

“**Representative**” means, with respect to any Party, the Party’s Affiliates and such Party’s and its Affiliates’ directors, officers, employees and advisors;

“**Sale Notice**” has the meaning set out in Section 15.5.1(d);

“**Shipment**” means each shipment of Product Delivered by the Seller to the Buyer pursuant to this Agreement;

“**Shipping Documents**” has the meaning set out in Section 6.1.1;

“**Title Document**” means, with respect to each Shipment, an on board bill of lading, and in each case identifying the recipient of the Shipment, its destination, date of Delivery and the weight of the Product comprised in such Shipment;

“**ton, or tons**” means standard U.S. Short Ton of 2,000 pounds;

“**ton/a**” means Tons per year;

“**Umpire**” means the Person appointed to act as an umpire pursuant to Section 11.1.1;

“**Unit Train**” means railcar train units up to 100 cars as set out in Section 2.4.2

“**Unit of Transport**” has the meaning set out in Section 8.1.1;

“**USD**” means the lawful currency of the United States of America; and

## **1.2 Interpretation**

Unless the contrary intention appears, a reference in this Agreement to:

1.2.1 a Section or schedule is a reference to a Section in or schedule to this Agreement;

- 1.2.2 a document (including this Agreement) includes any variation or replacement of it;
- 1.2.3 the singular includes the plural and vice versa;
- 1.2.4 a particular Person includes a reference to the Person's successors and permitted assigns;
- 1.2.5 a group of Persons or things is a reference to any two or more of them jointly and to each of them individually;
- 1.2.6 a statute, regulation, proclamation, code (which has the force of law), ordinance or by-law includes all statutes, regulations, proclamations, codes (which have the force of law), ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute; and
- 1.2.7 the words "include", "including", "for example" or "such as" are not used as, and are not to be interpreted as, words of limitation and when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

## **2. SALE OF PRODUCT**

### **2.1 Commencement of Commercial Production & Supply**

- 2.1.1 The Seller will use commercially reasonable efforts to have the Commencement of Commercial Production occur on or prior to the Fixed Start Date. Until the date of Commencement of Commercial Production, the Seller shall provide the Buyer with quarterly updates of the progress of the development of the Project and an estimate as to the date of Commencement of Commercial Production.
- 2.1.2 The Seller shall give the Buyer at least 90 days advance written notice of the date when the Seller expects Commencement of Commercial Production to occur. The Parties shall complete all requisite formalities for Delivery of the Annual Quantity after such date as contemplated under this Agreement. The Seller shall formally notify the Buyer in writing upon the occurrence of Commencement of Commercial Production, and shall promptly provide the Buyer with an Engineer's Certificate certifying such occurrence, or some other proof of such occurrence agreed to by the Buyer acting reasonably.
- 2.1.3 If Commencement of Commercial Production is not achieved by the Fixed Start Date, then either Party shall have the right, exercisable by written notice to the other, to terminate this Agreement whereupon neither Party shall have any further obligation to the other, save as may be otherwise specifically provided for herein, and provided further that in the event



[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		

2.2.4 The Parties may, in good faith, determine the sale and purchase of quantities in addition to the Annual Quantity, but neither shall be under any obligation to sell or purchase any Product in excess of the relevant Annual Quantity.

**2.3 Delivery Schedule**

2.3.1 Buyer shall take delivery of the Annual Quantity such that Product stored by Seller at Project Site shall not exceed 25,000 Tons of Product. Buyer shall have the option of taking delivery of all of Seller’s production over and above the Annual Quantity.

2.3.2 If, at any time, Buyer does not take Delivery of Product in a sufficiently consistent manner and, as a result, the requirement for storage by Seller of Product at Project Site exceeds 25,000 Tons, then all such Product over and above 25,000 Tons will be deemed to be an Annual Quantity Shortfall and will be dealt with pursuant to 2.6.3 of this Agreement. Notwithstanding the foregoing, Product stored at the Project Site over and above 25,000 Tons shall not be deemed to be an Annual Quantity Shortfall in the event that Seller fails to produce the Product in a sufficiently consistent manner.

2.3.3 The Parties shall coordinate a statement of deliveries (the “**Delivery Schedule**”) prior to each Contract Quarter, setting out the amount of Product

to be Delivered from the Project by the Seller, based on a good faith estimate of the quantity of Product which the Seller expects the Buyer to take delivery of in each month of a Contract Quarter, and the good faith estimates of the quantity of Product which the Buyer expects to purchase from the Seller in each month of a Contract Quarter. The Delivery Schedule will be set by the Parties, each acting reasonably, and based, in part, on anticipated market demands identified by the Buyer. The Seller acknowledges that the Annual Quantity to be Delivered each Contract Year may not be in consistent monthly quantities. Notwithstanding the foregoing, the amount of Product to be delivered in any Contract Quarter shall not deviate by more than 25% from the quantity obtained by dividing the Annual Quantity by 4.

2.3.4 The Seller will provide five calendar days' written notice to the Buyer prior to loading Product onto rail transport at the Project for each Delivery to be made pursuant to the Delivery Schedule.

## 2.4 Delivery

2.4.1 Unless otherwise agreed to in writing by the Seller and Buyer with respect to any particular Shipment, the Seller shall Deliver all Product on a FOB basis at the Project Site.

2.4.2 Seller shall have the capacity on Project Site to load [REDACTED]

2.4.3 The Seller shall load [REDACTED] designated by the Buyer at the Project Site and title to and responsibility for the Product shall pass from Seller to Buyer as the product is loaded [REDACTED].

(i) The Seller shall be responsible for [REDACTED] at its Project Site.

(ii) All costs of delivery of the Product to the Loading Point, including costs of storage at the Project Site and handling of the product shall be for the Seller's account.

(iii) The Buyer shall procure and maintain all [REDACTED]

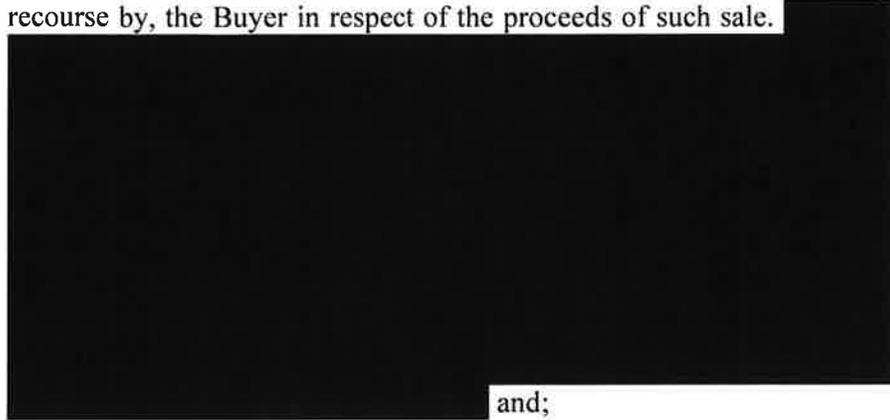
## 2.5 Failure to Deliver

- 2.5.1 If the Seller defaults in Delivery of the Annual Quantities in accordance with the terms of this Agreement, the Buyer shall be entitled to purchase the defaulted quantity from other sources and the Seller will compensate the Buyer for any net difference in price and any direct incremental costs that the Buyer may incur in purchasing and supplying alternative Product to the Buyer's customers, which incremental costs may include additional diversion charges, shipping and insurance costs (collectively, the "**Default Cost**"). For the avoidance of doubt, the Seller shall not be liable to the Buyer for, and Default Cost shall not include, any amount for loss of anticipated profits or any indirect or consequential losses incurred or alleged to have been incurred by the Buyer arising out of the Seller's default in the Delivery of the Annual Quantities referred to herein. Any quantities sourced due to Seller's Failure to Deliver under this section 2.5 shall give the Buyer the option, in its sole discretion, to reduce the Annual Quantities the Buyer is obligated to purchase in an equal amount.
- 2.5.2 Any reimbursements or amounts payable by the Seller under this Section 2.5, shall be against proof of loss.
- 2.5.3 The Seller shall make all payments in respect of such Default Costs within 30 days of having received notice of such Default Costs accompanied by proof of loss. In case of any delay by the Seller to make the necessary payments under this Section 2.5.3, interest shall be payable by it on the Default Costs amount at the prime rate of the Bank of Montreal plus 3%.
- 2.5.4 Unless and until the Seller pays the amounts due from it under this Section 2.5.3, the Buyer may set-off such amounts against any amounts payable by the Buyer to the Seller under this Agreement.

## 2.6 Take or Pay

- 2.6.1 The Buyer covenants and agrees to purchase the Annual Quantity in accordance with the terms of this Agreement.
- 2.6.2 If the Seller Delivers the Annual Quantities, and if the Buyer fails to complete the purchase of the Annual Quantities in accordance with terms hereof, the Buyer shall remain liable to remit payment as provided herein.
- 2.6.3 The Buyer's failure to take Delivery of any or all of the Annual Quantity shall not, of itself, be deemed a breach of this Agreement and shall not entitle the Seller to terminate this Agreement. If during any Contract Year, the Buyer determines it will be unable to accept Annual Quantities in accordance with this Agreement, the following provisions shall apply:
- (i) For any Annual Quantities with respect to which the Buyer does not take Delivery ("**Annual Quantity Shortfall**"), the Seller shall be free to market and sell the Annual Quantities Shortfall for its own benefit using

its own resources, and without any obligation to account to, or any recourse by, the Buyer in respect of the proceeds of such sale.



- (ii) Any quantity of Product with respect to which the Buyer has compensated the Seller as aforesaid shall be deemed as quantity of Product Delivered for the purpose of computing that year's Annual Quantity.

## **2.7 Term**

Unless otherwise terminated in accordance with Section 14, the rights and obligations under this Agreement begin on the date of this Agreement and end on the 10th anniversary of Commencement of Commercial Production (the "**End Date**"); and

## **2.8 Extension**

Not less than six months prior to the End Date, the Parties may mutually agree to extend the term of this Agreement for the remaining expected life of the Project. The remaining expected life of the Project to be reasonably estimated by the Parties.

## **3. QUALITY OF PRODUCT**

### **3.1 Specifications and Other Characteristics**

3.1.1 Chemical Specification: The Seller represents and warrants that the Product to be Delivered hereunder shall meet the Product Specifications in Section 2.2.3, and be free of any Prohibited Characteristics, and any legal encumbrances.

3.1.2 Characterization of the Product: For greater certainty: (i) the presence in the Product of any element or compound in quantities within the range for that element or compound expressly specified in the Product Specifications shall not constitute a Prohibited Characteristic; and (ii) the Seller shall, at its sole cost and expense, remove all Prohibited Characteristics that are removable and, following such removal, the Product shall be deemed not to contain any

such Prohibited Characteristics, but only if it meets the Product Specifications.

3.1.3 All Product to be Delivered to the Buyer must be suitable and safe for [REDACTED]

### 3.2 Non-Conforming Product

3.2.1 All Product Delivered hereunder shall meet to or exceed the Product Specifications and shall not contain or exhibit any Prohibited Characteristics. If the Product in any Shipment: (i) does not at least meet the Product Specifications, or (ii) has Prohibited Characteristics (in either case, “**Non-Conforming Product**”), the Buyer shall immediately notify the Seller of the details of such non-conformity (a “**Notice of Non-Conformity**”).

3.2.2 Notwithstanding anything to the contrary under this Agreement, the Buyer shall have the right to reject any Non-Conforming Product that fails to meet the Product Specifications set out in Section 2.2.3. In such case, the Seller shall promptly, subject to normal commercial and operating constraints, replace such Non-Conforming Product at the Seller’s sole expense, including removal and disposal thereof, and such quantity of Non-Conforming Product shall be subtracted from the Annual Quantity. The parties may otherwise agree to resolve the matter in a manner acceptable to the Buyer. If the Buyer has not given a Notice of Non-Conformity within 30 days of the delivery of the analysis certificate by the Discharging Point Surveyor to the Seller, the Buyer shall be deemed to have waived any right to reject such Product.

3.2.3 If there is a dispute between the Parties as to whether a Product is a Non-Conforming Product, the Parties shall cause the Product in question to be analyzed by an Umpire, whose findings regarding the non-conformity of the Product shall be binding on the Parties.

3.2.4 If in the determination of the Umpire that the Product is Non-Conforming Product, all costs of the Umpire shall be for the Seller. If in the event the determination of the Umpire is that the Product is within the Product Specifications, then the cost of the analysis by the Umpire shall be for the account of the Party whose analysis is further from that of the Umpire. In the event that the analysis of the Seller and the Buyer are equidistant from the Umpire analysis, the cost of the Umpire shall be shared equally by the Buyer and the Seller.

3.2.5 If the Umpire analysis indicates that the Product is Non-Conforming Product as per Section 3.2, then, while the Buyer will have no obligations to purchase the Non-Conforming Product, it may at its option choose to retain the Shipment subject to such terms and conditions as may be mutually agreed. If the Buyer rejects a Non Conforming Product, then the title to the Shipment shall be deemed to transfer from the Buyer to the Seller and the Seller shall be entitled at its discretion to sell, assign, transfer, dispose of or otherwise deal with such Non-Conforming Product in a manner that it deems

fit at its sole risk as to costs and consequences and the Buyer shall fully cooperate with all reasonable requests of the Seller in this regard. The Seller must then, forthwith upon demand, compensate the Buyer for all costs, expenses and liabilities incurred by the Buyer in respect of such disposal.

3.2.6 Where the Buyer has elected to purchase a Non-Conforming Product, the Buyer will be deemed to have accepted the non-conformity disclosed in the Notice of Non-Conformity and waives any right to further compensation or to make other claims against the Seller in respect of such non-conformity disclosed in the Notice of Non-Conformity.

**4. RISK, TITLE AND INSURANCE**

**4.1 Passing of Risk and Title**

The parties agree that title to and all risk of loss of or damage to each Shipment shall remain with the Seller until, and shall pass to the Buyer upon the Product being loaded [REDACTED] at the Loading Point.

**4.2 Seller's Warranties on Title**

The Seller represents and warrants to the Buyer with respect to each Shipment that at the time of title transfer thereof as provided for in Section 4.1, it will have and will deliver to the Buyer at such time, good and marketable title to the Product comprising such Shipment, free and clear of all liens and encumbrances.

**4.3 Insurance**

Once the Shipment is loaded [REDACTED] at the Loading Point all risk and title to the Product shall, in accordance with Section 4.1, transfer to the Buyer and the Buyer shall be responsible for insuring the Shipment for the balance of its journey, at the Buyer's own cost, in accordance with standard industry practice in respect of the same, and the Seller shall provide the Buyer all details required by the Buyer for so insuring the Shipment.

**5. PRICE**

**5.1 Product Pricing**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iii. [REDACTED]

iv. [REDACTED]

v. [REDACTED]

vi. [REDACTED]

**5.2 Pricing Adjustment**

The Parties agree to, in good faith, review and renegotiate the pricing formula and components thereof after the end of the fourth Contract Year and on an annual basis thereafter to ensure that the pricing formula is fair to both Parties and generally reflects current market conditions.

## 6. DOCUMENTATION, INVOICING AND PAYMENT

### 6.1 Shipping Documents

6.1.1 Promptly, and no longer than 12 hours, after title of each Shipment transfers to the Buyer as provided in Section 4.1, the Seller will send by electronic means the following documents, related to such Shipment (the “**Shipping Documents**”) Buyer may request particular original documents to be mailed within 5 business days after title transfers to Buyer:

- (a) Final Invoice;
- (b) a full set of clean bills of lading in respect of the Shipment;
- (c) the analysis certificate issued by the Loading Point Surveyor as mutually agreed under Section 8.1.1;
- (d) the weight certificate issued by the Loading Point Surveyor as mutually agreed under Section 7.1.1;
- (e) certificate of origin;
- (f) a material safety data sheet or comparable information as required to comply with applicable workplace hazardous material information system laws and regulations of Canada or other country or destination, as applicable; and
- (g) such additional documentation pertaining to a Shipment as the Buyer may reasonably request [REDACTED]

(h) [REDACTED]

### 6.2 Invoices

6.2.1 Invoicing and payments per Section 6.2 and Section 6.3 will be prepared and processed for each Shipment.

6.2.2 10 Business Days prior to the estimated date of Delivery of a Shipment, the Seller will provide the Buyer with an initial invoice (the “**Initial Invoice**”) regarding the Shipment based on the agreed tonnage for the Shipment and an estimated price (“**Estimated Sale Price**”), [REDACTED]

[REDACTED]

6.2.3 Upon completion of the loading of the Shipment, the Seller shall invoice the Buyer for each Shipment (the “**Final Invoice**”). Each Final Invoice shall be dated on or after the date of transfer of title to the Shipment to the Buyer and shall have attached to it a copy of the related Title Document and Loading Point Surveyors report. Each Final Invoice shall set out the appropriate shipping information, [REDACTED], the weight of Product in the Shipment (expressed in US short tons of 2,000 pounds and corresponding to the weight on the related Title Document), the Estimated Sale Price and the calculation of the total Price of the Shipment.

**6.3 Payment**

6.3.1 All Final Invoices are due upon receipt by the Buyer, but interest on late payment in accordance with Section 6.5, shall not begin to accrue until the 31<sup>st</sup> day after the date of the relevant Final Invoice (each a “**Payment Due Date**”), provided, unless Sections 8.2.3 or 8.2.4 apply, the Buyer has received and not rejected all or a part of the Shipment to which the Final Invoice relates as Non-Conforming Product in accordance with Section 8.2.4. If a Payment Due Date is not a Business Day, such payment shall instead be due on the next Business Day. Any payments due from the Seller to the Buyer may be adjusted against the invoiced amount, with notice to the Seller.

6.3.2 On a quarterly basis, the Parties shall reconcile all previous shipments made and the Final Invoices for each Shipment, [REDACTED]

**6.4 Manner of Payment**

All payments made by the Parties to each other under this Agreement shall be made in USD in immediately available and freely transferable funds by means of electronic transfer to the account designated by the recipient Party.

**6.5 Taxes, Tariffs and Duties**

6.5.1 [REDACTED]

6.5.2 [REDACTED]



6.5.3 No Application to Income Taxes. Notwithstanding Sections 6.5.1 and 6.5.2, neither the Seller nor the Buyer shall have any responsibility for any taxes imposed on or measured by the other's net income or net revenues by any governmental authority.

## 7. WEIGHING

### 7.1 At Loading Point

7.1.1 Weighing at the Loading Point for a Shipment shall be accomplished by installed, certified legal for trade weighing equipment at the Project Site. The Seller commits to a third-party inspected and verified maintenance, calibration and certification program for all weighing equipment and will make all data and certificates applicable to such program available to the Buyer for inspection. Weight certificates shall be issued and promptly delivered to the Buyer and shall be included with all Final Invoices.

7.1.2 The weights determined in 7.1.1 shall be the basis for the invoices and payments, subject to the provisions of this Agreement. The Buyer shall be entitled to nominate in advance, at its expense, a Representative of the Buyer to observe or inspect all weighing equipment and/or operations.

### 7.2 At Discharging Point

7.2.1 At its option and expense, the Buyer may initiate weight checks at the Discharging Point ("**Discharging Point**" is defined as the location where the Product, for a Shipment, is first unloaded from the Unit of Transport for delivery to a customer, placement in storage or any other purpose) against the weights generated at the Loading Point.

7.2.2 Any discrepancies found between the weights determined at the Discharging Point and the Loading Point shall be investigated by both Parties and the Parties will use best commercial efforts to ascertain the source of the discrepancies and eliminate such discrepancies. If a discrepancy is agreed upon that has a bearing on a Final Invoice, an adjusting entry will be made by the Seller for such Final Invoice.

7.2.3 If no agreement can be found for a weight discrepancy, then the matter will be referred to a third-party Umpire, whose analysis and decision on the matter will be final and binding on both Parties. The cost of the analysis by the Umpire shall be for the account of the Party whose analysis is further from that of the Umpire. In the event that the analysis of the Seller and the Buyer are equidistant from the Umpire analysis, the cost of the Umpire shall be shared equally by the Buyer and the Seller.

7.2.4 If weighing at the Discharging Point is not performed, the weight set out in the Seller's weight certificate at the Loading Point shall be regarded as final.

## **8. QUALITY DETERMINATION**

### **8.1 At Loading Point**

8.1.1 The Seller shall, at its expense, take or cause to be taken one representative sample of the Product from every Unit of Transport ("**Unit of Transport**" is defined as the unit, or container, which transports the Product from the Project Site and into which the Product is placed at [REDACTED]) of the Product loaded at the Loading Point for Delivery to the Buyer (the "**Loading Point Representative Samples**"). The Loading Point Representative Samples are then to be divided into two equal parts, one of which shall be sealed in an air-tight container and retained by the Seller for any dispute resolution or Umpire decision, the second shall be mixed with all other second half-part Loading Point Representative Samples to prepare a "composite" sample for a Shipment. The composite sample shall be divided into two equal parts and sealed in individual containers, each of which shall be a minimum of 400 grams (the "**Loading Point Product Samples**"). One of the Loading Point Product Samples shall be used for analysis by the Seller and one shall be sealed by the Seller and sent along with the Shipment to the Buyer. The Seller will perform chemical composition and granulometric analysis, as per agreed Product Specifications at Loading Point in accordance with the Analytical Methods. The chemical composition analysis shall be made against the Product Specifications.

8.1.2 The Buyer shall be entitled, at its expense, to nominate in advance a Representative of the Buyer, to observe such sampling and chemical granulometric analysis.

8.1.3 Unless contested in accordance with the provisions of Section 8.2.4, the analysis at the Loading Point shall be the basis for the invoices and payments, subject to the provisions hereof.

### **8.2 At Discharging Point**

8.2.1 After arrival of a Shipment at the Discharging Point, the Buyer may initiate its own quality determination, at its own expense, on the Product as received. Any such check shall be performed according to industry standards and the Analytical Methods defined herein and shall be similar in procedure to the Loading Point quality determination in Section 8.1.1.

8.2.2 The Seller shall be entitled to nominate at its expense a Representative of the Seller, to observe such sampling and granulometric analysis.

8.2.3 Any discrepancies found between the quality determined at the Discharging Point and the Loading Point shall be investigated by both Parties and the Parties will use best commercial efforts to ascertain the source of the

discrepancies and eliminate such discrepancies. If a discrepancy is agreed upon that has a bearing on a Final Invoice, an adjusting entry will be made by the Seller for such Final Invoice.

- 8.2.4 If no agreement can be found for a quality discrepancy, then the matter will be referred to a third-party Umpire, whose analysis and decision on the matter will be final and binding on both Parties. If in the determination of the Umpire that the Product is Non-Conforming Product, all costs of the Umpire shall be for the Seller. If in the event the determination of the Umpire is that the Product is within the Product Specifications, then the cost of the analysis by the Umpire shall be for the account of the Party whose analysis is further from that of the Umpire. In the event that the analysis of the Seller and the Buyer are equidistant from the Umpire analysis, the cost of the Umpire shall be shared equally by the Buyer and the Seller.
- 8.2.5 If Buyer concludes a quality check at the Discharging Point, the analysis certificate prepared by the Buyer at the Discharging Point will be delivered to the Seller by fax or electronic mail immediately, and in any event within three Business Days upon the receipt of such certificate by the Buyer.

### **8.3 Method of Analysis**

The quality analysis to be performed pursuant to this Section 8 shall be in accordance with the agreed Analytical Methods including sampling size and frequency, as amended from time to time.

### **8.4 Total Loss or Damage**

If the whole of, or a portion of, a Shipment is lost or damaged on account of a Force Majeure Event before quantity and quality analysis can be completed by the Buyer as contemplated by Sections 8.2, then the final price payable in respect of such Shipment shall be calculated on the basis of the quantity and quality analysis performed at the Loading Point and included with the Final Invoice.

## **9. FORCE MAJEURE AND OTHER PROVISIONS**

### **9.1 Effect of Force Majeure**

A “**Force Majeure Event**” means the following acts, events, circumstances or causes to the extent they: (A) are beyond the reasonable control of a Party and adversely and directly render the performance of obligations under the Agreement by such Party (the “**Affected Party**”), impossible in whole or in part; (B) could not have been prevented or overcome by the Affected Party taking reasonable steps in accordance with good industry practice and standards; and (C) are not caused by a default or negligence on the part of the Affected Party; and shall include without limitation, the following:

- (a) acts of God, lightning strikes, earthquake, cyclones, floods, storms, explosions, fires, epidemics, pandemics and any natural disaster;
- (b) acts of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, terrorism, riots, loss of goods at sea;
- (c) strikes, boycotts, or labour disruptions;
- (d) interruption, disruption or failure in access to or use of rail or public roadways;
- (e) action of a government agency having material adverse effect on the Project or the ability to perform this Agreement by the Affected Party including but not limited to: (i) acts of expropriation, compulsory acquisition or takeover by any government agency of the Project or any part thereof; (ii) any judgment or order of a court of competent jurisdiction or statutory authority in any proceedings which is non-collusive and duly prosecuted by the Affected Party, and; (iii) any passage of legislations, laws, orders or rules.

For greater certainty, Force Majeure Events shall not include: (i) any circumstances of economic hardship or lack of funds, and such lack of funds or economic hardship shall in no event constitute a cause beyond the reasonable control of the Affected Party; (ii) any circumstances which detrimentally affects the quality of the Product (including Product Specifications) as opposed to circumstances that detrimentally affect the production facilities or availability of transport of such Product; or (iii) fluctuations in the market price of potash.

## **9.2 Suspends Relevant Obligations of Both Parties**

If the Affected Party is unable to carry out an obligation under this Agreement due to a Force Majeure Event:

- 9.2.1 The Affected Party must give prompt written notice to the other Party (an “**FM Notice**”) within a period of ten Business Days of the occurrence of the Force Majeure Event with all particulars of the Force Majeure Event and, so far as is known, the probable extent to which the Affected Party shall be able to perform or be delayed in performing the obligation.
- 9.2.2 The other Party may give notice to the Affected Party of the extent to which the other Party’s ability to comply with its obligations shall be affected by the Affected Party’s inability to comply with its obligations.
- 9.2.3 The relevant obligations of the Affected Party and the other Party, so far as they are affected by the Force Majeure Event, shall be suspended during, but no longer than, the continuance of the Force Majeure Event. The suspension of performance shall be of no greater scope and no longer duration than is reasonably necessitated by the Force Majeure Event. However, the non-performance of any obligation of either Party that was required to be completed prior to the occurrence of the Force Majeure Event shall not be excused as a result of such subsequent Force Majeure Event.

9.2.4 The Affected Party must use all reasonable efforts to overcome or remove the Force Majeure Event as quickly as possible and shall furnish timely regular updates to the other Party with respect to the expected severity and duration of the Force Majeure Event.

9.2.5 The Party claiming Force Majeure Event shall give further notice to the other Party immediately upon such Force Majeure Event ceasing to have effect.

### **9.3 Parties Must Meet**

In the event of either Party giving an FM Notice, the Parties must meet promptly and use reasonable commercial efforts to reach a mutually acceptable solution to alleviate any hardship or unfairness caused to either Party as a result of the circumstances constituting the Force Majeure Event.

### **9.4 Pro Rata Reduction of Commitment**

9.4.1 If a Force Majeure Event reduces the Seller's ability to produce or Deliver the Product as per the terms of this Agreement, the Seller shall continue to Deliver all Product that it is able to Deliver to the Buyer, as the Seller has no other sales commitments to other parties from the Project.

9.4.2 If a Force Majeure Event results in a partial reduction in the Buyer's ability to perform under this Agreement and the Force Majeure Event is such that it is applicable to all of its supplies of potash, then the Buyer shall allocate any such reduction among all of its suppliers of Product including the Product to be Delivered by the Seller under this Agreement.

### **9.5 Right to Terminate After Six Months of Force Majeure**

If a Force Majeure Event has not been lifted six months after the date of the FM Notice, the unaffected Party shall have the right, exercisable by written notice to the Affected Party, to terminate this Agreement on the date six months after the date of the FM Notice. Written notice of intent to terminate due to Force Majeure shall be provide to Affected Party 30 days prior to the six months of Force Majeure termination date. During such 30 day period the Affected Party that has declared the Force Majeure Event shall be entitled to request that this Agreement not be so terminated and that both Parties shall meet to discuss reasons for termination. In the event that the unaffected Party still affirms its intention to terminate this Agreement, then this Agreement shall terminate at the expiry of the 30 day period stated in the notice, in which case any amount due hereunder will be immediately due and payment shall be made within the next ten Business Days, thereafter both Parties shall be free from liability in respect of unshipped Product.

### **9.6 Consultation in the Event of Hardship**

The provisions of this Agreement are intended by the Buyer and the Seller to operate fairly over the term of this Agreement. The Buyer and the Seller recognize that it is impracticable to make provision for every contingency which may arise

during the term of this Agreement. In the future, should circumstances arise which were unforeseeable at the time this Agreement was made and which cause severe economic hardship to either the Buyer or to the Seller from the continued operation of this Agreement in accordance with its terms, the Affected Party may so notify the other Party, following which the Parties shall agree to promptly consult together and review the provisions of this Agreement and consider possible modifications thereof which might lessen such severe economic hardship. Neither Party is obliged by this Section 9.6 to agree to any modification of this Agreement, and no modification of this Agreement shall be made except by agreement of the Parties in writing and in accordance with Section 15.11.

#### **9.7 Limitations on Right to Request Consultations**

It is not intended that Section 9.6 be invoked to deprive a Party of savings or advantages arising from the efficiency of the Party which contributes to the profitability of its operations, nor is it intended that Section 9.6 be invoked as a result of the availability of more attractive sources of potash supply for the Buyer or increase in production cost to the Seller or more attractive markets for the Seller.

### **10. REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

#### **10.1 Representations and Warranties of the Buyer**

The Buyer represents and warrants to the Seller as follows and acknowledges that the Seller is relying upon such representations and warranties in connection with the entering into of this Agreement that, as of the date hereof:

- 10.1.1 Organization. The Buyer is a corporation duly incorporated [REDACTED], and is validly existing and in good standing thereunder, and no proceedings have been instituted or are pending for its dissolution or liquidation.
- 10.1.2 Corporate Power and Authority. The Buyer has all requisite legal and corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 10.1.3 Duly Authorized and Binding Agreement. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Buyer, and this Agreement has been duly executed and delivered by the Buyer and constitutes a valid and legally binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, subject to bankruptcy, insolvency and other applicable laws affecting creditors' rights generally and to general principles of equity.
- 10.1.4 No Violation. The execution and delivery of this Agreement, the performance by the Buyer of its obligations hereunder and the consummation of the other transactions contemplated by this Agreement do

not and will not conflict with, or result (with or without notice or the lapse of time) in a breach or violation of, or constitute a default under, any of the terms or provisions of: (i) the constituting documents of the Buyer, (ii) the resolutions of its shareholders or directors (or any committee thereof) which are in effect, or (iii) any judgment, writ, injunction, degree or order of a court, arbitrator or governmental authority that is binding on the Buyer.

- 10.1.5 Licenses and Approvals. The Buyer or its affiliates has obtained and is in compliance with all authorizations, permits, licenses, approvals, etc. that are required to be obtained under this Agreement for performance of its obligations under this Agreement. All authorizations, permits, licenses, approvals required for performance of its obligations under this Agreement shall be obtained and shall be in full force and effect during the term of this Agreement.
- 10.1.6 Compliance with Laws. The Buyer is in compliance with all applicable laws in all material respects.
- 10.1.7 No Dissolution or Winding-up. No steps and/or legal proceedings have been commenced or are threatened, for the dissolution or winding up of such Party.

## **10.2 Representations and Warranties of the Seller**

The Seller represents and warrants to the Buyer as follows and acknowledges that the Buyer is relying upon such representations and warranties in connection with the entering into of this Agreement that, as of the date hereof:

- 10.2.1 Organization. It is a corporation duly incorporated under the laws of the Province of Ontario and is validly existing and in good standing thereunder, and no proceedings have been instituted or are pending for its dissolution or liquidation.
- 10.2.2 Corporate Power and Authority. It has all requisite legal and corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 10.2.3 Duly Authorized and Binding Agreement. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on its part, and this Agreement has been duly executed and delivered by it and constitutes a valid and legally binding obligation of it, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other applicable laws affecting creditors' rights generally and to general principles of equity.
- 10.2.4 No Violation. The execution and delivery of this Agreement, the performance by it of its obligations hereunder and the consummation of the other transactions contemplated by this Agreement do not and will not conflict with, or result (with or without notice or the lapse of time) in a

breach or violation of, or constitute a default under, any of the terms or provisions of: (i) its constituting documents, (ii) the resolutions of its shareholders or directors (or any committee thereof) which are in effect, or (iii) any judgement, writ, injunction, degree or order of a court, arbitrator or governmental authority that is binding on it.

- 10.2.5 Licenses and Approvals. It has obtained or will obtain and is in compliance with all authorizations, permits, licenses, approvals, etc. that are required to be obtained under this Agreement for performance of its obligations under this Agreement. All authorizations, permits, licenses, approvals required for performance of its obligations under this Agreement shall be obtained and shall be in full force and effect during the term of this Agreement.
- 10.2.6 Compliance with Laws. It is in compliance with all applicable laws in all material respects.
- 10.2.7 No Litigation. There are no actions, suits or proceedings pending, or to its best knowledge, threatened, against or affecting it before any court or administrative body or arbitral tribunal that could reasonably be expected to materially adversely affect its ability to meet and carry out its obligations under this Agreement.
- 10.2.8 No Dissolution or Winding-up. No steps and/or legal proceedings have been commenced or are threatened, for the dissolution or winding up of such Party.

## **11. UMPIRE**

### **11.1 Appointment of Umpire**

- 11.1.1 For the purpose of resolving any issue specifically agreed to be determined by Umpire under this Agreement, an umpire (the “**Umpire**”) shall be an independent third party, jointly appointed by the Seller and the Buyer, within 20 Business Days after the Seller or the Buyer has notified the other Party that it is referring such issue to an Umpire for resolution. Any Person to be appointed Umpire shall be neutral, free from all conflicts of interest, reputable and shall have experience with the factors relevant to the issue to be determined. No Person who has: (i) a financial or other interest in the Buyer or the Seller; or (ii) been employed by the Seller or the Buyer or any of their respective Affiliates as an employee, consultant, director, officer or otherwise (other than as an Umpire) during the five-year period preceding such time of intended appointment, shall, in either case, be eligible to be appointed an Umpire.
- 11.1.2 If the Parties are unable to jointly appoint the Umpire by the date set forth in Section 11.1.1, then upon the request of either Party, the Umpire shall be promptly appointed by the then President of the International Fertilizer Association failing which, each Party shall submit the names of two

proposed Umpires to the other and the one selected by lot by an Arbitrator appointed in accordance with Section 12, shall be the Umpire.

11.1.3 The determination by an Umpire shall be final and binding on the Parties.

## **12. ARBITRATION**

### **12.1 Scope**

Subject to the terms of this Section 12, all disputes (except those specifically identified as being determined by an Umpire) between the Parties in respect of this Agreement shall be referred to arbitration in Saskatoon, Saskatchewan in accordance with *The Arbitration Act, 1992* (Saskatchewan) and the rules of the ADR Institute.

### **12.2 Notice of Arbitration**

A Party desiring arbitration under this Agreement shall give a notice of arbitration to the other Party containing a concise description of the matter submitted for arbitration.

### **12.3 Arbitrators**

12.3.1 **Number.** The arbitral tribunal shall be comprised of three arbitrators appointed in the following manner.

12.3.2 **Qualifications.** Each of the arbitrators shall be a suitably qualified Person who is knowledgeable in relation to the subject matter of the arbitration. No Person shall be eligible for appointment unless that Person is independent of the Parties and free from all conflicts of interest and specifically shall not be a present or former director, officer, employee, shareholder, consultant, advisor or otherwise have any interest in either of the Parties or in the matter to be arbitrated.

12.3.3 **Appointment.** Each Party shall appoint one arbitrator within 20 days from receipt of notice of arbitration. If either Party fails to appoint an arbitrator within the aforementioned time, the arbitrator shall be designated by the ADR Institute. The two arbitrators shall appoint the third arbitrator within 15 days of their appointment and failing agreement by such arbitrators, the third arbitrator shall be appointed by the ADR Institute. The case shall be administered by the ADR Institute in accordance with the provisions of *The Arbitration Act, 1992* (Saskatchewan).

### **12.4 Powers of Arbitrator**

The arbitral tribunal may determine all questions of law and jurisdiction (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The arbitral tribunal shall have the right to grant legal and equitable relief (including injunctive relief) and to award costs (including legal fees and the costs of the arbitration) and interest.

## **12.5 Arbitration Procedure**

12.5.1 The arbitration shall take place in Saskatoon, Saskatchewan at such place and time as the arbitrator may fix. No later than 20 Business Days after hearing the representations and evidence of the Parties, the arbitral tribunal shall make his or her determination in writing and deliver one copy to each of the Parties.

12.5.2 The governing law for any arbitration shall be as set out in Section 15.17.

## **12.6 Language of Arbitration**

The arbitration proceedings shall be conducted in the English language.

## **12.7 Awards and Appeal**

In the absence of manifest error, the written decision of the arbitral tribunal shall be final and binding upon the Parties in respect of all matters relating to the arbitration, the procedure, the conduct of the Parties during the proceedings and the final determination of the issues in the arbitration. Judgment upon any award rendered by the arbitral tribunal may be entered in any court having jurisdiction.

## **12.8 Costs of Arbitration**

The costs of any arbitration shall be borne by the Parties in the manner specified by the arbitral tribunal in their determination.

## **13. CONFIDENTIALITY AND DISCLOSURES**

### **13.1 Confidentiality**

“**Disclosing Party**” means the party giving information.

“**Receiving Party**” means the party to whom information is given.

“**Confidential Information**” means this Agreement and any written or oral information of a technical, business or financial nature which is disclosed by one Party to another Party under or in connection with this Agreement but does not include information which the Receiving Party can establish:

- (a) was in the public domain when it was given to the Receiving Party;
- (b) becomes, after being given to the Receiving Party, part of the public domain, except through disclosure contrary to this Agreement;
- (c) was in the Receiving Party’s possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly; or

- (d) was lawfully received from another Person having the unrestricted legal right to disclose that information without requiring the maintenance of confidentiality.

### **13.2 Obligations of confidentiality**

Subject to Section 13.3, the Receiving Party must not:

- 13.2.1 disclose Confidential Information directly or indirectly in any form to anyone else; or
- 13.2.2 use or make a copy of any Confidential Information except to:
  - (a) acquire or check information in connection with this Agreement and the transactions contemplated by it; or
  - (b) perform any of its obligations under this Agreement or in relation to any of the transactions contemplated by it.

### **13.3 Exceptions to obligations of confidentiality**

The obligations in Section 13.2 do not apply to a Receiving Party where:

- 13.3.1 the Disclosing Party has first agreed in writing to the particular disclosure, use, or copying;
- 13.3.2 the disclosure is made to comply with the obligations of a Receiving Party under this Agreement;
- 13.3.3 the information is disclosed to Representative of the Receiving Party who has a legitimate need to know such information or to a Person whose consent is required under this Agreement or for a transaction contemplated by it, and that Person undertakes to the Disclosing Party:
  - (a) not to disclose any of the Confidential Information in any form to anyone else; and
  - (b) only to use the Confidential Information for the purposes of advising the Receiving Party or financing the Receiving Party or considering whether to give that consent (as the case may be); or
- 13.3.4 the Receiving Party is required by law or any government agency or regulatory body (including any relevant stock exchange) to disclose any Confidential Information, promptly gives written notice to the Disclosing Party of that requirement and discloses only that portion of the Confidential Information which it is legally required to disclose.

### **13.4 Return of Confidential Information**

On termination of this Agreement, a Receiving Party must immediately either destroy and/or deliver to the Disclosing Party all documents and other materials

containing, recording or referring to Confidential Information which are in its possession, power or control.

### **13.5 Public Announcements**

The Buyer and the Seller agree that no public announcement or communication relating to this Agreement or the terms of this Agreement may be made or authorized by the Buyer or the Seller, except such disclosure that may be required by securities legislation, regulation or policy, unless the Parties have previously agreed to the disclosure of the information to be so disclosed. Any disclosure must first be approved by both Parties.

### **13.6 Remedies**

Without prejudice to any other rights or remedies which a Party may have, each Party acknowledges and agrees that damages may not be an adequate remedy for any actual or threatened breach by a Party of this Section 13, and each Party shall be entitled to seek the remedies of injunction, specific performance, and other equitable relief for any threatened or actual breach of any such provision by the other Party or its representatives and no proof of special damages shall be necessary for the enforcement by a Party of its rights under this Section 13.

## **14. TERMINATION**

### **14.1 Buyer's Right to Terminate**

The Buyer may, in its sole discretion, terminate this Agreement by written notice to the Seller:

- (i) as contemplated by Section 2.1.3, if Commencement of Commercial Production has not occurred by the Fixed Start Date;
- (ii) if the Seller is affected by an Insolvency Event, except where the provisions of Section 15.5 apply, in which case obligations of the Buyer under this Agreement will survive;
- (iii) if the Seller commits a default of its material obligations under this Agreement, which has not been cured to the satisfaction of the Buyer, acting reasonably, within six months of a demand made in respect thereof by the Buyer;
- (iv) as contemplated by the provisions of Section 9.5, if a Force Majeure Event occurs and has not been lifted six months after the date of written notice to the unaffected Party; or

### **14.2 Seller's Right to Terminate**

The Seller may, in its sole discretion, terminate this Agreement by written notice to the Buyer:

- (i) if the Buyer is affected by an Insolvency Event;

- (ii) if the Buyer fails to make payments of amounts due in accordance with Section 6.3.1 and such breach is not cured to the satisfaction of the Seller, acting reasonably, within six months of a demand made in respect thereof by the Seller;
- (iii) as contemplated by the provisions of Section 9.5, if a Force Majeure Event occurs and has not been lifted six months after the date of written notice to the unaffected Party; or

**14.3 Effect of termination**

If this Agreement is terminated under this Section 14, then all rights and obligations under this Agreement other than:

- (i) Sections 6.3, 11 , 12, 13, 14.3 and 15; and
- (ii) rights that accrue before the date of termination,

shall terminate effective as of the date of termination of this Agreement.

**15. MISCELLANEOUS**

**15.1 Waivers**

No course of dealing and no delay by any Party in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice its rights, powers or remedies. No single exercise of any right or power shall preclude the further exercise thereof or the exercise of any other right or power hereunder. No right, power or remedy conferred upon a Party by this Agreement shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise, except as expressly provided herein. No waiver of any provision of this Agreement shall be effective unless made in a writing signed by the Party against whom the waiver is sought to be enforced.

**15.2 Limitations on Liability**

Except as specifically provided in this Agreement, neither Party shall be liable to the other for any loss of anticipated profits or any indirect or consequential losses for a breach of the terms of this Agreement.

**15.3 Licences, Permits and Consents**

[REDACTED]

## 15.4 Assignment

- 15.4.1 The Buyer shall not assign its rights and interests under this Agreement without the prior written consent of the Seller for a period of one year from the date of this Agreement (the “**Project Lock-In Period**”); provided, however, that Buyer shall be permitted to assign to any affiliate or subsidiary of Buyer without violating this Section.
- 15.4.2 The Seller shall not assign its rights and interests under the Agreement prior to one year post Commencement of Commercial Production, except for assignment to an affiliated entity which will hold and operate the Project.
- 15.4.3 After the expiry of the Project Lock In Period, the Seller may, upon due prior written notification to the Buyer, assign its rights and interests under this Agreement only if:
- (a) such assignment is pursuant to a Project Disposal;
  - (b) the Seller is not then in material default of the provisions of this Agreement;
  - (c) the Seller ensures that the subsequent acquirer of its interests in the Project is Competent, provided that in the event the subsequent acquirer is not an operating entity, the subsequent acquirer has acquired the Project together with the management and employees necessary for the operation of the Project;
  - (d) the Seller ensures that the subsequent acquirer enters into an assignment and assumption agreement that maintains and does not affect or prejudice in any way the rights of the Buyer under this Agreement;
  - (e) after giving effect to such assignment, no breach, and no event which, after notice or lapse of time or both, would become or constitute a breach of any of the Seller’s covenants or obligations;
  - (f) the acquirer and the Seller shall have delivered to the Buyer a certificate signed by an officer of each such Person stating that all conditions precedent herein; and
  - (g) there is no change in the terms of the Agreement as a result of such assignment by the Seller.
- 15.4.4 The Seller acknowledges that damages alone would not be an adequate remedy for any breach of the provisions of this Section 15.4 and, accordingly, without prejudice to any and all other rights and remedies that the Buyer may have in law or contract, the Buyer shall be entitled without proof of special damage, to the remedies of injunction and all other equitable reliefs for any threatened or actual breach of this Section 15.4.

15.4.5 Any purported assignment and transfer of the rights of the obligations under this Agreement not in compliance with this Section shall be null and void in all respects.

## **15.5 Project Lender Security Interest**

15.5.1 Notwithstanding the restrictions in Section 15.4, the Buyer agrees that these restrictions shall not apply to any assignment of this Agreement, of the Seller's rights and obligations under this Agreement or any Project Disposal, through the creation or grant of a security interest in any or all of the assets of the Seller in favour of any third party lender that is to provide financing for the construction or development of the Project, including for any material expansions thereof (the "**Project Lender**"), provided that prior thereto, such Project Lender agrees with the Buyer, in writing, that,

- (a) no such creation or grant of a security interest shall excuse or otherwise discharge the Seller, or any acquirer who has assumed the obligations under this Agreement, from their respective obligations under this Agreement;
- (b) the Project Lender will assume and be bound by and be subject to this Agreement in the event the Project Lender, during foreclosure, otherwise takes possession of the Project but only for the duration of such possession;
- (c) in the event of a default under the applicable financing and security documentation, the Project Lender will provide a copy of the notice of default to the Buyer;
- (d) the Project Lender will provide written notice (a "**Sale Notice**") to the Buyer prior to the exercise of any sale right or otherwise commencing or approving any sale process in respect of the Seller or the Project. Following such notice: (i) the Buyer and the Project Lender shall cooperate in good faith to attempt to find a subsequent purchaser assignee or transferee of the Project who shall assume all the obligations of the Seller under this Agreement; and (ii) the Buyer shall have 30 days from the receipt of the Sale Notice to elect in writing to purchase all of the indebtedness of the Project Lender in exchange for an assignment of the indebtedness and financing and security documentation and the rights of the Project Lender thereunder, such purchase to be completed within 90 days of the Buyer so electing to the purchase of the indebtedness of the Project Lender; and
- (e) the Seller hereby, and the Project Lender will, irrevocably agree that the rights set forth in this Section 15.5 will be assignable by the Buyer notwithstanding any other restriction on assignment in this Agreement.

15.5.2 In connection with such assignment the Buyer agrees, upon request, to promptly deliver to the Project Lender a consent and acknowledgement in

the form reasonably requested by such Project Lender and on customary terms and conditions.

#### **15.6 Right of First Refusal**

Seller hereby grants to Buyer the right of first refusal on any future off-take of Product produced at the Project by Seller, including, but not limited to, Product produced by Project expansion or de-bottlenecking efforts at the Project. Any such future production shall first be offered to Buyer for consideration of a definitive off-take agreement. If a third party proposes any off-take agreement with Seller on any future production that the Seller intends to accept, Buyer shall be granted the right to match the third party proposal on the same commercial terms as such third party off-take proposal (the "**Third Party Proposal**"), at the Buyer's option. Seller shall provide Buyer prompt notice of the Third Party Proposal and, upon notice, Buyer shall have 90 days to either match the Third Party Proposal or on the 91<sup>st</sup> day after notice the Buyer's right shall be waived. In the event the Third Party Proposal changes after presentation to Buyer, Seller shall re-submit such new Third Party Proposal to Buyer, and Buyer's 90 day period shall re-start. This process shall continue until a) Buyer waives its right of first refusal in writing, b) 90 days pass without Buyer's affirmative election to match the Third Party Proposal, or c) Buyer elects to match the Third Party Proposal within the 90 day period.

Seller hereby grants to Buyer the right of first refusal to purchase any or all portions of the Project Site that Seller may sell. If a third party proposes to purchase any portion of the Project Site and Seller intends to accept, Buyer shall be granted the right to match the third party proposal on substantially the same terms as such third party offer (the "**Third Party Offer(s)**"), at the Buyer's option. Seller shall provide Buyer prompt notice of the Third Party Offer and, upon notice, Buyer shall have 90 days to either match the Third Party Offer or on the 91<sup>st</sup> day after notice the Buyer's right shall be waived. In the event the Third Party Offer changes after presentation to Buyer, Seller shall re-submit such new Third Party Offer to Buyer, and Buyer's 90 day period shall re-start. This process shall continue until a) Buyer waives its right of first refusal in writing, b) 90 days pass without Buyer's affirmative election to match the Third Party Offer, or c) Buyer elects to match the Third Party Offer within the 90 day period. This process shall continue until all portions of the Project Site have been sold subject to Third Party Offer(s).

#### **15.7 Currency**

Unless otherwise expressly provided in this Agreement, all references to currency or prices in this Agreement shall be references in USD, and all monetary calculations, adjustments, reconciliation and payments pursuant to this Agreement shall be made in USD.

#### **15.8 Calculation of Time**

In this Agreement, a period of days will be deemed to begin on the first day after the event which began the period and to end at 11:59 p.m. (Saskatoon, Saskatchewan,

Canada time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period will terminate at 11:59 p.m. (Saskatoon, Saskatchewan, Canada time) on the next Business Day.

**15.9 Entire Agreement**

This Agreement contains the entire agreement between the Parties in relation to the sale and purchase of Product hereunder and supersedes all prior negotiations, undertakings and agreements, whether written or oral, in relation thereto.

**15.10 No Partnership or Joint Venture**

This relationship of the Seller and the Buyer hereunder is one of independent contracting Parties and nothing in this Agreement shall be construed as creating a partnership, a contractual joint venture or any similar legal relationship, between the Seller and the Buyer.

**15.11 Benefit of Agreement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**15.12 Amendments**

Any amendment to this Agreement shall only be effective if in writing, executed by or on behalf of the Parties.

**15.13 Severability**

If any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, the validity, legality and enforceability of such provision will not in any way be affected or impaired thereby under the laws of any other jurisdiction and the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

**15.14 Execution in Counterparts**

This Agreement may be executed in any number of counterparts (including counterparts by facsimile), each of which will be deemed to be an original, but all of which together will constitute one and the same document.

**15.15 Notices**

Any notice or other communication required to be given by this Agreement by either Party shall be deemed to have been well and sufficiently given to the other Party if faxed to or delivered at the following address of the other Party:

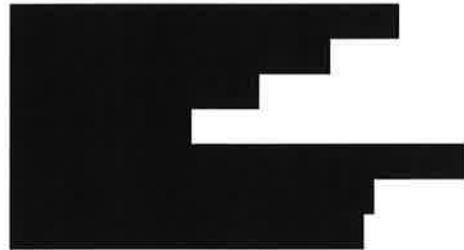
If to the Seller:

Gensource Potash Corporation  
1100 - 201 1<sup>st</sup> Avenue South  
Saskatoon, Saskatchewan, S7K 1J5  
Canada

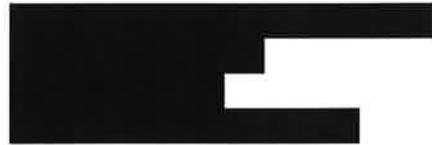


Facsimile No. : (306) 974-6413

If to the Buyer:



with a copy (which shall not constitute notice to the Buyer) to:



or at such other address as such Party from time to time direct in writing, and any such notice or other communication shall be deemed to have been received, delivered or faxed on the next Business Day after the time of delivery or faxing.

**15.16 Language for notices**

Any notices and communications given in respect of this Agreement must be given in the English language, or if given in any other language, that notice or communication must be accompanied by an English translation of it, which must be certified as being a true and correct translation of the notice or communication.

**15.17 Exclusion of Terms Implied by UN Convention**

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**15.18 Governing Law and Attornment**

This Agreement will be governed by and construed in accordance with the internal laws of the Province of Saskatchewan and the federal laws of Canada applicable therein, without reference to conflicts of law rules, and subject to Section 12, each

of the Parties irrevocably attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Saskatchewan.

*Remainder of page intentionally left blank.*

IN WITNESS WHEREOF this Agreement has been executed by the Parties as of the date first above written.

**GENSOURCE POTASH CORPORATION**

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

■ \_\_\_\_\_

■

**Schedule "A"**

**Analytical Methods**

AOAC International methods of analysis shall be used in analysing Product samples to determine each element specified in the Product Specifications. The relevant AOAC International methods for each element shall be negotiated and determined by the Parties not later than six months prior to the Commencement of Commercial Production. If no such AOAC International methods exist for any relevant element, the Parties shall negotiate and agree on another internationally recognized analytical method for such element.

**Schedule "B"**

**Expected Discharging Points**

The following represents the expected Discharging Points for the product within the Buyer's distribution network.

To be completed

