



**PURCHASE ORDER**  
**TERMS AND CONDITIONS**

**ARTICLE 1: DEFINITIONS**

Wherever used throughout the Purchase Order the following terms shall have the meanings set forth below:

- 1.1 “Affiliate” means a person or business entity that directly or indirectly controls or is controlled by, or is under common control with, BioMarin.
- 1.2 “Applicable Data Protection Laws” has the meaning set forth in **Section 15.1**.
- 1.3 “Applicable Laws” means all applicable global, federal, country, state, local, foreign and other laws, rules and regulations, ordinances, decrees, orders, codes and requirements (including, but not limited to, any requirements for licenses, consents, permits, certificates, approvals and inspections), as the same are promulgated, supplemented and/or amended from time to time.
- 1.4 “Acceptance” has the meaning set forth in **Section 10.1**.
- 1.5 “BioMarin” means:  
  
BioMarin Pharmaceutical Inc., a Delaware corporation, with its principal offices at:  
  
770 Lindero Street  
San Rafael, CA 94901, and  
  
and its mailing address at:  
  
105 Digital Drive  
Novato, CA 94949
- 1.6 “Change Order” has the meaning set forth in **Section 3.1**.
- 1.7 “Confidential Information” has the meaning set forth in **Section 14.1**.
- 1.8 “Delivery” has the meaning set forth in **Section 9.1**.
- 1.9 “Delivery Time” means a time specified for delivery of Goods set forth in the Order Requirements, or, if not set forth in the Order Requirements, then as soon as reasonably possible, subject to BioMarin’s written approval.
- 1.10 “Dominant Agreement” has the meaning set forth in **Section 2.2**.

- 1.11 “EEA Personal Data” has the meaning set forth in **Section 15.5(a)**.
- 1.12 “Environmental Laws” means any Applicable Laws relating directly or indirectly to (i) the protection of the environment (including air, water vapor, surface water, groundwater, drinking water supply, surface or subsurface land and including but not limited to laws such as the Resource Conservation and Recovery Act of 1976 (PL. 94-580) (“RCRA”), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), the Emergency Planning and Community Right-to-Know Act (“EPCRA”), the Clean Air Act (“CAA”), the Clean Water Act (“CWA”), the Safe Drinking Water Act (“SDWA”), and any and all Applicable Laws issued under or governed by the Food and Drug Administration (“FDA”), the International Conference on Harmonization (“ICH”), the Nuclear Regulatory Commission (“NRC”), federal and state Environmental Protection Agencies (however named), federal and state Departments of Transportation, and federal and state Departments of Health (however named); (ii) the protection and occupational health and safety of workers and employees (including but not limited to the Occupational Safety and Health Act (“OSHA”); or (iii) the registration, licensing, notification, warning or other governmental approval of the Goods and/or Services or any ingredients, by-products, intermediates thereof (including, but not limited to laws such as California Safe Drinking Water and Toxic Enforcement Act of 1986, Toxic Substances Control Act, or the EU Registration, Evaluation, Authorisation and Restriction of Chemicals); or (iv) the exposure to, or the use, transportation, storage, recycling, reuse, treatment, generation, labeling, protection, release or disposal of any and all Hazardous Materials.
- 1.13 “Goods” means all tangible materials, supplies, items, Software, hardware, or equipment covered by the Purchase Order.
- 1.14 “Hazardous Materials” means any (a) petroleum or petroleum products, byproducts or breakdown products, radioactive materials, toxic mold, radon, asbestos or asbestos-containing materials, lead-based paint, urea formaldehyde foam insulation or polychlorinated biphenyls; (b) any chemicals, materials, substances, compounds, or mixtures, products or byproducts, biological agents, living or genetically modified materials that are now or hereafter become defined, characterized as or included in the definition, or otherwise determined to be “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “special waste,” “toxic substances,” “pollutants,” “contaminants,” “toxic,” “dangerous,” “corrosive,” “flammable,” “reactive,” “radioactive,” or words of similar import, under any Environmental Law; and (c) any other substance or waste that is now or hereafter prohibited, limited or regulated by any regulatory authority.
- 1.15 “Intellectual Property Rights” means all patent, copyright, trademark, trade secret and other proprietary and intellectual property rights.
- 1.16 “Losses” has the meaning set forth in **Section 17.1**.
- 1.17 “Materials” has the meaning set forth in **Section 16.1**.



- 1.18 “Order Requirements” has the meaning set forth in **Section 2.1**.
- 1.19 “Point of Delivery” means a place specified for delivery of Goods set forth in the Order Requirements.
- 1.20 “Price” means the total sum to be paid by BioMarin to Seller for the Goods and/or Services, as set forth in the Purchase Order.
- 1.21 “Purchase Order(s)” has the meaning set forth in **Section 2.1**.
- 1.22 “Seller” means the party providing Goods and/or Services pursuant to the Purchase Order.
- 1.23 “Seller Documents” has the meaning set forth in **Section 2.1**.
- 1.24 “Seller Personnel” means Seller’s employees, officers, directors, independent contractors, consultants, advisors, and agents.
- 1.25 “Seller Property” has the meaning set forth in **Section 16.2**.
- 1.26 “Services” means all work, including furnishing of all necessary equipment, labor, supervision and required management, as described in the Purchase Order.
- 1.27 “Software” means any firmware, software applications, data compilations or set of computer program(s) or procedure(s) and related function(s) intended for the purpose of utilizing other Goods, storing information regarding methods and protocols with which such Goods are used, and/or storing or evaluating data, results, and other information generated through the use of such Goods.
- 1.28 “Specification(s)” means the document(s) provided to BioMarin specifying the general and technical requirements which the Goods and/or Services must meet, including any packing, packaging, and shipping requirements.
- 1.29 “Standard Contractual Clauses” has the meaning set forth in **Section 15.5**.
- 1.30 “Sub-Contractor” has the meaning set forth in **Section 4.1**.
- 1.31 “Terms and Conditions” means these terms and conditions, and any other amending or supplementary terms and conditions which may be agreed to by BioMarin in a written agreement signed by BioMarin and Seller.
- 1.32 “Work Product” has the meaning set forth in **Section 16.2**.



## ARTICLE 2: FORM OF AGREEMENT

- 2.1 Except as limited by **Section 2.2**, these Terms and Conditions shall be applicable to all orders to purchase Goods and/or Services issued by BioMarin ("Purchase Orders"), whether by mail, expedited courier service, telephone, email, or other electronic means, and to all final quotation documentation provided by Seller prior to issuance of the Purchase Order, including, but not limited to, Specifications, scopes of work, budgets, and timelines (such related documentation, "Seller Documents"). Unless the context requires otherwise, where the Purchase Order relates solely to the purchase of Goods, references to Services shall be disregarded and where this Purchase Order relates solely to the purchase of Services, references to Goods shall be disregarded. ***With the exception of a description of, and Specifications for, Goods and Services, pricing and payment information, and BioMarin's delivery requirements (collectively, the "Order Requirements"), any additional or different terms and conditions contained in any Seller Documents are hereby rejected and shall be of no force or effect.***
- 2.2 Notwithstanding the foregoing, if BioMarin and Seller have executed another agreement, including, without limitation, a master purchase, master supply, or master services agreement, which governs the purchase and sales of the Goods and/or Services set forth in the Purchase Order (a "Dominant Agreement"), the terms of such Dominant Agreement shall control and take precedence over these Terms and Conditions.

## ARTICLE 3: TERMS OF ACCEPTANCE

- 3.1 The Purchase Order, along with these Terms and Conditions, and, subject to **Section 2.1**, the Seller Documents, which shall both be considered essential attachments to the Purchase Order and incorporated therein, shall constitute the final, complete, and exclusive contract between the parties and may not be modified or rescinded except by a written change order agreed upon by the parties (a "Change Order"). Seller shall indicate its acceptance of the Purchase Order by: (a) verbal or written acceptance provided to BioMarin in any manner, (b) notifying BioMarin of its commencement of work on the Purchase Order, or (c) delivery of any of the Goods or Services authorized by the Purchase Order, within the time for such delivery as stated in the Seller Documents. Regardless of the manner or medium of acceptance, time is of the essence.
- 3.2 ***As an offer, the Purchase Order expressly limits acceptance to its terms and conditions, and notification of BioMarin's objection to any different or additional terms and conditions in any response to this offer from Seller is hereby given.*** If the Purchase Order is construed as BioMarin's acceptance of Seller's prior offer, this acceptance is expressly conditioned on Seller's (a) assent to these Terms and Conditions and (b) rejection of any terms and conditions contained in Seller's prior offer, other than the Order Requirements. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that the Purchase Order constitutes the final, complete and exclusive terms and conditions of the contract between the parties. If the parties have otherwise completed a Dominant Agreement, the parties agree that the use of the Purchase



Order to place orders for Goods and/or Services pursuant to such a contract shall be construed to supplement the terms of such Dominant Agreement only with respect to the Order Requirements. ***Regardless of its construction as an offer, acceptance, confirmation or use to place orders for Goods and/or Services pursuant to an earlier contract, this Purchase Order incorporates by reference all terms of the Uniform Commercial Code providing any protection for buyers, including, without limitation, all express and implied warranty protection and all buyer remedies under the Uniform Commercial Code.***

#### **ARTICLE 4: SUBCONTRACTS**

- 4.1 Seller may only contract with another business or individual to provide Goods and/or perform a portion or portions of the Services (hereafter, "Sub-Contractor") with prior written approval of BioMarin. The approval by BioMarin of any Sub-Contractor shall not release Seller from any responsibility or liability in connection with said Sub-Contractor and shall not create a contractual or employment relationship between BioMarin and the Sub-Contractor other than BioMarin's position as the intended third party beneficiary of the Goods and /or Services provided by the Sub-Contractor. Seller shall be responsible for the oversight and supervision of the work and designated activities of each Sub-Contractor, including assuring compliance with applicable Terms and Conditions of the Purchase Order. Seller shall ensure all Sub-Contractors comply with Seller's obligations under the Purchase Order, including, but not limited to, Seller's obligations concerning confidentiality and ownership of intellectual property. BioMarin shall have no obligation or liability to the Sub-Contractor under the Purchase Order, and the Sub-Contractor shall have no rights or remedies against BioMarin under the Purchase Order or otherwise. BioMarin may, at its discretion and upon request by Seller, directly pay a Sub-Contractor for any Services performed and/or Goods provided pursuant to the Purchase Order and offset the amount of such payment against any amount owed to Seller.

#### **ARTICLE 5: CHANGES**

- 5.1 BioMarin shall have the right to make changes to Goods and/or Services ordered under the Purchase Order. If any such change shall cause an increase or decrease in Seller's costs in supplying the Goods and/or Services under the Purchase Order, or in the time required for Seller's performance, an equitable adjustment to the Price will be negotiated in good faith and any changes agreed to in writing by BioMarin and Seller in a written Change Order will be incorporated into the Purchase Order.
- 5.2 Seller's claim for Price adjustment under this **Article 5** (Changes) must be submitted to BioMarin in writing no later than ten (10) days from the date of receipt by the Seller of the change notification.
- 5.3 Nothing in this **Article 5** shall excuse the Seller from proceeding with the Purchase Order as changed and in its entirety or to delay performance once written approval of the Change



Order, including a negotiated Price adjustment, is provided in writing by BioMarin. Seller may not execute changes without such written approval from BioMarin.

#### **ARTICLE 6: RIGHT TO ASSURANCES; REPUDIATION BY SELLER**

- 6.1 Should BioMarin in good faith have reason to question Seller's intention to perform, it may demand in writing that the Seller give a written assurance of its intent to perform. In the event that the demand is made and assurances not given within a reasonable period of time not exceeding one (1) week after receipt of such demand, BioMarin may treat this failure as a repudiation of the Purchase Order.
- 6.2 In the event that Seller repudiates the Purchase Order, or fails to provide written assurances of its intent to perform under the terms of the Purchase Order pursuant to **Section 6.1**, BioMarin shall have the right to terminate the Purchase Order under the terms of **Section 7.1** and to make substitute purchases from other sources, or, if the Goods and/or Services are in a partial state of completion, have them completed by other means. In either event, Seller shall be liable to BioMarin for the additional expenses and costs incurred, without waiver of BioMarin's right to damages and other remedies.

#### **ARTICLE 7: TERMINATION**

- 7.1 For Convenience: BioMarin may terminate the Purchase Order in whole, or in part, at any time and for any cause upon fifteen (15) days written notice to Seller; provided that BioMarin shall pay Seller for any Goods or Services supplied to BioMarin in accordance with the Purchase Order up to the effective date of termination in accordance with the terms of Section 7.3 below.
- 7.2 For Cause: If Seller delays delivery of the Goods and/or Services covered by this Purchase Order, repudiates the Purchase Order or fails to provide written assurances of its intent to perform under the terms of the Purchase Order (as set forth in **Article 6**), or otherwise materially breaches any other provision of the Purchase Order, or in the event of any proceeding by or against Seller in bankruptcy or insolvency or for appointment of a receiver or trustee or an assignment for the benefit of creditors, BioMarin may, in addition to any other right or remedy provided by the Purchase Order or by law, terminate all or any part of the Purchase Order immediately.
- 7.3 Effects of Termination:
- (a) In the event BioMarin has terminated the Purchase Order pursuant to **Section 7.1** prior to its acceptance of all Goods and/or Services set forth in the Purchase Order, BioMarin and Seller will negotiate in good faith a prorated Price reflecting Seller's reasonable, substantiated, and necessary costs incurred directly in the performance of the Purchase Order up to the date of termination (including costs incurred as result of partially completed Goods and/or Services), plus a reasonable profit thereon.



- (b) In the BioMarin has terminated the Purchase Order pursuant to **Section 7.2** prior to its acceptance of all Goods and/or Services set forth in the Purchase Order, BioMarin will reasonably determine and pay to Seller a prorated Price reflecting the value of the Goods and/or Services accepted by BioMarin, but BioMarin shall not be liable for costs incurred as result of partially completed Goods and/or Services or loss of anticipated profits on the Purchase Order, or the part thereof, so cancelled.
- (c) Upon termination of this Purchase Order, any upfront, progress, or milestone payments made to Seller by BioMarin shall be credited against amounts payable by BioMarin under **Section 7.3(a)** or **Section 7.3(b)**, as applicable, and, in the event such prior payments exceed the amounts payable by BioMarin under clause **Section 7.3(a)** or **Section 7.3(b)**, the excess shall be reimbursed to BioMarin.
- (d) In no event shall BioMarin's obligations to Seller, as a consequence of termination under this **Article 7**, exceed the Price of the Goods and/or Services so terminated, or any lower Price agreed upon or determined under clause (a) or (b), and upon payment thereof, BioMarin shall have no further obligation to Seller hereunder or otherwise.
- (e) Upon termination or expiration of this Purchase Order: (i) Seller shall comply with its obligations under Article 14 (Confidential Information) below; (ii) BioMarin shall be entitled to the ownership, possession, use and license of any and all work in process under this Purchase Order to which it is entitled pursuant to Article 16 (Intellectual Property) below; and
- (f) The following terms shall survive termination or expiration of this Purchase Order: **Article 1** (Definitions), **Article 2** (Form of Agreement), **Article 3** (Terms of Acceptance), **Section 7.3** (Effects of Termination), **Section 8.7** (Shipments), **Section 8.8** (Shipments), **Article 9** (Delivery and Risk of Loss), **Article 10** (Buyer's Right to Inspect – Acceptance), **Article 11** (Payment) to the extent there are remaining payment obligations, **Articles 12** (Audit Rights), **Article 13** (Guarantees and Warranties), **Article 14** (Confidential Information), **Article 15** (Privacy), **Article 16** (Intellectual Property), **Article 17** (Indemnification; Lien Waiver), **Article 18** (Insurance Requirements) **Article 19** (Regulatory Compliance), and **Article 21** (Environmental, Health and Safety Matters) and **Article 22** (No Transfer of License), **Article 23** (Software), and **Article 24** (Miscellaneous Provisions) and any other provisions which by their nature should survive, shall survive expiration or termination of this Agreement for any reason.

## **ARTICLE 8: SHIPMENTS**

- 8.1 Seller shall ship Goods via the method specified in the Purchase Order. Goods shall not be shipped via airfreight, rail, or U.S. Postal Service without the written direction or approval of



- BioMarin. Seller may ship via United Parcel Service, Fedex, DHL, or other similar delivery service as appropriate.
- 8.2 Goods shall be shipped pre-assembled to the maximum practical extent. Seller shall provide a listing of all instruments, accessories, or other appurtenances to be shipped separately.
  - 8.3 Seller shall be responsible for appropriate packing and protection of the Goods and for proper loading, blocking and bracing, covering, and shipping of Goods in accordance with any packaging Specifications, shipping methods and other related requirements set forth in this Purchase Order or otherwise communicated in writing by BioMarin, and, if no such Specifications, methods or requirements are provided, in a manner sufficient to prevent damage and loss to the Goods during shipment and to adequately assure safe transit to the destination. No charge for packing, protecting, loading, blocking and bracing, covering, or shipping will be allowed by BioMarin unless specifically authorized in the Purchase Order.
  - 8.4 Each item of equipment and/or each package, shipping crate, or container shall be externally and prominently marked and numbered with the Purchase Order number. Within each package each item shall be associated with the Purchase Order, and equipment tag numbers (if any) must be firmly affixed or attached. A detailed Packing List listing all separate items in each shipment must accompany the Goods. In the event that a packing list detailing all of the items included is not received with the shipment, BioMarin's count and receiving documents shall be accepted by Seller as final and conclusive.
  - 8.5 For permanent equipment identification, Seller's nameplate incorporating the following, as applicable, shall be securely attached to the equipment: manufacturer's name, model and serial numbers, size and/or type, electrical characteristics, equipment tag number, rotation direction, and other critical identification data.
  - 8.6 No variation in the quantities called for in this Purchase Order will be permitted unless specifically allowed by other provisions of the Purchase Order or otherwise approved in writing by BioMarin.
  - 8.7 For shipment of Goods imported into the commerce of the United States, Seller shall promptly provide BioMarin with a commercial invoice that includes the information required by 19 CFR 141.86, as supplemented and/or amended from time to time. Seller shall remain fully responsible for its compliance obligations under this Purchase Order.
  - 8.8 Seller shall provide to BioMarin all information related to the safety, safe handling, environmental impact, and disposal of the Goods including, without limitation, Material Safety Data Sheets. Seller shall promptly deliver to BioMarin, as it becomes available to Seller, any updates or amendments to the information, including those made to address the United Nations Globally Harmonized System of Classification and Labeling of Chemicals' requirements, and any new information relating to the safety, safe handling, environmental impact, or disposal of the Goods.



- 8.9 Seller agrees to furnish prompt written notice to BioMarin of all projected or actual shipping delays. Such notice shall state the reason or reasons therefore and the actions, if any, undertaken by Seller to avoid and/or limit or contain such projected or actual delay.
- 8.10 Seller shall not be held responsible for delays to the extent caused by BioMarin or due to Force Majeure event as defined in **Article 27** (Force Majeure). However, if Seller delays in performance of this Purchase Order or is unable to provide evidence satisfactory to BioMarin that Seller will provide Goods by the promised shipment date shown in the Purchase Order or fails to ship the Goods by the date so promised and Seller is not able to establish excusable delay as provided herein above, BioMarin may, at its option, approve a revised shipment promise and/or require Seller to effect corrective action at Seller's cost and expense, including premium work time and premium transportation. Further, if Seller's performance is significantly delayed and the delay is not excusable as provided herein above and Seller fails or refuses, after repeated requests by BioMarin, to take meaningful actions to accelerate performance such as to assure compliance with the Purchase Order requirements, such delay shall be deemed to be an "inexcusable delay", and BioMarin, in addition to its remedies at law, may terminate this Purchase Order in accordance with the provisions of **Section 7.2** hereof.

#### **ARTICLE 9: DELIVERY AND RISK OF LOSS**

- 9.1 Seller shall deliver the Goods to BioMarin, or perform the Services for BioMarin, at the Point of Delivery and at the Delivery Time ("Delivery"). In the event an INCOTERM (as defined in INCOTERM 2010) is required it shall be included in the Purchase Order itself.
- 9.2 Unless this Purchase Order specifically provides otherwise, transfer of the title to Goods and risk of loss or damage to items covered by this Purchase Order shall remain with Seller until delivery of the Goods to the possession of BioMarin at the Point of Delivery in this Purchase Order.
- 9.3 Notwithstanding the foregoing, the risk of loss or damage to Goods which so fail to conform to the Purchase Order and/or Specifications, as to give BioMarin a right of rejection shall remain with Seller until cured; provided however, Seller shall not be liable for loss or damage caused by the negligence of agents or employees of BioMarin acting within the scope of their employment.

#### **ARTICLE 10: BUYER'S RIGHT TO INSPECT - ACCEPTANCE**

- 10.1 All Goods and Services delivered or performed shall be subject to final review, inspection and acceptance by BioMarin, notwithstanding any payment or initial inspections. "Acceptance" of Goods and Services shall occur when the Goods and Services delivered under the Purchase Order have been inspected by BioMarin and determined to meet the requirements specified in the Purchase Order and Specifications, if applicable. BioMarin shall make such inspection within a reasonable period of time (not to exceed forty-five (45)

days) after the applicable Goods and/or Services have been completed and delivered by Seller.

- 10.2 If BioMarin's Purchase Order specifies an interim inspection prior to shipment, Seller shall use its best efforts to facilitate such inspection by BioMarin and shall give BioMarin a minimum of ten (10) business days written notice in advance of the date established for the inspection. Seller acknowledges and agrees that any such interim inspection does not constitute an Acceptance of the Goods and/or Services.
- 10.3 BioMarin's inspection, or witness of, or participation in any tests (or the failure of BioMarin to inspect or test) shall not act to relieve Seller of any of its obligations to conform to all of the requirements under this Purchase Order including correction of defects in materials, workmanship, or design.
- 10.4 There shall be no time restrictions applicable to BioMarin's provision of notice of rejection of any Goods and/or Services with respect to any latent defects, which shall include any defects that may not be detected by BioMarin through standard inspection and testing of a sample or that may affect only a portion of the Goods or Services.
- 10.5 Neither Acceptance of, nor payment for, the Goods and/or Services shall: (a) relieve Seller from its obligation to conform to all of the requirements of the Purchase Order; (b) affect Seller's guarantees and warranties or BioMarin's remedies under **Article 13** (Guarantees and Warranties); (c) impair BioMarin's right to reject or revoke Acceptance of non-conforming Goods; or (d) impair BioMarin's right to avail itself of any other remedies to which it may be entitled, at law or in equity, notwithstanding knowledge of the nonconformity, its substantiality, or the ease of its discovery.
- 10.6 If the Goods and/or Services do not meet the requirements of the Purchase Order or applicable Specifications, BioMarin shall give Seller detailed written notification of the deficiency or non-conformance and a direction to Seller to promptly (and in any event within thirty (30) days): (a) repair, replace or re-perform the deficient or non-conforming Goods and/or Services; or (b) cease all Seller activities related to the Goods and/or Services; and/or (c) refund to BioMarin all fees paid by BioMarin hereunder for the deficient or non-conforming Goods and/or Services and those Goods and/or Services that are dependent on such deficient or non-conforming Goods and/or Services. Any such corrected Goods and/or Services shall be subject to the same inspection and acceptance terms provided for in this **Article 10** (Buyer's Right to Inspect – Acceptance). If BioMarin directs Seller to repair, replace or re-perform the deficient or non-conforming Goods and/or Services, and Seller fails to complete the same within thirty (30) days after BioMarin's direction, then Seller shall refund to BioMarin all fees paid by BioMarin hereunder for the deficient or non-conforming Goods and/or Services and those Goods and/or Services that are dependent on such deficient or non-conforming Goods and/or Services.

## **ARTICLE 11: PAYMENT**

- 11.1 Seller shall submit to BioMarin properly documented invoices for payment in accordance with the terms of payment, including the currency, set forth in the Purchase Order. An acceptable invoice must be in either PDF, Word, Excel, TIF or JPG format and must be submitted to the email address on the Purchase Order. All invoices must: (1) reference a valid Purchase Order number and Purchase Order line number; (2) contain a description of the Goods or Services purchased, the corresponding Seller item numbers (if any), and the corresponding quantities and unit prices; (3) state the name of the individual from BioMarin who ordered the Goods and/or Services; and (4) contain contact information for an authorized Seller representative. Each invoice must be sent via email on the date appearing on the invoice and reference only one Purchase Order number (i.e. Seller must submit a separate invoice per Purchase Order). Freight, taxes, and other similar charges, if authorized by the Purchase Order, shall be itemized separately on the invoice.
- 11.2 Unless otherwise specified by BioMarin, Seller shall invoice BioMarin for the Goods or Services following Delivery. Unless otherwise specified by BioMarin in the Purchase Order, payment terms shall be net sixty (60) days after BioMarin's receipt of Seller's invoice submitted in accordance with, and containing any information specified in, the applicable Purchase Order; provided, that final payment shall not be made until the Goods and/or Services meet the requirements specified in this Purchase Order and/or are Accepted by BioMarin.
- 11.3 BioMarin may set off any amount owing from Seller to BioMarin against any amount payable by BioMarin. BioMarin may withhold payment of any invoiced amounts that it disputes in good faith and the parties shall work in good faith to resolve any such billing disputes. Any such billing disputes shall not be cause for Seller's nonperformance of Services and/or non-delivery of Goods, as the case may be, under this Purchase Order. All Seller invoices shall be subject to adjustment for errors, shortages, defects, or other failure of the Seller to meet the requirements of the Purchase Order.
- 11.4 Payment by BioMarin of Seller's invoice shall not constitute Acceptance of the Goods and/or Services or result in a waiver of its rights under the Purchase Order.
- 11.5 If requested by BioMarin or required by the terms of the Purchase Order, Seller agrees to furnish waivers of lien or acceptable proof of payment for all labor and material prior to BioMarin's payment of Seller's invoice and as a condition therefore.

## **ARTICLE 12: AUDIT RIGHTS; RECORDS**

- 12.1 Seller shall provide (and shall cause each Seller Sub-Contractor to provide) to BioMarin or its representatives, including its external auditors and to any governmental authority access at all reasonable times and after reasonable notice (except in the case of an audit by a governmental authority) to any facility of Seller (and each Seller Sub-Contractor), Seller Personnel, and to data and records, in each case relating to the Goods and/or Services

provided hereunder and Seller's performance under this Purchase Order, for the purposes of: (a) performing audits and inspections to verify the integrity and security of BioMarin data and to examine the systems that process, store, support and transmit that data and to ensure that BioMarin is compliant with Applicable Laws; (b) observing Seller's performance of its obligations under this Purchase Order; and (c) enabling BioMarin to comply with all Applicable Laws. Seller shall not require that BioMarin enter into a separate confidentiality, non-disclosure, site visit, or similar agreement in connection with any such access, inspection, audit or observation by BioMarin or its auditors or a governmental authority. Seller further agrees to maintain its books and records relating to Goods and/or Services provided under this Purchase Order for a period of six (6) years or such longer period as may be required by Applicable Laws from the date work under this Purchase Order was completed. If any such audit reveals that Seller has overcharged BioMarin, Seller shall promptly reimburse BioMarin for such overcharge, and in the event that any such overcharge equals an amount equal to or greater than five percent (5%) of the amount that should have been charged under the terms of this Purchase Order, then Seller shall promptly reimburse BioMarin for all reasonable costs and expenses incurred in the conduct of the audit. Seller acknowledges and agrees that BioMarin shall have the right, at any time during the term of this Purchase Order, including any renewal thereof, to request that Seller complete any forms (or any successor process) and that Seller will cooperate with such request and in the remediation of any identified weaknesses that reasonably may affect the privacy, confidentiality, security or integrity of Confidential Information. For purposes of this engagement and the avoidance of doubt, "BioMarin data" and "data" are deemed BioMarin's Confidential Information.

- 12.2 Seller shall promptly notify BioMarin of any inspections relating to the Goods and/or Services by any regulatory agency, including, without limitation, the FDA, of which it becomes aware. Unless prohibited by Applicable Laws, Seller shall permit BioMarin's representative to observe such inspection. Seller shall also provide BioMarin with copies of all correspondences submitted to or received from the regulatory agency relating to such inspection. Seller shall take all reasonable actions to cure any deficiencies as noted during any such regulatory inspection.
- 12.3 Seller shall create and maintain written records of the data, results and other information generated or recorded in the performance of the Services and other works under the Purchase Order in a timely, accurate, complete, and legible manner. Seller shall maintain such records in compliance with the requirements of the Purchase Order and all Applicable Laws. Seller shall maintain such records in a professional manner so as to permit BioMarin to review such records in full without disclosing to BioMarin any third party confidential or proprietary information in any review that BioMarin may perform hereunder. Seller shall make such records available for BioMarin's inspection and copying during regular business hours and upon reasonable advance notice. Promptly upon completion or termination of the Purchase Order, Seller shall transfer all such records to BioMarin, provided that Seller shall be permitted to retain a copy of such records to the extent necessary to comply with its obligations under Applicable Laws. Seller shall not destroy any such records without BioMarin's written consent.

## ARTICLE 13: GUARANTEES AND WARRANTIES

- 13.1 In addition to any warranty implied by fact or law, Seller expressly guarantees and warrants all Goods and Services, including the Work Product and other deliverables: (a) to be free from defects in design, materials, and workmanship; (b) to conform strictly to Specifications, drawings and approved samples, if any; (c) to be new, merchantable, of the most suitable grade and fit for their intended purposes; and (d) to meet or exceed all performance criteria set forth in the Purchase Order. Seller further guarantees and warrants that Seller has good title, free and clear of all liens, claims, security interests or encumbrances to all Goods furnished under the Purchase Order.
- 13.2 In the event of breach of **Section 13.1**, BioMarin may, at its option, either return for full credit or require prompt correction, repair, or replacement of the defective or non-conforming Goods and/or Services. All Seller inspections, service, repairs or corrective work resulting from Seller furnished defective or non-conforming Goods and/or Services, or the replacement thereof shall be performed promptly, with Seller's best efforts. All costs, including shipping, travel, removal and installation costs, howsoever incurred, in connection with Goods and/or Services to be replaced or repaired or faulty work to be corrected shall be borne by Seller. In the event Seller fails to promptly proceed with repair or correction of defective Goods and/or Services or replacement thereof, BioMarin may repair or correct Seller's non-conforming Goods and/or Services or procure replacement Goods and/or Services elsewhere with all costs of such actions for Seller's account. BioMarin shall be entitled to deduct all costs for the foregoing repairs, corrections, or replacement from any amounts owing to Seller and Seller shall be liable to BioMarin for any excess costs.
- 13.3 Prior inspection of Goods and/or Services by BioMarin shall not relieve Seller of any of its responsibilities under this Purchase Order or of its obligation to repair, correct, or replace defective Goods and/or Services as set forth in this **Article 13** (Guarantees and Warranties).
- 13.4 Seller expressly guarantees and warrants that: (a) the execution, delivery and performance of this Purchase Order by Seller does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, and does not violate any Applicable Laws; and (b) Seller is not currently a party to, and during the term of this Purchase Order will not enter into, any agreements, oral or written, that are inconsistent with its obligations under this Purchase Order.
- 13.5 Seller expressly guarantees and warrants that: (a) Seller is validly existing and in good standing under the laws of the jurisdiction of its organization and has the power and authority to enter into this Purchase Order; (b) this Purchase Order has been duly executed and delivered by Seller and constitutes the valid and binding obligation of Seller, enforceable against it in accordance with its terms except as enforceability may be limited by Applicable Laws; and (c) the execution, delivery and performance of this Purchase Order have been duly authorized by all necessary action on the part of Seller, its officers and directors.



- 13.6 Seller expressly guarantees and warrants that there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Seller's knowledge, threatened against Seller, wherein an unfavorable decision, ruling or filing would materially adversely affect the performance by Seller of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the enforceability of this Purchase Order, or any other agreement or instrument entered into by Seller in connection with the transactions contemplated hereby. In the event Seller becomes aware of such action, suit or proceeding, Seller shall immediately notify BioMarin.
- 13.7 Seller expressly guarantees and warrants that Seller owns, controls, or has secured all rights necessary to grant the rights, authorizations, licenses and permissions related to Seller's supply of Goods and that BioMarin's use of the Goods in accordance with the terms of this Purchase Order shall not violate or infringe any third party's Intellectual Property Rights. Seller further represents and warrants that Provider's performance of Services under this Purchase Order, including the delivery of any deliverables or Work Product prepared or provided by Seller, or the use thereof by BioMarin, shall not infringe the Intellectual Property Rights of a third party.
- 13.8 All guarantees and warranties in this **Article 13** (Guarantees and Warranties), together with all other service guarantees and warranties of Seller shall: (a) run to BioMarin, its successors, assigns and customers; (b) survive inspection, test, Acceptance, and payment by BioMarin; and (c) be valid for a period of not less than eighteen (18) months from date of BioMarin's Acceptance of the Goods and/or Services as applicable. All Goods repaired, corrected, or replaced under the provisions of this **Article 13** (Guarantees and Warranties) shall be subject to the same guarantee and warranty provisions for the remainder of the original guarantee and warranty period or for a minimum period of twelve (12) months from the date of BioMarin's Acceptance of the repaired, corrected, or replaced Goods, whichever period is longer.

#### **ARTICLE 14: CONFIDENTIAL INFORMATION**

- 14.1 Seller understands and acknowledges that, in the provision of Goods or Services pursuant to this Purchase Order, BioMarin may disclose to Seller or Seller may otherwise obtain information that BioMarin (or any of its subsidiaries, Affiliates, vendors or customers) considers confidential. Such information may include all information relating to the subject matter of this Purchase Order, whether furnished to or obtained by Seller or its representatives before, on or after the date of this Purchase Order, in any form, including, but not limited to, written, verbal, visual, electronic or in any other media or manner ("Confidential Information"). In addition, Confidential Information shall also include all Work Product (as defined in Section 16.2 below). For the avoidance of doubt, any and all Personal Information (as defined below in this **Section 14.1** made available to Seller pursuant to the Purchase Order is deemed Confidential Information. Seller shall keep Confidential Information strictly confidential as competitive-sensitive information. Seller shall exercise the same degree of care for the Confidential Information of BioMarin as it uses to



protect its own confidential information, but in any event, not less than reasonable care, including, without limitation, the requirements of this Purchase Order. Seller shall not disclose Confidential Information without the prior express written consent of BioMarin to any person or entity not a party to this Purchase Order (other than as required by Applicable Laws) in any manner whatsoever, in whole or in part, and shall not use any Confidential Information other than in connection with the purposes permitted by this Purchase Order. Confidential Information may be disclosed by Seller only to such Seller Personnel who have a legitimate need to know such Confidential Information for purposes of carrying out Seller's obligations under this Purchase Order, who have agreed to comply with confidentiality provisions for the protection of the Confidential Information no less protective than the terms of this Purchase Order, and who have been informed by Seller of the confidential nature of the Confidential Information as well as of the confidentiality undertakings of Seller contained herein. Seller shall be responsible for any breach of this **Article 14** (Confidential Information) caused by any such Seller Personnel. As used herein, "Personal Information" means the personally identifiable information, including name, address, e-mail address, telephone number, any other BioMarin-, Seller-, or third party-issued identifier, and/or IP address in any media or format, including, without limitation, computerized or electronic records and paper-based files of an individual person.

- 14.2 Notwithstanding the restrictions set forth above, if Seller is required by Applicable Laws to disclose any Confidential Information, Seller may make the required disclosure, provided that prior to making any such disclosure, Seller shall provide BioMarin with: (i) written notice of the proposed disclosure in order to provide BioMarin with sufficient opportunity to seek a protective order or other similar order preventing or limiting the proposed disclosure; and (ii) reasonable assistance in seeking such protective order or other similar order.
- 14.3 Upon completion or termination of this Purchase Order, and at BioMarin's written request at any time, Seller shall promptly return to BioMarin or destroy (at BioMarin's election) all copies of all documents or other materials, in whatever form, that contain Confidential Information and are in the possession or under the control of Seller or any Seller Personnel and shall certify to BioMarin in writing that Seller has done so in accordance with Applicable Laws.
- 14.4 Seller, and for its Seller Personnel, represents and warrants that: (a) it has adequate and appropriate controls to ensure the confidentiality, privacy, security and integrity of Confidential Information and to ensure that Confidential Information is not disclosed contrary to the provisions of this Purchase Order; (b) it has established and/or is maintaining an appropriate administrative, technical and physical safeguards as part of an appropriate information security program as well as security measures to ensure the privacy, security, confidentiality and integrity of Confidential Information; (c) its information security program will reasonably protect against any threats or hazards to the privacy, security, confidentiality and integrity of Confidential Information, and protect against unauthorized access to or use of Confidential Information (including, without limitation, where Confidential Information is transmitted over a network) that could result in the loss,

destruction, unauthorized use, modification, or disclosure of Confidential Information, or the substantial harm or inconvenience to BioMarin or any Individual.

- 14.5 Seller, and on behalf of Seller Personnel, agrees to provide to BioMarin, and as otherwise required by Applicable Laws, prompt written notice of all incidents that involve, or which Seller reasonably believes may involve, the attempted or successful unauthorized access, use, disclosure, modification, destruction or loss of Confidential Information or interference with system operation in an information system or in any medium or format, including without limitation, paper (hard) copy documents that may affect Confidential Information in the custody, possession or control of Seller or Seller Personnel ("Security Incidents"). Such notice shall summarize in reasonable detail the impact on BioMarin and the affected Individuals of the breach or unauthorized access, use, disclosure, modification, destruction or loss of Confidential Information and the corrective action taken or to be taken by Seller for preventative measures to prevent any future reoccurrences of such incident. Seller, at its sole expense, shall promptly take all necessary and appropriate corrective action including, without limitation, at the written request of BioMarin or any regulatory body, to provide notices to individuals whose Confidential Information may have been affected, whether or not such notice is required by Applicable Laws, and cooperate with any regulatory investigations of, and respond to and/or defend any litigation (including any class action suits or similar proceedings) relating to such Security Incident.
- 14.6 In the event of a Security Incident, Seller, and on behalf of Seller Personnel, agrees to reasonably cooperate with BioMarin in connection with Seller's, BioMarin's and any other entity's investigation(s) and/or remediation of such Security Incident and shall not distribute any public announcements (including, without limitation, website postings and press releases) without BioMarin's prior express written approval, which shall not be unreasonably withheld. Seller further agrees to reimburse BioMarin for all actual and reasonable costs BioMarin may incur in connection with any such investigation and remediation efforts concerning a Security Incident commensurate with the nature and level of severity of the Security Incident.
- 14.7 Except as otherwise provided herein, nothing contained in this Agreement shall be construed as conferring any right on Seller to use in any manner BioMarin's or its Affiliate's name or any trade name or trademark. Seller shall not make any public announcement or other public statement concerning the existence of this Purchase Order or the parties' respective performance hereunder, without the prior written consent of BioMarin, which may be withheld in BioMarin's sole and absolute discretion, except as necessary to comply with Applicable Law.
- 14.8 Seller expressly acknowledges and agrees that any breach or threatened breach of this **Article 14** may cause immediate and irreparable harm to BioMarin that may not be adequately compensated by damages. Seller therefore agrees that in the event of any breach or threatened breach of this Article 14, in addition to any remedies available at law, BioMarin shall have the right to secure equitable and injunctive relief, without bond, in connection with such a breach or threatened breach.

## ARTICLE 15: PRIVACY

- 15.1 Capitalized terms used in this **Article 15** and not otherwise defined herein shall have the meaning assigned in EU General Data Protection Regulation (Regulation (EU) 2016/679). For the purposes of these Terms and Conditions, “Applicable Data Protection Laws” means any Applicable Laws protecting a Data Subject’s privacy with respect to the Processing of Personal Data, including but not limited to those of the following jurisdictions (including any geographic subdivisions thereof): the European Union (EU), a Member State of the EU, a member of the European Economic Area (EEA), Switzerland, Canada, Japan, and the United States. Applicable Data Protection Laws may include, but is not limited to, the Swiss Federal Act of 19 June 1992 on Data Protection, EU Data Protection Directive (95/46/EC), and any successor or replacement legislation (including, e.g., as of May 25, 2018, the EU General Data Protection Regulation (Regulation (EU) 2016/679).
- 15.2 BioMarin and Seller acknowledge and agree that, with regard to the Processing of Personal Data pursuant to any Purchase Order, BioMarin is the Controller, and Seller is the Processor. Seller represents and warrants that any Processing of Personal Data pursuant to the Purchase Order will be done in compliance with Applicable Data Protection Laws and any policies, consents, or notices provided to or obtained from Data Subjects by Seller or otherwise communicated in writing by BioMarin to Seller.
- 15.3 Seller represents and warrants that all Processing of Personal Data pursuant to the Purchase Order will be done in accordance with BioMarin’s instructions and that Seller shall treat such Personal Data as Confidential Information. BioMarin hereby instructs Seller to Process Personal Data for the following purposes: (i) Processing in accordance with the Purchase Order; and (ii) Processing to comply with other reasonable instructions provided by BioMarin in writing, where such instructions are consistent with these Terms and Conditions and Applicable Data Protection Laws.
- 15.4 Seller further represents and warrants that it will: (i) appropriately oversee all personnel engaged in the Processing of Personal Data including Seller’s workers; (ii) maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality, and integrity of Personal Data; (iii) notify BioMarin if it receives a request from a Data Subject for access to, or correction, amendment, or deletion of that individual’s Personal Data; (iii) make available to BioMarin all information necessary to demonstrate compliance with Applicable Data Protection Laws; (iv) not disclose or transfer Personal Data to any third party without BioMarin’s prior written consent or as required by law; (v) maintain reasonable security incident management policies and procedures; and (vi) promptly notify BioMarin of any violation of Applicable Data Protection Laws, including any actual or reasonably suspected unauthorized disclosure of Personal Data.
- 15.5 EEA Personal Data. The Standard Contractual Clauses adopted in Commission Decision 2010/87/EU (the “Standard Contractual Clauses”), will apply to Personal Data that is transferred outside the EEA, either directly or via onward transfer, to any country not recognized by the European Commission as providing an adequate level of protection for

Personal Data as described in the Regulation (EU) 2016/679. The Standard Contractual Clauses will not apply to Personal Data that is not transferred, either directly or via onward transfer, outside the EEA. The Standard Contractual Clauses are incorporated herein by reference. In the event of any change to the continued validity of the Standard Contractual Clauses for the transfer of EEA Personal Data, or any modification to the Standard Contractual Clauses, Seller agrees to take such reasonable and appropriate steps that BioMarin and Seller agree are necessary for Seller to continue to Process the applicable Personal Data. For the avoidance of doubt, a change to the continued validity of the Standard Contractual Clauses for the transfer of EEA Personal Data will not relieve Seller of any obligations arising under the Purchase Order and these Terms and Conditions, except as otherwise agreed by BioMarin and Seller in writing.

- (a) BioMarin as Data Importer. Seller agrees that with respect to any Processing of Personal Data pursuant to the Purchase Order concerning Data Subjects in the European Economic Area (“EEA Personal Data”) it shall comply with all obligations imposed on the Data Importer under the Standard Contractual Clauses (processors) where “Data Importer” refers to the use of that term in the Standard Contractual Clauses.
- (b) Seller as Data Importer. To the extent Seller receives any EEA Personal Data directly from an affiliate or agent of BioMarin located in the European Economic Area, BioMarin and Seller agree that such transfers of Personal Data shall be governed by the Standard Contractual Clauses with the following additional details: (i) the BioMarin affiliate or agent located in the EEA shall be the “Data Exporter”; (ii) Seller shall be the “Data Importer”; (iii) the Member State referenced in Clause 9 (Governing Law) and Paragraph 3 of Clause 11 (Subprocessing) of the Standard Contractual Clauses is the Member State in which the Data Exporter is established; and (iv) the date of execution of the Standard Contractual Clauses shall be same as the date of Seller’s acceptance of the Purchase Order.

## **ARTICLE 16: INTELLECTUAL PROPERTY**

- 16.1 BioMarin may provide certain materials necessary to perform Services and/or produce Goods, as specified in the Purchase Order (collectively, “Materials”). All such Materials: (a) will remain the sole property of BioMarin; (b) will be used only in furtherance of the Services or production of Goods, in accordance with the Purchase Order; (c) will not be used or delivered to or for the benefit of any third party without the prior written consent of BioMarin; (d) will be used in compliance with all Applicable Laws; and (e) shall, in accordance with BioMarin’s instruction, be promptly returned or destroyed after the completion or termination of the Purchase Order.
- 16.2 For all work products and deliverables created under the Purchase Order through the performance of Services (“Work Product”), Seller and Seller Personnel hereby assign and transfer to BioMarin all rights to possession of, and all Intellectual Property Rights in and to, such Work Product, in whatever form or medium captured. For clarity, Work Product shall

include all physical and electronic materials, papers, documents (including drawings), copies, abstracts, and summaries thereof, which are developed or conceived or which may come into possession of Seller or Seller Personnel by reason of the provision of Services under this Purchase Order. Seller shall promptly disclose to BioMarin any Work Product known to Seller or Seller Personnel, and all such Work Product shall be deemed to be “works made for hire” exclusively for BioMarin, with BioMarin having sole ownership of such Work Product and the sole right to obtain and to hold in its own name any Intellectual Property Rights therein and thereto. Seller hereby agrees to give BioMarin or any person designated by BioMarin at BioMarin’s expense, all reasonable assistance required to perfect the rights hereinabove defined. Seller represents, warrants and covenants that it has caused or will cause all Seller Personnel to enter into an enforceable agreement with Seller prior to their performance of any Services, which agreement includes appropriate confidentiality, and assignment of Intellectual Property Rights provisions to effectuate the provisions of this Purchase Order. Notwithstanding the foregoing provisions, BioMarin’s ownership rights do not apply or extend to any of the following (collectively, the “Seller Property”): (a) any methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience or other materials or property owned or licensed by Seller independently from the Purchase Order; (b) any improvements or other modifications to any of the material or information set forth in clause (a) that Seller creates during the performance of the Services under this Purchase Order without the use of any of BioMarin’s Materials, Confidential Information or Intellectual Property Rights, that is clearly outside the scope of the Goods and/or Services as described in the Purchase Order (including in the Seller Documents), and that is applicable to Seller’s provision of goods and/or services to other clients; or (c) any of the Intellectual Property Rights in or to any of the items described in the preceding clauses (a) and (b). All right, title, and interest in and to the Seller Property is and shall remain in Seller, and Seller shall not be restricted in any way with respect to the Seller Property; provided however that, to the extent that any Seller Property is incorporated into or embodied in any of the Work Product, or covers or controls any of the Work Product, or is necessary in order to fully and freely use any of the Work Product, Seller hereby grants to BioMarin and its affiliates a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license, with the right to grant sublicenses, to: (i) use such Seller Property solely as part of or in connection with such Work Product or any derivative work based upon such Work Product; and (ii) to modify such Seller Property, solely to the extent such modification is necessary in connection with the creation of a derivative work based upon such Work Product.

#### **ARTICLE 17: INDEMNIFICATION; LIEN WAIVER**

- 17.1 Seller shall be responsible for and shall indemnify, defend, and hold harmless BioMarin and its Affiliates against all losses, claims, expenses and damages, including reasonable counsel fees (“Losses”) which may result in any way from any: (a) accident, injury, libel or damage either to person or property or from death of any persons by reason of any act or omission on the part of the Seller, its agents, employees, or subcontractors; or (b) negligence, gross negligence, or breach of these Terms and Conditions or Applicable Laws in the performance of the Purchase Order; except, in each case, to the extent that such





Losses are due solely and directly to the gross negligence or intentional misconduct of BioMarin and its Affiliates.

- 17.2 Seller shall promptly pay, when due, all its wages and bills for labor and materials used in, or specifically fabricated for, the Services or the production of the Goods, whether directly or by subcontract. Seller agrees to indemnify and hold BioMarin and its Affiliates harmless from any and all claims, liens, judgments, damages, costs (including court costs and attorney's fees) and expenses suffered or incurred as a result of Seller's failure to pay such wages and bills.
- 17.3 If a notice of Mechanics lien, other lien, or the like alleging non-payment should be filed or served upon BioMarin or its Affiliates by a Sub-Contractor or supplier of Seller, Seller shall pay to BioMarin liquidated damages equal to the amount of the lien, plus Ten Thousand Dollars (U.S. \$10,000). If such payment amount is not sufficient to fully indemnify BioMarin and its Affiliates, Seller shall compensate BioMarin and its Affiliates for the insufficient amount.
- 17.4 To the maximum extent permitted by law, Seller hereby waives its right to file Mechanics, or other liens, for itself and for its Sub-Contractors, suppliers, and all others furnishing materials or services to the Seller for use on or for incorporation into the BioMarin's premises. If requested by BioMarin, Seller shall promptly deliver to BioMarin a satisfactory release of all liens.
- 17.5 Seller agrees to indemnify, defend, and hold BioMarin and its Affiliates harmless from and against all Losses resulting from any actual or claimed trademark, patent or copyright infringement, trade secret misappropriation, or any litigation based thereon, with respect to any part of the Goods and/or Work Product covered by this Purchase Order or their use, and such obligation shall survive Acceptance of the Goods and/or Work Product, and payment therefore by the BioMarin. In addition to any indemnification as provided hereunder, if by virtue of a patent infringement suit an injunction shall be issued against Seller, BioMarin, or its Affiliates which prohibits or limits the use of any items purchased hereunder, Seller shall, at BioMarin's request, either: (a) supply BioMarin and/or its Affiliates with non-infringing replacement Goods and/or Work Product of similar kind and quality at no additional cost; or (b) procure for BioMarin and/or its Affiliates a license to use infringing Goods and/or Work Product at no additional cost to BioMarin and/or its Affiliates; or (c) modify the infringing Goods and/or Work Product to make them substantially equal but non-infringing, all at no additional cost to BioMarin and/or its Affiliates. If the alternatives described in clauses (a), (b) and (c) of this **Section 17.5** are not commercially practicable, Seller may terminate this Purchase Order and/or BioMarin's use and access to the Goods and/or Work Product, in which case Seller shall refund to BioMarin all of the fees paid to Seller under this Purchase Order. Upon such termination, BioMarin shall discontinue its use of the Goods and/or Work Product, as applicable.
- 17.6 If, at any time during the performance of this Purchase Order and for any reason, Seller is required to perform Work on BioMarin's or its Affiliate's premises, Seller agrees to





indemnify, defend, and hold harmless BioMarin and its Affiliates from any and all Losses on account of damage to property and injuries, including death, to all persons, including Seller Personnel, which may arise from performance of any work, when not attributable solely to the fault, failure, or negligence of BioMarin and/or its Affiliates. The phrase “perform work on BioMarin's or its Affiliate’s premises” shall, when performed on said premises, be understood to include, but not be limited to: (a) supervision of installation and/or installation of equipment or materials by Seller, (b) deliveries of equipment or materials by Seller, (c) check-out or start-up services, (d) training of BioMarin’s or its Affiliate’s personnel, (e) technical and other service type assistance, and (f) inspection of premises or of equipment and material. Seller agrees to abide by all rules and regulations in effect at BioMarin’s or its Affiliate’s site or premises including those pertaining to safety, plant protection, security identification, and operation and parking of vehicles.

- 17.7 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL BIOMARIN BE LIABLE TO SELLER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR OTHER INDIRECT DAMAGES (INCLUDING LOSS OF PROFIT) ARISING FROM OR RELATING TO THIS PURCHASE ORDER, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

#### **ARTICLE 18: INSURANCE REQUIREMENTS**

- 18.1 At all times, Seller shall maintain commercial general liability coverage of \$5,000,000 per occurrence and \$5,000,000 in aggregate with a carrier having Best’s rating of A- or above. In addition, Seller shall maintain workers’ compensation insurance as required by law, and such policy shall include a waiver of subrogation. Seller’s insurance, with the exception of workers’ compensation, shall include BioMarin as an additional insured. Upon BioMarin’s written request, Seller shall provide to BioMarin (or upon request to BioMarin’s Affiliate) certificates of insurance evidencing the above specifications.

#### **ARTICLE 19: REGULATORY COMPLIANCE; ANTI-CORRUPTION; CODE OF CONDUCT**

- 19.1 Seller represents that the Goods covered by the Purchase Order have been manufactured and sold in compliance with the requirements of the Robinson-Patman Act, the Fair Labor Standards Act and all other Applicable Laws.
- 19.2 Seller warrants that the Goods covered by the Purchase Order will conform to the standards and/or regulations promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, PL, 91-596) including any subsequent amendments as they exist on the date of the Purchase Order (“OSHA”). In the event the Goods sold do not conform to OSHA, BioMarin may return the Goods for either correction or replacement at Seller’s option and at Seller’s expense. Services performed by the Seller, which do not conform to OSHA must be corrected by Seller at Seller’s expense or by BioMarin at Seller’s expense in the event Seller fails to make the appropriate correction within a reasonable time. Any penalties assessed against BioMarin resulting

from an alleged violation for Seller's failure to comply with OSHA shall be Seller's sole responsibility and Seller shall indemnify BioMarin therefore.

- 19.3 Seller also warrants and represents that every chemical substance delivered hereunder shall be on the list of chemical substances, or have been submitted for inclusion on such list, as compiled by the Administrator, Environmental Protection Agency pursuant to the Toxic Substances Control Act.
- 19.4 Seller represents and warrants that: (i) it is aware of the terms of any applicable anti-corruption laws governing the jurisdictions in which Seller will provide Goods or Services, including but not limited to the Foreign Corrupt Practices Act ("FCPA") and/or the United Kingdom Bribery Act ("UK Bribery Act"), and that, at all times during the term of this Purchase Order, Seller shall keep apprised of any amendments, changes or other modifications to those laws; (ii) neither it, nor any of Seller's Personnel or Sub-Contractors, is an employee, officer or agent of a governmental authority or regulatory authority, or a candidate for foreign public office, within any jurisdiction where Goods or Services will be provided; and (iii) Seller has never been subject to any investigation, litigation, or disciplinary action relating to allegations of fraud or corruption by any governmental or regulatory authority. Seller agrees that in providing the Goods or performing the Services under the Purchase Order, it will refrain from any activity which may constitute a violation of any applicable anti-corruption laws. Without limiting the generality of the foregoing, Seller agrees that it will not offer, promise, or pay, indirectly or directly, money or any other thing of value to any government official, political party official, political candidate, or any relative, business associate or employee thereof, or to any other third party while knowing that such item of value or portion thereof may be offered, promised or given to a government official, political party official, political candidate or employee thereof in violation of any anti-corruption law applicable in the jurisdictions where Goods or Services are provided. BioMarin may terminate the Purchase Order immediately in the event of any violation by Seller of any applicable anti-corruption law.
- 19.5 Seller shall permit, upon the request, and at the sole discretion, of BioMarin, audits by BioMarin or its agents, and hereby agrees that such auditors shall have full and unrestricted access to, and to conduct reviews of, all records related to the work performed for, or Services or Goods provided to, BioMarin, and to report any violation of any applicable anti-corruption laws and regulations, with respect to: (a) the effectiveness of existing compliance programs and codes of conduct; (b) the origin and legitimacy of any funds paid to BioMarin; (c) its books, records and accounts, or those of any of its subsidiaries, joint ventures or affiliates, related to work performed for, or Services or Goods provided to, BioMarin; (d) all disbursements made for or on behalf of BioMarin; and (e) all funds received from BioMarin in connection with work performed for, or Services or Goods provided to, BioMarin.
- 19.6 Should Seller become the subject of a disciplinary action, government investigation, or litigation involving allegations of fraud or corruption, it will inform BioMarin in writing of the action, investigation, or litigation within ten (10) business days of the time Seller becomes aware of the allegations against it.

- 19.7 Seller represents and warrants that it, and any permitted Sub-Contractors, have reviewed, understand, and acknowledge BioMarin's "Supplier Code of Conduct," available at [www.bmrn.com](http://www.bmrn.com), as updated from time to time (the "Code of Conduct"). Seller will also ensure that any of its, and its Sub-Contractors', employees or independent contractors performing work for BioMarin (whether by supplying Goods or performing Services) review and understand the Code of Conduct.
- 19.8 Seller represents and warrants that it is not debarred and is not under investigation for debarment by the FDA pursuant to the Generic Drug Enforcement Act of 1992, as amended (21 U.S.C. § 301, *et seq.*), and it will not employ, contract with, or retain any person directly or indirectly to perform any work under this Purchase Order if such person debarred or is under investigation by the FDA for debarment. In addition, Seller represents and warrants that it has not engaged in any conduct or activity that could lead to any such debarment actions. If during the term of this Purchase Order, Seller or any person employed or retained by it to perform any work under this Purchase Order (a) comes under investigation by the FDA for a debarment action, (b) is debarred, or (c) engages in any conduct or activity that could lead to debarment, Seller shall immediately notify BioMarin of same.
- 19.9 U.S. Customs – Trade Partnership Against Terrorism ("C-TPAT"). Seller has reviewed its supply chain security procedures, and these procedures and their implementation are, and shall remain during the term of this Purchase Order, in accordance with the importer security criteria set forth by the C-TPAT program of the U.S. Bureau of Customs and Border Protection. Seller represents and warrants that it has developed and implemented, or shall develop and implement, within sixty (60) days of the date of this Purchase Order, procedures for periodically reviewing and, if necessary, improving its supply chain security procedures to assure compliance with C-TPAT security criteria. Seller agrees to conduct periodic security audits at each of its facilities and to take all necessary corrective actions to ensure the continued adherence to the security criteria set forth by the C-TPAT program. Seller agrees to share with BioMarin the results of such periodic audits and agrees to prepare and submit to BioMarin a report on the corrective actions taken in response thereto. In addition, BioMarin may audit Seller's records and facilities for the purpose of verifying that Seller's procedures are in accordance with the C-TPAT security criteria, and Seller shall provide BioMarin with access to Seller's records and facilities reasonably necessary for the purpose of conducting such audit. Seller agrees to notify BioMarin of any event that has resulted in or threatens the loss of its C-TPAT benefits (if it is a member of the C-TPAT program) or alternatively jeopardizes the security of shipments to BioMarin. In an effort to secure each part of the supply chain, if Seller is not already a member, Seller agrees to work in good faith to become a member of the C-TPAT program, if Seller is organized or incorporated in the United States, Mexico or Canada, or the equivalent supply chain security program criteria administered by the customs administration in Seller's home country if Seller is not organized or incorporated in the United States, Mexico or Canada.

## **ARTICLE 20: EQUAL EMPLOYMENT OPPORTUNITY**

- 20.1 The provisions of the following laws, executive orders, and any rules and regulations issued there under, are incorporated herein by reference as part of this **Article 20** (Equal Employment Opportunity):
- (a) Paragraphs one (1) through seven (7) of Section 202 of Executive Order 11246, as amended, relating to equal opportunity in employment under government contracts and subcontracts.
  - (b) Section 2012 of Title 38 of the United States Code and Executive Order 11701, as amended, relating to affirmative action obligations of government contracts and subcontractors for disabled veterans and veterans of the Vietnam era.
  - (c) Section 503 of the Rehabilitation Act of 1973, and Executive Order 11758, as amended, relating to affirmative action obligations of government contractors and subcontractors for handicapped workers.
- 20.2 The Seller agrees to fully comply with the provisions of **Article 20** (Equal Employment Opportunity), and any amendments thereof. In addition, all Sub-Contractor agreements that the Seller enters into to provide Goods and/or Services under the terms of the Purchase Order shall obligate such Sub-Contractors to comply with such provisions.

## **ARTICLE 21: ENVIRONMENTAL, HEALTH AND SAFETY MATTERS**

- 21.1 Seller shall comply and shall ensure that the Goods and/or Services comply with all applicable Environmental Laws (as defined herein). With respect to all environmental, health and safety matters related to Seller's activities in providing Goods and/or Services to BioMarin, Seller shall: (a) inform BioMarin promptly of any significant adverse event (e.g., fires, explosions, accidental discharges) that have affected or have the potential of affecting (i) the quality of the Goods and/or Services to be delivered and/or (ii) any BioMarin facility, property or asset; (b) inform BioMarin promptly of any allegations or findings of violations of Applicable Law, including Environmental Laws, that have affected or have the potential of affecting (i) the quality of the Goods and/or Services to be delivered and/or (ii) any BioMarin facility, property or asset and any individual located at those locations; and (c) implement promptly any corrective action which may be reasonably requested by BioMarin, including, without limitation, adhering to reasonable and significant elements of the environmental, safety and industrial hygiene program adhered to by BioMarin in its own operations.
- 21.2 Seller represents and warrants to BioMarin that any and all equipment, machinery, and vehicles used by Seller, its employees, agents, or Sub-Contractors to perform Services or provide the Goods at issue in this Purchase Order, shall be properly licensed in compliance with all Applicable Laws and BioMarin policies and that Seller shall obtain and pay for all permits, licenses, and official inspections made necessary by the Services or sale of Goods under this Purchase Order.

- 21.3 Seller represents and warrants that its employees, agents, and Sub-Contractors have all training, medical surveillance, permits, certifications, and approvals that are required by all Applicable Laws and BioMarin standards for the performance of the Services or sale of the Goods. Seller shall furnish to BioMarin, upon request, proof of all training, medical surveillance, permits, certifications, and approvals. If any change occurs with respect to any Laws or BioMarin standards applicable to the Services or Goods, Seller shall comply with such change or changes.
- 21.4 Seller shall collect, properly handle, profile, characterize, safely containerize, and properly transport or dispose all waste generated during any Services performed on-site at a BioMarin facility in accordance with all Environmental Laws.
- 21.5 In the event of any unauthorized release or spill on-site at a BioMarin facility of any Hazardous Materials or waste under the control of Seller, its employees, agents or Sub-Contractors, Seller shall immediately take steps to contain, clean up and dispose of the material in a manner consistent with Environmental Laws and BioMarin safety requirements. Seller shall be solely and exclusively responsible for the emergency response, management, clean up, transportation and disposal of, and all other remedial action related to, any releases of Hazardous Materials or waste under the control of Seller occurring on or outside BioMarin property as a result of (a) any negligent act or omission of Seller during Seller's performance of its Services or sale of Goods while handling Hazardous Materials or waste pursuant to this Purchase Order; and (b) any act or omission of Seller during transportation of Hazardous materials or waste pursuant to this Purchase Order.
- 21.6 Seller shall not bring, or allow its employees, agents, Sub-Contractors, or suppliers to bring, any Hazardous Materials on site of a BioMarin facility, except as required to provide the Goods and/or perform the Services and approved by BioMarin in writing, and shall ensure that any use, storage, or disposal of such Hazardous Materials complies with all requirements of Environmental Laws. Seller shall remove any Hazardous Materials brought on to the site by Seller, its employees, agents, Sub-Contractors, or suppliers, on or before the completion of the Services, and shall indemnify, defend, protect and hold harmless BioMarin from and against damages, liabilities, judgments, actions, claims, attorneys' fees, consultants' fees, payments, costs or expenses arising from the presence of any such Hazardous Materials.
- 21.7 Seller shall have and implement a documented health and safety policy which addresses, among other things, elimination of workplace injuries. Seller shall be responsible for the health and safety of Seller's employees and independent contractors, including providing necessary training and other requirements of Applicable Law, including but not limited to OSHA and state equivalents, while present at a BioMarin facility, property or asset. Seller shall comply with Applicable Laws and BioMarin requirements relating to health and safety, security, entrances, parking areas, sanitation, and other provisions for maintenance of good order and shall cause its employees and independent contractors to do the same. Seller shall formulate and implement an overall safety training program that includes rules and regulations to promote safe and orderly prosecution of Seller's activities and which shall





also address BioMarin's site-specific safety rules and regulations. Seller shall immediately notify BioMarin of any health and safety incidents or any non-compliance with health and safety laws while performing Services at a BioMarin facility, property or asset. All Goods and Services shall be subject to environmental, health and safety inspections at all times by BioMarin.

## **ARTICLE 22: NO TRANSFER OR LICENSE**

22.1 Nothing in this Purchase Order is intended to grant or transfer any right to Seller under any Intellectual Property Rights of BioMarin, nor shall this Purchase Order grant or transfer to Seller any right in or to the Confidential Information except as expressly set forth herein. None of the Confidential Information which may be disclosed by BioMarin shall constitute any representation, warranty, assurance, guarantee or inducement by BioMarin to Seller, including, without limitation, with respect to the non-infringement of Intellectual Property Rights, or other rights of third persons.

## **ARTICLE 23: SOFTWARE**

- 23.1. License Grant. Effective upon the delivery of the Goods, Seller grants to BioMarin, and BioMarin hereby accepts, a non-exclusive, perpetual, worldwide, irrevocable, license to access, use, copy, modify, and otherwise operate and utilize the Software and related documentation, for BioMarin's internal business purposes, including without limitation, use of the Goods (the "License"). For the avoidance of doubt, as part of the License, BioMarin will also be permitted to: (a) make a reasonable number of copies of the design, function, operation, and use of the Software to support the use of the Goods and for back-up, disaster recovery and archival purposes; and (b) to allow third party service provider(s) to use the Software with the Goods to assist BioMarin with certain internal business activities, provided that such use is subject to the terms of this Purchase Order.
- 23.2. Updates. BioMarin acknowledges that the Software may evolve over time and Seller, or Seller's licensors, retains the right to modify, update and/or upgrade the Software (each an "Update"). In the event of such an Update the new features will include at least the functionality BioMarin previously received from the Software. Seller agrees that that any such Update shall not cause any delay or interruption of the Software and/or any loss or corruption of data. Without limiting the foregoing, with respect to each major Update or change, Seller will provide such Services as reasonably necessary to assist in any required installation and integration of the Update at no additional charge to BioMarin.
- 23.4. Malicious Code. Seller will use industry standard software scanning technology (updated with the then-current virus signatures and data) to test the Software in order to, wherever possible, ensure the Software will not contain, and shall use best efforts to remove, any viruses, known harmful programs, data, malware, spyware, or contaminants, including any codes or instructions that may be used to access, modify, delete, damage, disable or otherwise prevent the proper operation of a computer hardware system or the associated software (collectively, "Malicious Code"). Seller agrees that in the event Malicious Code is





found to have been introduced into the Software or into BioMarin's information technology environment, Seller will use best efforts to assist BioMarin in reducing the effects of the Malicious Code at no additional cost to BioMarin and if the Malicious Code causes a loss of operational efficiency or loss of data, Seller shall restore such lost data and correct such lost efficiency.

- 23.5. Support Obligations. Seller will provide support to BioMarin comprising of problem resolution for the Software including without limitation, repairing errors or problems so that the Software operates in substantial accordance with its documentation.
- 23.6. Additional Terms. No shrink-wrap, click-through, or other terms and conditions, including end user license agreements, if any ("Additional Terms"), provided with the Software shall be binding on BioMarin, even if use of such Software requires an affirmative "acceptance" of those Additional Terms before access is permitted. All such Additional Terms shall be of no force or effect and shall be deemed rejected by BioMarin in their entirety.

#### **ARTICLE 24: MISCELLANEOUS PROVISIONS**

- 24.1 Complete Agreement. The Purchase Order constitutes the final, complete and exclusive agreement of BioMarin and Seller with respect to the subject matter thereof and supersedes all prior and contemporaneous agreements, communications, negotiations or understandings between the parties with respect to the matters addressed herein. No modification of or amendment to the Purchase Order will be effective unless in writing and signed by BioMarin and Seller.
- 24.2 Severability. If any provision of the Purchase Order should be held invalid or unenforceable, the remaining provisions shall be unaffected and shall remain in full force and effect, to the extent consistent with the intent of the parties as evidenced by the Purchase Order as a whole.
- 24.3 Waiver. Failure of BioMarin to insist upon strict performance of any provisions of, or to exercise any right or privilege contained in, the Purchase Order, or the waiver of any breach of the terms or conditions of the Purchase Order shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred. All rights and remedies reserved under the terms and conditions hereof shall be cumulative and in addition to any further rights and remedies provided in law or equity.
- 24.4 Assignment. Seller may not assign its rights or obligations under the Purchase Order without the prior written consent of BioMarin, which consent may be given or withheld in BioMarin's sole and absolute discretion. Any purported assignment by Seller without BioMarin's consent shall be null and void. BioMarin may transfer or assign the Purchase Order, or any of its rights and obligations under the Purchase Order, in whole or in part, without Seller's consent, including without limitation to any: (a) Affiliate of BioMarin; (b) wholly-owned subsidiary or successor-in-interest; or (c) any third party with which it merges,



or consolidates, or to which it transfers all or substantially all of its assets to which the Purchase Order relates.

- 24.5 Force Majeure. If either BioMarin or Seller is prevented from carrying out its obligations under the Purchase Order by events beyond its reasonable control, acts of God or government, natural disasters, including earthquakes or storms, fire, political strife, terrorism, failure or delay of transportation, then such party's performance of its obligations hereunder shall be excused during the period of such events and for a reasonable period of recovery thereafter, and the time for performance of such obligations shall be automatically extended for a period of time equal to the duration of such events; provided, however, that the party claiming force majeure shall promptly notify the other party of the existence of such force majeure, shall use commercially reasonable efforts to avoid or remedy such force majeure and shall continue performance hereunder with the utmost dispatch whenever such force majeure is avoided or remedied. When such circumstances arise, the parties shall discuss what, if any, modification of the terms of the Purchase Order may be required in order to arrive at an equitable solution.
- 24.6 Governing Law; Venue. The Purchase Order shall be governed by and construed and interpreted according to the laws of the State of California. Any disputes under the Purchase Order must be brought in the state courts and the Federal courts located in the Northern District of California, and the parties hereby consent to the personal jurisdiction and exclusive venue of these courts. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. In addition the parties hereby agree to exclude the 1980 United Nation Convention on Contracts for the International Sale of Goods and all and any additions, amendments or changes thereto.
- 24.7. Written Notice. Written notice shall be deemed to have been duly served when delivered by certified mail or expedited courier service to the business address of the person, firm or corporation for whom intended, or to his, their or its duly authorized agent, representative or officer. Written notices intended for BioMarin shall be delivered to:

Attention: Global Strategic Sourcing  
BioMarin Pharmaceutical Inc.  
105 Digital Drive  
Novato, CA 94949

With a copy to:  
General Counsel  
BioMarin Pharmaceutical Inc.  
105 Digital Drive  
Novato, CA 94949



Written notices intended for BioMarin shall be delivered to Seller's address as set forth on Seller Documents, or as otherwise explicitly set forth in writing by Seller.

- 24.8 Independent Contractor Relationship. Seller's relation to BioMarin under this Purchase Order is that of an independent contractor. Nothing in this Purchase Order is intended or should be construed to create a partnership, joint venture, or employer-employee relationship between BioMarin and Seller or any of Seller's employees or agents. Seller is not the agent of BioMarin and is not authorized, and must not represent to any third party that it is authorized, to make any commitment or otherwise act on behalf of BioMarin.