

## GENERAL TERMS AND CONDITIONS FOR SERVICES

**1. PURCHASE ORDER.** These General Terms and Conditions for Services (this "Agreement") are made a part of, and incorporated into, each purchase order (together with this Agreement, and as modified by any change orders, this "Purchase Order"), between Intrepid Potash–New Mexico, LLC, Intrepid Potash–Moab, LLC, Intrepid Potash–Wendover, LLC, or HB Potash, LLC, as appropriate ("Intrepid") and the pertinent contractor ("Contractor"), relating to the procurement of services, including, but not limited to, training, engineering, maintenance, construction, design, contract labor, consulting, installation, inspection, and commissioning services (the "Services"), **unless a negotiated master services or general services agreement exists between Intrepid and Contractor, in which case the negotiated master services or general services agreement shall govern the relationship between the parties with regard to the Services.** Unless otherwise expressly stated otherwise, Contractor shall at its sole expense: furnish all supervision, labor, insurance, overhead, transportation, fuel, tools, equipment, safety equipment, standard and specialty personal protective equipment, hoisting/transporting equipment, materials, consumable materials, incidentals and supplies, office supplies (including printing and copying supplies) required for performance of the Services; obtain all licenses, permits, and other documents required for the performance of the Services; provide office space, storage space, drinking water and sanitary facilities as needed for its employees; and maintain a clean and safe worksite. Intrepid reserves the right to obtain any and all services from third parties, and this Agreement will in no event be construed to be an exclusive dealing contract for the provision of the Services.

**2. PAYMENT; PAYMENT NOT APPROVAL OR ACCEPTANCE.** Payment against approved invoices shall be made within 30 days of receipt of invoice. Invoices must be submitted within 30 days of completion of the Services. Billable overtime must have prior approval from the Intrepid project manager and that manager's name must be referenced on the invoice. Intrepid's payment of invoices or portions thereof will not constitute approval or acceptance of the Services or be considered a waiver by Intrepid of any of its rights, including those arising under this Agreement.

### **3. TERMINATION.**

3.1 Intrepid may, at its sole discretion and for any reason, terminate the performance of Services, in whole or in part, prior to completion by providing Contractor five days' prior written notice, subject to Section 3.2. If a force majeure event (as defined in Section 18) continues for more than 30 days, either party may terminate the performance of Services by providing five days' prior written notice to the other party.

3.2 **Termination Invoice.** Promptly after termination of the Services, Contractor shall invoice Intrepid for all Services performed prior to termination that have not been previously invoiced ("Termination Invoice"). Subject to Intrepid's rights under Sections 2 and 12, Intrepid shall pay Contractor the Termination Invoice amount in accordance with the payment terms set forth in Section 2. The Termination Invoice will be deemed the final invoice. Contractor's sole right upon termination is limited to seeking compensation for Services actually and satisfactorily rendered. Intrepid will not be liable to pay any bonus, damage, or other claim asserted by Contractor for its anticipated profit on the uncompleted portion of the Services.

3.3 If Contractor's conduct fails to conform to any of the requirements or terms of this Agreement, Intrepid may, in lieu of termination, elect to notify Contractor of its nonconformance and allow Contractor 15 days or, in the case of plant production interruption, plant

load-out interruption, or safety violation, any shorter period of time as may be required by Intrepid in its sole discretion (the "Probationary Period") within which Contractor must rectify its nonconformance. If Contractor fails to rectify its nonconformance during the Probationary Period, Intrepid may terminate this Agreement immediately. Intrepid may obtain Services from third parties during the Probationary Period, and Contractor will be liable for the difference between the commercially reasonable and customary costs paid to the third parties for the Services and the costs Intrepid would have paid to Contractor under the terms of this Agreement for the Services.

3.4 Nothing in this Section 3 will limit Contractor's or Intrepid's other rights and remedies provided for in this Agreement or elsewhere, including rights and remedies that may be available in the event of default or breach by the other party.

3.5 Upon termination of this Agreement, Contractor shall, at its sole cost and expense, remove all Contractor materials and leave the site where the Services were performed in a clean condition.

**4. ASSUMPTION OF RISK.** Contractor hereby expressly acknowledges that it (a) has had the opportunity to undertake any desired investigation of the site at which the Services are to be performed; (b) understands the scope of the Services required under this Agreement and agrees that the Services described are complete and appropriate in all material respects; and (c) is fully aware of the risks associated with performance of the Services and hereby assumes all risks associated with performance of the Services, including the risk of personal injury or death, except to the extent attributable to the acts or omissions of Intrepid or any of its employees, contractors, representatives or agents.

**5. INDEPENDENT CONTRACTOR.** Contractor has no authority to enter into agreements on Intrepid's behalf or to otherwise bind Intrepid in any manner. Contractor is performing the Services as an independent contractor and will not be deemed an agent or employee of Intrepid for any purpose. As an independent contractor, Contractor will be solely responsible for determining the means, manner, and method for performing the Services. Without limiting the foregoing, Contractor and its employees, subcontractors, and agents will not be treated as an employee of Intrepid for purposes of any federal, state, or local employment laws, regulations, rules, or orders, including workers' compensation and employment taxes. Contractor acknowledges that Intrepid is not providing workers' compensation benefits to Contractor. Contractor shall be responsible for and pay all taxes imposed on Contractor under the Self-Employment Contribution Act to the extent applicable, and shall pay and be responsible for all employment taxes applicable to Contractor's employees, subcontractors, and agents. At the request of Intrepid, Contractor shall supply reasonable evidence that such taxes have been timely and properly paid. Contractor and its employees, subcontractors, and agents will not be eligible for any retirement plan, insurance program, or other employee benefits provided to employees of Intrepid.

### **6. CONTRACTOR'S PERSONNEL.**

6.1 Contractor shall furnish personnel who are qualified, competent, fit, and skilled to perform the Services. Contractor shall ensure that its employees and the employees of its subcontractors (a) are properly licensed and certified in accordance with all applicable federal, state and local laws, rules and regulations, (b) have undergone a pre- and/or post-employment drug screening, (c) have received all regulatory and safety training required under applicable law prior to performing any Services, including any safety training that

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Intrepid may be required to provide to such employees under the Federal Mine Safety and Health Act, as amended, and any applicable rules of the Mine Safety and Health Administration (“MSHA”), including 30 CFR 48, (d) comply with any Intrepid safety training and rules, and (e) are equipped with all personal protective equipment (“PPE”) and specialty PPE required by law and by Intrepid. Intrepid will have no liability to Contractor or its subcontractors for any failure to provide such training.

6.2 Contractor shall comply with, and shall ensure that its subcontractors comply with, all Intrepid safety and job site rules, procedures, and regulations, that Intrepid makes available or verbally explains to Contractor. Contractor shall conduct its Services, and ensure its subcontractors conduct the Services, in such a manner as to avoid endangering the safety of or unreasonably interfering with activities of Intrepid and its personnel, other contractors, and the public. Contractor shall comply with, and shall ensure that its subcontractors comply with, all applicable procedures and regulations of any regulatory agency having jurisdiction over the Services, including, but not limited to, state and federal safety and health rules, procedures, and regulations, MSHA 30 CFR Parts 47,48, 56, 57, and 62 (available at [www.msha.gov](http://www.msha.gov)), and Occupational Safety and Health Administration (“OSHA”) 29 CFR Parts 1910 or 1926. Such regulatory requirements shall be considered the minimum standard for compliance. If Intrepid’s standard or requirement is more stringent than the regulatory agency’s requirement, the Contractor will comply with the more stringent requirement.

6.3 Contractor shall notify Intrepid promptly, in writing, of any labor dispute or anticipated labor dispute known to Contractor that may reasonably be expected to affect Contractor’s performance of the Services.

6.4 Contractor shall comply with, and shall ensure its subcontractors comply with, Intrepid’s Substance Abuse Policy, which provides for random drug and alcohol testing and is a zero tolerance policy. At the request of Intrepid, Contractor shall immediately remove from the job site and from participation in any aspect of the Services any of its employees or its subcontractors’ employees that Intrepid determines, in its sole, absolute, and unreviewable discretion, pose a danger to the safety or health of those around them or are otherwise unfit or incompetent to perform Services. Any employee of Contractor or its subcontractors who uses or is under the influence of alcohol or drugs while performing Services under this Agreement will be deemed unfit to perform Services. Intrepid will have the right to require Contractor to cause its and its subcontractors’ employees present on Intrepid’s property to submit to any drug test requested by Intrepid. All of Contractor’s subcontracts shall incorporate the requirements of this Section 6.4.

6.5 If and when Contractor wishes to use any non-English-speaking personnel to provide the Services, Contractor agrees that it must supply an on-site supervisor who will be (1) bi- or multi-lingual, meaning able to (a) both write and speak fluently in English, and (b) speak proficiently in the language(s) spoken by such non-English speaking personnel; and (2) present at the site at all times in order to supervise and communicate with such personnel, and Contractor’s crew as a whole. If no such on-site supervisor is available, or if the scope and/or economics of the project do not warrant the presence of a supervisor at all times, Contractor agrees that it will provide the Services using only personnel who are able to speak proficiently in the common language of English. These requirements are intended to help ensure the effective and efficient performance of the Services, as well as the safety of all persons in the vicinity of the job site (including Contractor’s personnel, Intrepid’s employees and

Intrepid’s third-party contractors). In the event of an emergency at the job site, and in order to communicate effectively with all persons in the vicinity, Contractor’s on-site supervisor (if any) will be expected to be able to speak both English and any other language(s) primarily spoken by any non-English-speaking personnel (if any) on Contractor’s crew. Each of Contractor’s on-site supervisors (or, in the absence of such a supervisor, a designated member of Contractor’s crew) shall carry a cell phone at all times and provide the cell phone number to Intrepid’s project manager.

7. **SUBCONTRACTORS.** Contractor will be fully responsible for the acts or omissions of its subcontractors and of all persons employed by them. At Intrepid’s request, Contractor shall provide Intrepid with a list of all subcontractors retained by Contractor, which shall contain subcontractor’s business name, representative’s name, and representative’s telephone number. Contractor shall update the list any time a new subcontractor is used. Contractor is solely responsible for the payment of its subcontractors and Intrepid will have no responsibility to make payments to Contractor’s subcontractors, subject to the rights reserved to Intrepid in Section 12.

## 8. WARRANTY AND REMEDIES.

8.1 Contractor’s Warranty. During performance of the Services and for one year following Final Completion of the applicable Services, Contractor represents and warrants that (a) it is fully competent to perform the Services; (b) the Services will be performed in accordance with the terms of this Agreement and all applicable laws, rules and regulations; (c) all materials and equipment supplied by Contractor will be in conformance with any required specifications or will otherwise be new and of the highest quality, unless otherwise agreed in writing by Intrepid; (d) all Services will be performed in accordance with the existing industry standard for such activities, and will be free from defective workmanship; and (e) Contractor will have good and valid title to all materials and equipment supplied at the time title passes to Intrepid. Contractor further represents and warrants that it is properly qualified, licensed, trained, organized, and financed to perform the Services under this Agreement. “Final Completion” means the date by which all of the following have occurred: (w) receipt by Intrepid of mechanics lien releases from Contractor and all subcontractors specified by Intrepid including all funds disbursed under this Agreement through such date; (x) receipt by Intrepid of properly supported final invoice; (y) written acceptance by Intrepid of the Services; and (z) demobilization, jobsite cleanup, and disposition of all residual materials by Contractor.

8.2 Remedies. If any portion of the Services fails to conform to the foregoing warranty, Intrepid may, in addition to and without limitation of any other rights and remedies available at law or in equity, elect to (a) require Contractor to correct promptly the nonconformance at Contractor’s expense, or (b) correct the nonconformance with Intrepid personnel at Contractor’s expense. Intrepid shall give Contractor written notice describing the nonconformance and Intrepid’s election of the foregoing remedies within 30 days after discovery and evaluation of the nonconformance. If Intrepid elects to permit Contractor to correct the nonconformance, Contractor shall mobilize within 24 hours of receiving Intrepid’s notice and work diligently, using whatever labor force and equipment is necessary, to complete the work as quickly as possible. The warranty in Section 8.1 will also apply to any work performed by Contractor to correct a nonconformance, extending for a period of one year from the date Contractor and Intrepid agree in writing that such corrective work has been completed.

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### 9. INSURANCE.

9.1 Contractor shall purchase and maintain insurance as required by law and with not less than the insurance coverage and limits of liability set forth below (the “Required Insurance”) with an insurance company licensed to do business in the state where the Services will be performed. The Contractor shall bear the cost of all Required Insurance. Such insurance shall be maintained to underwrite and assume any liability arising from Contractor’s performance of its Services under this Agreement, including any liability that may arise under Sections 4, 10, or 12. Before performing any Services under this Agreement, Contractor shall provide to Intrepid original evidence or certificates for each insurance policy identified below, endorsed to include that the policy will not be materially changed or canceled without at least 30 days’ prior written notice to Intrepid.

9.2 Until the later of Final Completion or the termination of this Agreement, Contractor shall have in effect the following:

(a) *Workers’ Compensation.* To the extent required by law, workers’ compensation and employer’s liability insurance covering all claims by or in respect to the employees of Contractor providing each of the following: (i) Coverage for the statutory limits of all claims under applicable laws as required by the State in which the project is located; (ii) Employer’s liability insurance with minimum limits of US\$1,000,000 each accident, and US\$1,000,000 disease, policy limit and each employee; (iii) Voluntary compensation insurance covering all employees not subject to applicable workers’ compensation laws; and (iv) Waiver of subrogation clause endorsement included in favor of Intrepid.

(b) *CGL.* Commercial general liability insurance that is written on ISO occurrence form CG 00 01 12 07 (or a substitute form providing equivalent coverage) and provides for combined bodily injury and property damage liability coverage in the following amounts: general aggregate US\$2,000,000 limit of liability; products-completed operations aggregate US\$2,000,000 limit of liability; each occurrence US\$1,000,000 limit of liability; and personal injury and advertising injury US\$1,000,000; such insurance shall meet each of the following requirements:

(i) Include premises/operations; contingent liability for work performed by subcontractors/vendors; explosion, collapse, and (if applicable) underground; broad form property damage (including completed operations); personal injury liability (with contractual exclusion deleted); and contractual liability (including the tort liability of another assumed in a business contract)

(ii) Include the following endorsements: (a) Additional insureds for ongoing operations (Form CG 20 33 10/01) and additional insureds for completed operations (Form CG 20 37 10/01) or their equivalent; these endorsements shall cover Intrepid, and (b) The policy shall state that it is primary and non-contributory with any insurance maintained by Intrepid and its subsidiaries, directors, officers, employees and agents.

(iii) Contractor shall maintain products and completed operations liability insurance and the additional insured and primary and non-contributory coverage as specified in this Section for three years after work is completed.

(iv) Cross-liability coverage: if Contractor’s liability policies do not contain the standard ISO separation of insureds

provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

(v) Include a waiver of subrogation clause endorsement in favor of Intrepid.

(c) *Auto.* Automobile liability insurance to cover owned, non-owned, or hired vehicles in combined single limit in the amount of US\$1,000,000 per each accident and covering combined bodily injury and property damage liability; such insurance shall include a waiver of subrogation in favor of Intrepid.

(d) *Excess.* Umbrella or excess liability coverage in the amount of US\$5,000,000 each occurrence and US\$5,000,000 aggregate excess of the employer’s liability, commercial general liability and automobile liability coverages on a following form basis, including coverage for the additional insureds specified in (2) and including liability coverage for damage to the insured’s completed work equivalent to that provided under ISO form CG 00 01; such insurance shall include a waiver of subrogation in favor of Intrepid.

(e) *Subcontractor’s Insurance.* Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the types specified above with limits of liability appropriate for the work. When requested by Intrepid, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

9.3 Contractor, and its Subcontractors at any tier, shall retain the risk of loss for any damage whatsoever to their equipment, stationary or mobile, tools including worker’s tools, supplies, materials, scaffolding, automobiles and vehicles, highway or otherwise, cranes, and hoists or any other property owned or leased which will not be incorporated into the physical construction. If separate insurance is maintained for any property described in this Section, it shall contain a Waiver of Subrogation on the part of the insurance company in favor of Intrepid and all other Contractors and Subcontractors at any tier with respect to on Site activities. If a Contractor of any tier chooses to self-insure any of the property described under this Section, it is agreed that Intrepid and all other suppliers and Subcontractors of any tier shall be held harmless for any loss or damage to the property while on Site.

9.4 Each certificate of insurance shall contain the following language: “As it pertains to the Master Services Agreement between the insured and Intrepid, Intrepid is named as an additional insured on a primary and non-contributory basis and the insurance provider hereby waives subrogation rights with respect to Intrepid, its subsidiaries and affiliates, and their respective members, managers, directors, officers, employees, and agents.”

9.5 To the extent necessary for Intrepid to pursue a claim or claims under this Agreement, Contractor shall promptly furnish to Intrepid copies of the Required Insurance policies.

9.6 The effecting of the insurance set out in this Section 9 will not in any way limit, alter, or affect the liability and obligations of Contractor under this Agreement, at common law, in equity, by statute, or otherwise.

9.7 Without the prior written consent of Intrepid, the Contractor shall effect all insurance policies required as part of the Required Insurance with insurance providers that have a Best rating of A-VII or better. Should any insurance company that is providing insurance required by this Agreement fall below a Best A-VII rating,

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the Contractor shall promptly notify Intrepid and effect coverage that complies in all respects with this Section.

**10. INDEMNIFICATION.** Contractor shall take all reasonable and appropriate steps and measures to ensure the safety of individuals and property in the vicinity of where the Services are being performed and further shall indemnify, defend, and save and hold harmless Intrepid, its subsidiaries and affiliates, and all of their respective members, managers, directors, officers, employees, and agents, from and against any and all losses, liabilities, damages, fines, penalties, claims, actions or suits, including costs and attorneys' fees, (collectively, "Losses") for or on account of any injury, bodily or otherwise, to or death of persons, damage to, or destruction of property belonging to Intrepid or others, or violation of any law, regulation, decree, code, ordinance, or other act of any governmental authority to the extent resulting from Contractor's fault, negligence, willful misconduct, or breach of this Agreement. **FOR NEW MEXICO SITES:** It is the parties' intent that the indemnification provided under this Agreement will be as broad as permitted by NMSA Section 56-7-1 and will not be construed in a manner contrary to the indemnification limitations in that statute.

**11. NON-INFRINGEMENT.** Contractor represents and warrants that neither Contractor's performance of the Services nor Contractor's use of materials, methods, products, or equipment in performance of the Services will infringe any third party patents or violate any trade secrets or other intellectual property rights, or will cause Intrepid to be liable to Contractor for any fees or royalties to Contractor arising under any patents or trade secrets held by Contractor. Contractor shall indemnify, defend, and hold harmless Intrepid, its subsidiaries and affiliates, and all of their respective members, managers, directors, officers, employees, and agents from and against any and all claims of patent infringement or violation of trade secrets or other intellectual property rights arising from the performance of the Services or use of materials, methods, products, or equipment in the performance of the Services by Contractor or its members, managers, directors, officers, employees, agents, or subcontractors.

**12. LIENS.** Contractor shall timely make payments to subcontractors as provided for in its subcontracts or as may be necessary to avoid having any subcontractor obtain a mechanic's lien or other lien on any of Intrepid's property. Intrepid will have the right to request from Contractor executed partial lien waivers from any of its subcontractors and Contractor shall require its subcontractors to provide such lien waivers as applicable. Provided that Intrepid is current with its payment obligations to Contractor pursuant to this Agreement, at the time, Intrepid will have the right to offset against Contractor's invoices and/or hold Contractor liable for any amount that Intrepid has to (a) pay to bond over any lien by a subcontractor of Contractor on property owned or operated by Intrepid; (b) pay to a subcontractor of Contractor to resolve any subcontractor lien on property owned or operated by Intrepid, together with all reasonable attorneys' fees, costs, and expenses incurred in connection therewith; or (c) otherwise incur in connection with Contractor's failure to comply with the terms of this Section 12.

**13. TAXES.** Contractor shall be responsible for payment of all taxes and similar charges required by law relating to the Services performed and its property used in the performance of the Services, including all federal, state, county, and local (a) income, franchise, business privilege, and occupational taxes, (b) sales, use, and related excise taxes imposed on its Services and its property, (c) employment and payroll, unemployment, workers' compensation, and related taxes, (d) ad valorem taxes imposed on its property; and (e) any interest or

penalties or both imposed with respect to any of the above. Contractor hereby agrees to indemnify, defend, and save and hold Intrepid harmless from and against any claim against or liability imposed upon Intrepid on account of such taxes and similar charges. Intrepid shall withhold and remit to appropriate tax authorities any tax or similar charge applicable to payments Intrepid makes to Contractor under this Agreement, to the extent that such tax withholding is required or reasonably believed by Intrepid to be required by any governmental authority having jurisdiction. Contractor may not rely upon any such withholding by Intrepid as a determination of Contractor's tax liability to any governmental authority. Contractor agrees to independently assess and determine its tax liability. Contractor hereby releases Intrepid from and waives any claim against Intrepid for withholding and remittance of such taxes and similar charges.

**14. AUDIT AND RECORD RETENTION.** Contractor will make available to Intrepid reports of hours worked at Intrepid's facility, training records for employees performing Services at Intrepid's facility, and inspection reports and forms regarding Intrepid equipment. To the extent that Contractor seeks reimbursement for direct or indirect costs, including reimbursement for any subcontractors or vendors, Contractor shall maintain and submit to Intrepid itemized receipts and supporting documentation with all invoices (credit card receipts without itemization of charges will not be accepted). Such records shall be made available to Intrepid or its designated representative during the term of this Agreement and for a period of two years following any termination or expiration of this Agreement, upon 48 hours prior notice and during business hours, to audit, inspect, or copy.

**15. EQUAL EMPLOYMENT.** Contractor certifies that it is an equal opportunity employer and that Contractor has established a personnel policy prohibiting discrimination with respect to the hiring, firing, and promotion of employees upon grounds that are impermissible under the Civil Rights Act, Age Discrimination in Employment Act, Rehabilitation Act, and Americans with Disabilities Act. Contractor also certifies that it files annual EEO-1 Reports as required by law (if Contractor has 50 or more employees). Contractor further certifies that it does not, and will not, maintain or provide segregated facilities for employees at any of its establishments. **Contractor and any of its subcontractors shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals for disabilities. Contractor and any of its subcontractors shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

**16. CONTRACTOR ENVIRONMENTAL POLICY.** Intrepid is committed to operating in a safe and responsible manner that is protective to the environment and natural resources, and expects those individuals and companies that do work on a contract basis for Intrepid to operate in the same manner. This commitment includes the protection of natural resources and the utilization of systems and equipment that are designed, maintained, and operated in a professional and protective way to minimize the potential for degradation of the environment and natural resources. Contractor and its subcontractors will comply with all applicable laws, regulations, Intrepid and Contractor held permits, and Intrepid policies. Contractor will designate a qualified representative responsible for environmental compliance and this representative will report all environmental

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incidents as soon as is practicable, but in no case later than 24 hours from the incident, to Intrepid's environmental department. Contractor and its subcontractors will not (a) drive off-road without approval from Intrepid's environmental department, (b) bring firearms onto Intrepid's property, (c) hunt wildlife, or (d) harass or harm wildlife within Intrepid's property. Contractor will provide a list of all chemicals, reagents, adhesives and flammables to be brought onto Intrepid property and a copy of all Safety Data Sheets (SDS). This list will be reviewed and approved in writing by Intrepid before these items are brought on site and used by Contractor or its subcontractor in the performance of the Services. Contractor will ensure that all substances are properly labeled, stored and handled. All unused or waste materials that are non-hazardous (as defined by law) shall be properly managed and disposed of on-site if acceptable to Intrepid and any hazardous waste (as defined by law) generated by the Contractor or its subcontractor shall be removed from Intrepid property and properly disposed of away from Intrepid's property under Contractor's EPA number. Intrepid will not accept any hazardous waste product generated by Contractor unless previously approved by the Intrepid environmental department and expressly authorized in writing. Contractor may not mix or co-mingle any waste product with any Intrepid waste product without proof of non-hazardous designation analysis and prior written authorization from Intrepid's environmental department. Contractor will not leave any hazardous wastes, hazardous materials, or used oils on Intrepid property after Final Completion of the project. Intrepid will monitor the environmental performance of the Contractor and will notify the Contractor of potential noncompliance. Should the Contractor fail or refuse to promptly correct the noncompliant condition, Intrepid may take one or more of the following actions: cease the operation, correct the condition and charge the Contractor, hold payment for the work performed, invoke contract penalties and/or terminate the Agreement.

**17. EQUIPMENT WARRANTIES.** If Contractor purchases or procures equipment or other materials for delivery to Intrepid under this Agreement, (a) the equipment and materials will be provided to Intrepid without Contractor markup unless mutually agreed in writing and (b) Contractor shall obtain from the vendor of such equipment or materials guarantees or warranties, with respect to quality, workmanship, and performance, that are generally made available by the vendor to purchasers of such equipment or materials. At Intrepid's request, Contractor shall obtain and provide to Intrepid information pertaining to the availability of additional or extended warranties from a given vendor. Contractor shall include appropriate language in the agreement for the purchase of equipment or materials that makes each and every guarantee and warranty obtained by Contractor run directly to Intrepid, permitting Intrepid to enforce or pursue such guarantees and warranties as if Intrepid had purchased the equipment or materials itself.

**18. FORCE MAJEURE.** Neither Intrepid nor Contractor will be considered in default of its obligations under this Agreement to the extent that performance (except payment obligations) is delayed or prevented by circumstances that have a material effect on the party, are beyond its reasonable control, and are caused by or result from acts of God, floods, fires, accidents, explosions, strike, lockouts, cessation, slowdown or stoppage of labor, sabotage, riots, war, acts of terrorism, enemy action, laws, regulations, rulings or acts of any governmental body or authority, governmental restriction or prohibition of exports or imports, governmental blockade or hostility, governmental seizure or expropriation or the closure of international trade routes, or any other similar cause; provided that the party claiming force majeure shall, within ten days after the beginning of such event, notify the other party in writing of the fact of the event and its probable effect on performance. A force majeure event may not be a basis for a claim for additional compensation and each party will bear its own costs and expenses associated with or caused by such an event. The party

claiming force majeure shall take reasonable measures to mitigate the potential impact of the force majeure event on performance of obligations created by this Agreement.

**19. CONFIDENTIALITY.** During and after the term of this Agreement, Contractor, for itself and on behalf of its employees, agents, assigns, and subcontractors, agrees to treat as confidential and proprietary, and not to disclose, the Confidential Information to others by any medium (including photographs, video, website postings, press releases or otherwise), without the express prior written consent of Intrepid, which consent may be withheld for any reason whatsoever. "Confidential Information" means any information, whether verbal or written, or any description whatsoever (expressly including any technical information, experience or data) regarding Intrepid plans, programs, plants, processes, products, costs, equipment, operations or customers of Intrepid, or any subsidiaries or affiliates of Intrepid, which may come within the knowledge of Contractor or its employees, agents, assigns, or subcontractors in the performance of this Agreement. Contractor agrees not to use any Confidential Information in connection with purchases or sales of, or trading in, any securities of Intrepid Potash, Inc. Contractor agrees to take all necessary precautions, contractual and otherwise, to prevent unauthorized disclosure or use of any information so obtained. Confidential Information will not include any information that (a) is generally known to the public or available to the public; (b) was in the possession of Contractor prior to disclosure thereof to Contractor by Intrepid or its subsidiaries or affiliates; (c) through no fault of Contractor becomes published or otherwise available to the public under circumstances such that the public may use the same without any direct or indirect obligation to Intrepid or its subsidiaries or affiliates; or (d) is, or at any time may be, acquired by Contractor from any third party rightfully possessed of the information and having no direct or indirect obligation to Intrepid or its subsidiaries or affiliates with respect to the information. All knowledge and information acquired or developed by or on behalf of Contractor under this Agreement will be and remain the confidential and proprietary information of Intrepid.

**20. SURVIVAL.** The obligations imposed on the parties under Sections 2, 4, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20, 21, and 22, and any other section that by its terms is intended to survive, will survive the termination of this Agreement.

### **21. GOVERNING LAW; DISPUTE RESOLUTION.**

21.1 For purchase orders issued by Intrepid Potash–New Mexico, LLC, or HB Potash, LLC, this Agreement will be governed by the laws of the State of New Mexico, excluding any conflict of laws rule or principle that might refer the governance or the construction of this Agreement to another jurisdiction. The parties hereby irrevocably submit to the sole and exclusive jurisdiction of and venue in the New Mexico State District Court for the district that includes Carlsbad, New Mexico, and to the jurisdiction of the United States District Court for the District of New Mexico, for the purposes of any suit, action, or other proceeding arising out of or relating to this Agreement and each party waives any right to change venue.

21.2 For purchase orders issued by Intrepid Potash–Moab, LLC, or Intrepid Potash–Wendover, LLC, this Agreement will be governed by the laws of the State of Utah, excluding any conflict of laws rule or principle that might refer the governance or the construction of this Agreement to another jurisdiction. The parties hereby irrevocably submit to the sole and exclusive jurisdiction of and venue in the Utah State District Court for the district that includes Moab, Utah or Wendover, Utah (in accordance with the location of the

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Intrepid entity), and to the jurisdiction of the United States District Court for the District of Utah, for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement and each party waives any right to change venue.

### 22. MISCELLANEOUS.

(a) *Notices.* All notices under this Agreement shall be given in writing and will be effective upon receipt by the recipient party, including by electronic delivery if applicable, at the address set forth below that party's signature on the signature page of this Agreement. A party may change its address by providing written notice to the other party.

(b) *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement of the parties with respect to the subject matter of the Agreement and supersedes all prior agreements. This Agreement may not be amended, and the rights under this Agreement may not be waived, except by written agreement executed by the party or parties to be charged with such amendment or waiver. No field employee of Intrepid is authorized or empowered to alter the terms of this Agreement.

(c) *No Waiver.* The failure of either party to insist upon or enforce strict performance by the other party of any of the terms of this Agreement, or to exercise any rights under this Agreement, will not be construed as a waiver or relinquishment to any extent of the waiving party's right to assert or rely upon such terms or rights.

(d) *Counterparts.* This Agreement may be executed by facsimile or electronic signature and in counterparts.

(e) *Severability.* If any provision of this Agreement is invalid or unenforceable, such provision will be fully severable from this Agreement and the other provisions of this Agreement will remain in full force and effect and will be liberally construed in order to carry out the provisions and intent of this Agreement or its provisions, as applicable.

(f) *Assignment.* Intrepid may assign its rights and delegate its obligations to any person that acquires the facility or facilities of Intrepid where the Services are to be performed (*provided that* Intrepid shall remain liable for payments due for Services performed prior to the time Contractor receives notice of such assignment); otherwise, neither party may assign any of its rights under this Agreement without the prior written consent of the other party.

(g) *Successors; No Third Party Beneficiaries.* This Agreement will be binding upon the parties and, except as otherwise prohibited, their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any other person or entity any benefits, rights, or remedies, including the rights of a third party beneficiary.

(h) *Waiver of Consequential and Exemplary Damages.* Each of Intrepid and Contractor (1) waives all claims against the other party and its subsidiaries and affiliates, and all of their respective members, managers, directors, officers, employees, and agents for any consequential, special, incidental, or indirect damages arising out of or relating to this Agreement, including any claim for personnel compensation, losses of financing, business and reputation and/or lost profits and (2) waives all claims against the other party and its subsidiaries and affiliates, and all of their respective members, managers, directors, officers, employees, and agents, for any exemplary or punitive damages.

(i) *References.* "Including" means "including, without limitation."

(j) *Ownership of Work Product.* All items prepared by Contractor under this Agreement including any and all drawings, sketches, specifications, tracings, evaluations, calculations, data books, schedules, operating instructions, documentation, reports, studies, and other written materials (the "Data") will be the sole property of Intrepid.

All such materials shall be turned over to Intrepid upon Final Completion, or at any other time upon Intrepid's request, and may not be further used by Contractor without the prior written approval of Intrepid. Notwithstanding the foregoing, Contractor may retain one copy of the Data for its internal files.

(k) *Attorneys' Fees and Costs.* The prevailing party to any dispute arising out of this Agreement will be entitled to recover its reasonable attorneys' fees and costs from the other party.

(l) *Intrepid Corporate Safety Reporting.* FOR NEW MEXICO SITES: On or before the last Contractor business day of each month, Contractor will report total man hours, by location, for that month, by sending a written statement to: ContractorHours@intrepidpotash.com. Example statement is as follows: "450 man hours at North, 631 MH at West underground, and 13 MH at East surface for January 2013." For fixed fee projects, the number of hours must be a reasonably accurate total. For time and materials projects, the number of hours must match timesheet submissions. These reports are for Intrepid's internal use only.

(m) *Intrepid Policies.* Contractor shall comply with any and all Intrepid policies and procedures that have been made available or verbally explained to Contractor, including as applicable Intrepid's contractor safety handbook, invoicing and reporting guidelines, and environmental policy.