

STANDARD PURCHASE ORDER FOR SERVICES - TERMS AND CONDITIONS

- Parts A and C shall apply to purchases of Goods by Company.
- Parts B and C shall apply to purchases of Services by Company.
- Parts A, B and C shall apply to purchases of Services which are provided by Contractor in connection with what is otherwise a purchase of Goods by Company.

“**Agreement**” means: the terms and conditions set forth herein and the Statement of Work dated _____, 20__ (“SOW”) attached hereto as Exhibit A and incorporated herein by reference into this Agreement.

“**Company**” means: [INSERT NAME OF PMC COMPANY]

“**Contractor**” means: (i) _____, a _____ corporation having its principal place of business at _____.

“**Services**” means and includes all labor, work, equipment, supplies and other materials necessary or appropriate for the furnishing of the Services by Contractor to Company under the Agreement and as more particularly described in the SOW

“**Goods**” means all goods sold to Company by Contractor in connection with the Services and more particularly described on Exhibit B attached hereto and incorporated herein by reference.

“**Delivery Point**” means Company’s plant in Memphis, TN.

A. Terms and Conditions applicable to the Purchase of Goods

1. WARRANTIES

- Contractor shall provide the Goods to the Company as describe and at the prices set forth in Exhibit B in accordance with the terms and conditions of this Agreement.
- Contractor represents and warrants that the Goods supplied hereunder (i) shall be of the kind and quality specified herein, free from fault in design, workmanship and material, (ii) shall be new and of good and merchantable quality, (iii) are suitable and fit for the purpose for which they shall be used, (iv) shall perform in accordance with the specifications and drawings, if any, provided by the Company or otherwise referred to, or incorporated, in this Agreement, (v) shall not constitute an infringement or contributory infringement of any patent or any copyright or trademark, or violation of any trade secret when sold or used for their ordinary intended purpose. All Goods provided under this Agreement shall be delivered free from all liens, encumbrances or other charges. All Goods shall at all times be subject to Company’s inspection but neither Company’s inspection nor failure to inspect shall relieve Contractor of any obligations hereunder or constitute a waiver of any of Company’s rights or warranties of Contractor. If any Goods fail to conform with specifications or drawings or are otherwise defective, then: (i) Company may, in its sole discretion reject all or any portion of the non-conforming or defective Goods purchased under this Agreement, and they may be (A) held at Contractor’s risk or (B) returned upon notice, and at Contractor’s cost to Contractor and Company shall be entitled to a refund in full, or (ii) at Company’s option, Contractor shall promptly repair or replace same at Contractor’s sole expense.
- The warranties in this Section 1 Warranties shall continue in full force and effect for a period of: (i) eighteen (18) months from the date of transfer of title to Goods, or (ii) twelve (12) months from the date of start-up of the Goods or start-up of the equipment into which the Goods are incorporated, whichever period ends last.
- Where Goods are repaired or replaced under the above warranties, such Goods shall be warranted for a new period of: (i) eighteen (18) months from the date of completion of such repair or replacement, or (ii) twelve (12) months from the date of restart-up of the Goods or restart-up of the equipment into which the Goods are incorporated, whichever period ends last.

- (e) Company shall be entitled to the benefit of any of Contractor's service warranties and guaranties customarily offered by Contractor, in addition to those warranties set forth above.
- (f) Contractor shall bear all costs for removal, repair, replacement and reinstallation of Goods under the above warranties.
- (g) To the fullest extent permitted by law Contractor herewith assigns and transfers to Company all right to, and benefit from, any and all manufacturers' or suppliers' warranties (each and collectively "Manufacturer's Warranty") that apply or otherwise relate to any Goods provided under this Agreement. Contractor shall fully cooperate with and assist Company in making any claim under any Manufacturer's Warranty. Any claim by Company under a Manufacturer's Warranty shall not: (i) prevent Company from (A) making a claim under any other warranty or (B) otherwise seeking to protect its rights; and (ii) limit or restrict Company's rights or remedies in law or at equity.
- (h) Acceptance of, or payment for, the Goods delivered under this Agreement shall not constitute a waiver by Company of any of the warranties of Contractor, either express or implied, and shall not be deemed to alter or affect the obligations of Contractor or rights of Company under any of such warranties, either express or implied, nor shall acceptance of, or payment for, any Goods constitute a waiver of any of Company's rights or remedies either contained herein, or in law or at equity.
- (i) All warranties and the benefits thereof will run to Buyer, its successors and assigns.
- (j) Upon request of Company, Contractor shall determine whether any Goods contain tin, tantalum, tungsten, gold or any other material that is designated under applicable rules of the Securities and Exchange Commission ("SEC") as a "conflict mineral." If no Goods contains one or more conflict minerals that are necessary to the functionality or production of such Goods within the meaning of applicable SEC rules and interpretations, Contractor shall, upon request, certify to Company that none of the Goods contains such conflict minerals. If any Goods contains one or more such conflict minerals, Contractor shall certify to Company the country of origin of any such conflict mineral or that the conflict mineral came from recycled or scrap sources within the meaning of those terms under applicable SEC rules. If Contractor is unable to identify the country of origin, and the conflict mineral(s) in question did not come from recycled or scrap sources, Contractor shall in good faith conduct an inquiry of its relevant suppliers as to the country of origin of such conflict minerals, and such inquiry shall comply with then-existing standards under SEC rules for the conduct of a reasonable country of origin inquiry. In the event that Contractor is or becomes aware that any conflict minerals that are necessary to the functionality or production of any Goods originated from a "covered country" within the meaning of the SEC's conflict minerals rules and did not come from recycled or scrap sources, Contractor shall make a good faith effort to determine whether such conflict minerals came from a processing facility certified as conflict free by a recognized industry group that requires an independent private sector audit of the smelter or from an individual processing facility that has obtained an independent private sector audit that is publicly available, and to provide written documentation of such determination. Contractor shall also take such additional actions and provide such additional information requested by Company as may be necessary in order for Company to be or remain compliant with applicable laws, rules and regulations relating to conflict minerals.
- (k) The warranties set forth or referred to herein are in addition to all rights and remedies Company may have in law or at equity.
- (l) Contractor shall provide Company with not less than forty-five (45) days advance written notice of any changes in or to the Goods, including, without limitation, changes in or to the specifications, raw materials, packaging, manufacturing processes, manufacturing locations, analytical test methods, use of a new reagent or solvent, or any other change which results in an alteration to the physical or chemical characteristics of the Goods.

2. TITLE

- (a) Contractor represents and warrants that Company shall receive clear and unencumbered title to the Goods supplied hereunder and that the Goods may be acquired, owned, held, used and disposed of by Company without infringing any patent, industrial design, copyright or trademark whether foreign or domestic.
- (b) Title to each item included in the Goods shall pass to Company on the earlier of: (i) payment for such item, or (ii) its delivery to the Delivery Point. Notwithstanding the foregoing, risk of loss for all Goods shall remain with the Contractor and shall transfer to Company only when the Goods are under the care, custody, and control of Company at the Delivery Point.

3. CERTIFICATE OF ORIGIN

Where applicable:

- (a) Contractor shall at Contractor's cost, prepare and issue to Company, Certificate(s) of Origin for Goods sold pursuant to the North American Free Trade Agreement (NAFTA) and shall provide copies of the issued Certificate of Origin to the customs administration of Contractor's and Company's home country upon request as well as provide all information requested by either customs administration in respect of the issued Certificate(s) of Origin. Contractor shall maintain records in respect of the Certificate of Origin for five (5) years or such longer period as required by law. Contractor shall otherwise comply with Contractor's obligations under NAFTA.
- (b) Contractor shall defend, indemnify and save Company harmless from and against all liability, loss and cost incurred for additional duties, tariffs and penalties imposed by any customs administration, resulting from the Certificate(s) of Origin furnished with respect to Goods being found to be incomplete, false or otherwise invalid in whole or in part, or arising out of a breach by Contractor of Section 3(a) Certificate of Origin above. Contractor's indemnity herein shall extend to all costs and expenses, including attorney's fees, arising from any resulting redetermination or reassessment with respect to any of the Goods.

4. PACKAGING

Contractor shall ensure all Goods are packaged in accordance with applicable law and regulations and in such a manner as to ensure the Goods are transported and delivered to Company without sustaining damage.

5. LABELING AND SHIPPING

- (a) Contractor shall place or affix the number of this Agreement on all invoices, packing lists, packages, containers and related correspondence. Each shipment must be accompanied by all Material Safety Data Sheets or similar documentation, and a packing list showing the exact quantity and description of Goods shipped. Contractor shall mark all containers with necessary lifting, handling, environmental, safety and shipping information.
- (b) Where Company is responsible for freight charges Contractor shall ship the Goods by the most economical manner and route unless otherwise specified or directed by Company.
- (c) If Company specifies or directs Contractor to ship the Goods in a specific manner or by a specific route and Contractor fails to do so, Contractor shall reimburse Company for any loss or extra expenses incurred by Company resulting from such failure.

6. PAYMENT TERMS

Unless otherwise agreed to in writing by the parties, invoices shall be due and payable 45 days after the later of (i) receipt of invoice by Company, or (ii) delivery of the Goods to Company.

B. Terms and Conditions applicable to the Purchase of Services

7. PERFORMANCE

- (a) Contractor shall diligently and carefully perform the Services in strict accordance with this Agreement and shall furnish all labor, supervision, tools, materials and equipment necessary or appropriate therefor and shall provide all Goods required in connection with the Services in accordance with the terms of this Agreement.
- (b) Unless otherwise agreed to in writing by Company, Contractor shall immediately upon completion of the Services remove from Company's premises all its equipment, surplus materials and debris and shall leave such premises in a clean and tidy condition.
- (c) Title to all work product resulting from the Services shall pass to Company as such work product is completed. Notwithstanding the foregoing, the Services and all work product shall remain at the risk of Contractor until completion of all the Services hereunder and acceptance of those Services by Company.

8. WARRANTY

- (a) Contractor represents and warrants to Company that:
 - (i) Contractor shall perform the Services in a timely, professional and workmanlike manner, in accordance with the industry's highest standards of care, thoroughness, and competence;

- (ii) Contractor shall perform the Services in full compliance with all applicable laws, regulations and rules and this Agreement and other documentation delivered by Company, or as otherwise agreed to by Company and Contractor in writing;
 - (iii) Contractor shall employ only persons who may lawfully work at the site where the Services are to be performed;
 - (iv) Contractor shall employ only trained, qualified, competent and experienced personnel to perform the Services; and
 - (v) All work product resulting from the Services shall be of the kind and quality specified herein, free from fault in design, workmanship and material and belong solely and exclusively to Company.
- (b) The above warranties shall continue in full force and effect for a period of twelve (12) months after completion of the Services. Contractor shall, during such period, re-perform all Services that were performed incorrectly or otherwise do not fully comply with the above warranties.
 - (c) Where Services are re-performed under the above warranties, such Services shall be warranted for a new period of twelve (12) months from the date re-performance is completed.
 - (d) Contractor shall bear all costs for re-performance of the Services under the above warranties.
 - (e) Contractor shall assign to Company the benefit of all warranties or similar obligations provided by any subcontractor or supplier to Contractor (each and collectively **"Supplier Warranties"**). Contractor shall ensure that all Supplier Warranties are assignable to Company without the consent of the subcontractor or supplier, or shall obtain the necessary consents before completing the Services. Contractor shall fully assist Company in making any claim under any Supplier Warranty. Any claim by Company under a Supplier Warranty shall not:
 - (i) prevent Company from (A) making a claim under any other warranty or (B) otherwise seeking to protect its rights; and
 - (ii) limit or restrict Company's rights or remedies in law or at equity.

9. CONTRACTOR'S PERSONNEL AND EQUIPMENT

If Company determines in its sole discretion that any of Contractor's personnel or equipment do not comply with applicable safety and security requirements or of any other legally permitted reason, Company may refuse to permit such personnel or equipment to enter upon any of Company's premises. Contractor shall indemnify defend and hold harmless Company from any and all claims, causes of action, petitions, demands, loss or expenses (including court costs, interest and reasonable attorney's fees) of every kind arising out of Company's refusal to permit any of Contractor's personnel or equipment to enter upon any of Company's premises.

10. BOND

At Buyer's request, Seller shall furnish Buyer with a performance bond in an amount designated by Buyer. The form and content of the bond and the surety shall be subject to prior approval by Buyer.

11. ENVIRONMENT, HEALTH AND SAFETY

Without limiting the generality of Section 28 Compliance with Laws and Policies below, the parties agree as follows:

- (a) Contractor shall, and shall be responsible for ensuring that its employees, agents and subcontractors at all times comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, State or local governments relating to environmental protection as well as any environmental policies or procedures imposed by Company from time to time.
- (b) Company may at any time evaluate Contractor's environmental practices and procedures and may, from time to time, require the assistance of Contractor in completing evaluations in this regard.
- (c) Contractor shall, and shall be responsible for ensuring that its employees, agents and subcontractors at all times comply with all applicable Federal, State or local occupational health and safety laws and regulations as well as any additional safety rules imposed by Company from time to time, whether attached as an Appendix to this Agreement or otherwise.

12. SITE INSPECTION

Contractor acknowledges that prior to entering into this Agreement it has, and shall be deemed to have, examined and familiarized itself with and considered the location and all conditions of the work to be performed as part of the Services including, without restricting the generality of the foregoing, topography, access to the work site, the rights-of-ways,

the character and quantity of the physical plant and equipment thereat, the surface and subsurface conditions, the uncertainties of weather, the availability of labour and other requisite elements such as power, water and transportation and the type and quantities of necessary equipment and materials (each and collectively “**Site Conditions**”).

13. PRICE and PAYMENT TERMS

Except as otherwise expressly provided herein, Company shall pay, and Contractor shall accept, as the sole and complete consideration for the performance of the Services, including all labor, supervision, tools, materials and equipment necessary or appropriate therefor the sum of _____. Unless otherwise specified by the parties in writing, the following payment terms shall apply to the purchase of Services:

- (a) In the case of a lump sum price for the Services, no invoice shall exceed an amount that is proportionate to the Services performed during the period covered by such invoice. Invoices shall include such information as Company may require.
- (b) In the case of hourly rates in respect of the Services, invoices shall, for the period covered by the invoice, include a statement of hours expended by each of Contractor’s personnel at their applicable hourly rates, the dates upon which such hours were expended and a description of Services provided, together with such other information as Company may require.
- (c) For Services billed on a time and materials basis, materials shall be separately identified on each invoice together with such other information as Company may require.
- (d) Unless otherwise specified in this Agreement, invoices shall be due and payable on the later of 45 days after:
 - (i) receipt of the invoice by Company, or
 - (ii) completion of the Services which are the subject of the invoice.Each invoice issued by Contractor shall be subject to a fifteen percent (15%) holdback by Company, which shall be payable by Company upon the completion of the Services to Company’s reasonable satisfaction and in accordance with this Agreement.

C. Terms and Conditions applicable to THE PURCHASE OF ALL GOODS AND SERVICES

14. ACCEPTANCE

Contractor’s acceptance of this Agreement is expressly limited to its terms and Company hereby objects to and rejects any different or additional terms in any response to this Agreement and, in addition, Company and Contractor are not bound by prior dealings or trade usage. EXCEPT AS AGREED TO IN WRITING BY COMPANY, IN THE EVENT OF A CONFLICT OR INCONSISTENCY BETWEEN ANY AGREEMENT SUBMITTED BY CONTRACTOR AND THE PROVISIONS HEREOF, THE PROVISIONS HEREOF SHALL GOVERN AND CONTROL AND CONTRACTOR ACKNOWLEDGES THAT UNIFORM COMMERCIAL CODE SECTION 2-207 OR THE APPLICABLE STATE LAW EQUIVALENT, SHALL NOT APPLY, AND SHALL NOT ALTER, ADD, CHANGE OR MODIFY THE PROVISIONS HEREOF. Each acceptance of a Agreement by Contractor shall constitute the creation of a separate binding contract between Contractor and Company, subject to the terms hereof. Any of the following acts by Contractor shall constitute acceptance of an Agreement:

- (i) Contractor signing and returning a copy of this Agreement;
- (ii) Contractor’s shipment of all or any portion of the Goods covered by an Agreement; or
- (iii) Contractor’s commencement of the performance of any of the Services identified in an Agreement.

15. DRAWINGS AND SPECIFICATIONS

Unless otherwise agreed to by the parties, all drawings, blueprints, specifications, dies, patterns and tools, whether supplied by Company or prepared or constructed by Contractor as required for the completion of this Agreement, or for repair, replacement or re-performance pursuant to the warranty provisions hereunder, shall be the property of Company.

16. PRICE

- (a) All prices quoted by Contractor shall be quoted in United States Dollars. Prices shall be as last quoted in writing by Contractor to Company and shall not change without written agreement of Company, delivered prior to

delivery of the Goods or performance of the Services. Company may cancel any order without any resulting liability after receiving a price change notice. Charges for packing, packaging, freight/shipping and handling will not be allowed or paid by Company unless expressly included in Contractor's price quote prior to Company's acceptance. Prices for Services shall include expenses, charges and costs for all equipment, goods and materials necessary to complete the Services.

- (b) No increases in the price or other charges shown or referred to in the SOW, including taxes or customs and excise duties, shall be payable by Company unless such increases are authorized by Company in writing.
- (c) No payment or acceptance of Goods or Services by Company hereunder shall constitute a waiver with respect to any provisions of this Agreement, nor shall anything herein contained be construed to limit any warranties or conditions implied by law.
- (d) If any error is discovered in an invoice by Company, such error shall be adjusted within thirty (30) days from the date of discovery of such error, provided however, that there shall be no adjustment made for any error discovered by Contractor more than twelve (12) months after receipt of an invoice by Company.
- (e) Unless otherwise specifically provided for in this Agreement, Contractor assumes exclusive liability for and shall pay before delinquent, all sales, use, customs and excise, import, export (from country of origin), value added and other taxes, charges, duties, levies, imposts or contributions of any kind or with respect to or measured by the Goods or the Services supplied hereunder (Collectively "**Sales Taxes**"). **Contractor shall indemnify, defend and hold harmless the Company Indemnified Parties, as defined herein, from any claims Causes of action, costs and expenses (including court costs and expenses and reasonable attorney's fees) arising out of Contractor's failure to pay any Sales Taxes that are Contractor's responsibility under this Section.**
- (f) Unless otherwise specifically provided for in this Agreement, Contractor assumes exclusive liability for and shall pay before delinquent all Federal, State and local income taxes, pension benefits, social security taxes, employment, disability and other customary insurance and for any other taxes or payments which may be due and owing by Contractor or which are the result of fees or amounts paid by Company to Contractor under this Agreement (each and collectively "**Income Taxes**"). **Contractor shall indemnify, defend and hold harmless the Company Indemnified Parties, as defined herein, from any claims Causes of action, costs and expenses (including court costs and expenses and reasonable attorney's fees) arising out of Contractor's failure to pay any Income Taxes that are Contractor's responsibility under this Section.**
- (g) Company shall furnish Contractor any applicable, valid and effective tax exemption certificates and Contractor shall collect Sales Taxes and other taxes only in accordance with those tax exemption certificates.
- (h) Any applicable Sales Taxes and other government charges shall be separately listed on Contractor's invoice.
- (i) All taxes and duty rebates, remissions, exemptions or other such savings shall be for the account of Company and accordingly, shall reduce the price shown in the Agreement. In the event that Company has already paid the price shown in the Agreement, Contractor shall pay all amounts received in respect of rebates, remissions, exemptions or other such savings to Company within ten (10) days of their receipt. Contractor shall apply promptly for all available rebates, remissions and exemptions in compliance with applicable law.
- (j) Early payment discounts shall run from the later of: (i) Company's receipt of Contractor's invoice, (ii) delivery of the Goods, or (iii) completion of the Services.

17. GOODS SOLD AT COST

Contractor's invoices for Goods sold hereunder shall be for amounts equal to the amount charged to Contractor by its supplier(s) and Contractor shall not invoice or charge Company for any mark up or other cost, fee or commission for any Goods furnished to Company under this Agreement. Company shall have the right to audit the books and records of Contractor at any time to confirm Contractor's compliance with this Agreement.

18. TIMELY PERFORMANCE AND COVER

- (a) Contractor understands and agrees that time is of the essence and Contractor shall deliver all Goods and perform and complete all Services in accordance with time schedules referred to in the SOW or otherwise agreed to by the parties.
- (b) If it is reasonably anticipated that Contractor may fail to deliver Goods or perform and complete all Services within the above time periods, Contractor shall promptly notify Company of any anticipated delay and forthwith take all steps necessary or appropriate to expedite performance so as to prevent such failure. Any additional costs resulting from such steps including, but not limited to, the full cost of cover for Goods or Services not



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timely delivered or completed shall be borne by Contractor, including any costs or expenses incurred by Company to purchase such Goods from an alternate source.

19. INDEPENDENT CONTRACTOR

- (a) The parties acknowledge and agree that Contractor is an independent contractor and nothing contained in this Agreement or otherwise nor any past relationships or course of dealings between the parties shall be construed as constituting a joint venture or partnership or establishing a relationship of principal and agent, master and servant, franchisor or franchisee, or employer and employee. Contractor shall be solely responsible for the performance of the Services and such Services shall be performed by Contractor according to its own methods and at its own risk, subject only to compliance with the provisions of this Agreement.
- (b) Contractor, in keeping with its independent status, shall cause itself and any of its employees when applicable, to be registered with the appropriate government agencies for the purpose of workers' compensation, unemployment insurance, social security or equivalent and income tax. Contractor shall indemnify the Company Indemnified Parties in accordance with Section 16(f) Price for failure to pay any aforementioned taxes.
- (c) Contractor shall ensure that all Contractor personnel and subcontractors have received all training regarding health and safety or any other matters required by applicable law or applicable governmental regulations or authorizations. Training or implementation of any additional health and safety measures appropriate for the work will be specified by Company. Upon Company's request Contractor shall provide Company written documentation of said training and worker qualifications.

20. SUBCONTRACTORS

- (a) Contractor may not subcontract any part of this Agreement without the prior written approval of Company and if granted such approval shall not operate to relieve Contractor of any liability to Company under this Agreement.
- (b) Contractor shall enter into written contracts with subcontractors that include provisions requiring them to perform in accordance with and subject to the terms and conditions of this Agreement.
- (c) Contractor shall be fully responsible to Company for any and all acts and omissions of its employees, agents or subcontractors and their employees or agents of any tier.

21. INDEMNIFICATION

- (a) Contractor shall defend, indemnify, release and save Company its members, shareholders, managers, directors, officers, employees, agents and affiliates (each and collectively "**Company Indemnified Parties**") harmless from and against any and all losses, liabilities or expenses (including legal fees and expenses), suits, actions, claims, demands, damages of all kinds and descriptions (including punitive damages) on account of bodily injury, sickness, disease or death of any person or persons, or damage to or destruction of tangible property, including the loss of use resulting therefrom arising out of or related to the performance of this Agreement, including but not limited to, latent defects which Company Indemnified Parties may suffer or incur by reason of, arising from, relating to, or in connection with:
 - (i) any breach of this Agreement by Contractor or any employee, agent or subcontractor of Contractor;
 - (ii) any violation of applicable law by Contractor or any employee, agent or subcontractor of Contractor;
 - (iii) any other act or omission by Contractor or any employee, agent or subcontractor of Contractor; or
 - (iv) any claim, suit or allegation, including, without limitation, any claim or suit for alleged infringement of any patent, industrial design, copyright or trademark, resulting from or arising in connection with the manufacture, sale, use or other disposition of any of the Goods or the provision of any of the Services hereunder.
- (b) **Without limiting the obligations of Contractor in Section 21(a), Contractor shall release Company Indemnified Parties of any liability for, and shall protect, defend, indemnify, and save Company Indemnified Parties harmless from and against any and all losses, liabilities or expenses (including legal fees and expenses), suits, actions, claims, demands, damages of all kinds and descriptions (including punitive damages) in favor of Contractor's employees (including leased employees) or Contractor's contractors and subcontractors or their employees or Contractor's invitees on account of bodily**



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injury, death or damage to property without limit and without regard to the cause or causes thereof, including without limitation, the acts or omissions of any party or parties, arising out of or related to this Agreement or relating in any way to the performance of the Services. Contractor's indemnity shall be without regard to and without any right to contribution from any insurance maintained by Company.

22. INSURANCE

- (a) Contractor shall, at its own expense, obtain and maintain while this Agreement is in effect, with insurers having an A.M. Best rating of A VII or better, the following minimum coverages which may be increased at Company's reasonable discretion:
- (i) commercial general liability insurance (including contractual, products, and completed operations coverages) of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of or relating to the acts or omissions of Contractor in providing the Goods or performance of the Services, which insurance shall include Company as an additional insured, provide a waiver of subrogation in the Company's favor and provide thirty (30) days' notice of cancellation or material change;
 - (ii) insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of the ownership or operation of a motor vehicle used or to be used in connection with the supply of Goods or the performance of the Services by Contractor and which insurance shall include Company as an additional insured, provide a waiver of subrogation in the Company's favor and provide thirty (30) days' notice of cancellation or material change; and
 - (iii) Contractor shall furnish evidence of its and its permitted subcontractor's compliance with Worker's Compensation or similar legislation applicable at the site(s) where the Services shall be performed or Goods shall be delivered;
 - (iv) product liability insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of Supplier's provision of the Goods to Company and which insurance shall include Company as an additional insured, provide a waiver of subrogation in the Company's favor and provide thirty (30) days' notice of cancellation or material change;
 - (v) errors and omission liability insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate which insurance shall include Company as an additional insured, provide a waiver of subrogation in the Company's favor and provide thirty (30) days' notice of cancellation or material change; and
 - (vi) crime (Fidelity) insurance of not less than \$500,000 per employee dishonesty claim.
- (b) Prior to commencing to provide any Goods or Services hereunder, Supplier shall deliver to Company a broad form "vendors endorsement," ISO # 20-15-07-04 or equivalent thereto, in favor of Company and a certificate of insurance evidencing the above coverages or, if required by Company, certified copies of the above insurance policies and endorsements. The above insurances shall be primary to any other coverage in favor of the Company.
- (c) Contractor shall ensure that its permitted subcontractors comply with the above insurance requirements and each permitted subcontractor shall provide Company with evidence of the above coverages and endorsements prior to delivering any Goods or Services hereunder.

23. CONFIDENTIALITY

Contractor shall not use or disclose to any third person any business information, business plans, data, designs, drawings, specifications or other information, (collectively, the "**Confidential Information**") belonging to or supplied by or on behalf of Company except in the performance of this Agreement. Upon the expiration or termination of this Agreement or upon Company's earlier request, all Confidential Information, including any copies thereof, shall be returned to Company. Where Company's Confidential Information is furnished to Contractor's subcontractors or suppliers in connection with the performance of this Agreement, Contractor shall insert the substance of this provision in its orders and shall ensure compliance with such provision by its suppliers.

24. TERMINATION

Company may, in its sole discretion, terminate this Agreement at any time, in whole or in part by written notice to Contractor. Upon receipt of such notice, Contractor shall immediately discontinue any Services or efforts in respect of provision of Goods being performed in connection with this Agreement, except as directed by Company. Upon such termination, and subject to audit, Company shall reimburse Contractor for Goods delivered and Services actually provided to Company up to the effective date of termination. In no event shall Company be liable to Contractor for lost or anticipated profits.

25. SET-OFF

- (a) Company shall be entitled at all times to set-off against any amount due or owing to Contractor under this Agreement, such amounts that, in the opinion of Company, are sufficient to: (i) cover any account owing from Contractor to Company or to any of its affiliated companies, or (ii) protect Company from any losses or expenses arising from defects or deficiencies in the Services performed or Goods provided by Contractor, or any other failures by Contractor to comply with the requirements of this Agreement.
- (b) Company shall further have the right, but not the duty, to withhold any monies payable by it hereunder and apply same to the payment of: (i) any obligations of Contractor to Company howsoever arising or (ii) any obligations of Contractor to any other parties arising in connection with this Agreement.

26. FORCE MAJEURE

Neither party shall be liable for delays or defaults due to acts of God, acts of terrorism, governmental authority or public enemy, war, fires, floods, epidemics, freight embargoes, or contingencies reasonably beyond its control. The party so affected shall use its good faith efforts to remediate such force Majeure as expeditiously as possible and, upon prompt written notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. Company may terminate this Agreement pursuant to Section 24 Termination herein in the event of such delay in performance.

27. LIENS

- (a) Contractor shall keep Company's premises and all other assets free and clear of any and all liens and charges arising in connection with the performance of this Agreement.
- (b) Company may withhold a lien holdback from the price agreed to be paid to Contractor for the purpose, in the manner, in the amount and for the time provided under all applicable laws, rules and regulations. In the event that any lien or charge is filed against Company's premises in connection with this Agreement or any claim shall exist in connection with this Agreement which may form the basis for any lien or charge against Company's premises, Contractor shall take such steps as are necessary to immediately discharge the lien, charge or claim. If such lien, charge or claim has not been discharged within five (5) days of notice from Company, Company may in its sole discretion take such steps as it deems necessary to discharge such lien, charge or claim, including withholding amounts payable under this Agreement. Contractor shall be liable for and shall indemnify and save Company harmless from any and all costs and expenses (including legal fees) and other liabilities arising from such lien, charge, or claim.

28. COMPLIANCE WITH LAWS AND POLICIES

Contractor shall comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, State or local governments. Contractor shall also comply with any business conduct policies and safety and security rules imposed by Company from time to time. Contractor shall ensure that its employees, subcontractors and agents are made aware of and comply with the above laws, regulations, by-laws, permits, approvals, policies and rules and shall furnish Company with such evidence of compliance as Company may require from time to time.

29. GOVERNING LAW

This Agreement shall be deemed to be an agreement made in the State of Delaware governed by and construed in



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accordance with the laws of the State of Delaware pertaining to the sale of Goods or provision of Services as applicable and without reference to that jurisdiction's choice or conflict of laws rules. Company and Contractor expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

30. WAIVER OF JURY TRIAL

CONTRACTOR IRREVOCABLY WAIVES ANY AND ALL RIGHT CONTRACTOR MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN THIS AGREEMENT OR ANY OF SUCH DOCUMENTS. CONTRACTOR ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

31. JURISDICTION AND VENUE

Contractor hereby irrevocably agrees, submits and consents to, and expressly waives any right to contest or object to, the exclusive jurisdiction and venue of the federal or state courts of Tennessee for all disputes arising out of or relating to this Agreement.

32. COMPANY'S RIGHTS and DAMAGES LIMITATIONS

- (a) Contractor agrees that any right, cause of action or remedy under the warranties or undertakings assumed or imposed upon Contractor under this Agreement shall extend without exception to any company affiliated with Company on whose behalf this Agreement is issued by Company.
- (b) Except as specifically set forth herein, all rights and remedies provided in favor of Company hereunder are in addition to and without prejudice to any other rights and remedies to which Company may lawfully be entitled, including without limitation, under and by virtue of the provisions of any Federal, State or local law governing the sale of goods.
- (c) The failure of Company to insist upon strict performance by Contractor of any of the terms and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that Company may have at law or in equity in respect thereof and shall not be deemed a waiver of any subsequent default by Contractor.
- (d) Under no circumstances shall Company be liable for consequential, special, indirect, incidental, punitive, statutory or exemplary damages arising out of any claim or cause of action arising out of or based on this Agreement, even if advised of the possibility of such damages.

33. ENTIRE AGREEMENT AND CHANGES

- (a) This Agreement shall constitute the entire, final, complete, and exclusive agreement between Company and Contractor and no terms or conditions, other than those stated herein, and no agreements or understandings, oral or written, in any way purporting to modify this Agreement, or customs or usages of trade shall be binding on Company unless documented by Company's written authorization.
- (b) Without limiting the generality of the foregoing, the quality, quantity and other specifications of the Goods or Services to be supplied hereunder shall not be changed from those referred to in the SOW, or in any specification furnished by Company or otherwise agreed to by Company and Contractor without Company's written authorization thereof.

34. MISCELLANEOUS

- (a) The headings contained herein are provided for convenience only and are not to be considered when interpreting or construing this Agreement.
- (b) No right, title, estate or interest in this Agreement and no obligations or duty or liability of Contractor shall be transferred, assigned, set over, conveyed, pledged, hypothecated or otherwise disposed of without the prior written consent of Company, which consent may be given or withheld in the sole discretion of Company.
- (c) Each notice, statement and invoice to be given pursuant to this Agreement shall be in writing and shall be sent by prepaid ordinary or registered mail, by facsimile transmission or by recognized courier to the addresses and facsimile numbers for Company and Contractor noted in the SOW. Notices, statements and invoices sent by mail or courier shall be deemed to have been received when actually received or refused, and those sent by facsimile

transmission shall be deemed to have been received on the first business day following the day on which they were sent.

- (d) Company or any person designated by Company may at any and all reasonable times for a period of twenty-four (24) months after completion of delivery of the Goods or Services hereunder, have access to Contractor's books and records relating to the Contractor's invoices for the purpose of auditing and verifying such costs and Company may make copies of such books and records as reasonably required by Company in performing such audit. Contractor shall promptly review and settle with Company all matters arising from such audit including the refunding of monies where applicable.
- (e) If this and any other documents are transmitted by any means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Contractor.
- (f) Contractor shall not use Company's names, logos, trade names, trademarks or copyrights or the fact that Contractor is performing Services or supplying Goods for Company in any press release, media statement, advertisement or other public communications or otherwise publicize this Agreement without the prior written consent of Company.
- (g) The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision.

IN WITNESS WHEREOF, Company and Contractor, intending to be legally bound, have entered into and have executed this Agreement of the ___ day of _____ 20__.

[INSERT CONTRACTOR NAME]

[INSERT NAME OF PMC COMPANY]

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:



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