

AGREEMENT FOR [state the item being purchased or services provided]

PREVIEW

IN CONSIDERATION of the mutual promises and covenants that are contained in this Agreement, the Parties agree as follows:

I. PARTIES

The parties to this Agreement are:

- 1.1 * , hereinafter referred to as "Vendor".
- 1.2 * [CORRECT ENTITY, i.e. [Name], hereinafter referred to as "Buyer".

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II. PURPOSE AND SCOPE OF THE AGREEMENT

- 2.1 The purpose of this Agreement is to *[state the purpose as clearly as possible, i.e. establish an on going purchase relationship between the parties pursuant to this Master Purchase Order Agreement. The Master Agreement shall set forth the parties' relationship, duties and obligations.]

- 2.2 *.

- 2.3 The "work" to be performed may include the furnishing and delivery by Vendor of all labor, supervision, materials, tools, equipment and supplies which may be necessary to provide the goods, work or services purchased. Some of the work may be performed at Buyer's facilities. For purposes of convenience, the terms goods, services or work may be used interchangeably herein.

III. PURCHASE OFFER, CONDITIONS AND ACCEPTANCE

- 3.1 This Agreement governs all transactions between the above parties that relate to the purchase of goods, work, services or a combination thereof.
- 3.2 Buyer's offer to Vendor is conditioned upon full and complete acceptance of all of the terms and conditions contained in this Agreement. This Agreement expressly limits Vendor's acceptance to the terms stated herein.
- 3.3 In the event that Vendor submits or proposes any terms that state any additions, changes, deviations, or modifications to the offer contained in this Agreement, said terms shall automatically be deemed void, objected to and rejected by Buyer unless the Vendor's terms are expressly agreed to in writing by an authorized.

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~~IV. PRICE~~
PREVIEW

- 4.1 The price for the *~~g~~oods or services is *\$ or set forth in Exhibit "A" which is attached hereto and incorporated for reference for all purposes.
- 4.2 No extra charges of any kind will be allowed unless specifically agreed to in writing by Buyer.
- 4.3 All prices shall include any and all taxes, fees, levies or similar charges. All sales and use taxes must be separately itemized.

V. DISCOUNT PERIODS AND EXTRA CHARGES

- PLEASE DO NOT COPY**
- 5.1 ~~Except for prepayment discounts, all cash discount periods shall be computed from the date of receipt by Buyer of a correct invoice or the goods, work or services purchased, whichever is later.~~
 - 5.2 Cash discounts will be based on the full amount of the invoice less freight charges and taxes separately stated on the invoice.
 - 5.3 Except for prepayments, no invoices shall be issued, nor payment made prior to delivery.
 - 5.4 All state, local and federal excise, sales and use taxes shall be stated separately on the invoice. ~~All payments are subject to adjustment for storage or rejection.~~
 - 5.5 No insurance or other charges will be allowed unless authorized by Buyer in writing.
 - 5.6 Any excess charges resulting from the use of unauthorized charges including transportation expenses will be disallowed or charged to Vendor. Vendor shall not declare any value on goods shipped via United Parcel Service, Air Express, Air Freight, or Parcel Post without Buyer's permission.
 - 5.7 Vendor shall release rail or truck shipment at the lowest valuation permitted in governing tariff or classification.

THIS DOCUMENT

THANK YOU

VI. QUALITY, INSPECTION, TESTING AND REJECTION OF NON-CONFORMING GOODS, WORK OR SERVICES

6.1 QUALITY:

All services rendered to Buyer and all items, whether included in service provided by ~~the~~ manufacturer, or delivered by the vendor must:

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- meet and conform to Vendor's representations,
- meet and conform to Buyer's specifications and requirements,
- be of good quality and be free from defects in workmanship and material,
- be fit for their ordinary, intended purposes, as well as any special purposes specified by Buyer,
- be new, this means not reconditioned, repackaged, returned, damaged or manufactured over one year from the date of the product's original manufacture,
- not contain, in whole or part, any substituted or inferior materials, and
- be performed in a good and workmanlike manner.

6.2 INSPECTION, ACCEPTANCE, REJECTION AND TESTING:

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Buyer shall have the right to inspect and test any goods delivered or work/services performed hereunder and to reject any or all of said goods, work or services which are in Buyer's sole judgment defective. In the event Buyer receives goods, work or services having defects or non-conformities which are not apparent on examination which result in damages to the Buyer, then the Buyer reserves the right to require the replacement, as well as payment of all damages which are caused by the defect, failure or non conformance.

6.3 The right to test and reject non-conforming goods, work or services applies to all purchases under this Agreement. This includes but is not limited to processes, technical information, computer software, raw materials, components, intermediate assemblies, semi-products and, when applicable, services to be performed hereunder.

6.4 Buyer has 30 days after the first use of the goods, work or services to inspect, test and reject the goods, work or services to insure that they comply with this Agreement and Vendor's representations. This right exists even if payment has already been made by the Buyer to the Vendor.

6.5 Buyer's inspection or acceptance of or payment for the goods, work or services shall not constitute a waiver of any warranties or shall not waive any rights that Buyer might otherwise have at law or by express reservation in this Agreement with respect to any nonconformity. Buyer's approval of any sample or acceptance of any goods shall relieve Vendor from responsibility to deliver goods or Vendor's duty to perform services or deliver goods which conform to specifications, drawings, or descriptions.

6.6 Vendor shall furnish to Buyer all information and data as may be reasonably required to perform Buyer's inspection.

6.7 Any delay of goods or performance of services which are non-conforming as to the quality, quantity or the delivery schedule shall constitute a breach of this

Agreement and Buyer shall have the absolute right to reject such goods, work or service, in whole or in part.

PREVIEW

6.8 In the event that Buyer does not accept any goods, work or services which have been submitted to Buyer, then Buyer shall be entitled to any and all remedies which are provided by law. Furthermore Buyer shall, in addition thereto, have the right to do any or all of the following:

- to hold such non-conforming goods or services for a reasonable period at Vendor's risk and expense pending a determination to accept or reject any or all thereof,
- to return such non-conforming goods, work or services to Vendor at Buyer's election and at Vendor's risk and expense for replacement or correction. Buyer may charge Vendor for all expenses of unpacking, examining, repackaging, storing and reshipping of any merchandise rejected,
- to accept such non-conforming goods, work or services subject to an equitable price reduction,
- to replace or correct such non-conforming goods, work or services and charge to Vendor the cost occasioned to Buyer thereby,
- to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by Buyer as a result of such holding, return, replacement, correction, reductions, or rejections of non-conforming goods, work or services, or
- to terminate this Agreement.

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6.9 The Vendor understands that some of the items which may be purchased or services provided may be incorporated into and consumed in conjunction with some unit, vessel, or equipment, and that any inspection or testing of such item may not be accomplished until such unit, vessel or equipment is completed or placed in operation. In that event, Buyer shall not be obligated to test or accept such item until such time as such unit, vessel or equipment is placed in operation regardless of whether any invoice has been submitted hereunder or has been paid prior thereto.

6.10 Vendor agrees to a continuing obligation, subsequent to delivery of goods or the providing of service, to notify Buyer in the event that Vendor discovers or becomes aware of any quality or other deficiency in the delivered goods, work or services performed.

THANK YOU

6.11 Vendor must provide written notice to Buyer within twenty-four (24) hours of such discovery.

6.12 Performance and use of all materials for any goods, work or services contemplated hereunder must conform to any and all federal, military, or

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industrial specifications which may be applicable to the transactions contemplated hereunder.

PREVIEW

VII. DELIVERY

7.1 Vendor shall strictly adhere to the delivery and completion schedules specified in this Agreement.

7.2 The obligation of Vendor to meet the delivery dates, specifications, and quantities set forth herein is of the essence of this Agreement.

7.3 Deliveries are to be made both in quantities and at times specified herein or if not, such quantities and times as are specified pursuant to Buyer's written instruction.

7.4 Shipments in greater or lesser quantity than ordered may be returned at Vendor's expense unless written authorization is issued by Buyer.

7.5 If Vendor's deliveries fail to meet schedule, Buyer, without limiting its other rights or remedies, may either direct expedited routing or charge excess cost incurred thereby to Vendor or cancel all or part of this Agreement in accordance with the default provisions hereof.

7.6 Goods that are delivered in advance of schedule are delivered at the risk of Vendor and may, at Buyer's option, be returned at Vendor's expense for proper delivery and/or have payment therefor withheld by Buyer until the date that the goods are actually scheduled for delivery.

7.7 All shipments by Vendor shall be made F.O.B. Buyer's location.

7.8 Acceptance of late deliveries shall not be deemed a waiver of Buyer's right to hold Vendor liable for any loss or damage resulting therefrom, nor shall it act as a modification of Vendor's obligation to make future deliveries in accordance with the delivery schedule set forth in this Agreement.

7.9 If Buyer rejects or refuses any goods, then the title to said goods goes back to the Vendor.

7.10 If, at any time, Vendor believes it may be unable to comply with the delivery or completion schedules, then Vendor shall immediately notify Buyer's Purchasing Representative in writing of the probable length of any anticipated delay and the reasons for it. Vendor shall continue to notify Buyer's Purchasing Representative of any material change in the situation. In the event of such notification or of an actual failure by Vendor to comply with the delivery or completion schedules, Buyer may, in addition to all other remedies, require Vendor, at Vendor's expense, to ship goods via air freight or expedited routing to avoid or minimize delay.

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- 7.11 Vendor shall provide shipping labels on all unit loads and transport packages shipped to Buyer.

PREVIEW

VIII. PACKING

- 8.1 All items are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications.
- 8.2 All items must be accompanied with a packing or shipping list, which shows the invoice, items delivered and price of the item.

IX. SHIPPING AND INVOICE INSTRUCTIONS

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- 9.1 Originals of all bills of lading and express receipts shall be sent to the Buyer.
- 9.2 All invoices must be in writing and specify the items purchased, the amount and the prices charged.
- 9.3 Invoiced amounts, not subject to dispute or set off, shall be due and payable by Buyer net thirty (30) days from the payment due date.
- 9.4 Determination of payment due date, whether under net or discount terms, will be based on the latest of:
- the date goods are received or services are completed,
 - the date goods are scheduled to be shipped/received or services are scheduled for completion under the Agreement, or
 - the date an accurate invoice is received.
- 9.5 Unless early delivery of goods, work or services is expressly authorized by Buyer's Purchasing Representative, payment for goods, work or services received in advance of the contractual commitment date shall not be made prior to the contractual commitment date.

- 9.6 Payment shall be deemed to have been made when deposited in the mail or sent by electronic delivery.

THANK YOU

- 9.7 Payment of an invoice shall not constitute acceptance of the goods, work or services and shall be subject to appropriate adjustment for failure of Vendor to meet the requirements of this Agreement including any warranties applicable to the goods, work or services purchased by Buyer. Buyer may set off any amount owed to Vendor.

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X. GENERAL AND ADMINISTRATIVE PROVISIONS

PREVIEW

10.1 ACCEPTANCE AND DATE OF EFFECTIVENESS:

This Agreement and all documents associated herewith may be signed on a facsimile transmitted document. Any and all signatures may be affixed by electronic and/or digital means. Both the facsimile transmissions and the electronic or digital signatures shall be considered original documents and signatures. Said documents and signatures may be used for all purposes in lieu of original signed documents and signatures; they shall have the same binding legal effect as original documents or signatures.

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This Agreement shall not be binding until it is executed by all parties to this Agreement. At that time, this Agreement shall become effective and all obligations contained herein shall be conclusive and binding upon all of the parties.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed to be one and the same agreement.

10.2 ADDITIONAL COMPANIES:

Buyer may apply this Agreement for any and all parent, subsidiaries, divisions or affiliated companies including but not limited to operating companies and joint ventures which may be owned, in whole or part, by Buyer.

THIS DOCUMENT

10.3 ENTIRE AGREEMENT:

This Agreement along with any Exhibits represents the entire Agreement by and between the parties.

10.4 AMENDMENT, CHANGES OR MODIFICATION:

This Agreement may not be amended, added to, changed or modified except by a written Agreement which has been duly executed by all of the parties' authorized representatives.

THANK YOU

Notwithstanding Buyer's act of accepting or paying for any shipment or similar act of Buyer, this Agreement shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance.

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Each shipment received by Buyer from Vendor shall be deemed to be only on the terms and conditions contained in this Agreement notwithstanding any of Vendor's terms and conditions that may be contained in any acknowledgment, bill

of lading, certificate, invoice, Order or any other form or document between Vendor and Buyer.

PREVIEW

10.5 ASSIGNMENT AND SUBCONTRACTING:

Except as to a subsidiary, affiliate, or operating division of either party hereto, neither this Agreement, nor any duty, right or interest therein may be delegated, assigned, subcontracted or otherwise transferred in any manner without the prior written consent of Buyer, and any effort to the contrary shall be void.

Vendor will not subcontract without Buyer's prior written consent for the design, development or procurement of the whole or any substantial portion of any goods ordered hereunder. This limitation shall not apply to Vendor's purchases of standard commercial supplies or raw materials.

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Either party may, upon written notice to the other, assign this Agreement to any person, firm or corporation with which such party may merge or consolidate or to which such party may assign substantially all of its assets, and either party may assign claims for moneys due or to become due hereunder to any bank, trust company or other financial institution, including any Government lending agency.

The assigning party shall furnish the other party with a signed copy of any such assignment.

10.6 AUDITS:

THIS DOCUMENT

In those instances where Buyer is entitled to discounts, tier pricing, or other considerations which may need reviews or audits, Vendor agrees to permit Buyer's auditors access, at reasonable times, to all records, correspondence, account books, invoices, canceled checks, payroll and other records that relate to this Agreement for the purpose of verifying that this Agreement has been complied with.

Vendor shall preserve such records for three (3) years after completion of the work.

10.7 CHOICE OF LAW, CURRENCY AND LANGUAGE:

THANK YOU

This Agreement shall be subject to and governed under the laws of the State of Texas. Venue for purposes of any and all lawsuits, causes of action, arbitrations, or other disputes shall be in the city and county where the Buyer's corporate headquarters are located.

And any and all obligations and payments are due and performable and payable in the city and county where the Buyer's corporate headquarters are located.

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All prices, payments and other terms which relate to money shall refer to United States of America (U.S.) Dollars. Prices quoted shall be those in effect at the time quoted regardless of any currency changes which may occur between the time the price was quoted and payment is made.

All documentation, notices, and oral communications concerning this Agreement shall use the English language. In the event that English communications are translated into another language, the meaning conveyed by the English version of the communication shall govern this Agreement and the parties' performance.

10.8 COMPLETION:

Vendor agrees that for all work or services which may be performed for Buyer, the work or services shall be deemed to be completed when the work or services are fully completed and functioning. If the work or services are installed as part of a piece of equipment or item, the unit must work as represented in order for the work or services to be deemed "completed"; until said time, the Vendor shall bear the risk of loss on said work, services or unit and payment shall not be due.

For all service or other work which may be performed that may leave excess work materials or other debris, Vendor agrees that upon completion of this Agreement, Vendor shall leave the premises used by it in the performance of this Agreement as clean and free from rubbish, trash, excavations and structures as they were upon Vendor's initial entry.

10.9 COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:

Vendor represents that it has complied with all applicable federal, state, and local laws, regulations, rules, ordinances, zoning requirements, licensing permit requirements and executive orders which may be applicable to this Agreement and the transactions contemplated hereunder.

Some of the laws include but are not limited to the applicable provisions of the Environmental Protection Act, Fair Labor Standards Act, the Occupational Safety and Health Act, and any and all regulations and standards or amendments which may be applicable thereto.

Vendor shall pay any and all employment taxes, sales taxes, use taxes, excise taxes, and any other taxes of every kind applicable to its employees or purchase of its raw materials or the manufacture of the materials contemplated in this Agreement.

In the event such taxes are not paid, and demand is made on Buyer to pay the same, Buyer is hereby authorized to pay the amount and withhold the same from the money owed to Vendor.

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It is expressly agreed that Buyer shall not be responsible for or liable for any payment of any taxes accruing by reason of any purchases made hereunder or services performed hereunder.

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Vendor hereby indemnifies and holds Buyer harmless from any and all liability and claims for payments for any unpaid taxes, assessments, liens or other contingencies which may be owed by Vendor that could be claimed against Buyer including but not limited to any and all penalties, interest, costs, or legal defense fees incurred in connection therewith.

Vendor agrees that it is an independent contractor under this Agreement for purposes of the Immigration Reform and Control Act of 1986 (IRCA). Vendor acknowledges that IRCA may require verification of the identity and work authorization status of its employees performing work in the United States applicable to this Agreement.

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10.10 NON DISCRIMINATION, UTILIZATION OF SMALL BUSINESS, WOMEN-OWNED BUSINESS, VIET NAM VETERANS, HANDICAPPED WORKERS AND SMALL DISADVANTAGED BUSINESS CONCERNS:

For all transactions which may require special considerations to protected categories of individuals or entities such as small business, minority or women-owned business and small disadvantaged business concerns in support of Government laws, rules, regulations, executive orders, policies, consent decrees or agreed judgments that are deemed legal and enforceable, the parties hereto agree to accomplish the required amount of subcontracting to said protected categories and to use reasonable efforts to place subcontracts in areas of persistent or substantial labor surplus, where this can be done consistent with the efficient performance of this Agreement and at prices no higher than are available elsewhere.

THIS DOCUMENT

10.11 GOVERNMENT CONTRACTS:

If this Agreement is subject to any government requirements, then all terms and conditions required by law, with respect to this Agreement are incorporated herein by reference.

THANK YOU

To the extent that the terms and conditions of this Agreement are inconsistent with any such required terms and conditions, then the required terms and conditions will prevail and be binding on both Buyer and Vendor.

Vendor agrees, upon request, to furnish Buyer with a certificate or certificates if such forms are required.

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10.12. REVOCATION OF INFORMATION AND NOTICES

Each party shall furnish to the other party any and all required forms and information including but not limited to tax forms such as 1099 forms, their taxpayer identification or social security number.

PREVIEW

Additionally, Buyer may be required to obtain correct taxpayer identification numbers from all non-corporate payees who receive payment for services, rents, royalties, or interest that would be subject to IRS Form 1099 reporting. Twenty percent (20%) back-up tax withholding may be imposed on all Form 1099 reportable payments made to Vendor, if Vendor fails to provide a correct taxpayer identification number.

Vendor is required to obtain any required information on its subcontractors and other third parties that perform work or services at Buyer's facilities. Each party shall give to the other all notices required by law which may be applicable to the manufacture, sale, pricing and delivery of any and all products or services ordered under this Agreement or any party of the subject matter of this Agreement.

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Such notices include but are not limited to the subject matter of this Agreement includes but is not limited to those of the Consumer Product Safety Commission relating to defects and harmful ingredients, the Toxic Substances Control Act and OSHA Hazards Communication Rule.

10.13 CONTRACT INTERPRETATION AND PRECEDENCE:

This Agreement may establish a comprehensive commercial arrangement, which may contemplate subsequent individual transactions. This Agreement may also cover procedures and prices for the purchase of both goods, work or services.

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Since this Agreement is intended to cover a wide range of both products, services and other contractual relationships, some of the terms or conditions may not be applicable to a specific transaction. In that event, the inapplicable language may be disregarded as surplus or inapplicable language.

This Agreement represents a cooperative business relationship, which shall be based on mutual trust, open communication and teamwork. The parties agree to modify this Agreement and re-negotiate this Agreement, if the primary goals and objectives of the Agreement are not being met anytime during the term of this Agreement.

THANK YOU

Buyer expects to leverage its buying power by purchasing goods, work or services for multiple facilities, standardize the purchase of products and obtain: significant price discounts and concessions, reliable, high quality products or equipment, and maintain increased reliability and service.

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By execution of this Agreement, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Agreement.

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This Agreement, although drafted by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the non-drafting party.

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Agreement, or any subsidiary documents referenced therein, the following order of precedence shall apply:

- Buyer's specifications,
- Any special terms and conditions which may be stated in this Agreement,

PLEASE DO NOT COPY Any other terms and conditions contained in this Agreement, and any other attachments or references which may be incorporated herein by reference.

10.14 CONFIDENTIAL INFORMATION AND RELATIONSHIP:

The parties agree that the information and data at each other's disposal during the term of the negotiation, operation and enforcement of this Agreement is considered proprietary information and confidential.

Such information, which includes but is not limited to information contained in reports, drawings, documents, or other records, if disseminated to third parties, would be detrimental to the owner of the proprietary data.

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Accordingly, each party agrees to take any and all reasonable precautions to restrict the dissemination of such information by its employees, agents or subcontractors.

Each party shall treat as proprietary all specifications drawings, blueprints, nomenclature, samples, models, and other tangible information supplied by the other party.

Without the prior written consent of the other party, neither party shall in any manner advertise, publish, disclose, or release for publication orally or in writing, any statement mentioning that the other party has furnished or contracted to furnish items and/or services to a party under this Agreement.

THANK YOU

Vendor shall issue no news release (including photographs and files), public announcement, advertisement, denial, or confirmation concerning all or any part of the subject matter of this Agreement or any phase of any program hereunder without the prior written approval of Buyer.

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During the term of this Agreement or any extension of this Agreement, neither party shall permit access by any nonaffiliated employees or person to the proprietary information, without the other party's written permission.

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The party who receives confidential information shall only use the information supplied by the disclosing party to accomplish the work contemplated in this Agreement and for no other purpose.

The following information shall not be considered confidential or proprietary:

- information which is in, at time of disclosure, the public domain or
- information which after disclosure becomes part of the public domain through no violation of this Agreement by the receiving party.

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In the event that the Buyer believes that additional contractual protection is required to protect its confidential information, Vendor and its employees, agents and subcontractors shall execute a separate confidentiality Agreement.

By execution of this Agreement, Vendor acknowledges that it has had the opportunity to read and review the confidentiality Agreement.

Upon completion or termination of this Agreement, if directed by the disclosing party in writing, all proprietary information shall be returned to the disclosing party.

THIS DOCUMENT

The obligations contained in this paragraph shall continue and shall survive notwithstanding the completion, modification or termination of this Agreement for a period of three (3) years from the effective date of this Agreement.

10.15 CORPORATE AUTHORITY:

If any party to this Agreement is a legal entity, including, but not limited to, an association, corporation, joint venture, limited partnership, partnership, or trust, then that party represents to the other that this Agreement and the transactions contemplated in this Agreement and the execution and delivery hereof have been duly authorized by all necessary corporate, partnership, or trust proceedings and actions including, but not limited to action on the part of the directors, officers and agents of the entity, if said action is required.

THANK YOU

Furthermore, a corporate party represents that all appropriate corporate meetings were held or the actions contemplated herein will be ratified to authorize the aforementioned obligations and certified copies of all corporate meetings or minutes and corporate resolutions authorizing this transaction have been delivered to all parties to this Agreement prior to or at the time of execution of this Agreement, if such corporate authorization was requested by the party seeking such authorization within five (5) days of the execution of this Agreement.

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10.16 DEFAULT:

PREVIEW

Buyer may cancel this Agreement in whole or in part upon a breach of this Agreement by Vendor.

Events That Constitute A Default of This Agreement By Vendor:

- failure to comply with any of the terms of this Agreement,
 - failure to comply with any time or delivery deadlines,
 - failure to meet any specifications, representations or quality requirements,
- or

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It shall be presumed that if Vendor shall become insolvent, make a general assignment for the benefit of creditors, Vendor's creditors file an involuntary bankruptcy against the Vendor or Vendor files for bankruptcy protection under any chapter other than chapter 11, then Vendor is not able to perform under this Agreement.

For services to be performed under this Agreement, if Vendor fails to begin or prosecute the work with reasonable diligence, without interruption, and in a good workmanlike manner, Buyer may at its option, upon three (3) days notice in writing to Vendor terminate this Agreement.

THIS DOCUMENT

Without prejudice to any other remedy Buyer may have Buyer may take control of the work for the purpose of completing the same, either by its own employees or by another independent contractor.

If Buyer takes control of the work, then Vendor shall be entitled, upon Buyer's completion of the work, only to the difference between the price in this Agreement and the reasonable cost and expense incurred by Buyer in finishing the work.

If such cost and expense should exceed the original price, then Vendor shall pay Buyer the excess as liquidated damages agreed upon by the parties hereto in consideration of the difficulty in ascertaining the actual damages.

THANK YOU

In the event Buyer cancels this Agreement, in whole or in part based on Vendor's default, then Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, items or services similar to those so canceled and Vendor shall be liable to Buyer for any excess costs of such similar items or services.

After receipt of notice of such cancellation, Vendor shall transfer title and deliver to Buyer satisfactorily completed work and such work in process as may be directed by Buyer.

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The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

Vendor, at its option, may cancel this Agreement for default if:

- Buyer's payments are in default;
- Buyer becomes insolvent or a petition under any bankruptcy act or similar statute is filed by or against Buyer and is not vacated within one hundred eighty (180) days after such filing.

Such cancellation shall be effective upon receipt by Buyer of a written notice of cancellation issued by Vendor.

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10.17 DISPUTES:

In the event that a dispute occurs applicable to the operation, construction, interpretation, or enforcement of this Agreement, the parties hereby agree to submit the dispute to a commercial arbitrator so that the matter may be arbitrated in lieu of resolving the dispute in a court of law or equity.

The parties shall choose an arbitrator from the American Arbitration Association pursuant to the following process: The parties shall request from the American Arbitration Association a list of qualified commercial arbitrators. Each party, assuming there are two parties to the Agreement, shall have four strikes, and thereby strike from the list the arbitrators they do not wish to use. The remaining arbitrator, the one that has not been stricken, will be the arbitrator to hear the matter.

THIS DOCUMENT

The parties agree to follow the American Arbitration Association rules, guidelines and procedures. The Arbitrator shall not base his or her ruling on more stringent rules of civil procedure or evidence which may be contained in any state or federal law, code or regulation including but not limited to the Federal or any State's rules of civil procedure or evidence.

The Arbitrator shall set the matter for hearing and hear the case; no summary judgment or dismissal shall be allowed.

THANK YOU

The parties shall abide by the Arbitrator's decision, which shall be final and binding. The Arbitrator shall be required to give reasons to support the decision. The losing party agrees to reimburse the prevailing party for any and all attorney's fees and costs of arbitration incurred.

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In the event the prevailing party is required to file a lawsuit to enforce this Agreement or the arbitrator's decision, then the losing party agrees to pay any and

all attorney's fees that the prevailing party may incur in order to require the other party's compliance with an arbitrator's or court's decision.

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Pending the final resolution of any dispute involving this Agreement, Vendor agrees to proceed with performance of this Agreement.

10.18 FORCE MAJURE AND SUSPENSION OF WORK:

Buyer's Purchasing Representative may, by written order, suspend all or part of the work to be performed under this Agreement for a period not to exceed ninety (90) days.

Within such period, or any extension thereof to which the parties may agree, Buyer shall either:

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- cancel such suspension, or
- terminate the work covered by suspension.

Vendor shall resume work whenever a suspension is canceled or expires.

An equitable adjustment shall be made in the delivery schedule or contract price, or both, if:

- the suspension results in a change in Vendor's cost of performance or ability to meet the Agreement delivery schedule and
- Vendor asserts a claim for adjustment within thirty (30) days after the end of the period of suspension.

THIS DOCUMENT

Whenever Vendor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Vendor shall immediately give notice thereof, and all relevant information with respect thereto, and shall notify Buyer of any material changes in the information required hereunder.

Vendor agrees to insert the substance of this paragraph in any subcontract hereunder when in a labor dispute may delay the timely performance of this Agreement.

THANK YOU

10.19 FURTHER ASSURANCES:

Each party further agrees that it shall take any and all necessary steps and sign and execute any and all necessary documents or Agreements required to implement the terms of the Agreement of the parties contained in this Agreement.

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Each party also agrees to refrain from taking any action, either expressly or impliedly, which would have the effect of prohibiting or hindering the performance of the other party to this Agreement.

10.20 INDEMNITY:

Vendor agrees to indemnify and hold Buyer harmless from any and all obligations, loses, damages, claims, demands or lawsuits which are caused in whole or part by Vendor.

This indemnity shall protect Buyer in the event Vendor causes, either directly or indirectly, any personal or property damage, loss, destruction, including but not limited to any fire, explosion, leak, injury liability, or other claims that could be made against Buyer, its successors, assigns, customers and users of its goods, work or services, as a result of Vendor's actions, goods, work or service, including but not limited to Vendor's, its employees, agents, subcontractors or other personnel's intentional conduct, negligence or other damaging actions.

This indemnity shall become effective in the event that Buyer or any other person or entity claims or alleges to have suffered any damages, claims, injury, loss or other contingency which could or did result from the goods, work or services purchased or ordered per this Agreement.

Vendor shall pay for all legal defense expenses incurred pursuant to this indemnification and Vendor shall reimburse Buyer for all expenses, fees, damages or other costs that result from the actions or conduct of Vendor, its employees, agents, subcontractors or other personnel.

This indemnification will apply whether Vendor or Buyer defends any such suit or claim and whether the matter involves property damage or personal injury claims.

This indemnification clause shall survive this Agreement and be enforceable as a separate Agreement in the event the same becomes necessary.

10.21 PATENT INDEMNITY BY VENDOR:

Vendor warrants that it has not infringed on any patent, trademark, trade secret or copyright. Vendor agrees to indemnify Buyer for any and all costs, expenses, losses or adverse consequences which may occur if an infringement or other claim is made against Vendor which could adversely affect Buyer.

Vendor will undertake the defense of such claim and pay all costs and amounts necessary to compromise and settle the claim, or the damages awarded to the

claimant if litigation ensues. Vendor will reimburse Buyer for its attorney's fees and other costs of defense.

PREVIEW

In addition to the above remedies, if Buyer or Buyer's customers are enjoined from using the items sold or provided hereunder, Vendor will, at its expense, either procure for Buyer or Buyer's customers the right to continue using the items/ replace, or modify the same so that they become non-infringing, to Buyer's satisfaction, or if none of the foregoing is possible, grant Buyer a credit for such items and accept their return.

10.22 INDEPENDENT CONTRACTOR RELATIONSHIP NO PARTNERSHIP INTENDED:

PLEASE DO NOT COPY

By virtue of entering into this Agreement, all work or services provided hereunder shall be performed in the capacity of an independent contractor rather than an employee and the parties hereto have not formed, either expressly or impliedly, any joint venture or partnership arrangement. Under no circumstances shall any party to this Agreement be deemed an employee, partner of the other, nor shall either party act as an agent of the other party.

Each party is interested only in the results obtained hereunder and has the general right of inspection and supervision in order to secure the satisfactory completion of the work. Neither party shall have control over the other party with respect to its hours, times, employment, or the like with the exception that Vendor shall comply with and observe any rules, operating schedules, deadlines or other time considerations which may be applicable to Vendor's facilities.

THIS DOCUMENT

10.23 INSURANCE:

For Agreements which require services or labor, Vendor and its subcontractors shall maintain at its sole cost and expense, from the time any work is commenced hereunder until the work is fully performed and discharged, insurance of the kind and with minimum limits as listed below.

Vendor and its subcontractors shall furnish Buyer with a Certificate of Insurance naming Buyer as an additional insured.

THANK YOU

Type of Insurance amount of Insurance

| | |
|-------------------------------------|-------------|
| Workers' Compensation | Statutory |
| Employers' Liability | \$1,000,000 |
| Commercial General Liability* | \$2,000,000 |
| Comprehensive Automobile Liability* | \$2,000,000 |

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*For Excess Liability Insurance with Limit in the aggregate of \$5,000,000.

10.24 LIENS OR CLAIMS AGAINST MATERIAL OR SERVICES PERFORMED:

PREVIEW

Vendor represents that all work performed by it or its subcontractors and all material used on Buyer's behalf, shall be completely paid for.

Title to all goods, products, merchandise, materials or services which are provided to Buyer shall be completely paid for and Vendor represents that there are no materialman's or other liens attached to the goods, products, merchandise, materials or services which are provided to Buyer.

Vendor warrants that no lien rights are pending or have been filed on Buyer's facilities. In the event liens are filed against Buyer, then Vendor shall be liable to Buyer for the same, and Vendor agrees to indemnify and hold Buyer harmless for any and all losses, damages, suits, causes of action, or other legal proceedings that may accrue as a result of the lien filings, claims, litigation or other actions, if any. Vendor agrees to reimburse Buyer for any and all legal costs or expenses associated with the defending or removing of the liens, claim, litigation or other actions, if any.

PLEASE DO NOT COPY

10.25 NEW TECHNOLOGY:

The parties agree that Buyer may desire to establish the capability to use newer technology to implement this Agreement.

THIS DOCUMENT

Such technology may include procurement cards, master Agreements which allow releases of goods, work or services, or the ability to receive orders electronically and provide by electronic means, inventory lists, merchandise lists, pricing, and such other data, communications and information as may be necessary to implement this Agreement. In that event, Vendor agrees to work with Buyer to implement such a system.

10.26 NOTICES:

Any and all notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if sent by facsimile transmission or mailed by certified mail, return receipt requested, postage prepaid, and addressed as follows:

THANK YOU

Buyer-

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Vendor
* [name]
* [address]

Attention: * [name]

PREVIEW

Either party hereby reserves the right to designate in writing to the other party any change of name, change of person, or address to which the notices shall be sent.

10.27 PARTS AVAILABILITY:

In order to protect Buyer's investment in the goods, products or equipment purchased hereunder and as an obligation, which survives the acceptance of goods hereunder, Vendor shall maintain and provide spare parts for the goods purchased hereunder for a period of at least five (5) years from the date of the original purchase of the item which may need the spare part.

10.28 PARAGRAPH HEADINGS, USE OF PRONOUNS, AND CAPTIONS: PLEASE DO NOT COPY

The captions, numbering sequences, titles, paragraph headings, punctuation, and organization used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it. The paragraph headings used in this Agreement are descriptive only and shall have no legal force or effect whatsoever other than to aid a reasonable interpretation of the Agreement. The titles to each of the various articles and paragraphs are included for convenience or reference only and shall have no effect on or be deemed as part of the text of this Agreement. Use of the neuter or the singular to refer to the parties described in this Agreement shall be deemed a proper reference whether the party is an individual, partnership, corporation, association, trust, a group of two or more individuals, partnerships, or corporations, or a joint venture.

Any grammatical changes required to make the provisions of this Agreement applicable to individuals, or groups of individuals, such as males versus females, corporations, associations, partnerships, trusts or other entities shall, in all instances be assumed as though each case were fully expressed.

10.29 PAROL EVIDENCE, STATUS OF AGREEMENT AND PRIOR UNDERSTANDINGS:

This Agreement and the exhibits attached hereto and incorporated herein, if any, contain the entire agreement of the parties and there are no representations, inducements, promises, Agreements, arrangements or undertakings, oral or written, between the parties to this Agreement other than those set forth herein and duly executed in writing.

No Agreement of any kind shall be binding upon either party unless and until the same has been made in writing and duly executed by both parties.

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Upon execution of this Agreement by all parties, all previous Agreements, Agreements, oral understandings, reservations, arrangements, or undertakings of any kind relative to the matters contained in this Agreement are hereby superseded and canceled and all claims and demands not contained in this Agreement are deemed fully completed and satisfied.

Buyer's remedies shall be cumulative and are in addition to any other rights or remedies that Buyer may have at law or in equity. Any remedies herein specified do not exclude any remedies allowed by law.

Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision.

10.30 PARTIES BOUND BY THIS AGREEMENT AND SUCCESSORS: PLEASE DO NOT COPY

This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, executors, administrators, legal representatives, successors and assigns.

The parties to this Agreement expressly agree that in the event a party seeks to or does transfer part or all of its assets to a separate entity, not a party to this Agreement, the party shall be liable under this Agreement as if the transfer had not occurred.

Any party to this Agreement may assign its rights and obligations under this Agreement without consent to its successor to all or substantially all of its business, whether the successor has acquired this business by sale, merger, consolidation, or otherwise.

10.31 RISK OF LOSS:

Vendor shall bear the risk of loss for all of Vendor's, its employees, agents and subcontractors personal or other property which may be used in the performance of this Agreement applicable thereto.

Loss in Transit and Environmental Responsibility:

Title and risk of loss in transit shall not pass to Buyer until delivery to Buyer. Buyer shall not be liable for payment until Vendor or Vendor's carrier has complied with all applicable federal, state, provincial, or local laws or regulations, including but not limited to U.S. Department of Transportation and U.S. Environmental Protection Agency regulations for hazardous substances.

Vendor shall indemnify Buyer for any damages that may be asserted against Buyer as a result of Vendor's or its carrier's failure to comply with the requirements contained in this Agreement.

PREVIEW

Buyer shall not be liable for any discharge, spill, or other incident, including, but not limited to, expenses for any clean up costs involving any materials transported hereunder. Vendor assumes any and all risk of loss, injury, harm or other calamity that could or may occur when its agents, employees or contractors come on to Buyer's properties or facilities.

10.32 SAFETY:

In the event that Vendor's agents, employees or subcontractors enter any facilities or premises occupied by or under the control of Buyer, or any of its customers, or suppliers in the course of the performance of this Agreement. Vendor will take all necessary precautions to prevent the occurrence of any injury (including death) to any person, or of any damage to any property arising out of acts or omissions of such agents, employees, or subcontractors.

PLEASE DO NOT COPY

The Vendor understands that some of the goods, services or work contemplated herein may be performed or delivered at refineries or other facilities which require the utmost attention to safety and other significant concerns. Accordingly, in those situations, the Vendor agrees to perform all of its obligations or work according to any and all any rules, regulations or safety standards which may be applicable to any of the Buyer's facilities.

The Vendor agrees to perform the work safely, diligently, efficiently and in a professional manner. The Vendor agrees to comply with the safety guidelines, which are set out in the attached exhibit, which is made an integral part of this Agreement.

THIS DOCUMENT

The Vendor acknowledges that it has received, read and agreed to the safety guidelines for each of Buyer's facilities that Vendor may enter.

The parties agree that some of the federal or state laws, rules or regulations, Buyer's safety rules or contractual terms and conditions contained herein or incorporated herein may have references that are not applicable to a specific transaction.

The Vendor agrees to comply with those laws, regulations, rules or terms and conditions that are applicable to the specific facility or transaction where the goods, services or work may be delivered to or performed at.

THANK YOU

10.33 SETOFFS AND RETAINAGES:

In addition to the UCC allowed contract by contract right of setoff, Buyer is entitled to a "party by party" right of set off. Buyer is not required to mitigate its damages in order to obtain the relief for a breach of contract remedies available to it.

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PREVIEW

Buyer is granted the right to withhold as retainage, from moneys owed to Vendor any amounts allowed by law, or if the percentage amount is not specified at law, ten %(10) of the contract price for any transaction which may involve subcontractors, workmen, mechanic's or materialman's liens or specially fabricated goods.

Buyer may pay the retainage directly to the person or entity that the money is owed in the event of a dispute or claim.

10.34 SEVERABILITY:

If any provision of this Agreement is, for any reason, held violative of any applicable law, governmental rule or regulation, or if the provision is held to be unenforceable or unconscionable, then the invalidity of that specific provision shall not be held to invalidate the remaining provisions of this Agreement.

All other provisions and the entirety of this Agreement shall remain in full force and effect unless the removal of the invalid provision destroys the legitimate purposes of this Agreement, in which event this Agreement shall be canceled and terminated.

10.35 SURVIVAL OF OBLIGATIONS:

All obligations shall continue notwithstanding the expiration, termination or cancellation of this Agreement.

10.36 THIRD PARTY BENEFICIARIES:

This Agreement is intended to be solely for the benefit of the parties named herein, their successors and permitted assigns. This Agreement shall not provide any person who is not a party to this Agreement with any rights, benefits, remedies, claims, liabilities, reimbursements, commissions, causes of action or other rights that are conferred by virtue of this agreement.

10.37 TERM:

Initial and Extension Term:

The initial term of this Agreement is three (3) years commencing from the date that the Agreement is signed and effective. Thereafter, the Agreement shall automatically be extended for additional terms of one (1) year each unless terminated by either party in writing with thirty (30) days' prior written notice.

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Permission for Convenience

Buyer may at any time terminate this Agreement in whole or part for its convenience upon written notice to Vendor.

PREVIEW

In this event Vendor shall be entitled to reasonable termination charges, consisting of a percentage of the price reflecting the percentage of any work performed prior to termination, plus actual direct costs resulting from termination.

In no event shall Buyer be liable for more money than this Agreement provided for, if this Agreement had not been terminated.

Termination For Default:

Buyer may terminate the whole or any part of this Agreement if Vendor defaults under this Agreement.

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Events of default are stated above in the Default paragraph.

In the event of a termination for default, Vendor shall deliver the goods, work or service to Buyer which were completed or delivered prior to the termination.

Payment for said goods, work or services shall be at a price determined in the same manner as provided in this Agreement, except that Vendor shall not be entitled to profit on this Agreement. Furthermore Buyer shall be entitled to any and all damages which it may suffer as a result of Vendor's breach of Agreement.

THIS DOCUMENT

Buyer may withhold from Vendor monies which may have otherwise been due to Vendor for completed goods and/or manufacturing materials in such amounts as Buyer determines necessary to protect itself against loss due to outstanding liens or claims against said goods, work or services.

10.38 TIME LIMITS:

Time is of the essence in this Agreement and, accordingly, all time limits shall be strictly construed and strictly enforced.

Failure of one party to this Agreement to meet a deadline imposed hereunder shall be considered a material and significant breach of the Agreement and shall entitle the non-breaching party to any and all rights of default as stated above.

THANK YOU

10.39 WAIVER:

The failure or delay of either party in the enforcement of the rights detailed in this Agreement shall not constitute a waiver of the rights nor shall it be considered as a basis for estoppel either at equity or at law. That party may exercise its rights under this Agreement despite any delay or failure to enforce those rights at the time the cause of action or right or obligation arose.

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10.40 WARRANTIES: **PREVIEW**

Whether or not Vendor is a merchant of goods, work or services provided by it, Vendor warrants that all goods and/or services provided by it shall be performed in a manner that does not interrupt Buyer's normal operations at any of its facilities. Vendor further warrants that:

For products and goods:

- be new, not used, substituted, restocked or refurbished and are of good quality and workmanship and are free from defects, latent or patent, shall conform to all representations, drawings or plans given to Buyer from Vendor.
- shall conform to all of Buyer's specifications,
- shall be merchantable and shall pass without objection in the trade,
- shall be suitable and sufficient for their intended purpose, Vendor acknowledges that Buyer is relying on Vendor's skill, judgment and recommendations in the purchase of goods, service or work contemplated herein, and
- shall be free of any claim, lien, security or encumbrance of any party so that good, free and clear title passes to the Buyer.

For services:

THIS DOCUMENT

In addition to all of the above warranties, the services must be performed only by qualified persons who are both properly trained or licensed and have prior actual work experience in the trade or craft to which the services relate to,

- the Vendor warrants that it will provide proper supervision to all persons or sub contractors who provide services to the Buyer,
- if Buyer believes that any person or sub contractor is either not qualified to perform the work or is not performing the services according to the agreed to standard or representation, then Buyer may remove said person from the work and Vendor shall find a qualified replacement so that the work is not delayed or performed improperly.

THANK YOU

None of the remedies available to Buyer for the breach of any of the forgoing warranties may be limited except to the extent and in the manner agreed upon by Buyer in a separate Agreement specifically designating such limitation and signed by an authorized representative of Buyer.

Buyer's inspection or acceptance of or payment for goods, work or services shall not constitute a warranty of fitness or quality. Buyer's approval of any sample or acceptance of any goods shall not relieve Vendor from responsibility to deliver

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goods and to perform services conforming to specifications, drawings, and descriptions.

PREVIEW

The parties agree that any and all goods, products or items purchased by Buyer shall also be covered by Vendor's express warranties.

Vendor agrees to provide free repair or replacement of all labor and parts for at least one year from the date of delivery of the product or longer if provided for in Vendor's express warranty.

Other Warranties:

Vendor is liable for all costs and expenses, if any, associated with any product recalls applicable to any parts or supplies used to fulfill the Agreement.

PLEASE DO NOT COPY

All warranties, including special warranties specified elsewhere herein, shall inure to Buyer, its successors, assigns, customers and users of its products.

Price Warranty:

The prices stated herein is all that Buyer will pay. Buyer shall not be liable for any additional charges including but not limited to delivery charges, charges for returnable or reusable containers. Vendor agrees that no prices will be escalated to match market price at the time of delivery.

THIS DOCUMENT

Vendor agrees not to sell the same product under substantially the same terms and conditions to anyone else at a lower price; if Vendor does, then Vendor agrees to lower the price to Buyer to match the lower price, terms or conditions.

Pricing for the term of this Agreement shall be the stated herein or an Exhibit, which shall be attached thereto. Any increase in prices during the term of this Agreement shall be limited to a maximum of 10% per calendar year.

SIGNATORY CLAUSE

This Agreement is signed, accepted and agreed to by all parties, either in their individual capacities or by and through their duly authorized officers, agents, trustees, attorneys-in-fact or representatives.

THANK YOU

All parties, and if appropriate, by and through their authorized agents, hereby acknowledge that they have read and understood this Agreement, the attachments and exhibits hereto and if this Agreement is signed by an authorized agent, then the agent states that the principal has read, authorized and agreed to this Agreement.

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All parties, and if appropriate, by and through their authorized agents, further acknowledge that they have executed this legal document voluntarily and of their own free will.

PREVIEW

BUYER

VENDOR

Signature: _____

Signature: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

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Tax I.D. Number: _____

THIS DOCUMENT

THANK YOU

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