

MASTER VENDOR AGREEMENT

W. A. Kendall and Company, LLC ("Kendall") and _____ ("Vendor") enter into the following Master Vendor Agreement ("Agreement"). For good and valuable consideration, the parties agree as follows:

1. Purchase Order; Goods and Services.

- 1.1. Kendall has or may execute one or more Purchase Orders (each a "PO" and collectively, "POs") which describe the Goods and/or Services to be provided by Vendor, the Fees to be paid by Kendall, and other business terms.
- 1.2. Any POs between the parties hereto are deemed incorporated into and made part this Agreement, and the term "Agreement" as used herein shall include all such POs. If there is a conflict or inconsistency between this Master Vendor Agreement and a PO, this Master Vendor Agreement shall control.
- 1.3. A valid PO is required for any Goods or Services sold to Kendall. Absent a valid PO from Kendall, this Agreement does not, in and of itself, represent a commitment by Kendall to purchase any Goods or Services from Vendor. Kendall will only be committed to purchase and Vendor will only be committed to perform when Kendall has tendered a valid PO to Vendor.
- 1.4. Vendor understands and agrees that if it provides any Goods or Services to Kendall without first receiving a valid PO from Kendall, Kendall will not pay for and will not be liable for any fees, charges, expenses, or costs Vendor may charge or incur related to the Goods or Services.
- 1.5. A PO is valid only if prepared by and signed by an authorized representative of Kendall.

2. Term and Termination.

- 2.1. Term. This Agreement shall commence upon the earlier of (a) the latest date of the signatures below or (b) the date of the first PO. This Agreement shall remain in effect and shall apply to all POs until replaced by a superseding Master Vendor Agreement or until terminated as provided below.
- 2.2. Termination. This Agreement may be terminated as follows: (a) upon written notice by Kendall for failure of Vendor to perform satisfactorily under a PO; (b) upon written notice by Kendall for Kendall's convenience; or (c) if a period of two years has elapsed since Services were performed, Goods were delivered, or Fees were paid, this Agreement shall be deemed to have been terminated on the date on which the latest Services were completed, the Goods were delivered, or the Fees were paid in full, whichever is later. If this Agreement is deemed terminated under subpart (c) and an PO is executed thereafter without a new Master Vendor Agreement, then this Agreement shall be deemed revived and applicable to such PO.
- 2.3. Effect of Termination. Termination of this Agreement shall not relieve Vendor of its obligations under Sections 4, 6, 8, 10, 12, 13, 14, 15, 16, or any other obligations that survive termination as provided elsewhere in this Agreement.

3. Payment of Fees. The time and manner of payment of Fees shall be as set forth in a PO. If the time and manner are not specified in the PO, then Fees will be due within 30 days after Kendall receives an invoice from Vendor. Vendor must submit an invoice to Kendall for all Fees. Vendor must submit

a completed Form W-9 to Kendall prior to or simultaneously with its first invoice each year.

4. Vendor Responsibilities.

4.1. Performance. Vendor is responsible for timely performance in accordance with the specifications of the PO.

4.2. Vendor's Authorized Contact. Vendor represents that the contact person(s) identified in the PO(s) have authorization to make decisions on behalf of Vendor and to bind Vendor.

5. Relationship of Parties. Vendor is an independent contractor. Neither party has the right or authority to assume or to create any obligation or responsibility on behalf of the other party. This Agreement shall not be construed to create a joint venture or partnership between the parties.

6. Warranties.

6.1. Vendor warrants that it will perform in accordance with the specifications set forth in any PO and in general compliance with prevailing industry standards.

6.2. Vendor warrants that: (i) it has the right to enter into this Agreement; (ii) there are no prior commitments or other obligations that prevent Vendor from fully performing all its obligations under this Agreement; (iii) Vendor's performance shall be consistent with prevailing industry standards; and (iv) Vendor shall use competent and qualified personnel to perform under each PO.

6.3. Vendor warrants that at the time of performance and for a period of 24 months from the end of performance (the "Warranty Period"), the Goods and Services will be new, merchantable, free from faults and defects in design, materials and workmanship, suitable for the purpose intended, conform in all respects to the specifications set forth in the relevant PO, and comply with all applicable laws and regulations.

6.4. Vendor warrants that Kendall will receive good and marketable title to the Goods free from liens or encumbrances of any nature.

6.5. Kendall may at any time during the Warranty Period require Vendor to remedy by repair, correction, or replacement, without cost to Kendall, any Services or Goods that fail to comply with the warranties, regardless of the cause. During the Warranty Period, in the event the Goods or Services fail to comply with any warranties, Vendor shall: (a) make every reasonable effort to immediately correct the non-compliance; and (b) within five business days of notice of non-compliance from Kendall, repair or replace defective Goods or Services or refund to Kendall the full amount of any Fees Kendall has paid and all costs incidentally related thereto.

6.6. All warranties, expressed or implied, shall inure to the benefit of Kendall. Vendor hereby assigns to Kendall the warranties for third-party products, if any, that relate to the Goods or are used in performance of the Services. Vendor will cooperate with and assist Kendall in seeking satisfaction of any such warranty.

6.7. THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED, ORAL OR WRITTEN, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO THE EXTENT APPLICABLE.

- 6.8. Vendor acknowledges, expressly waives, and intentionally relinquishes its right to raise the statute of limitations or statute of repose as a defense to the warranty obligations imposed by this Agreement. Vendor acknowledges that this is a waiver of a legal right and that it makes this waiver voluntarily and knowingly after consultation with, or the opportunity to consult with, counsel of its own choice.
7. Title; Risk of Loss or Damage. Vendor retains title to Goods until such title is transferred pursuant to the applicable PO terms or, if the PO is silent on the issue, until the Goods are delivered to Kendall. Vendor shall be responsible for any loss or damage to Goods due to Vendor's failure to properly preserve, package, or handle the Goods. Notwithstanding any prior inspection, Vendor will bear all risk of loss, damage, or destruction to the Goods until delivery to the specified delivery location; provided that Vendor shall not be liable for any damage to rejected Goods caused by the gross negligence or willful conduct of Kendall's employees acting within the scope of their employment.
8. Compliance with Applicable Laws and Regulations. Vendor shall give all notices required by and otherwise comply with all applicable federal, state, and local laws, regulations, codes, ordinances, orders, notices, actions, policies, or common laws. Vendor is solely responsible to secure, pay for, and/or comply with the terms of all local, state, and federal licenses, permits, fees, and taxes necessary for the performance of any PO. Kendall shall not be responsible for verifying Vendor's compliance with any law, regulation, rule, or ordinance.
9. Vendor Purchase Orders Are Not Effective. Vendor may, for its own administrative convenience, use Vendor's standard form of purchase order; however, any terms or conditions on any Vendor-issued purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect whatsoever. Kendall hereby rejects all terms and conditions in any Vendor-issued purchase order that differ in any way from this Agreement or the applicable PO.
10. Confidentiality. "Confidential Information" means all nonpublic technical or business information disclosed by Kendall to Vendor, including without limitation the terms of this Agreement. Vendor shall hold such information in confidence for five years after termination of this Agreement, restrict disclosure of such information solely to its employees with a business need to know such information, and prevent the unauthorized disclosure, use, or publication of Kendall's Confidential Information.
11. Assignments and Subcontracts. Neither this Agreement, any PO, nor any right to Fees under a PO shall be assignable or otherwise transferable by Vendor without the prior written consent of Kendall. Any assignment or transfer without the prior written consent of Kendall is void. Vendor shall not subcontract all or any portion of this Agreement or any PO without the prior written consent of Kendall; if given, such written consent shall not in any way diminish the responsibility of Vendor to comply with this Agreement.
12. Indemnification.
- 12.1. To the fullest extent permitted by law, Vendor shall indemnify and hold harmless Kendall from and against any and all claims, losses, expenses (legal and otherwise, including but not limited to attorneys' fees), demands, causes of action, notices, orders, losses, suits, fines, penalties, assessments, damages (including consequential or punitive damages and liquidated damages), legal and otherwise, and liabilities incurred by or asserted against Kendall that in any way arise out of or are related to the performance of any PO, the negligence of Vendor or its employees, agents, or suppliers, or Vendor's violation or alleged violation of any applicable law, regulation, order, or code.

- 12.2. Vendor is not required to indemnify Kendall for or to the extent of damages caused solely by Kendall's own negligence.
- 12.3. Vendor shall have a duty to defend Kendall from and against any claim, demand, cause of action, notice, order, loss, suit, damage, liability, or resulting action for which Vendor is or may be required to indemnify Kendall, including but not limited to Kendall's litigation costs, arbitration costs, attorneys' fees, expert witness and consultant fees and expenses, and all other related expenses. At Kendall's option, Kendall may select the counsel to represent it under this clause; Kendall's exercise of this option shall not affect Vendor's duty to pay for the counsel's fees and all other related costs and expenses. Vendor's duty to defend Kendall shall arise at the time Kendall first receives notice of such a claim, demand, cause of action, notice, order, loss, suit, damage, or liability.
- 12.4. Vendor's obligations under this Agreement shall not be limited in any way by the availability or non-availability of insurance coverage or a defense provided or not provided by any insurer; or any limitation on the amount or type of damages, compensation, or benefits payable by or for Vendor under worker's compensation acts, disability benefit acts, or any other similar employee benefit act.
- 12.5. Vendor waives its right to raise the statute of limitations or statute of repose as a defense to the indemnity obligations imposed by this Agreement. Vendor acknowledges that this is a waiver of a legal right and that it makes this waiver voluntarily and knowingly after consultation with, or the opportunity to consult with, counsel of its own choice.
13. Insurance. Vendor shall carry and maintain throughout the life of this Agreement, at its own expense, insurance in not less than the highest amounts and coverages specified in any PO. Insurance shall be provided by a carrier licensed in the state where the work is to be performed and the insurance company shall have an A.M. Best Rating of A- or higher. Vendor shall name Kendall as an additional insured under the applicable policies and deliver a certificate of insurance to Kendall upon demand.
14. Limitation of Liability. Kendall is not liable to Vendor for any indirect, special, punitive, exemplary, or consequential damages of any kind. Kendall's liability to Vendor on account of any acts or omissions relating to this Agreement shall be limited to proven direct damages in an aggregate amount not to exceed the lesser of (i) Vendor's actual direct damages incurred due to Kendall's acts or omissions, or (ii) the Fees set forth in the applicable PO. These limitations apply regardless of the form of action, whether in contract, warranty, strict liability, or tort.
15. Vendor's Non-Performance. If Kendall terminates the Agreement pursuant to Section 2.2(a), Kendall, at its option, without further notice and without affecting any other right Kendall has under this Agreement, shall have the right to engage another vendor to complete or supplement the work of Vendor or to take over and complete the PO. Kendall shall be entitled to deduct from any Fees due Vendor all expenses Kendall incurs as a result of Vendor's non-performance. If the unpaid portion of Fees is insufficient to cover Kendall's complete reimbursement for such expenses, Vendor agrees to pay such deficiency to Kendall upon demand.
16. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement, any PO, or the breach of either (collectively, "Covered Claims"), shall be settled by final and binding arbitration in Atlanta, Georgia, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Arbitration is the parties' exclusive legal remedy for any Covered Claim. The parties hereby waive any right to have any Covered Claim tried in a court or to a jury. All Covered Claims shall be arbitrated on a single-claimant basis and not on a class, collective, or other multiple-claimant basis. The arbitrator has exclusive authority to resolve any dispute

regarding arbitrability.

17. Definitions. Capitalized terms used in this Agreement shall have the definitions set forth *supra* and as follows:

17.1. Vendor. The vendor identified in the signature block below.

17.2. Goods. Products, items, or other goods Vendor is required to supply to Kendall pursuant to any PO.

17.3. Services. Services that Vendor is required to perform pursuant to any PO.

17.4. Fees. Fees, charges, and expenses that Vendor invoices to Kendall for Goods and Services performed pursuant to a valid PO.

18. General.

18.1. Entire Agreement. This Agreement, together with all PO(s), contains all the agreements, representations, and understandings of the parties and supersedes any previous understandings, commitments, or agreements, oral or written, with respect to the subject matter of this Agreement.

18.2. Severability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable, then the remainder of this Agreement will not be affected and in lieu of each clause or provision that is illegal, invalid, or unenforceable, there will be substituted a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and as may be legal, valid, and enforceable.

18.3. Modification. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party. No other act, usage, or custom will be deemed to amend or modify this Agreement. Each party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section.

18.4. No Waiver. No failure on the part of either party to exercise, and no delay in exercising, any right, power, or privilege will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

18.5. Choice of Law. This Agreement shall be governed by the laws of the State of Georgia, without regard to any choice of law rules. Section 16 shall be governed by the Federal Arbitration Act.

18.6. Venue. As set forth in Section 16, arbitration is the exclusive forum for any dispute arising under or related to this Agreement. In the event of a dispute for which arbitration is not available, the parties agree that venue is proper only in the state or federal courts having jurisdiction in Duluth, Georgia and further agree that the jury waiver of Section 16 shall apply to any such court proceeding.

18.7. No Third-Party Beneficiaries. This Agreement is an agreement between the parties and confers no rights upon any of the parties' employees, agents, contractors, or customers, or upon any other person or entity other than Kendall and Vendor.

18.8. Notices. Any notice permitted or required under this Agreement shall be sent by certified mail,

return-receipt requested, overnight express mail, or personal delivery to the address of the party set forth in the PO. Notices sent by certified mail shall be deemed effective on the third business day following mailing. Notices sent otherwise shall be deemed effective on receipt. A party may change its address for notices upon prior written notice. Notwithstanding the foregoing, notices and communications other than those alleging a breach or terminating this Agreement may be sent by email to the designated points of contact in the PO and shall be effective upon sending, unless the sender receives a communication that the email was not sent or received.

IN WITNESS WHEREOF, THE PARTIES EXECUTE THIS AGREEMENT BY THEIR SIGNATURES BELOW.

VENDOR

By: _____ Date: _____

KENDALL

By: _____ Date: _____