MASTER AGREEMENT
FOR
DEMAND SIDE MANAGEMENT AND ENERGY EFFICIENCY SERVICES
WITH
"COMPANY"

THIS MASTER AGREEMENT (this "**Agreement**") is made and entered into as of the [redacted] day of [redacted], 199[redacted] (the "**Effective Date**"), by and between [redacted] (the "**Company**") and [redacted] (the "**Customer**") (the Company and the Customer each being referred to herein individually as a "**Party**" and collectively as the "**Parties**"), with reference to the following:

RECITALS

A. The Company is in the business of providing demand side management services for customers pursuant to a Company initiated program known as the Energy Efficiency Services Program (the "**Program**");

B. The Customer has agreed to participate in the Program by considering the furnishing and upgrading of its facilities with energy efficient equipment and systems in order to achieve potential electric demand and energy savings; and

C. Pursuant to this Agreement, the Parties wish to set forth their understanding concerning certain energy efficiency services (the "**Services**") to be provided by the Company to the Customer under the Program.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 - SCOPE OF AGREEMENT AND TERM

1.1 Scope. Subject to the terms and conditions of this Agreement, the Company shall furnish, and the Customer shall purchase and receive, Services requested by the Customer from time to time with respect to certain specified facilities of the Customer (each, a "**Service Location**") and with respect to specific Energy Conservation Opportunities (each, an "**ECO**") identified at a Service Location. The Services to be furnished by the Company with respect to each Service Location and with respect to ECOs identified at a Service Location shall be set forth in a supplement to this Agreement (each, a "**Supplemental Agreement**") which will be mutually agreed upon and executed by both Parties prior to the Company commencing work at any designated Service Location. Each Supplemental Agreement (a form of which is attached as Exhibit A to this Agreement) shall cover one or more Service Locations of the Customer and shall consist of the following forms and schedules:

Form of Supplemental Agreement
Schedule A - Specification of Service Location(s)
Schedule B - Form of Audit Request
Schedule C - Form of Agreement for Feasibility Study
Schedule D - Form of Engineering and Design Order
Schedule E - Form of Construction and Implementation Order

Schedule F - Form of Certificate of Final Acceptance
Schedule G - Form of Payment Agreement

Upon execution of a Supplemental Agreement or any Schedule thereto by the Parties, such Supplemental Agreement or Schedule shall be binding upon the Parties and shall be incorporated herein by reference as part of this Agreement. In the event of any conflict between this Agreement and a Supplemental Agreement or Schedule thereto, the terms and provisions of this Agreement, as amended from time to time, shall control, and in the event of any conflict between or among a Supplemental Agreement and the Schedules thereto, the document of the latest date mutually agreed upon by the Parties shall control.

1.2 Term. This Agreement shall commence upon the Effective Date and shall continue in effect indefinitely until written notice of termination by either Party in accordance with the provisions of Article 14 hereof; provided that upon such written notice of termination, portions of this Agreement and of one or more Supplemental Agreements previously entered into by the Parties may remain in effect as set forth in Article 14.

ARTICLE 2 - ENERGY AUDIT AND FEASIBILITY STUDY

2.1 Initiation of Audit. From time to time upon the request of the Customer, the Company will meet with the Customer's energy personnel to identify Service Locations to be included in a Company assisted energy efficiency audit. The Parties will agree upon mutually acceptable audit procedures and schedules, identify energy savings technologies to be reviewed, determine the payback criteria desired by the Customer with respect to new installations, and agree upon other matters with respect to the audit, all as set forth in a Supplemental Agreement entered into by the Parties at such time, which shall include an executed Schedule A (Specification of Service Location(s)) and an executed Schedule B (Audit Request). All of the Services to be provided by the

Company in performing or assisting in such audit shall be performed by the Company at no cost to the Customer in accordance with the terms and conditions of such Supplemental Agreement and Schedules.

2.2 Audit Report. Upon completion of an audit conducted by the Parties pursuant to Section 2.1, the Company shall submit to the Customer an audit report (an "**Audit Report**") identifying potential ECOs, if any, at the Customer's Service Location(s) which the Company believes may be cost effective to implement and which may meet the Customer's payback criteria, as set forth in the Audit Request. The Company shall designate in the Audit Report those ECOs, if any, for which it recommends that a detailed feasibility study be performed, and the Customer shall have thirty (30) days from receipt of the Audit Report to notify the Company whether the Customer wishes to receive a feasibility study proposal from the Company concerning such ECOs. If the Customer fails to request such a proposal within the thirty (30) day period, the Company's obligations under the Supplemental Agreement covering the Service Location(s) of the audit shall terminate, without further liability of either Party thereunder. If the Customer requests a feasibility study proposal within such period, then the Company shall submit such a proposal to the Customer, which shall include a designation of the Services to be provided, the technologies to be included in the study and the compensation to be paid to the Company for such Services. The proposal also shall include a completed Schedule C (Agreement for Feasibility Study) of the Supplemental Agreement, to be executed by the Customer and returned to the Company within thirty (30) days of the Customer's receipt of the proposal. If the Customer fails to execute and return to the Company the Schedule C within such period, the Company's obligations under the Supplemental Agreement shall terminate, without further liability of either Party thereunder. If the Customer executes and returns the Schedule C, then the Company shall perform the feasibility study in accordance with the terms thereof.

2.3 Feasibility Report. Pursuant to a feasibility study performed by the Company as set forth in Section 2.2, the Company shall recommend ECOs for implementation at the Service Location(s) surveyed based on a life-cycle cost analysis and estimated energy savings for each ECO. The Company shall prepare and submit to the Customer a written report (a "**Feasibility Report**") specifying each recommended ECO and providing for each an estimate of (a) the expected implementation cost, (b) the anticipated life-cycle cost savings, and (c) the estimated timing for implementation, all of which shall be estimates only, based on the Company's reasonable assumptions. In the case of each ECO examined in a Feasibility Report, the Company shall provide sufficient information to determine whether the Customer's payback criteria described in Schedule C (Agreement for Feasibility Study) of the Supplemental Agreement are expected to be met based on the Company's estimates. Subject to the provisions of Schedule C, if the Feasibility Report submitted by the Company does not identify at least one potential ECO which meets the Customer's agreed upon payback criteria, the Customer shall be under no obligation to pay the Company for the Feasibility Report.

2.4 Engineering and Design Order. The Customer shall have thirty (30) days following receipt of a Feasibility Report to determine if it wishes to proceed with the implementation of any or all of the ECOs recommended by the Company and to supply the Company with a list of the ECOs approved for further action by the Company. If the Customer fails to supply the Company with a list of such approved ECOs within such thirty (30)-day period, the Company's obligations under the applicable Supplemental Agreement shall terminate, without further liability of the Company, and the Customer shall pay the Company for the feasibility study in accordance with the provisions of Schedule C of the Supplemental Agreement (subject to the terms and conditions thereof). If, however, the Customer wishes to proceed with the implementation of one or more ECOs and provides the Company with a list of approved ECOs in accordance with the foregoing, the Company shall provide the Customer with a proposal to develop the design and detailed cost estimate for each approved ECO, which proposal shall include all Services to be performed by the Company in order to quote a definitive fixed price for the installation of each such approved ECO and the compensation to be paid to the Company for such Services. The proposal also shall include a completed Schedule D (Engineering and Design Order) of the Supplemental Agreement, to be executed by the Customer and returned to the Company within thirty (30) days of the Customer's receipt of the proposal. If the Customer fails to execute and return to the Company the Schedule D within such period, the Company's obligations under the applicable Supplemental Agreement shall terminate, without further liability of the Company, and the Customer shall pay the Company for the feasibility study in accordance with the provisions of Schedule C of the Supplemental Agreement. If the Customer executes and returns the Schedule D, then the Company shall perform engineering and design services in accordance with the terms thereof.

ARTICLE 3 - DESIGN AND INSTALLATION

3.1 Design Services and Estimate. Unless otherwise set forth in Schedule D, the Company shall prepare and develop, or cause to be prepared and developed, designs, specifications and installation drawings for each approved ECO identified in Schedule D and shall prepare, through solicitation of bids or otherwise, a detailed cost estimate and proposed implementation schedule for each such ECO. The Company shall coordinate its design and engineering work with the Customer's energy

personnel, and a joint technical review shall be conducted with the Customer, as set forth in Schedule D, when the design documents are approximately 35% and 95% complete. Designs and specifications shall comply with all applicable codes, standards, regulations and permits (if any) and shall be available for inspection by the Customer at any time during normal business hours upon reasonable advance notice. Upon the completion of design and development of a final cost estimate for each approved ECO, the Company shall submit to the Customer a design document (a "**Design Document**") and fixed-price installation proposal (an "**Installation Price Proposal**"), as set forth in Schedule D of the Supplemental Agreement.

3.2 Construction and Implementation Order. If, on the basis of the Company's submission, the Customer wishes to proceed with the installation and construction of one or more ECOs in accordance with the Design Document and Installation Price Proposal, the Customer shall notify the Company thereof within thirty (30) days of the receipt of such submission, and the Parties shall thereupon complete and execute a Schedule E (Construction and Implementation Order) of the Supplemental Agreement providing for such work. The Schedule E shall include the Services to be performed by the Company and the price to be paid by the Customer with respect to each such installed ECO. Prior to executing a Schedule E, the Company will consult with the Customer regarding the selection of any third party contractors to be retained by the Company to perform installation or construction work at the Customer's Service Location(s) (each, an "**Implementation Contractor**"), and the Company shall not select an Implementation Contractor to which the Customer has a reasonable objection (provided, however, that any increased cost resulting from the need to select an alternative Implementation Contractor shall be borne by the Customer). If the Customer does not wish to proceed with the installation of any ECO in accordance with the Design Document and Installation Price Proposal, or if the Parties fail to complete and execute a Schedule E within thirty (30) days following the date of the submission of the Design Document and Installation Price Proposal to the Customer, then the Company's obligations under the applicable Supplemental Agreement shall terminate, without further liability of the Company, and the Customer shall pay the Company for its Services in accordance with the provisions of Schedule D of the Supplemental Agreement. If the Customer elects to proceed with an ECO and the Parties enter into a Schedule E in accordance with the foregoing, then the Company shall provide construction and installation services in accordance with the provisions thereof.

3.3 Elimination of Schedules. Notwithstanding any provision in this Agreement to the contrary, the Parties may elect, by mutual agreement, to eliminate and forego any of the steps outlined above and set forth in Schedules B, C, and D of the Supplemental Agreement; and, in lieu thereof, the Parties may agree to enter directly into a Schedule E (Construction and Implementation Order) on the basis of a fixed price proposal for one or more ECOs submitted by the Company to the Customer for the Service Location(s) set forth in Schedule A. Such an election may occur, for example, in the case of a standard ECO identified by the Company in an Audit Report, which is of such a nature that it does not require a feasibility study or design and engineering services in order for the Company to provide an estimate and quote a fixed-price proposal, or in order for the Customer to request that the ECO be implemented. In such a case, a Supplemental Agreement may consist of some but not all of the Schedules listed in Section 1.1 of this Agreement, and, upon entering into a Schedule E of the Supplemental Agreement, the Parties shall be deemed to have waived the preceding provisions of this Agreement which are no longer applicable.

3.4 Financing. As set forth in Schedule E of the Supplemental Agreement, the Company may, if the Customer meets the Company's credit criteria, provide the Customer the option of obtaining Company furnished financing for installed ECOs, in which case the Customer shall compensate the Company for its Services with respect to such installed ECOs by means of a Service Charge to be added to the Customer's monthly utility bill from [redacted] for a period of time (the "**Payback Period**") agreed to by the Parties. If offered by the Company and requested by the Customer, the terms and conditions of such Company furnished financing, including the amount of the monthly Service Charge and term of the Payback Period, shall be agreed to by the Parties and set forth in a Schedule G (Payment Agreement) of the Supplemental Agreement, which, together with Exhibit A (Customer Consent) to such Payment Agreement, shall be executed by the Customer and returned to the Company concurrently with the execution and return of Schedule E (Construction and Implementation Order) of the Supplemental Agreement. The Customer acknowledges and agrees that the Company, without the Customer's consent, may transfer or assign, for financing purposes, to one or more assignees, all or any part of the Company's right to receive payments under any Schedule G, and, in connection therewith, the Customer agrees, at the request of the Company or any assignee, to execute and deliver, to the extent permitted by applicable law, any and all consents, acknowledgments, financing statements, security agreements, supplements and the like as may be reasonably requested by the Company or an assignee to secure the obligations and liabilities of the Customer under Schedule G and to confirm the rights and interests of the Company or assignee thereunder.

3.5 Construction and Implementation Services. Subject to the provisions of Section 3.2, the Company may employ one or more Implementation Contractors in the performance of Services under Schedule E, which Implementation Contractors shall be the

sole responsibility of the Company and shall have no direct contractual relationship with the Customer. In accordance with Schedule E, the Company and its Implementation Contractors shall (a) procure, construct and install all materials, equipment and systems required to implement each ECO in accordance with the Design Documents, (b) provide and pay for all labor and support services necessary to perform such work, (c) supply to the Customer copies of any operation and maintenance manuals available from the manufacturers, vendors and suppliers of equipment or systems comprising a part of any installed ECO, (d) provide on-site training for a reasonable number of the Customer's designated operating personnel, if such training is reasonably required or necessary for the proper operation and maintenance of any complex equipment or system comprising a part of any installed ECO, and (e) arrange for the final inspection and check-out of each installed ECO. In connection with training provided by the Company, the Customer shall make available training areas at the Customer's Service Location(s), training aids and Customer's operating personnel during normal business hours, as set forth in Schedule E. Upon completion of construction and installation, the Parties shall conduct a final inspection of each installed ECO and if the work is found to be complete, the Customer shall execute and return to the Company a Schedule F (Certificate of Final Acceptance) of the Supplemental Agreement, within twenty (20) days following receipt by the Customer of a notice of substantial completion from the Company. If, upon inspection, the work is not found to be substantially complete, or if any material defect or deficiency exists, then the Customer shall so notify the Company as set forth in Schedule E and the Company shall perform any necessary corrections prior to the Customer executing and returning a Schedule F. The date upon which the Customer issues, or is deemed pursuant to Schedule E to issue, a Schedule F with respect to an ECO shall be referred to herein as the "**Final Acceptance Date**" for such ECO.

3.6 Verification of Energy Savings. If applicable, the Design Documents shall set forth appropriate systems and procedures for measuring and verifying the actual energy savings resulting from the implementation of an ECO. At the Customer's request, the Company shall assist the Customer in measuring and verifying such energy savings with respect to each ECO following the Final Acceptance Date. The Company's compensation for such Services shall be included in the compensation to be paid to the Company pursuant to Schedule E.

ARTICLE 4 - WARRANTY

4.1 General Warranty. The Company warrants to the Customer that the Services performed by the Company under this Agreement and under any Supplemental Agreement shall be performed with the degree of skill and care that is required by current good and sound professional procedures and practices, and in conformance with generally accepted industry standards prevailing at the time the Services are performed. The Company further warrants that all equipment and materials provided and installed by the Company in connection with the implementation of any ECO hereunder shall be new, shall be free from significant defects in design, engineering, materials, construction and workmanship, and shall conform in all material respects with all requirements of law, the final Design Documents applicable to such ECO and all descriptions set forth therein, applicable engineering and construction codes and standards, and all other requirements of this Agreement and of the applicable Supplemental Agreement.

4.2 Warranty Period. The warranty period for the warranties set forth in Section 4.1 shall extend, with respect to each installed ECO, for a period of one (1) year following the Final Acceptance Date for such ECO. The warranty period for any Services performed by the Company hereunder or under any Supplemental Agreement which do not result in the installation or full implementation of an ECO shall extend for a period of one (1) year following the date of completion of such Services.

4.3 Remedies. The Customer shall promptly notify the Company in writing of the discovery during the applicable warranty period of any breach of the Company's warranties under Section 4.1, including any defects in the equipment or materials installed as part of an ECO. As the Customer's sole and exclusive remedy for any such breach of the Company's warranties, the Company shall, at its own cost and expense, as soon as reasonably possible following the Company's receipt of notice of any breach of warranty or the Company's otherwise obtaining knowledge of any breach of warranty, perform any necessary services to correct any deficiencies and repair or, if necessary, replace, rework and retest (if appropriate) defective equipment and construction workmanship and/or provide at the Company's expense any changes, modifications or additions to the work which are necessary due to a failure to perform any Services hereunder and furnish the equipment and materials in accordance with the standards set forth in Section 4.1. All costs incidental to the Company's rework and testing thereof shall be borne by the Company. The Company shall use reasonable efforts to perform such remedial actions and make any tests in such a manner and at such a time so as to minimize disruption of normal operations at the Customer's Service Location. If the Company fails to correct defective or nonconforming Services or materials within a reasonable time after written notice from the Customer, the Customer may correct and, if necessary, retest the same at the Company's expense.

4.4 Vendor Warranties. Without limiting the Company's warranty set forth in Section 4.1, the Company, in procuring materials and equipment for an ECO, shall use reasonable efforts

to obtain standard vendor warranties from the supplier or Implementation Contractor for the benefit of the Company and the Customer, and where practical shall attempt to obtain warranty periods of longer than one (1) year from the Final Acceptance Date, if such extended warranty periods do not increase the Company's procurement costs. The Customer shall be entitled to the benefit of any vendor or Implementation Contractor warranties obtained which are better or of longer duration than those provided by the Company hereunder. If any such warranties are for a period longer than the Company's warranties, they shall be transferred to the Customer at the end of the Company's warranty period hereunder, and the Company shall thereafter act, at the Customer's request and expense, as liaison for the Customer with such vendors or Implementation Contractors in prosecuting any warranty claims.

4.5 Company Principally Responsible. Notwithstanding Section 4.4, the Company shall have primary liability with respect to all Company warranties set forth in Section 4.1, including warranties with respect to materials and equipment, whether or not any event or defect is also covered by a vendor or Implementation Contractor warranty, and the Customer need only look to the Company for corrective action pursuant to Section 4.3; provided that the Company shall receive the benefit of any vendor or Implementation Contractor warranties.

4.6 Warranty Exclusions. The liabilities and obligations of the Company under this Article 4 do not extend to any repairs, adjustments, alterations, replacements or maintenance which may be required as a result of wear and tear in the operation or use of an installed ECO, or as a result of the Customer's failure to operate or maintain an ECO in accordance with the operating manuals or instructions supplied by the Company, or in accordance with the training provided by the Company to Customer's personnel.

4.7 NO IMPLIED WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 4, THE COMPANY MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, CONCERNING THE SERVICES OR ANY ECO, AND THE COMPANY DISCLAIMS ANY WARRANTY IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE. THE COMPANY MAKES NO WARRANTIES OR GUARANTEES OF ANY NATURE WHATSOEVER CONCERNING THE ACTUAL REDUCTION IN THE CUSTOMER'S ENERGY USAGE AS A RESULT OF THE INSTALLATION AND OPERATION OF ANY ECO, AND THE CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY ESTIMATED SAVINGS, ESTIMATED LOAD REDUCTIONS OR OTHER SIMILAR PROJECTIONS SUPPLIED OR MADE BY THE COMPANY SHALL BE FOR INFORMATIONAL PURPOSES ONLY AND SHALL NOT CONSTITUTE A WARRANTY OR GUARANTEE BY THE COMPANY OF THE ACTUAL SAVINGS OR LOAD REDUCTION, IF ANY, WHICH MAY BE EXPERIENCED BY THE CUSTOMER.

ARTICLE 5 - LIMITATION OF THE COMPANY'S LIABILITY

5.1 No Operating or Maintenance Responsibility. Except as otherwise specifically provided in Article 4, the Company shall have no responsibility or liability with respect to any ECO after the Final Acceptance Date thereof, and the Customer shall be solely responsible for the operation, maintenance and utilization of each ECO after such date. Without limiting the generality of the foregoing, no payment obligation of the Customer hereunder, or under any Supplemental Agreement or Schedule, shall be affected by the actual performance of any ECO following the Final Acceptance Date, and the Service Charge to be paid by the Customer pursuant to Schedule G of any Supplemental Agreement shall not be measured or determined in any manner by the actual amount of energy savings or load reduction resulting from the implementation or operation of any ECO.

5.2 Consequential Damages. In no event shall the Company, its officers, directors, partners, shareholders, employees or affiliates, or any Implementation Contractor or its employees or affiliates, be liable to the Customer for special, indirect, exemplary, punitive or consequential damages of any nature whatsoever connected with or resulting from the Services or from performance or non-performance of this Agreement or any Supplemental Agreement or Schedule, including damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective or whether such claims are based upon negligence, strict liability, contract, operation of law or otherwise.

5.3 Intent. Except in cases of willful misconduct, the Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionment's of liability, and exclusive remedy provisions expressed throughout this Agreement and in any Supplemental Agreement or Schedule shall apply even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its and their partners, shareholders, directors, officers, employees, contractors and agents. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the termination, suspension, cancellation or rescission of this Agreement, any Supplemental Agreement,

Schedule or any other agreement entered into pursuant hereto. No officer, director, employee, agent or other individual representative of either Party shall be personally responsible for any liability arising under this Agreement or any Supplemental Agreement or Schedule.

5.4 Remedies. Where remedies are expressly afforded by this Agreement or any Supplemental Agreement or Schedule with respect to the Services provided by the Company, such remedies are intended by the Parties to be the sole and exclusive remedies of the Customer for liabilities of the Company arising out of or in connection with the Services or this Agreement, notwithstanding any remedy otherwise available at law or in equity.

ARTICLE 6 - ACCESS AND INFORMATION

6.1 Access to Service Locations. Upon the request of the Company, the Customer shall provide the Company and its Implementation Contractors with reasonable access to the Service Location(s) to enable the Company to perform all Services hereunder and under any Supplemental Agreement and to verify and confirm the operation of any installed ECO following the Final Acceptance Date. The Company also shall have access to the Service Location(s) during the warranty period specified in Article 4 for purposes of performing its obligations thereunder. The Customer shall provide the Company with storage and laydown areas at the Service Location(s), as applicable, during the installation of ECOs and shall make available any construction power and other utilities required by the Company and its Implementation Contractors to perform the Services. The Company and its Implementation Contractors shall observe all of the Customer's safety and security procedures at the Service Location(s), to the extent made known to the Company, and shall not unreasonably disturb or interrupt the Customer's operations at such location(s).

6.2 Information. The Customer shall promptly comply with all reasonable requests by the Company for information concerning the Service Location(s), as required by the Company to perform the Services, and information to enable the Company to determine the actual energy savings and load reduction achieved at the Service Location(s) as a result of ECO implementation. The Customer also shall provide the Company with any information and other assistance reasonably required to verify to the [redacted], (the "**Commission**") the demand and energy savings achieved and the related costs thereof. The Customer agrees that the Company may disclose such information obtained by the Company or provided by the Customer pursuant to this Agreement or any Supplemental Agreement to the Commission and to any other public authority having jurisdiction.

ARTICLE 7 - DOCUMENTS AND DATA

7.1 Ownership Rights. Any Audit Report, Feasibility Study, Design Document or other report or document furnished or to be furnished by the Company pursuant to this Agreement or any Supplemental Agreement shall become the property of the Customer and may be used by the Customer for the operation, maintenance, repair or alteration of any ECO installed by the Company. Notwithstanding the foregoing, the Customer shall not acquire any rights or interest with respect to the Company's or its Implementation Contractors' proprietary technology, know-how, processes or computer software that may be used in connection with the Services or the supply of equipment and materials hereunder.

7.2 Use of Documents After Termination. If any Supplemental Agreement or Schedule is terminated, in whole or in part, by the Customer prior to completion of the installation of any ECO, or the Customer chooses not to proceed with the implementation of an ECO as set forth herein, then the Customer shall be entitled to use for its own purposes any Audit Report, Feasibility Study, Design Document or other documents furnished by the Company hereunder, upon payment of the Company therefor to the extent required in this Agreement or any Supplemental Agreement; provided, however, that the Customer shall be obligated to indemnify, defend and hold harmless the Company and its Implementation Contractors with respect to all claims, actions, liabilities and costs (including attorneys' fees and costs of litigation) arising out of such use by the Customer.

ARTICLE 8 - INSURANCE

8.1 Insurance to be Maintained by the Company. At any time that the Company is performing Services under this Agreement or under any Supplemental Agreement at any Customer Service Location, the Company shall keep and maintain, with insurers of recognized responsibility, the following insurance, which shall include the minimum coverages and limits set forth below:

(a) Worker's Compensation Insurance covering all of the Company's employees as required by law;

(b) Commercial General Liability Insurance, including contractual liability, premises and operations, broad-form property damage, products/completed operations, independent contractor, and personal injury coverages, with a limit of not less than $1,000,000 for each occurrence, combined single limit; and

(c) Commercial Automobile Liability

Insurance, including coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles, for both bodily injury and property damage in accordance with state legal requirements, having not less than $1,000,000 combined single limit per occurrence.

8.2 Policy Requirements. Any insurance carried by the Customer with respect to the Services of the Company shall be deemed to be excess and not contributory insurance, and the Company's insurance to be provided hereunder shall be primary to the Customer's coverage for all purposes, despite any conflicting provisions in the policies to the contrary. No policy maintained by the Company hereunder shall be subject to cancellation or reduction in coverage or amount, except upon thirty (30) days prior written notice thereof (ten (10) days for non-payment of premiums) to the Customer at its address set forth in Section 17.1. The Company shall provide proof of coverage to the Customer with respect to the insurance required to be maintained hereunder at any time upon the Customer's request.

8.3 Implementation Contractor Insurance. The Company shall require such liability insurance of its Implementation Contractors performing services at a Service Location as shall be reasonable and in accordance with industry practices in relation to the work or other items being provided by each such Implementation Contractor. Upon the Customer's request, the Company shall provide the Customer evidence of the insurance coverages carried by any Implementation Contractor.

ARTICLE 9 - INDEMNIFICATION

9.1 Indemnity Obligation. To the fullest extent permitted by law, each Party (an "**Indemnitor**") shall defend, indemnify and hold harmless the other Party, its affiliates and contractors and their respective directors, partners, shareholders, officers, agents and employees (collectively, the "**Indemnitees**"), from and against all loss, damage, liability and expense (including court costs and reasonable attorneys' fees) resulting from injury to or death of persons, including employees of the Indemnitor or any Indemnitee, and from loss to or damage of property, for which any Indemnitee becomes liable caused by or arising out of the fault or negligent acts or omissions, whether active or passive, of the Indemnitor or anyone employed by the Indemnitor in connection with activities or Services under this Agreement, except such loss, damage, liability or expense as may be caused by the willful misconduct or negligence of any Indemnitee. The Company's obligation under the foregoing indemnification shall include full indemnification of the Customer from any of the foregoing which is caused by the fault or negligence, whether active or passive, of any Implementation Contractor retained by the Company, including the subcontractors, officers, employees and agents of any such Implementation Contractor.

9.2 Employee Claims. In any and all claims against an Indemnitee by an employee of an Indemnitor or of anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations stated in Section 9.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnitor under any applicable worker's compensation law, disability law, or other employee benefit law.

9.3 Comparative Negligence. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed and each Party shall bear the proportionate cost of any loss, damage, expense or liability attributable to that Party's negligence.

9.4 Defense of Claims. An Indemnitor shall have the right to defend an Indemnitee by counsel (including insurance counsel) of Indemnitor's selection reasonably satisfactory to the Indemnitee, with respect to any claims within the indemnification obligations hereof. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. No Indemnitee shall settle any such claims or actions without prior written consent of the Indemnitor.

9.5 Payment. In the event that either Party is required to make an indemnity payment under this Article 9, such Party shall promptly pay the Indemnitee the amount so determined. The amount owing to the Indemnitee shall be the amount of such Indemnitee's actual out-of-pocket loss or expense, net of any insurance or other recovery paid to such Indemnitee. If there should be a dispute as to the amount or manner of determination of any indemnity obligation, the Indemnitor shall nevertheless pay when due such portion, if any, of the obligation as is not subject to dispute. Upon the payment in full of any claim, the Indemnitor making payment shall be subrogated to the rights of the Indemnitee against any person with respect to the subject matter of such claim.

9.6 Survival. The obligations of the respective Parties under this Article 9 shall survive the termination of the Agreement or of any Supplemental Agreement with respect to any claims or liability arising prior to such termination.

ARTICLE 10 - HAZARDOUS MATERIALS

The Customer shall have sole responsibility and liability with respect to the proper identification, removal and disposal of any hazardous materials (e.g., asbestos) or correction of any hazardous

condition at a Service Location which affects the Company's performance of the Services hereunder or under any Supplemental Agreement. If, during the course of performing the Services, the Company becomes aware of any such hazardous materials or hazardous condition, the Company shall report such matter to the Customer immediately and before disturbing (or further disturbing) such materials or condition. Work in the affected areas shall be resumed by the Company only upon the written direction of the Customer, when such materials have been removed or such condition has been corrected, and then only if such continuation of work shall not violate any applicable law or permit. The Customer shall indemnify, defend and hold harmless the Company and its Implementation Contractors with respect to any liability, cost or expense of whatever nature incurred as a result of any such hazardous materials or hazardous condition.

ARTICLE 11 - TITLE AND RISK OF LOSS

11.1 **Passage of Title**. Subject to the provisions of Section 11.2, legal title to each installed ECO, including all equipment and materials comprising a part thereof, shall pass to the Customer upon the Final Acceptance Date for the ECO. Notwithstanding the foregoing, the Customer shall bear all risk of loss or damage of any kind with respect to all or any part of an ECO located at a Service Location, whether installed or not, and the Customer shall indemnify and pay the Company for the repair or replacement of any ECO or component thereof stolen, lost, destroyed or damaged at a Service Location, unless such loss or damage is directly caused by the Company or an Implementation Contractor retained by the Company. Loss or damage to an ECO directly caused by the Company or its Implementation Contractor shall be the responsibility of the Company.

11.2 **Security Interest**. Notwithstanding the provisions of Section 11.1, following the Final Acceptance Date and passage of title to the Customer, the Company or its assignee shall have a purchase money security interest (to the extent permitted by law) in each installed ECO and the components thereof to secure the compensation payable to the Company hereunder or under the applicable Supplemental Agreement until paid in full. The Customer agrees (to the extent permitted by law) to execute and deliver all documents requested by the Company or its assignee to protect and maintain such purchase money security interest.

11.3 **Warranty of Title**. Except as set forth in Section 11.2, the Company warrants good title to all ECOs and components thereof furnished or installed by the Company or its Implementation Contractors, and the Company warrants that title to such ECOs and components shall pass to and vest in the Customer as set forth in Section 11.1 free and clear of all liens, claims, charges, security interests, encumbrances and rights of other parties arising as a result of the actions or failure to act of the Company, its Implementation Contractors, or their employees.

ARTICLE 12 - FORCE MAJEURE

Neither the Company nor the Customer shall be considered to be in default in the performance of its obligations under this Agreement or under any Supplemental Agreement or Schedule, except obligations to make payments with respect to amounts already accrued, to the extent that performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of, and not a result of the fault or negligence of, the affected Party (a "**Force Majeure Event**"). If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable.

ARTICLE 13 - CHANGES

The Customer shall have the right to request changes in the Services (each, a "**Change**"), consisting of modifications or additions to, or deletions from, any work to be performed or materials to be provided by the Company pursuant to this Agreement, or any Supplemental Agreement or Schedule thereto. A Change also may result from any failure of the Customer, or its representatives or agents, to fulfill its obligations hereunder, which failure materially adversely affects the Company's cost, schedule or performance under this Agreement or any Supplemental Agreement or Schedule. Should any Change cause an increase or decrease in the cost of or time required for the Company's performance, or otherwise affect any provision of this Agreement or any Supplemental Agreement or Schedule, an equitable adjustment shall be made to the Company's compensation and any other provision of this Agreement or of any Supplemental Agreement or Schedule which is thereby affected, by mutual agreement of the Parties. The Company shall not be obligated to proceed with or perform any Change requested by the Customer hereunder until the Parties have agreed in writing upon any such adjustments resulting from the Change. Except to the extent a Change specifically results in an amendment or adjustment to one or more provisions of this Agreement or of any Supplemental Agreement or Schedule, all provisions hereof and thereof shall apply to all Changes, and no Change shall be implied as a result of any other Change.

ARTICLE 14 - TERMINATION AND DEFAULT

14.1 Termination for Convenience. Either Party may terminate this Agreement or any Supplemental Agreement, in its sole discretion, at any time, without further liability, upon ten (10) days prior written notice to the other Party; provided, however, that such termination shall not apply with respect to any Services or work of the Company previously ordered by the Customer under a Supplemental Agreement Schedule entered into by the Parties on or prior to the termination date. With respect to any such previously ordered Services or work, including any previously implemented ECO or ECO under implementation, this Agreement and the applicable Supplemental Agreement and Schedules entered into thereunder, shall remain in full force and effect in accordance with their terms, unless the Parties specifically agree in writing to the contrary.

14.2 Termination for Cause.

14.2.1 Termination by Customer for Company Default. The Customer shall have the right to terminate this Agreement and any Supplemental Agreement for cause if (a) any proceeding is instituted against the Company seeking to adjudicate the Company as bankrupt or insolvent, or if the Company makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the Company, or if the Company files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts and, in the case of any such proceeding instituted against the Company (but not by the Company) such proceeding is not dismissed within sixty (60) days of such filing, or (b) the Company substantially fails to perform its obligations hereunder or under any Supplemental Agreement; provided, in the case of clause (b), that the Customer first has given the Company fifteen (15) days written notice of default of any payment obligation or thirty (30) days written notice of any other default, and the Company has failed to cure the default (or, if the non-payment default cannot be cured within thirty (30) days, the Company has not commenced the cure within that period and diligently proceeds therewith). In the case of such a termination by the Customer, to the extent that the reasonable and necessary costs of completing any Services previously ordered by the Customer hereunder or under any Supplemental Agreement or Schedule, including compensation for obtaining a replacement contractor or for obtaining additional professional services required as a consequence of the Company's breach, exceed those costs which would have been payable to the Company but for the Company's breach, the Company shall pay the difference to the Customer. The Company, in turn, shall be entitled to be paid an amount (to the extent not already paid) equal to the sum of all of its reasonable costs incurred in performing the Services up to the termination date, including all costs incurred with respect to any Implementation Contractors; provided that the Company makes available to the Customer all of the work product, equipment and materials produced or obtained by the Company in performing such Services. Notwithstanding the foregoing and notwithstanding any other provisions set forth herein or in any Supplemental Agreement or Schedule to the contrary, such a termination by the Customer shall not affect or diminish in any way any liability already incurred by the Customer pursuant to any Schedule G (Payment Agreement) already entered into by the Customer prior to the termination date, and each such Schedule G shall remain in full force and effect.

14.2.2 Termination by the Company for Customer Default. The Company shall have the right to terminate this Agreement and any Supplemental Agreement for cause if (a) the Customer makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the Customer, or if the Customer files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against the Customer (but not by the Customer) such proceeding is not dismissed within sixty (60) days of such filing, or (b) if the Customer substantially fails to perform its obligations hereunder or under any Supplemental Agreement, including any payment obligation; provided, in the case of clause (b), that the Company first has given fifteen (15) days written notice of default of any payment obligation or thirty (30) days written notice of any other default, and the Customer has failed to cure the default (or, if the non-payment default cannot be cured within thirty (30) days, has not commenced the cure within that period and diligently proceeds therewith). In the event of such a termination by the Company, the Company shall be entitled, as its sole remedy, to be paid an amount equal to the sum of (i) all amounts due and payable and not already paid under any Supplemental Agreement or Schedule for Services performed by the Company prior to the termination date, (ii) an amount equal to the sum of all of the Company's reasonable costs and expenses incurred in performing Services up to the termination date, to the extent the Company's compensation for such Services is not included in the amounts set forth in clause (i) of the foregoing, and (iii) all of the Company's reasonable costs and expenses of termination, including cancellation charges and demobilization costs assessed against the Company by its Implementation Contractors. Notwithstanding the foregoing and notwithstanding any other provisions set forth herein or in any Supplemental Agreement or Schedule to the contrary, such a termination by the Company shall not in itself affect or diminish in any way any liability already incurred by the Customer pursuant to any Schedule G (Payment Agreement) already entered into by the Customer prior to the termination date, and each such Schedule G shall remain in full force and effect.

14.2.3 Payment. All amounts payable by either Party pursuant

to this Section 14.2 shall be due within thirty (30) days following the submission by the other Party of an invoice therefor, which invoice shall include an itemization of costs with respect to any amounts measured on the basis of reimbursable costs. Such reimbursable costs also shall be subject to audit by the other Party, at the other Party's expense upon reasonable advance notice; provided that such audit shall be completed within sixty (60) days following the submission of the invoice. Amounts not paid by either Party to the other when due hereunder shall bear interest, from the date payment was due to and including the date of payment at a rate equal to the lesser of one percent (1%) per month, or the maximum rate permitted by applicable law (the "**Delayed Payment Rate**").

ARTICLE 15 - DISPUTES

15.1 Resolution by Arbitration. Any controversy, dispute or claim between the Parties arising out of or relating to this Agreement, or any Supplemental Agreement or Schedule, or the breach thereof, which the Parties are unable to resolve by consultation and negotiation shall be submitted to arbitration and shall be settled by arbitration in accordance with the Commercial Arbitration Rules (the "**Rules**") of the American Arbitration Association ("**AAA**") then in effect and the provisions of this Article. No suit at law which seeks to resolve any controversy, dispute or claim between the Parties shall be instituted by either Party, except where such suit is instituted to appeal or confirm an arbitration award rendered pursuant to this Article 15. Any controversy, dispute or claim submitted to arbitration shall be settled by arbitration in [redacted], [redacted], unless otherwise agreed by the Parties. Any award entered pursuant to such arbitration shall be binding on both Parties, and judgment upon the award rendered or received may be entered in a court of competent jurisdiction in the State of [redacted]. Exclusive jurisdiction for the entry of judgment on any arbitration award relative to any controversy or claim between the Parties shall lie in any court of appropriate subject matter jurisdiction located in [redacted], and the Parties hereby expressly subject themselves to the personal jurisdiction of said court for entry of any such judgment and for the resolution of any dispute, action, or suit arising in connection with the entry of such judgment.

15.2 Arbitration Proceeding. The controversy, dispute or claim to be arbitrated shall be referred to one (1) arbitrator to be selected by the Parties by alternately striking from a list of nine (9) arbitrators provided by the AAA. All decisions and awards shall be made by the arbitrator in writing. After a notice of demand for arbitration has been filed in accordance with the Rules, the Parties may, to the extent permitted by the Rules, make discovery of any matter relevant to such dispute before the hearing. Any costs associated with arbitration under this Article 15, including but not limited to attorneys fees and witness expenses, shall be paid by the Party originally incurring the costs and the costs of the arbitrator shall be shared equally by the Parties.

15.3 Pendency of Dispute. The existence of any dispute, controversy or claim under this Agreement, or any Supplemental Agreement or Schedule, or the pendency of the dispute settlement or resolution procedures set forth herein shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations hereunder or thereunder.

ARTICLE 16 - ASSIGNMENT

16.1 Agreement Binding. This Agreement and each Supplemental Agreement entered into by the Parties shall be binding upon, and shall inure to the benefit of, the Parties and their successors and permitted assigns.

16.2 Permitted Assignment. This Agreement and each Supplemental Agreement entered into by the Parties shall not be assignable by either Party, in whole or in part (except as otherwise provided in Section 3.4 hereof), without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld or delayed, except that this Agreement may be assigned without such consent to an affiliate or successor of either Party, or to a person acquiring all or a controlling interest in the business assets of such Party; provided that, unless otherwise expressly agreed by the Parties, any such assignment pursuant to the foregoing shall not relieve the assigning Party of any of its obligations under this Agreement or any such Supplemental Agreement. Any assignment which does not comply with the provisions of this Section 16.2 shall be null and void.

16.3 No Third Party Beneficiaries. Except as otherwise expressly provided herein, neither this Agreement nor any Supplemental Agreement or Schedule, nor any term or provision hereof or thereof, shall be construed as being for the benefit of any party not a signatory hereto.

ARTICLE 17 - NOTICES

17.1 In Writing. All notices, demands, offers or other written communications required or permitted to be given pursuant to this Agreement, or any Supplemental Agreement or Schedule, shall be in a writing signed by the Party giving such notice and shall be mailed by U.S. Mail, postage prepaid, couriered or faxed as follows:

If to the Company:

If to the Customer:

Each Party shall have the right to change the place to which notices shall be sent or delivered or to specify one additional address to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.

17.2 Timing of Receipt. Notices delivered by mail shall be deemed received three (3) working days after the date of the postmark, and notices delivered by overnight courier shall be deemed received on the date when left at the address of the recipient. Notices sent by fax shall be effective the date faxed, if a working day, or the following working day otherwise; provided that all faxes shall be confirmed by follow-up mail within three (3) working days.

ARTICLE 18 - GENERAL PROVISIONS

18.1 Entire Agreement. This Agreement, including the Exhibits and Schedules attached hereto, sets forth the full and complete understanding of the Parties relating to the subject matter hereof as of the Effective Date, and supersedes any and all negotiations, agreements and representations made or dated prior hereto with respect to the subject matter of this Agreement. Any actions or Services described in this Agreement which were performed or implemented by the Parties prior to the Effective Date shall for all purposes be deemed to have been performed under this Agreement.

18.2 Amendments. No change, amendment or modification of this Agreement or any Supplemental Agreement or Schedule thereto shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

18.3 Status of the Parties. The Company and its Implementation Contractors shall be independent contractors with respect to the Services performed hereunder and under any Supplemental Agreement or Schedule, irrespective of whether such Implementation Contractors are approved by the Customer, and neither the Company nor its Implementation Contractors, nor the employees of either, shall be deemed to be the employees, representatives or agents of the Customer. Nothing in this Agreement or any Supplemental Agreement or Schedule shall be construed as inconsistent with the foregoing independent contractor status or relationship, or as creating or implying any partnership, joint venture, trust or other relationship between the Company and the Customer.

18.4 Drafting Interpretations and Costs. Preparation and negotiation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating and finalizing this Agreement and any Supplemental Agreement or Schedule.

18.5 Captions. The captions contained in this Agreement or in any Supplemental Agreement or Schedule are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of such document or the intent of any provision contained therein.

18.6 Severability. The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Agreement or any Supplemental Agreement or Schedule shall not affect the validity of the remaining portions thereof so long as the material purposes of such document can be determined and effectuated.

18.7 Further Assurances. The Company and the Customer each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either Party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.

18.8 Applicable Law. This Agreement and each Supplemental Agreement and Schedule thereof, shall be governed by, construed and enforced in accordance with the laws of the State of Florida, exclusive of conflicts of laws provisions.

18.9 Counterparts. This Agreement and any Supplemental Agreement or Schedule may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.

18.10 No Waiver. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Agreement or any Supplemental Agreement or Schedule, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their duly authorized representatives as of the Effective Date.

THE COMPANY:

_____

By:

Its:

THE CUSTOMER:

_____

By:

Its: