



PROFESSIONAL SERVICE AGREEMENT

This **Professional Service Agreement** (the “**Agreement**”) is dated the date last signed below (the “**Effective Date**”) and is between the **Department of Administrative Services, Facilities Management Division of Milwaukee County**, a Wisconsin municipal body corporate located at 901 N. 9th Street, Milwaukee, WI 53233 (the “**County**”) and _____ **Contractor Legal Name**, a _____ **type of business entity (e.g. corporation, limited liability company)** with a primary place of business at _____ **headquarters address, city, state** (the “**Contractor**”), for the purpose of organizational change consulting services. The Contractor and the County are referred to as the “**Parties**” throughout this Agreement.

1. **Order of Precedence.** The Agreement includes the following documents, incorporated by reference, in the following order of precedence, which will be followed in resolving any inconsistencies between the terms of the Agreement and the terms of any Exhibits, Attachments, or Amendments to the Agreement:
 - a. This Agreement, including any exhibits to this Agreement, which shall have precedence in the order they are attached;
 - b. Milwaukee County RFP-_____ (the “**RFP**”); and
 - c. Contractor’s RFP Proposal dated _____ [the “**Proposal**”).

2. **Performance of Services.**
 - a. **Scope.** Contractor shall perform services as identified in the Contractor’s Proposal.

 - b. **Staffing.** Contractor represents that it possesses the necessary skill, expertise, and capability, including the availability of sufficient personnel with the necessary qualifications, to perform the services required by this Agreement. Contractor shall provide, at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be the employees of, or have any other contractual relationship with, the County.

 - c. **Subcontracting and Contractor’s Agents.** The Contractor shall have a written and enforceable agreement in place with each of its subcontractors that will enable the Contractor to perform its obligations under this Agreement. Agents used or supplied by the Contractor in the performance of any services are employees or agents of the Contractor, and under no circumstances are such individuals to be considered employees of the County. The Contractor shall have the sole responsibility for the conduct of its personnel and agents, and for payment of personnel and/or agent entire compensation, including but not limited to salary, withholding of income and social security taxes, workers’ compensation, employee and disability benefits, and the like. The Contractor shall be responsible for all employer obligations toward all of its personnel and/or agents under all applicable laws and all of the County’s policies.

 - d. **Replacement of Contractor’s Personnel.** Contractor shall not replace the employees set forth in the Proposal without the prior written approval of the County. Any replacement of



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listed personnel shall be by persons of equal qualifications, which shall be attested to by Contractor. County may require Contractor to remove and/or replace any such personnel upon fifteen (15) days' written notice to Contractor. Without limitation to the foregoing, Contractor will immediately remove and replace any Contractor personnel if County determines that such personnel violated, or may have violated, County's policies or work rules, or any other rule, regulation, statute, or law. Contractor agrees to maintain a consistent skill level among all replacement personnel, whether Contractor or County instigated the replacement.

- e. **Reports.** Contractor shall provide written progress reports to County on a monthly basis, in a form and manner determined by the County. Upon completion of the services, Contractor shall provide County with a digital copy of the final report and deliverables in a mutually agreed upon format. The Contractor shall make one, in person, oral presentations concerning the final report, at times and locations selected by the County.
- f. **Adding or Changing Services.** The Parties may add or change services provided under this Agreement by properly executed amendment. The Contractor shall neither add to nor change its current services prior to authorization by the County through execution of an amendment. The County is not responsible for payment for any new or changed services rendered prior to the Contractor's receipt of appropriate authorization as described in this Section.

3. Term and Termination.

- a. **Term.** This Agreement shall commence on the Effective Date and shall continue in full force and effect for 12 months (the "**Term**").
- b. **Termination.** The Parties may terminate this Agreement as detailed in this Section. Upon termination of this Agreement for any reason, the County shall retain any and all fully vested rights that exist on the effective date of that termination.
 - i. **Termination for Breach.** If either Party fails to fulfill its obligations under this Agreement in a timely or proper manner, or violates any of its provisions, the other Party shall there upon have the right to terminate by giving thirty (30) days written notice of termination of Agreement, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, the breaching Party cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination due to Contractor's breach, the County will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Agreement.
 - ii. **Unrestricted Right of Termination by County.** The County further reserves the right to terminate the Agreement at any time for any reason by giving Contractor thirty (30) days written notice of such termination. In the event of said termination and upon receipt of notice of termination, the Contractor shall reduce its activities hereunder as mutually agreed to by the Parties. Upon said termination, Contractor shall be paid for



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all services rendered through the date of termination. The County may terminate the Agreement without liability if the Milwaukee County Board of Supervisors fails to appropriate monies required for the completion of any services under the Agreement.

- iii. **Return of Unearned or Unspent Funds.** Termination by either Party must include return of unearned or unspent funds to Milwaukee County.
- iv. **County's Retention of Rights.** County shall retain all fully vested rights that exist on the effective date of termination. If County terminates this Agreement, County's liability and Contractor's exclusive remedy will be limited to County paying Contractor for services and deliverables completed in accordance with the terms of this Agreement or specific performance by the County of any obligations under this Agreement until the termination date, provided, however, that any payment will not exceed unpaid amounts due.

4. Compensation.

- a. **Fees & Payments.** The County shall compensate the Contractor pursuant to the terms set forth in the RFP and Proposal. The total compensation to the Contractor for work performed under the Agreement shall not exceed \$ [REDACTED], unless agreed to by the County in writing.
- b. **Not to Exceed Amount.** The Contractor shall notify County 30 days before the value of goods and services provided under this Agreement reaches the not to exceed amount. The Contractor shall not perform any service nor provide any goods that would result in the County owing the Contractor more than the not to exceed amount. Regardless of goods or services provided the County will not pay any amount beyond the not to exceed amount. The only way to increase the value of this Agreement beyond the not to exceed amount is by a written amendment signed by both Parties.
- c. **Nature of Compensation.** Unless otherwise stated in this section, the compensation to the Contractor described in this section shall include any and all out-of-pocket expenses incurred by the Contractor and/or its employees, agents, subcontractors, or other personnel including, without limitation, travel expenses.
- d. **Prepayment.** Milwaukee County will not pre-pay for services.
- e. **Invoicing.** The Contractor shall invoice Milwaukee County on a monthly basis consistent with the amounts set forth in this Agreement and as stated in this Section. Contractor shall send the County an invoice promptly after providing a service or deliverable that includes the following minimum information:
 - 1) The Agreement's INFOR Contract # OR Purchase Order #.
 - 2) The Effective Date of the Agreement.
 - 3) The date the service or deliverable was provided.
 - 4) Contractor's business name.



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- 5) Payee name.
- 6) Contractor's address.
- 7) An invoice number.
- 8) An invoice date.
- 9) Contractor's email and phone # for billing issues.
- 10) An invoice line for each item or service.
- 11) Sufficient detail to support each invoice line (for example, units billed and unit rate, or hours billed and hourly rate).
- 12) The date due.
- 13) The amount billed.

If requesting payment by Check, Contractor must include Contractor's remittance address.

If requesting payment by ACH, Contractor must include:

- 1) Bank Name.
- 2) Bank Location (city and state).
- 3) Bank's American Bankers Association routing number.
- 4) Payee's Bank Account #.
- 5) Type of Account (i.e. Checking or Savings).
- 6) Email address of Contractor's Accounts Receivable/Finance Department who should receive the remittance information (the receipt that the funds reached Contractor's bank account).

The Contractor must submit invoices to the following recipient in order for Contractor's invoices to be considered received by the County:

[Name of County Contact for Invoices
Street Address
City, State, Zip Code
E-mail Address]
cc: APinvoices@milwaukeecountywi.gov

As a matter of practice, the County attempts to pay all invoices within 30 days of receipt of an accurate invoice from Contractor and County's acceptance of the corresponding services that comply with the terms of this Agreement.

- f. Cost of Performance of Obligations.** Contractor is responsible for all charges, costs, and fees incurred as a result of performing its obligations and rendering its services under this Agreement, unless otherwise indicated. The Contractor shall indemnify and hold the County harmless from any claims for payment of such charges, costs, and fees by any third party.
- g. State Prompt Pay Law Exemption.** State Prompt Pay Law, Section 66.285, does not apply to this Agreement.



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include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. The contractor will post in conspicuous places, available for employment, notices to be provided by the county setting forth the provisions of the nondiscriminatory clause. A violation of this provision shall be sufficient cause for the county to terminate the contract without liability for the uncompleted portion or for any materials or services purchased or paid for by the contractor for use in completing the contract.”

b. Compliance with MCCO §56.17(1d).

The Contractor shall comply with MCCO §56.17(1d), which states:

“The Contractor agrees that it will strive to implement the principles of equal employment opportunities through an effective affirmative action program, and will so certify prior to the award of the contract, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment in all divisions of the contractor's workforce, where these groups may have been previously under-utilized and under-represented. The contractor also agrees that in the event of any dispute as to compliance with the aforestated requirements, it shall be his/her responsibility to show that he/she has met all such requirements.”

c. Violations. When a violation of the non-discrimination, equal opportunity or Affirmative Action provisions of this Section has been determined by County, Contractor shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of a violation to Contractor, further violations of this Section are committed during the Term, County may terminate the Agreement by contacting the Contractor via the information set forth in the Notices below. Such termination shall be without liability for the uncompleted portion or any materials or services purchased or paid for by the Contractor for use in completing the Agreement, or it may permit Contractor to complete the Agreement, but, in either event, Contractor may be ineligible to bid on any future contracts let by County.

8. Targeted Business Enterprise Goals.

a. Contractor shall comply with all provisions imposed by or pursuant to MCCO Chapter [42](#) regarding Targeted Business Enterprise (“**TBE**”) participation on County projects, when and where applicable, and as said Ordinance may be amended. The County shall notify Contractor in the event that new ordinances are issued.

b. The Parties agree that no TBE goal has been established and no goal is required under this Agreement.



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- 9. Publicity, Marketing, and Use of Milwaukee County's Name or Marks.** The Contractor shall not use the name, seal, insignia, logo, image, or any other intellectual property or likeness of Milwaukee County in any marketing, advertising, press release, publication, case study, or other promotional materials without the County's prior written consent. The County expressly grants the Contractor permission to include its name and logo in any client list(s) compiled and used by the Contractor for purposes of demonstrating current or past performance but does not permit the Contractor to use these marks in any manner which implies Milwaukee County's endorsement of the Contractor and/or its goods or services. The Contractor further agrees not to issue any public statements, media releases, or respond to inquiries from the press regarding this Agreement or the Contractor's relationship with the County without first obtaining written approval from the County. This provision shall survive termination of this Agreement.
- 10. Indemnity.** Contractor agrees to the fullest extent permitted by law to indemnify, defend and hold harmless, County, and its agents, officers and employees, from and against all loss or expense including costs and reasonable attorney's fees by reason of statutory benefits under Workers' Compensation Laws, or liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of Contractor and/or its agents which may arise out of or are connected with the activities covered by this Agreement. The County's liability is limited by Wis. Stats. Section 893.80 for general liability and Wis. Stats. Section 345.05(3) for automobile liability.
- 11. Insurance.** Contractor and all parties furnishing services or products to the County must provide the County with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the Agreement. All parties shall, at their sole expense, maintain the following insurance:
- a. Commercial General Liability Insurance including contractual coverage:**
The limits of this insurance for bodily injury and property damage combined shall be at least:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising injury Limit	\$1,000,000

 - b. Business Automobile Liability Insurance:**
Should the performance of this Agreement involve the use of automobiles, Contractor shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Contractor shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.

 - c. Workers' Compensation Insurance:**
Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.



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- d. Employers Liability Insurance:**
Such insurance shall provide limits of not less than \$500,000 policy limit.

- e. Professional Liability/Errors and Omissions:**
This insurance shall insure the professional services of the Contractor for the scope of services to be provided under this Agreement. Such insurance shall provide limits of not less than \$1,000,000 per occurrence.

- f. Excess/Umbrella Liability Insurance:**
Such insurance shall provide additional limits of not less than \$1,000,000 per occurrence in excess of the limits stated in (a), (b), and (d) above.

- g. Additional Requirements.** Contractor shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, subcontractors shall also comply with the additional requirements listed below.

The insurance specified in (a), (b) and (f) above shall: (a) name Milwaukee County, including its directors, officers, employees and agents as additional insureds by endorsement to the policies, and, (b) provide that such insurance is primary coverage with respect to all insureds and additional insureds.

Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against Milwaukee County, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.

The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. The County may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order.

Contractor shall provide certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Contractor shall require all insurers to provide Milwaukee County with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- or better.

- 12. Confidentiality.** Contractor agrees that all work product and oral reporting shall be provided only to or as directed by County employees working on this Agreement. Contractor further agrees that, aside from obligations under the public records law as more fully described in this Agreement and as determined in cooperation with the County, Contractor shall maintain all materials and communications, regardless of form, medium or method of communication, developed under or relating to this Agreement as confidential and shall disclose them only to or as directed by County employees working on this Agreement. Contractor shall only use confidential information for



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activities pursuant to and related to the performance of this Agreement. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable local, state, and federal law. Contractor understands that breach of confidentiality, especially regarding information that is not subject to public records law disclosure, will harm or create liability for the County and will require Contractor to indemnify County as provided in of this Agreement. This provision shall survive termination of this Agreement.

13. Prohibited Practices.

- a. **Conflict of Interest.** During the Term, the Contractor shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of the Contractor, has a conflict of interest.
- b. **Code of Ethics.** Contractor hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part,

"No person shall offer or give to any public official or employee, directly or indirectly, and no public official or employee shall solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the public official's or employee's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction or omission by of the public official or employee."

Additionally, the Contractor shall ensure all subcontractors and employees are familiar with the statement above.

- c. **Non-Conviction for Bribery.** The Contractor hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, partners, or employees directly involved in obtaining contracts have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government.
- d. **Debarment or Suspension.** Contractor hereby declares and affirms that, to the best of its knowledge and belief, its principals, owners, officers, shareholders, key employees, directors, and/or member partners:
 - 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - 2) Have not, within a three-year period preceding the Effective Date, been convicted of, or had a civil judgment rendered against them for, commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or governmental transaction or contract under a public or governmental transaction, violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 3) Are not presently indicted for or otherwise criminally charged by a governmental entity with commission of any of the offenses set forth in the subsection above; and



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- 4) Have not, within a three-year period preceding the Effective Date, had one or more public or governmental transactions terminated for cause or for default.

14. Contractor Code of Conduct. The Contractor shall comply with the [Milwaukee County Contractor Code of Conduct](#). A failure to adhere to these requirements may result in contract termination, penalties, or other remedial actions as deemed necessary by Milwaukee County. All parties agree to adhere to the requirements set forth therein.

15. Safety & Security Policies. Contractor agrees to use commercially reasonable efforts to cause any of its employees who provide services under this Agreement on County's premises to comply with County's communicated safety and security policies to the extent that such policies are applicable to the site where Contractor's employees are providing services. Notwithstanding the above, such standard safety and security policies shall not include policies related to drug testing.

- a. **Smoking, Tobacco, and Marijuana Products.** Contractor and its personnel shall comply with all Milwaukee County policies regarding smoking, vaping, or the possession or use of tobacco and marijuana products at or on the grounds of the impacted site. The Contractor shall educate its personnel, including contractors and third parties, regarding these policies, and is responsible for ensuring personnel compliance with the policies.

- b. **Workplace Violence & Harassment.** Contractor shall comply with the most current Occupational Safety and Health Administration ("OSHA") and/or National Institute for Occupational Safety and Health ("NIOSH") guidance on evaluating and controlling violence in the workplace. The Contractor shall ensure its personnel are trained regarding workplace discrimination and harassment and shall put in place policies and procedures which prohibit Contractor personnel from engaging in behavior that is discriminatory, harassing, or which could reasonably be considered to create a hostile work environment. The Contractor shall report to County all allegations and incidents involving workplace violence, discrimination, or harassment made by or about its personnel during the provision of services under this Agreement. If the allegation or incident involves a County employee, the Contractor shall comply with any requests made during the County's investigation of the incident or allegation. The Contractor shall advise its personnel that investigations of allegations or incidents may result in action up to and including criminal prosecution. The Contractor shall document the outcome of any investigations it conducts regarding allegations, complaints, or incidents involving its personnel and shall provide a copy of such documentation and a report regarding action taken to the County within thirty (30) days of final disposition.

16. Drug Use Policies & Drug Screens. Contractor will advise any Contractor employee, independent contractor, and/or subcontractor who provides services under this Agreement on County's premises of County's right to require a drug screen at any time throughout the Term; provided, however, that County shall have no right to require a drug screen if any applicable laws so prohibit that right. Notwithstanding the foregoing, County may require a drug screen:

- a. If required by the Contractor's employee's work assignment or work location, upon assignment by the Contractor to provide services under this Agreement, and prior to performing the work, or



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- b. If the County believes, in good faith, that the Contractor's employee is under the influence of an illegal substance, or
- c. As a consequence of an accident caused by or involving the Contractor's employee on Milwaukee County's premises during the performance of services under this Agreement and likely to have been related to the Contractor's employee's use of an illegal substance, or
- d. At random, in compliance with any applicable standard operating procedures, corporate policies, or federal, state, or local laws or regulations governing the work performed.

Drug screening (unless provided by the County) shall be performed by the Contractor at the Contractor's expense, and the Contractor will address any positive results and handle accordingly. If a test of any Contractor personnel returns positive results not sufficiently explained by legitimate prescription medications, that individual will not be permitted on Milwaukee County premises and will not be permitted to provide services to the County under the Agreement.

17. Notices. All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or email, or three days after posting via US Mail, to the Party addressed as follows:

[Contractor Name]
[Attn: _____]
[Street Address]
[City, State, Zip]
[E-mail Address]

Milwaukee County [Department/Division]
[Attn: _____]
[Street Address]
[City, State, Zip]
[E-mail Address]

With a Copy to:

Milwaukee County Corporation Counsel
901 N. 9th Street, Room 303
Milwaukee, WI 53233
Scott.Brown@milwaukeecountywi.gov

Either Party may designate a new address for purposes of this Agreement by written notice to the other Party.

18. Public Records. Both Parties understand that the County is bound by the public records law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor hereby agrees that it shall be obligated to assist the County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this Agreement, whereupon the Contractor shall then and in such event be obligated to indemnify, defend and hold the County harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the County in writing, records



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that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this Agreement.

- 19. Independent Contractor.** Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Contractor or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder. Nothing contained in this Agreement shall give Contractor any authority to supervise, manage, and/or direct County employees.
- 20. Electronic Documents Considered Writing.** Any document properly transmitted by computer access will be considered a “writing” delivered in connection with this Agreement. Electronic documents will be considered signed by a Party if they contain an agreed-upon electronic identification symbol or code as required by law. Electronic documents will be deemed received by a Party when accessible by the recipient on the computer system.
- 21. Compliance with Laws.** The Contractor agrees to comply with all applicable federal, state, and local statutes, laws, rules, regulations, ordinances, and all policies, procedures, standards, and regulations of any accreditation agencies or bodies. The Contractor agrees to hold the County harmless from any loss, damage, or liability resulting from a violation on the part of the Contractor of any such laws, rules, regulations, policies, procedures, standards, or ordinances.
- 22. Choice of Law.** This Agreement shall be governed, interpreted, construed, and enforced in accordance with the internal laws of the State of Wisconsin, without regard to its conflict of laws principles. Any litigation over the enforceability of the provisions herein or to enforce any rights hereunder shall be in state court with venue in Milwaukee County.
- 23. Assignment Limitation, Subcontracts.** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns; provided, however, that neither Party shall assign its obligations hereunder without the prior written consent of the other. Assignment of any portion of the work by subcontract must have the prior written approval of County.
- 24. Severability.** If any part of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity or enforceability of the remainder of this Agreement, unless the Agreement so construed fails to meet the essential business purposes of the Parties as manifested herein.
- 25. Modification and Waiver.** This Agreement may not be modified and none of its terms may be waived, except in writing and signed by authorized representatives of both Parties. To the extent that any term in any document, other than a writing signed by both Parties that expressly purports to amend this Agreement, is contrary to, or conflicts with this Agreement, the terms of this Agreement shall control. A waiver by a Party of any default shall not be deemed a waiver of a prior or subsequent default of the same or other provisions of this Agreement. The failure of a Party to enforce, or the delay by a Party in enforcing, any of its rights shall not be deemed a continuing waiver or a modification of this Agreement.



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26. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and supersedes any and all prior agreements and negotiations, whether oral, written, or implied. No change, addition, or amendment shall be made except by written agreement signed by a duly authorized representative of each Party.