

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET. SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA**

**Consulting Services Agreement**

These Standard Terms and Conditions (“Terms”) apply to products sold by TPM, INC. (“Service Provider”), a South Carolina corporation, to the client (“Client”). These Terms, together with any related quote, proposal or purchase order shall constitute the entire agreement (the “Agreement”) between the parties. The parties hereby agree as follows:

1. **Engagement.** Pursuant to this Agreement, Service Provider shall provide professional services (the “Services”) as may be agreed upon by Service Provider and Client in one or more Statements of Work (SOWs).

2. **Price and Payment.** The price for the Services shall be set forth in one or more SOWs. The price provided in a quote or proposal is valid for thirty (30) days, unless otherwise specifically provided in such quote or proposal. Any travel expenses incurred by Service Provider while performing the Services shall be reimbursed to Service Provider in addition to the price provided in the applicable SOWs, quotes and/or proposals. If Client has an existing or creates an approved account with Service Provider (an “Account”), Client’s Account will be billed monthly for the Services provided to date under this Agreement and any other agreement with Service Provider. Each payment term is net thirty (30) days, unless otherwise provided in an applicable quote or proposal. If Client does not have an existing Account and elects not to open an Account, Client must prepay the full amount for the Services on the Effective Date. Payment may be made by cash, cashier’s check, wire or credit card. Payments by cash or cashier’s check should be remitted to TPM, Inc., P.O. Box 6705, Greenville, South Carolina 29606. Payments made by wiring funds should be routed to Bank Routing Number (ABA) 021052053, Account Number 68436126. Payments made by credit card in excess of One Thousand Five Hundred Dollars (\$1,500), excluding tax, shall be assessed a fee equal to three percent (3%) of the payment amount. Failure to pay within the specified terms may, at the option of Service Provider as may be exercised by Service Provider’s written notice to Client, result in (i) the imposition of interest charges at 1.5% per month (or the highest charges allowed by law, whichever is lower) and/or (ii) the termination or suspension of Service Provider’s obligations under this Agreement and any other agreements with Client. All sales and use taxes shall be added to the invoice(s). In the event Client claims exemption from sales and use taxes, Client shall provide Service Provider with the appropriate tax exemption certificate from the relevant taxing authority.

3. **Standard Services Rate Schedule.** Professional Services and labor outside standard support or SOW will be billed at the following rate schedule.

(a) **Professional Services.** CAD Consulting (\$200/hr), Solutions Consulting (\$250/hr), Advanced Solutions Consulting (\$300/hr), After Hours (\$375/hr), After Hours On-call (\$100/hr).

(b) **Hardware Service Technician.** Business Hours (\$250/hr), After Hours (\$375/hr).

(c) **Travel.** Expenses associated with travel outside of a 30-mile radius of TPM location are excluded and will be charged as a reimbursable expense.

4. **Fees and Taxes.** Client, at its expense, shall pay, discharge, and be responsible for all license fees and business, sales, use, or other similar taxes or assessments charged or levied by reason of anything performed under this Agreement, excluding, however, all taxes and assessments applicable to Service Provider’s income or applicable to Service Provider’s property. If Service Provider is required to remit any fee, tax, or duty on behalf of or for the account of Client, Client will reimburse Service Provider within ten (10) business days after Service Provider notifies Client in writing of such remittance.

5. **Client Representative.** Client shall appoint at least one “Client Representative” to coordinate the Services with Service Provider. The Client Representative(s) shall be available at reasonable times during the term of this Agreement to coordinate the conduct of the Services, answer Service Provider’s questions, and respond to problems or complaints, and shall be authorized to act on Client’s behalf and to legally bind Client. The Client Representative(s) for any Services provided by Service Provider shall be identified on the applicable quote or proposal for such Services. Client may appoint one or more new Client Representative(s), or remove any one or more Client Representative(s) at any time by written notice to Service Provider; provided, however, that Client must have at least one (1) acting Client Representative with respect to all Services being or to be performed by Service Provider at all times.

6. **Representations and Warranties.**

(a) **Service Provider.** The Services are provided by Service Provider on a reasonable best-efforts basis and Service Provider is not guaranteeing any specific result.

(b) **Client.** Client represents, warrants and agrees that (i) any information and materials furnished by Client under this Agreement will not violate the right of

privacy or publicity of, or defame, or infringe any copyright, trademark, service mark, patent or other right of any person, firm or corporation, or violate any applicable United States or state law, (ii) Client has the right to authorize Service Provider to provide the Services, and (iii) Client shall be solely responsible for any software license compliance related to any computer products or other hardware which may be provided or repaired by Service Provider as part of the Services.

7. **Proprietary Rights.** Service Provider does not convey or transfer nor does Client obtain any right or interest in any of the software programs, systems, tools, data or materials or process utilized or provided by Service Provider in connection with the performance of this Agreement, but grants to Client a perpetual, royalty-free, worldwide right to use the technology imbedded in such software programs, systems, tools, data or materials or process utilized, subject to any “click through” license agreements required by any software manufacturer or owner. The terms of any such “click through” license agreement are hereby incorporated by reference into this Agreement and Client agrees to be bound by the terms of such “click through” license regardless of whether the software generating such “click through” license agreement is installed by Service Provider, Client, Client’s employee or by an independent contractor.

8. **Limitation of Liability.** Service Provider will not under any circumstances be liable, and Client agrees to indemnify and hold Service Provider harmless, for any special, indirect, incidental or consequential damages, including but not limited to property damage, loss of profit, lost time, loss of data, loss of use of any equipment, cost of procurement of substitute products, technology or services, or any other damages resulting from the breakdown or failure of any computer products, hardware or software, or from delays in servicing or the inability to render service on any computer products, hardware or software even if it has been advised of the likelihood of such damages. Notwithstanding anything to the contrary in this Agreement, Service Provider’s liability for damages resulting from any cause, including but not limited to Service Provider’s negligence or installation of defective parts or components, whether or not such defect was known or discoverable, shall not exceed the actual price paid to Service Provider by Client for the Services. Service Provider shall not be responsible for damages caused by (a) accidents, misuse, misapplication, or neglect of Client or any of its agents or employees or as result of any services provided by any person other than the Service Provider; (b) placement or operation of computer products in an area that does not comply with the product manufacturer’s published space or environmental requirements; or (c) improper storage, use, and movement of any computer products to be serviced. Service Provider does not and cannot control the flow of data over the Internet or the integrity of the Internet (the global system of interconnected computer networks).

Therefore, Service Provider disclaims all liability for loss of data, corruption of data, or inability to provide the Services as a result of disruptions, slowdowns, breakdowns, or other technical issues affected by the Internet. Service Provider and its employees and agents are not engineers registered by any organization, and Service Provider and its employees and agents are merely providing guidance and advice pursuant to this Agreement; therefore, Service Provider and its employees and agents shall not be liable for any damages resulting from Client’s implementation of any product, design, method, system, or hardware or software of any kind, as a result of any recommendation made by Service Provider or its employees or agents.

9. **Indemnification.** Client agrees to defend, indemnify and hold harmless Service Provider and Service Provider’s employees, directors, agents and representatives from and against (a) any and all liabilities, losses, damages, demands, judgments, costs and expenses, including reasonable attorneys’ fees, arising out of Client’s breach of its representations and warranties under this Agreement, and (b) any and all liabilities, losses, damages, demands, judgments, costs and expenses for death, personal injury or damage to personal property to the extent directly caused by the negligent or willful acts of Client, its employees, agents or representatives.

10. **Confidentiality.** Service Provider and Client each represents and warrants to the other that it shall (a) at all times maintain the confidentiality of any Confidential Information (as defined below), and (b) maintain appropriate security measures that are in compliance with data protection regulations promulgated under applicable state and federal laws of the United States. For the purposes of this Agreement, “Confidential Information” means any information that relates to a party’s (the “Disclosing Party”) technical data, research, product plans, products, formulas, ingredients, recipes, services, employees, suppliers, customers, markets, software, know-how, trade secrets, ideas, processes, marketing, finances, notes, layouts, materials, names and expertise of employees and consultants, any other technical, business, financial, customer, supplier, or product information, forecasts, strategies, and other confidential information, and all tangible and intangible embodiments thereof of any kind whatsoever, whether conveyed to the other party (the “Receiving Party”) in writing, orally, or by any other medium; provided, however, that “Confidential Information” does not include any such information which is (i) known to the Receiving Party prior to its disclosure by the Disclosing Party, (ii) part of the public domain, (iii) rightfully obtained by the Receiving Party from a third party without any breach of this Agreement, or (iv) independently developed, derived, or discovered by the Receiving Party.

11. **Non-Disclosure.** During the term of this Agreement and at all times thereafter, each Receiving Party will hold and maintain the confidentiality of any and all Confidential Information previously or subsequently

disclosed by any Disclosing Party. Further, except as permitted under this Agreement, each Receiving Party will not, without the prior written consent of the applicable Disclosing Party, use any Confidential Information for its own benefit, or publish, disclose, communicate, reveal or divulge any Confidential Information to, or use any Confidential Information for the direct or indirect benefit of, any person, corporation, or other entity other than such Disclosing Party. Furthermore, each Receiving Party shall use the same degree of care to avoid publication or dissemination of any Confidential Information as such Receiving Party employs with respect to its own information which it does not desire to have published or disseminated. Confidential Information may be disseminated within a Receiving Party's own organization only to the extent reasonably necessary to provide the Services. Each Party agrees that no provision in this Agreement shall be construed as granting or conferring rights by license or otherwise in any Confidential Information disclosed to a Receiving Party. Nothing in this Agreement is intended to prevent either Party from using its own Confidential Information which it furnished hereunder for dealings with third parties for any purpose. The provisions of this Paragraph 10 shall survive the completion, expiration, or termination of this Agreement for a period of two (2) years after the date of such completion, expiration, or termination.

12. **Non-Solicitation.** Client shall not solicit for employment, directly or indirectly, the officers, employees, subcontractors or agents ("Personnel") of Service Provider who have provided Services related to this Agreement during the term such provision of Services at any time earlier than one (1) year after the earlier of: (a) the termination of such Personnel's engagement; or (b) the completion, expiration, or termination of this Agreement, unless explicitly agreed to in writing by the parties. No offer or other form of solicitation of employment will be made at any time when the employment of such Personnel is prohibited by this Agreement. Should Client solicit any Personnel for employment or as any independent contractor in violation of this Paragraph, and should that employee subsequently become an employee or independent contractor of Client within such restricted period, Client agrees to reimburse Service Provider an amount equal to the salary and commissions, if any, earned by such employee during the last twelve (12) months of such employee's employment by Service Provider. Both parties agree that this amount represents reasonable compensation to Service Provider for its cost of recruiting and training, and does not constitute a penalty. Such amount will be due and payable by Client within ten (10) business days of receipt of written demand from Service Provider. The intention of this Paragraph is to prohibit the active recruitment of Personnel by Client, and no provision of this Paragraph shall prevent an employee of Service Provider from responding to an employment advertisement or announcement of general circulation made by Client.

13. **Termination.** Either Service Provider or Client may terminate this Agreement at any time if the other party breaches any material provision of this Agreement and fails to correct such default promptly or to commence corrective action reasonably acceptable to the aggrieved party within ten (10) business days after receipt of notice of default. Further, either Service Provider or Client shall have the right to terminate this Agreement without cause, without penalty, and without liability for any damages as a result of such termination at any time giving the other party at least thirty (30) calendar days prior written notice of such termination. If either party properly terminates the Agreement, Service Provider will provide a pro rata refund for any advanced payment for the remaining days of coverage under this Agreement. Any funds so owed by Service Provider will be refunded in full within sixty (60) calendar days after receiving written notice of contract termination. Notwithstanding any termination of this Agreement, Client shall be obligated to pay Service Provider for (a) the Services provided by Service Provider in accordance with this Agreement at any time on or prior to the effective date of termination; and (b) all incidental costs and expenses incurred by Service Provider in accordance with this Agreement at any time on or prior to the effective date of termination.

14. **Miscellaneous.**

(a) **Governing Law.** This Agreement shall be governed by and construed in accordance with (i) the laws of the State of South Carolina applicable to contracts entered into and to be fully performed therein without regard to choice of law principles, and (ii) in accordance with any applicable federal laws.

(b) **Assignment; Binding on Successors.** Neither party shall assign any of its rights or obligations under this Agreement to anyone without the other's prior written consent. Except as otherwise specifically provided herein, all terms and provisions of this Agreement shall be binding upon and inure only to the benefit of the parties, their respective members, employees, agents, representatives, affiliates, subsidiaries and successors in interest and authorized assigns, and no third party shall enjoy the benefits of this Agreement or shall have any rights hereunder.

(c) **Entire Agreement.** This Agreement, together with any SOWs, proposals, quotes and/or Terms and Conditions which may be executed by Service Provider and Client, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior agreements between the parties with respect to the subject matter hereof. This Agreement and any SOWs, proposals, quotes and/or Terms and Conditions may be amended only in a written document signed by Client and Service Provider.

(d) **Dispute Resolution.** If there is any dispute or controversy between the parties arising out of or

relating to this Agreement, the parties agree that such dispute or controversy will be subject to arbitration in Greenville, South Carolina in accordance with proceedings under the South Carolina Uniform Arbitration Act, and such arbitration will be the exclusive dispute resolution method under this Agreement. The decision and award determined by such arbitration will be final and binding upon both parties. All costs and expenses, including reasonable attorney's fees and expert's fees, of all parties incurred in any dispute that is determined and/or settled by arbitration pursuant to this Agreement will be borne by the party determined to be liable in respect of such dispute; provided, however that if complete liability is not assessed against only one party, the parties will share the total costs in proportion to their respective amounts of liability so determined.

(e) Subcontractors. Client expressly agrees that Service Provider may use any subcontractor that it chooses, without the prior approval of Client, to perform the Services pursuant to this Agreement, and the protections offered under this Agreement to Service Provider shall apply to any such subcontractor; provided, however, that the use of such subcontractors shall not relieve Service Provider of its obligations hereunder.

(f) Force Majeure. Notwithstanding any other provision in this Agreement, Service Provider shall not be in breach of this Agreement nor shall Service Provider be liable to Client for any losses or damages or any type due to any act of God or other act reasonably beyond Service Provider's control, such as fire or flood, labor disputes, unusual delays in transportation, disease, war, strikes or power blackouts.

(g) No Waiver. No waiver by Service Provider or Client of any condition or breach of any term, representation or warranty contained in this Agreement or any document referred to herein shall, whether by conduct or otherwise, be construed as a waiver or release of any other term, representation or warranty at any time.

(h) Counterparts; Facsimile and PDF. This Agreement may be executed in one (1) or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one (1) or more such counterparts have been signed by each of the parties and delivered to the other party. This Agreement may be executed by facsimile or "pdf" copy with the same binding effect as the original.

(i) Notices. Notices and communications under this Agreement shall be deemed made if given by certified mail, postage prepaid, and addressed to the party to receive such notice, invoice, or communication at the address or electronic mail address given in the signature block below.

(j) Valid Agreement. The invalidity or partial invalidity of any portion of this Agreement shall not

invalidate the remainder of the Agreement, and the remainder shall be construed as if the invalidated portion shall never have been a part of this Agreement.

(k) Construction. No provision of this Agreement shall be construed by any court or other authority against any party hereto by reason of such party being deemed to have drafted or structured such provision.