

the above warranties in any material respect, Kmart may exercise all rights and remedies available to it under applicable laws and all other rights and remedies under this Agreement.

15. If any provision of this Agreement is held to be void or unenforceable by any judicial or administrative authority, or is unlawful or unenforceable under any applicable law, the remaining provisions are considered to be severable and their enforceability is not to be affected or impaired in any way by reason of such law or holding.
16. All notices under this Agreement must be in writing and must be given by either party by prepaid mail or by cable, telefax, telegram, telex, or hand delivery to the other party as follows:

If to Kmart: Kmart Corporation 3100 West Big Beaver Road Troy, Michigan 48084 Attn: Jeffrey Stollenwerk, Vice President With a copy to: Attn: General Counsel (at the above address) Shawn Husband, Divisional Vice President General Auditor (at the above address)	If to Contractor: Horn Murdock Cole 3001 West Big Beaver Road Troy, Michigan 48084 Attn: David Flynn, Vice President
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Either party may change its address and/or addressee for notices at any time with fifteen (15) days prior notice to the other party in accordance with the foregoing.

17. Kmart agrees to pay Contractor for Services rendered the amounts set forth in Exhibit A after the receipt of a correct invoice from Contractor. All invoices must include, at a minimum, the following information: (i) Name and address of Contractor; (ii) Contractor DUNS number (if such a number has been assigned); (iii) Invoice number; (iv) Description of Services provided; (v) Date; and (vi) Dollar amount due. Kmart is not required to pay any disputed charge until after the resolution of the dispute. Contractor is responsible for the payment of all taxes, however designated, levied, or based on the purchase of the service. The prices charged to Kmart are not to be increased during the term of this Agreement. In no case will Kmart be charged more for the Services than any other comparable purchaser of similar services.
18. THIS AGREEMENT, AND ALL OTHER ASPECTS OF THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, IS CONSTRUED, INTERPRETED, AND ENFORCED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO

CHOICE OF LAW PROVISIONS. CONTRACTOR AGREES, WITH RESPECT TO ANY LITIGATION ARISING DIRECTLY OR INDIRECTLY OUT OF, OR THAT IN ANY WAY RELATES TO, THIS AGREEMENT, THE BUSINESS RELATIONSHIP OR ANY OTHER TRANSACTION, MATTER, OR ISSUE BETWEEN THE PARTIES, TO COMMENCE IT EXCLUSIVELY IN THE STATE OF MICHIGAN COURTS OF OAKLAND COUNTY, MICHIGAN OR THE UNITED STATES DISTRICT COURT AT DETROIT, MICHIGAN, AND CONTRACTOR BY THIS AGREEMENT CONSENTS TO THE JURISDICTION OF THESE COURTS.

19. Contractor must not subcontract any duty or obligation under this Agreement to a third party. All performance required under this Agreement must be solely by the named Contractor.
20. Each person signing below warrants and represents that he/she has full power and authority to execute this Agreement on behalf of the party he/she represents. Upon request, each party must provide a Certified Resolution or Certificate of Authority authorizing the undersigned to enter into and sign this Agreement.
21. Time is of the essence in the performance of all parts of this Agreement, but neither party is responsible for delays due to causes beyond its reasonable control during the continuance thereof that by reasonable diligence could not have been avoided or overcome; provided further, if substitute performance is available, Contractor must offer Kmart the substitute performance, which Kmart may accept or reject at its sole option.
22. This is an arms-length transaction and relationship. There exist no implied or otherwise unstated covenants, rights, or obligations by, of or against either party. The parties expressly disclaim the existence of any implied covenant of good faith and/or fair dealing.
23. Contractor and Kmart each expressly represent and warrant to the other that each has relied solely and exclusively on its own judgment and the advice of its own attorneys in entering into this Agreement, and that no representative or agent of the other has made any statement or representation to it beyond those in this Agreement that have induced signing of this Agreement.
24. Kmart has the right to audit all books and records of Contractor relating to Contractor's performance of this Agreement upon 3 days notice. During the term hereof and for a period of 7 years thereafter, Contractor must maintain its books and records in a manner that facilitates a full and complete review of Contractor's performance of this Agreement. At Kmart's option, audits may be conducted (i) by Kmart or its third party designee, and (ii) at Contractor's offices or at a different location specified by Kmart, in which latter case Contractor must deliver copies of all applicable books and records to that

location. Kmart and Contractor will each bear their own costs associated with the audits

25. This Agreement is the final and complete agreement between Kmart and Contractor with respect to the subject matter hereof. No representations, inducements, promises, or understandings in relation to the subject matter hereof, whether oral or written, exist unless expressly set forth in this Agreement, and this Agreement supersedes all prior understandings, agreements, contracts, or arrangements between the parties, whether oral or written, unless otherwise expressly incorporated in this Agreement. No agreement or other understanding purporting to add to or to modify the terms and conditions hereof is binding unless agreed to by duly authorized representatives of the parties in writing. Any terms or conditions in any forms of the parties used in the performance of this Agreement that are in conflict with the terms and conditions hereof are void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
day and year set forth below.

(Contractor) **Kmart Corporation**

Signature

Signature

Name

Name

Title

Title

Date

Date

EXHIBIT A

(i) Description of Services (including times and manner of performance):

HMC will perform an audit of amounts invoiced to Kmart for facilities maintenance services, including snow removal, parking lot sweeping and landscaping, performed or subcontracted by its vendor Global Property Services. The audit will include a review of invoices for the past two years, or for such period of time as requested by Kmart management at the commencement of the audit. HMC will validate amounts invoiced against the contractual agreement(s) with Global Property Services to determine whether amounts invoiced and paid were in accordance with the contract(s).

HMC will plan and perform the audit according to its professional judgment, with advice and supervision of Kmart management. Prior to directly contacting the vendor, any of the vendor's subcontractors, or Kmart associates other than Shawn Husband, DVP General Auditor, Ben Lau, (Title/Role), Shawky Yoakim (Title/Role) or Carolyn Saint, Director, Corporate Audit, HMC will obtain Kmart management authorization and approval. Kmart will provide access to such information as it deems necessary to perform the audit, including accounts payable information, copies of paid invoices, copies of email correspondence from field personnel and copies of contracts, as available.

HMC will verbally report progress on the audit to Shawn Husband, or his representative, on a periodic basis to be determined, but not less than biweekly. Any written correspondence from HMC regarding this matter (including emails, memos, or written reports) shall be addressed to Kmart's Legal Counsel, James Defebaugh, and will be considered privileged and confidential information. HMC will include in any written correspondence with Kmart the following statement:

(please provide proper wording on privileged and confidential nature of information, how to handle properly, etc)

HMC will include in its final report to Kmart an analysis of overpayments, if any, to Global Property Services, including amounts, dates and root causes of such overpayments. HMC's final report to Kmart will also include recommendations to improve the process of contracting with, supervising, validating invoices of and disbursing funds to facilities maintenance vendors generally and Global Property Services specifically. HMC will provide a trend analysis of facilities maintenance spending for Kmart, comparing costs incurred for the period prior to engaging Global Property Services to the periods subsequent to engaging Global Property Services.

The audit will commence as soon as possible upon signing of this agreement.

(ii) Term (number of months from Effective Date, subject to Paragraph 3):

Not to exceed 3 months.

(iii) Amounts payable for Services / payment terms:

HMC will invoice Kmart for services performed for this audit at the rate of \$85 per hour. Expenses exceeding \$50 will be approved in advance by Shawn Husband, or his representative. Invoices will be submitted to Jeffrey Stollenwerk on a biweekly basis.

SERVICES AGREEMENT

Agreement entered into this ____ day of September, 2003 (the "Effective Date") by and between Kmart Management Corporation, having its principal place of business at 3100 West Big Beaver Road, Troy, Michigan 48084 ("Kmart"), and Horn Murdock Cole a _____ ("HMC"), having its principal place of business at 3001 West Big Beaver Road, Suite 210, Troy, Michigan 48084 ("Contractor").

In consideration of the mutual covenants, terms, and conditions herein contained, the parties agree as follows:

1. The services, products, software, equipment, and other materials provided to Kmart by Contractor (collectively, the "Services") are described, and must be provided at the times and in the manner set forth in, Exhibit A attached hereto and incorporated herein by this reference.
2. This Agreement is binding on the parties upon full signing hereof. The term of the Agreement commences on the Effective Date and, subject to early termination pursuant to Paragraph 3, remains in effect for the number of months set forth in Exhibit A. The term may be extended or renewed for an additional term only by written agreement of the parties. If the term of the Agreement expires without being formally renewed or extended, but both parties continue to perform as set forth in this Agreement, then this Agreement will continue in effect on a month-to-month basis until terminated by either party on thirty days prior written notice.
3. This Agreement may be terminated at any time without cause by either party with 30 days prior notice to the other party. This Agreement may also be immediately terminated by either party if the other party breaches or fails to perform any of its obligations in any material respect, attempts to assign or otherwise transfer its rights, obligations, or duties under this Agreement, or if the other party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws. Upon termination, there is nothing due from Kmart to Contractor beyond any fees due for services actually performed up to the date of termination, and both parties are relieved of any further obligations contained in this Agreement except for those that by their nature survive or may require performance after termination (e.g., indemnity). Contractor must remove all of its material, software, and/or equipment from the Kmart premises within three (3) days of the date of termination.
4. Contractor is responsible for and does represent that it will comply with all federal, state, and local laws, rules, and regulations applicable to this Agreement or to the performance thereof.

5. To the fullest extent permitted by law: Contractor must reimburse, indemnify, defend, and hold harmless Kmart, its parent, subsidiaries and affiliates and each of Kmart's parent's subsidiary's and affiliate's present, former, and future shareholders, employees, officers, and directors from and against all loss, damage, expense (including attorney's fees and expenses), and penalty, and any claim or action therefor by or on behalf of any person, (collectively, "Loss") arising out of or in connection with Contractor's performance or failure of performance of this Agreement including, without limitation, Loss arising out of or occurring in connection with: (i) any acts or omissions by Contractor or its employees or agents, including, without limitation, personal injury and death claims; (ii) all claims of Contractor's employees, agents, and subcontractors, whether for injury, death, compensation, social security, pension, unemployment compensation, etc.; (iii) the provision, ownership, installation, operation, maintenance, use, or repair of any of the Services; and (iv) all third-party claims alleging that any of the Services infringes any patent, copyright, trademark, or other proprietary right or constitutes a misuse of any trade secret information. Contractor will not be relieved of the foregoing indemnity and related obligations by allegations or any claim that Kmart was negligent; but Contractor is not liable to the extent any injury or damage is finally judicially determined by a court of competent jurisdiction to have been proximately caused by the sole negligence or willful act of Kmart. Kmart agrees to timely advise Contractor of any suit, claim, or proceeding, and to reasonably cooperate with Contractor in the defense or settlement of such suit, claim, or proceeding, but Contractor will have sole control thereof. If an injunction is obtained against Kmart's use of any of the Services, in whole or in part, Contractor must promptly at Kmart's option either: (i) procure right to continue using the Services enjoined from use or replace or modify them so that Contractor's use or possession is not subject to any such injunction, or (ii) refund to Kmart all amounts paid to Contractor for the Services. If this indemnification provision is construed by a court of competent jurisdiction to require indemnification over and above that permitted by applicable law or public policy, the parties intend that the Agreement be judicially modified to afford Kmart the maximum indemnification allowed.
6. Contractor must, during the performance of this Agreement, maintain the following insurance coverages as indicated or as required by law, whichever is greater, with insurers in good standing, possessing an A.M. Best rating of not less than A, Financial size X., and authorized to do business under the laws of the State(s) and/or Countr(y/ies) where performance occurs:
 - (a) Commercial General Liability written on an occurrence coverage form, naming Kmart as an additional insured, including, without limitation, Bodily Injury and Property Damage Liability, Products and Completed Operations Liability, Contractual Liability, and Personal and Advertising Liability. The minimum limits are Three Million Dollars (\$3,000,000) per each occurrence,

- Three Million Dollars (\$3,000,000) aggregate (Products and Completed Operations), and Three Million Dollars (\$3,000,000) general aggregate;
- (b) Automobile Liability covering all non-owned, leased, or rented vehicles with property damage and bodily injury coverage with minimum limits of One Million Dollars (\$1,000,000) per person, One Million Dollars (\$1,000,000) per accident, and One Million Dollars (\$1,000,000) annual aggregate;
 - (c) Workers' Compensation and Employers' Liability with statutory coverage for Workers' Compensation and minimum limits of One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) disease (each employee), and One Million Dollars (\$1,000,000) disease (policy limit) for Employers' Liability; and
 - (d) Umbrella/Excess Liability with minimum limits of Three Million Dollars (\$3,000,000) each occurrence and aggregate.

Contractor must tender to Kmart certificates of insurance evidencing the coverages required to be maintained by Contractor. The certificates must provide that no change or cancellation of insurance will be made without thirty (30) days prior written notice to Kmart. The insurance evidenced by the certificate must be primary over any and all other collectible insurance.

- 7. Contractor is an independent contractor in the performance of this Agreement, and nothing contained in this Agreement may be construed to create or constitute a joint venture, partnership, agency, franchise, lease, or any other arrangement other than as expressly granted in this Agreement. Contractor is responsible for its own operation. Contractor must exercise control over its employees, agents, representatives, subcontractors, and suppliers and is solely responsible for the verification of identity and employment eligibility, for the payment of any wages, salaries, or other remuneration of its employees, agents, representatives, subcontractors, and suppliers, and for the payment of any payroll taxes, contributions for unemployment or workers compensation, social security, pensions, or annuities that are imposed as a result of the employment of Contractor's employees, agents, representatives, subcontractors, and suppliers. Contractor must not pledge credit, incur any obligation or liability, hire any employee, nor purchase any merchandise or services in the name of Kmart or any subsidiary or affiliate thereof. Unless otherwise provided in this Agreement, all costs, charges, and expenses incurred in connection with Contractor's performance of this Agreement must be borne by Contractor.
- 8. Neither party may assign or otherwise transfer its rights, obligations, and/or duties under this Agreement without the prior written consent of the other party, given at the other party's sole option; but Kmart may assign this Agreement to a subsidiary or affiliate upon notice to Contractor. Any prohibited assignment is void.

9. Contractor hereby assigns, conveys, and transfers all right, title, and interest in and to the Services, which include all related work product of Contractor and its employees, to Kmart. Contractor understands that all Services produced, developed or otherwise created by Contractor or its employees hereunder are the exclusive property of Kmart. Consistent with this understanding, Contractor must not use the Services for the benefit of any party other than Kmart.
10. Contractor warrants that all creators and/or contributors to the Services, including but not limited to, all persons engaged by Contractor to make any contributions to the Services, were, at the time of the Services' creation, bona-fide employees of Contractor who made their contributions to the Services within the scope of their employment as work for hire or that Contractor has obtained and possesses a written assignment of the copyright, title, and interest from all the creators or contributors not otherwise considered bona-fide employees. Contractor must maintain an agreement with each of its employees consistent with the obligations set forth in Paragraphs 9, 10, and 11 and is responsible for enforcing such agreements. Contractor must provide a copy of such agreement at the request of Kmart.
11. Contractor agrees that all information (including the provisions of this Agreement) of or relating to Kmart, its parent, subsidiaries and/or affiliates, regardless of the manner or medium in which it is furnished to or otherwise obtained by Contractor or any Contractor representative, is provided to and received by Contractor in confidence. Contractor must at all times preserve and protect the confidentiality of this information and any other proprietary and non-public Kmart information that Contractor or any Contractor representative becomes aware of or acquires during the performance of this Agreement (collectively, the "Confidential Information"). Without limiting the generality of the foregoing, Contractor must not divulge to or discuss with third parties any trade secret; system, program, or any other matter on which Contractor is working hereunder; other program, system, or work product belonging to Kmart, its parent, subsidiaries and/or affiliates, which are disclosed on Contractor; or information regarding Kmart and any agreements or contracts which Kmart, its parent, subsidiaries and/or affiliates, has with other companies or firms. Contractor must take all necessary steps to ensure that the Confidential Information is not disclosed to, or used by any person, firm, or entity, except Contractor's own employees and agents, and then only to the extent necessary to permit Contractor to perform this Agreement. The confidentiality obligations set forth above do not apply to information (i) available to the public through no fault of Contractor; (ii) released by Kmart to any third party on a non-confidential basis without restrictions on disclosure; and (iii) to the extent disclosure of the information is required under any valid court or governmental order and Contractor provides Kmart immediate notice thereof so that Kmart will have an opportunity to contest disclosure or seek an appropriate protective order. The

confidentiality and non-disclosure obligations contained in this Agreement survive and continue after termination of this Agreement for any reason and bind Contractor's legal representatives, successors, and assigns.

12. Contractor acknowledges Kmart of Michigan, Inc.'s ("KMI's") exclusive right, title, and interest in and to all trademarks, trade names, service marks, logos, assignees, program and event names, identifications, and other proprietary rights and privileges that it licenses to Kmart with the right to sublicense (the "Kmart Marks"). This Agreement and its various provisions are not a license or assignment of any right, title, or interest in the Kmart Marks by KMI or Kmart to Contractor. Contractor must not, in any manner, represent that it has any ownership in the Kmart Marks. Contractor must not do or cause to be done anything that impairs Kmart's exclusive license in the Kmart Marks. Contractor must not use, print, or duplicate the Kmart Marks unless Contractor has obtained prior written approval from Kmart and KMI. Any permitted use by Contractor of the Kmart Marks is limited to the term of this Agreement. Upon termination, Contractor must immediately cease all use of the Kmart Marks. Contractor must not assign or attempt to assign any rights with regard to the Kmart Marks that arise under this Agreement and any such attempted assignment is void.
13. Except with respect to damages arising from Paragraphs 5, 9, 10, 11, and 12 herein, neither party is liable to the other party for incidental, consequential, punitive, or exemplary damages arising in connection with this Agreement or the performance, omission of performance, or termination hereof including, without limitation, lost sales and profits and other business interruption damages, even if the party has been advised of the possibility of such damages and without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, or otherwise).
14. Contractor represents and warrants that: (i) its performance under this Agreement will at all times conform to the highest professional and ethical standards; (ii) due care and its commercially reasonable efforts will be utilized by Contractor in the performance of this Agreement; (iii) it is under no obligation or restriction that would conflict with the Services required to be furnished by Contractor and its other obligations under this Agreement, or that otherwise would in any manner prevent the full performance by Contractor of the terms, conditions, and requirements of this Agreement (Contractor must immediately disclose to Kmart any actual or potential conflict of interest that may arise during the Contractor's performance of this Agreement); and (iv) the Services are Year 2000 Compliant. For purposes hereof, "Year 2000 Compliant" means that all Services, individually and collectively, accurately process date and time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology used in combination with the Services properly exchanges date/time data with

the Services. The foregoing warranties are in lieu of all other warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose. In the event Contractor breaches any of the above warranties in any material respect, Kmart may exercise all rights and remedies available to it under applicable laws and all other rights and remedies under this Agreement.

15. If any provision of this Agreement is held to be void or unenforceable by any judicial or administrative authority, or is unlawful or unenforceable under any applicable law, the remaining provisions are considered to be severable and their enforceability is not to be affected or impaired in any way by reason of such law or holding.
16. All notices under this Agreement must be in writing and must be given by either party by prepaid mail or by cable, telefax, telegram, telex, or hand delivery to the other party as follows:

If to Kmart:

Kmart Corporation
3100 West Big Beaver Road
Troy, Michigan 48084
Attn: Jeffrey Stollenwerck, Vice President

If to Contractor:

Horn Murdock Cole
3001 West Big Beaver Road
Troy, Michigan 48084
Attn: David Flynn, Vice President

With a copy to:

Attn: General Counsel
(at the above address)
Shawn Husband,
Divisional Vice President General Auditor
(at the above address)

Either party may change its address and/or addressee for notices at any time with fifteen (15) days prior notice to the other party in accordance with the foregoing.

17. Kmart agrees to pay Contractor for Services rendered the amounts set forth in Exhibit A after the receipt of a correct invoice from Contractor. All invoices must include, at a minimum, the following information: (i) Name and address of Contractor; (ii) Contractor DUNS number (if such a number has been assigned); (iii) Invoice number; (iv) Description of Services provided; (v) Date; and (vi) Dollar amount due. Kmart is not required to pay any disputed charge until after the resolution of the dispute. Contractor is responsible for the payment of all taxes, however designated, levied, or based on the purchase of the service. The

prices charged to Kmart are not to be increased during the term of this Agreement. In no case will Kmart be charged more for the Services than any other comparable purchaser of similar services.

18. THIS AGREEMENT, AND ALL OTHER ASPECTS OF THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, IS CONSTRUED, INTERPRETED, AND ENFORCED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO CHOICE OF LAW PROVISIONS. CONTRACTOR AGREES, WITH RESPECT TO ANY LITIGATION ARISING DIRECTLY OR INDIRECTLY OUT OF, OR THAT IN ANY WAY RELATES TO, THIS AGREEMENT, THE BUSINESS RELATIONSHIP OR ANY OTHER TRANSACTION, MATTER, OR ISSUE BETWEEN THE PARTIES, TO COMMENCE IT EXCLUSIVELY IN THE STATE OF MICHIGAN COURTS OF OAKLAND COUNTY, MICHIGAN OR THE UNITED STATES DISTRICT COURT AT DETROIT, MICHIGAN, AND CONTRACTOR BY THIS AGREEMENT CONSENTS TO THE JURISDICTION OF THESE COURTS.
19. Contractor must not subcontract any duty or obligation under this Agreement to a third party. All performance required under this Agreement must be solely by the named Contractor.
20. Each person signing below warrants and represents that he/she has full power and authority to execute this Agreement on behalf of the party he/she represents. Upon request, each party must provide a Certified Resolution or Certificate of Authority authorizing the undersigned to enter into and sign this Agreement.
21. Time is of the essence in the performance of all parts of this Agreement, but neither party is responsible for delays due to causes beyond its reasonable control during the continuance thereof that by reasonable diligence could not have been avoided or overcome; provided further, if substitute performance is available, Contractor must offer Kmart the substitute performance, which Kmart may accept or reject at its sole option.
22. This is an arms-length transaction and relationship. There exist no implied or otherwise unstated covenants, rights, or obligations by, of or against either party. The parties expressly disclaim the existence of any implied covenant of good faith and/or fair dealing.
23. Contractor and Kmart each expressly represent and warrant to the other that each has relied solely and exclusively on its own judgment and the advice of its own attorneys in entering into this Agreement, and that no representative or agent of the other has made any statement or representation to it beyond those in this Agreement that have induced signing of this Agreement.

24. Kmart has the right to audit all books and records of Contractor relating to Contractor's performance of this Agreement upon 3 days notice. During the term hereof and for a period of 7 years thereafter, Contractor must maintain its books and records in a manner that facilitates a full and complete review of Contractor's performance of this Agreement. At Kmart's option, audits may be conducted (i) by Kmart or its third party designee, and (ii) at Contractor's offices or at a different location specified by Kmart, in which latter case Contractor must deliver copies of all applicable books and records to that location. Kmart and Contractor will each bear their own costs associated with the audits
25. This Agreement is the final and complete agreement between Kmart and Contractor with respect to the subject matter hereof. No representations, inducements, promises, or understandings in relation to the subject matter hereof, whether oral or written, exist unless expressly set forth in this Agreement, and this Agreement supersedes all prior understandings, agreements, contracts, or arrangements between the parties, whether oral or written, unless otherwise expressly incorporated in this Agreement. No agreement or other understanding purporting to add to or to modify the terms and conditions hereof is binding unless agreed to by duly authorized representatives of the parties in writing. Any terms or conditions in any forms of the parties used in the performance of this Agreement that are in conflict with the terms and conditions hereof are void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day
and year set forth below.

Horn Murdock Cole
(Contractor)

Kmart Management Corporation

Signature

Signature

Name

Name

Title

Title

Date

Date

EXHIBIT A

(i) Description of Services (including times and manner of performance):

HMC will perform an audit of amounts invoiced to Kmart for facilities maintenance services, including snow removal, parking lot sweeping and landscaping, performed or subcontracted by its vendor Global Property Services. The audit will include a review of invoices for the past two years, or for such period of time as requested by Kmart management at the commencement of the audit. HMC will validate amounts invoiced against the contractual agreement(s) with Global Property Services to determine whether amounts invoiced and paid were in accordance with the contract(s).

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HMC will verbally report progress on the audit to Shawn Husband, or his representative, on a periodic basis to be determined, but not less than biweekly. Any written correspondence from HMC regarding this matter (including emails, memos, or written reports) shall be addressed to Kmart's Legal Counsel, James Defebaugh, and will be considered privileged and confidential information. HMC will include in any written correspondence with Kmart the following statement:

**PRIVILEGED AND CONFIDENTIAL PREPARED AT THE REQUEST OF COUNSEL IN
ANTICIPATION OF LITIGATION**

HMC will include in its final report to Kmart an analysis of overpayments, if any, to Global Property Services, including amounts, dates and root causes of such overpayments. HMC's final report to Kmart will also include recommendations to improve the process of contracting with, supervising, validating invoices of and disbursing funds to facilities maintenance vendors generally and Global Property Services specifically. HMC will provide a trend analysis of facilities maintenance spending for Kmart, comparing costs incurred for the period prior to engaging Global Property Services to the periods subsequent to engaging Global Property Services.

The audit will commence as soon as possible upon signing of this agreement.

(ii) Term (number of months from Effective Date, subject to Paragraph 3):

Not to exceed 3 months.

(iii) Amounts payable for Services / payment terms:

HMC will invoice Kmart for services performed for this audit at the rate of \$85 per hour. Expenses exceeding \$50 will be approved in advance by Shawn Husband, or his representative. Invoices will be submitted to Jeffrey Stollenwerck on a biweekly basis.

KMRT 0000018167

SERVICES AGREEMENT

Agreement entered into this ____ day of September, 2003 (the "Effective Date") by and between Kmart Management Corporation, having its principal place of business at 3100 West Big Beaver Road, Troy, Michigan 48084 ("Kmart"), and Horn Murdock Cole a _____ ("HMC"), having its principal place of business at 3001 West Big Beaver Road, Suite 210, Troy, Michigan 48084 ("Contractor").

In consideration of the mutual covenants, terms, and conditions herein contained, the parties agree as follows:

1. The services, products, software, equipment, and other materials provided to Kmart by Contractor (collectively, the "Services") are described, and must be provided at the times and in the manner set forth in, Exhibit A attached hereto and incorporated herein by this reference.
2. This Agreement is binding on the parties upon full signing hereof. The term of the Agreement commences on the Effective Date and, subject to early termination pursuant to Paragraph 3, remains in effect for the number of months set forth in Exhibit A. The term may be extended or renewed for an additional term only by written agreement of the parties. If the term of the Agreement expires without being formally renewed or extended, but both parties continue to perform as set forth in this Agreement, then this Agreement will continue in effect on a month-to-month basis until terminated by either party on thirty days prior written notice.
3. This Agreement may be terminated at any time without cause by either party with 30 days prior notice to the other party. This Agreement may also be immediately terminated by either party if the other party breaches or fails to perform any of its obligations in any material respect, attempts to assign or otherwise transfer its rights, obligations, or duties under this Agreement, or if the other party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws. Upon termination, there is nothing due from Kmart to Contractor beyond any fees due for services actually performed up to the date of termination, and both parties are relieved of any further obligations contained in this Agreement except for those that by their nature survive or may require performance after termination (e.g., indemnity). Contractor must remove all of its material, software, and/or equipment from the Kmart premises within three (3) days of the date of termination.
4. Contractor is responsible for and does represent that it will comply with all federal, state, and local laws, rules, and regulations applicable to this Agreement or to the performance thereof.

5. To the fullest extent permitted by law: Contractor must reimburse, indemnify, defend, and hold harmless Kmart, its parent, subsidiaries and affiliates and each of Kmart's parent's subsidiary's and affiliate's present, former, and future shareholders, employees, officers, and directors from and against all loss, damage, expense (including attorney's fees and expenses), and penalty, and any claim or action therefor by or on behalf of any person, (collectively, "Loss") arising out of or in connection with Contractor's performance or failure of performance of this Agreement including, without limitation, Loss arising out of or occurring in connection with: (i) any acts or omissions by Contractor or its employees or agents, including, without limitation, personal injury and death claims; (ii) all claims of Contractor's employees, agents, and subcontractors, whether for injury, death, compensation, social security, pension, unemployment compensation, etc.; (iii) the provision, ownership, installation, operation, maintenance, use, or repair of any of the Services; and (iv) all third-party claims alleging that any of the Services infringes any patent, copyright, trademark, or other proprietary right or constitutes a misuse of any trade secret information. Contractor will not be relieved of the foregoing indemnity and related obligations by allegations or any claim that Kmart was negligent; but Contractor is not liable to the extent any injury or damage is finally judicially determined by a court of competent jurisdiction to have been proximately caused by the sole negligence or willful act of Kmart. Kmart agrees to timely advise Contractor of any suit, claim, or proceeding, and to reasonably cooperate with Contractor in the defense or settlement of such suit, claim, or proceeding, but Contractor will have sole control thereof. If an injunction is obtained against Kmart's use of any of the Services, in whole or in part, Contractor must promptly at Kmart's option either: (i) procure right to continue using the Services enjoined from use or replace or modify them so that Contractor's use or possession is not subject to any such injunction, or (ii) refund to Kmart all amounts paid to Contractor for the Services. If this indemnification provision is construed by a court of competent jurisdiction to require indemnification over and above that permitted by applicable law or public policy, the parties intend that the Agreement be judicially modified to afford Kmart the maximum indemnification allowed.
6. Contractor must, during the performance of this Agreement, maintain the following insurance coverages as indicated or as required by law, whichever is greater, with insurers in good standing, possessing an A.M. Best rating of not less than A, Financial size X., and authorized to do business under the laws of the State(s) and/or Countr(y/ies) where performance occurs:
 - (a) Commercial General Liability written on an occurrence coverage form, naming Kmart as an additional insured, including, without limitation, Bodily Injury and Property Damage Liability, Products and Completed Operations Liability, Contractual Liability, and Personal and Advertising Liability. The minimum limits are Three Million Dollars (\$3,000,000) per each occurrence,

- Three Million Dollars (\$3,000,000) aggregate (Products and Completed Operations), and Three Million Dollars (\$3,000,000) general aggregate;
- (b) Automobile Liability covering all non-owned, leased, or rented vehicles with property damage and bodily injury coverage with minimum limits of One Million Dollars (\$1,000,000) per person, One Million Dollars (\$1,000,000) per accident, and One Million Dollars (\$1,000,000) annual aggregate;
 - (c) Workers' Compensation and Employers' Liability with statutory coverage for Workers' Compensation and minimum limits of One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) disease (each employee), and One Million Dollars (\$1,000,000) disease (policy limit) for Employers' Liability; and
 - (d) Umbrella/Excess Liability with minimum limits of Three Million Dollars (\$3,000,000) each occurrence and aggregate.

Contractor must tender to Kmart certificates of insurance evidencing the coverages required to be maintained by Contractor. The certificates must provide that no change or cancellation of insurance will be made without thirty (30) days prior written notice to Kmart. The insurance evidenced by the certificate must be primary over any and all other collectible insurance.

- 7. Contractor is an independent contractor in the performance of this Agreement, and nothing contained in this Agreement may be construed to create or constitute a joint venture, partnership, agency, franchise, lease, or any other arrangement other than as expressly granted in this Agreement. Contractor is responsible for its own operation. Contractor must exercise control over its employees, agents, representatives, subcontractors, and suppliers and is solely responsible for the verification of identity and employment eligibility, for the payment of any wages, salaries, or other remuneration of its employees, agents, representatives, subcontractors, and suppliers, and for the payment of any payroll taxes, contributions for unemployment or workers compensation, social security, pensions, or annuities that are imposed as a result of the employment of Contractor's employees, agents, representatives, subcontractors, and suppliers. Contractor must not pledge credit, incur any obligation or liability, hire any employee, nor purchase any merchandise or services in the name of Kmart or any subsidiary or affiliate thereof. Unless otherwise provided in this Agreement, all costs, charges, and expenses incurred in connection with Contractor's performance of this Agreement must be borne by Contractor.
- 8. Neither party may assign or otherwise transfer its rights, obligations, and/or duties under this Agreement without the prior written consent of the other party, given at the other party's sole option; but Kmart may assign this Agreement to a subsidiary or affiliate upon notice to Contractor. Any prohibited assignment is void.

9. Contractor hereby assigns, conveys, and transfers all right, title, and interest in and to the Services, which include all related work product of Contractor and its employees, to Kmart. Contractor understands that all Services produced, developed or otherwise created by Contractor or its employees hereunder are the exclusive property of Kmart. Consistent with this understanding, Contractor must not use the Services for the benefit of any party other than Kmart.
10. Contractor warrants that all creators and/or contributors to the Services, including but not limited to, all persons engaged by Contractor to make any contributions to the Services, were, at the time of the Services' creation, bona-fide employees of Contractor who made their contributions to the Services within the scope of their employment as work for hire or that Contractor has obtained and possesses a written assignment of the copyright, title, and interest from all the creators or contributors not otherwise considered bona-fide employees. Contractor must maintain an agreement with each of its employees consistent with the obligations set forth in Paragraphs 9, 10, and 11 and is responsible for enforcing such agreements. Contractor must provide a copy of such agreement at the request of Kmart.
11. Contractor agrees that all information (including the provisions of this Agreement) of or relating to Kmart, its parent, subsidiaries and/or affiliates, regardless of the manner or medium in which it is furnished to or otherwise obtained by Contractor or any Contractor representative, is provided to and received by Contractor in confidence. Contractor must at all times preserve and protect the confidentiality of this information and any other proprietary and non-public Kmart information that Contractor or any Contractor representative becomes aware of or acquires during the performance of this Agreement (collectively, the "Confidential Information"). Without limiting the generality of the foregoing, Contractor must not divulge to or discuss with third parties any trade secret; system, program, or any other matter on which Contractor is working hereunder; other program, system, or work product belonging to Kmart, its parent, subsidiaries and/or affiliates, which are disclosed on Contractor; or information regarding Kmart and any agreements or contracts which Kmart, its parent, subsidiaries and/or affiliates, has with other companies or firms. Contractor must take all necessary steps to ensure that the Confidential Information is not disclosed to, or used by any person, firm, or entity, except Contractor's own employees and agents, and then only to the extent necessary to permit Contractor to perform this Agreement. The confidentiality obligations set forth above do not apply to information (i) available to the public through no fault of Contractor; (ii) released by Kmart to any third party on a non-confidential basis without restrictions on disclosure; and (iii) to the extent disclosure of the information is required under any valid court or governmental order and Contractor provides Kmart immediate notice thereof so that Kmart will have an opportunity to contest disclosure or seek an appropriate protective order. The

confidentiality and non-disclosure obligations contained in this Agreement survive and continue after termination of this Agreement for any reason and bind Contractor's legal representatives, successors, and assigns.

12. Contractor acknowledges Kmart of Michigan, Inc.'s ("KMI's") exclusive right, title, and interest in and to all trademarks, trade names, service marks, logos, assignees, program and event names, identifications, and other proprietary rights and privileges that it licenses to Kmart with the right to sublicense (the "Kmart Marks"). This Agreement and its various provisions are not a license or assignment of any right, title, or interest in the Kmart Marks by KMI or Kmart to Contractor. Contractor must not, in any manner, represent that it has any ownership in the Kmart Marks. Contractor must not do or cause to be done anything that impairs Kmart's exclusive license in the Kmart Marks. Contractor must not use, print, or duplicate the Kmart Marks unless Contractor has obtained prior written approval from Kmart and KMI. Any permitted use by Contractor of the Kmart Marks is limited to the term of this Agreement. Upon termination, Contractor must immediately cease all use of the Kmart Marks. Contractor must not assign or attempt to assign any rights with regard to the Kmart Marks that arise under this Agreement and any such attempted assignment is void.
13. Except with respect to damages arising from Paragraphs 5, 9, 10, 11, and 12 herein, neither party is liable to the other party for incidental, consequential, punitive, or exemplary damages arising in connection with this Agreement or the performance, omission of performance, or termination hereof including, without limitation, lost sales and profits and other business interruption damages, even if the party has been advised of the possibility of such damages and without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, or otherwise).
14. Contractor represents and warrants that: (i) its performance under this Agreement will at all times conform to the highest professional and ethical standards; (ii) due care and its commercially reasonable efforts will be utilized by Contractor in the performance of this Agreement; (iii) it is under no obligation or restriction that would conflict with the Services required to be furnished by Contractor and its other obligations under this Agreement, or that otherwise would in any manner prevent the full performance by Contractor of the terms, conditions, and requirements of this Agreement (Contractor must immediately disclose to Kmart any actual or potential conflict of interest that may arise during the Contractor's performance of this Agreement); and (iv) the Services are Year 2000 Compliant. For purposes hereof, "Year 2000 Compliant" means that all Services, individually and collectively, accurately process date and time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology used in combination with the Services properly exchanges date/time data with

the Services. The foregoing warranties are in lieu of all other warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose. In the event Contractor breaches any of the above warranties in any material respect, Kmart may exercise all rights and remedies available to it under applicable laws and all other rights and remedies under this Agreement.

15. If any provision of this Agreement is held to be void or unenforceable by any judicial or administrative authority, or is unlawful or unenforceable under any applicable law, the remaining provisions are considered to be severable and their enforceability is not to be affected or impaired in any way by reason of such law or holding.
16. All notices under this Agreement must be in writing and must be given by either party by prepaid mail or by cable, telefax, telegram, telex, or hand delivery to the other party as follows:

If to Kmart:

Kmart Corporation
3100 West Big Beaver Road
Troy, Michigan 48084
Attn: Jeffrey Stollenwerck, Vice President

If to Contractor:

Horn Murdock Cole
3001 West Big Beaver Road
Troy, Michigan 48084
Attn: David Flynn, Vice President

With a copy to:

Attn: General Counsel
(at the above address)
Shawn Husband,
Divisional Vice President General Auditor
(at the above address)

Either party may change its address and/or addressee for notices at any time with fifteen (15) days prior notice to the other party in accordance with the foregoing.

17. Kmart agrees to pay Contractor for Services rendered the amounts set forth in Exhibit A after the receipt of a correct invoice from Contractor. All invoices must include, at a minimum, the following information: (i) Name and address of Contractor; (ii) Contractor DUNS number (if such a number has been assigned); (iii) Invoice number; (iv) Description of Services provided; (v) Date; and (vi) Dollar amount due. Kmart is not required to pay any disputed charge until after the resolution of the dispute. Contractor is responsible for the payment of all taxes, however designated, levied, or based on the purchase of the service. The

prices charged to Kmart are not to be increased during the term of this Agreement. In no case will Kmart be charged more for the Services than any other comparable purchaser of similar services.

18. THIS AGREEMENT, AND ALL OTHER ASPECTS OF THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, IS CONSTRUED, INTERPRETED, AND ENFORCED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO CHOICE OF LAW PROVISIONS. CONTRACTOR AGREES, WITH RESPECT TO ANY LITIGATION ARISING DIRECTLY OR INDIRECTLY OUT OF, OR THAT IN ANY WAY RELATES TO, THIS AGREEMENT, THE BUSINESS RELATIONSHIP OR ANY OTHER TRANSACTION, MATTER, OR ISSUE BETWEEN THE PARTIES, TO COMMENCE IT EXCLUSIVELY IN THE STATE OF MICHIGAN COURTS OF OAKLAND COUNTY, MICHIGAN OR THE UNITED STATES DISTRICT COURT AT DETROIT, MICHIGAN, AND CONTRACTOR BY THIS AGREEMENT CONSENTS TO THE JURISDICTION OF THESE COURTS.
19. Contractor must not subcontract any duty or obligation under this Agreement to a third party. All performance required under this Agreement must be solely by the named Contractor.
20. Each person signing below warrants and represents that he/she has full power and authority to execute this Agreement on behalf of the party he/she represents. Upon request, each party must provide a Certified Resolution or Certificate of Authority authorizing the undersigned to enter into and sign this Agreement.
21. Time is of the essence in the performance of all parts of this Agreement, but neither party is responsible for delays due to causes beyond its reasonable control during the continuance thereof that by reasonable diligence could not have been avoided or overcome; provided further, if substitute performance is available, Contractor must offer Kmart the substitute performance, which Kmart may accept or reject at its sole option.
22. This is an arms-length transaction and relationship. There exist no implied or otherwise unstated covenants, rights, or obligations by, of or against either party. The parties expressly disclaim the existence of any implied covenant of good faith and/or fair dealing.
23. Contractor and Kmart each expressly represent and warrant to the other that each has relied solely and exclusively on its own judgment and the advice of its own attorneys in entering into this Agreement, and that no representative or agent of the other has made any statement or representation to it beyond those in this Agreement that have induced signing of this Agreement.

24. Kmart has the right to audit all books and records of Contractor relating to Contractor's performance of this Agreement upon 3 days notice. During the term hereof and for a period of 7 years thereafter, Contractor must maintain its books and records in a manner that facilitates a full and complete review of Contractor's performance of this Agreement. At Kmart's option, audits may be conducted (i) by Kmart or its third party designee, and (ii) at Contractor's offices or at a different location specified by Kmart, in which latter case Contractor must deliver copies of all applicable books and records to that location. Kmart and Contractor will each bear their own costs associated with the audits
25. This Agreement is the final and complete agreement between Kmart and Contractor with respect to the subject matter hereof. No representations, inducements, promises, or understandings in relation to the subject matter hereof, whether oral or written, exist unless expressly set forth in this Agreement, and this Agreement supersedes all prior understandings, agreements, contracts, or arrangements between the parties, whether oral or written, unless otherwise expressly incorporated in this Agreement. No agreement or other understanding purporting to add to or to modify the terms and conditions hereof is binding unless agreed to by duly authorized representatives of the parties in writing. Any terms or conditions in any forms of the parties used in the performance of this Agreement that are in conflict with the terms and conditions hereof are void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day
and year set forth below.

Horn Murdock Cole
(Contractor)

Kmart Management Corporation

Signature

Signature

Name

Name

Title

Title

Date

Date

EXHIBIT A

(i) Description of Services (including times and manner of performance):

HMC will perform an audit of amounts invoiced to Kmart for facilities maintenance services, including snow removal, parking lot sweeping and landscaping, performed or subcontracted by its vendor Global Property Services. The audit will include a review of invoices for the past two years, or for such period of time as requested by Kmart management at the commencement of the audit. HMC will validate amounts invoiced against the contractual agreement(s) with Global Property Services to determine whether amounts invoiced and paid were in accordance with the contract(s).

HMC will plan and perform the audit according to its professional judgment, with advice and supervision of Kmart management. Prior to directly contacting the vendor, any of the vendor's subcontractors, or Kmart associates other than Shawn Husband, DVP General Auditor, Ben Lau, (Title/Role), Shawky Yoakim (Title/Role) or Carolyn Saint, Director, Corporate Audit, HMC will obtain Kmart management authorization and approval. Kmart will provide access to such information as it deems necessary to perform the audit, including accounts payable information, copies of paid invoices, copies of email correspondence from field personnel and copies of contracts, as available.

HMC will verbally report progress on the audit to Shawn Husband, or his representative, on a periodic basis to be determined, but not less than biweekly. Any written correspondence from HMC regarding this matter (including emails, memos, or written reports) shall be addressed to Kmart's Legal Counsel, James Defebaugh, and will be considered privileged and confidential information. HMC will include in any written correspondence with Kmart the following statement:

**PRIVILEGED AND CONFIDENTIAL PREPARED AT THE REQUEST OF COUNSEL IN
ANTICIPATION OF LITIGATION**

HMC will include in its final report to Kmart an analysis of overpayments, if any, to Global Property Services, including amounts, dates and root causes of such overpayments. HMC's final report to Kmart will also include recommendations to improve the process of contracting with, supervising, validating invoices of and disbursing funds to facilities maintenance vendors generally and Global Property Services specifically. HMC will provide a trend analysis of facilities maintenance spending for Kmart, comparing costs incurred for the period prior to engaging Global Property Services to the periods subsequent to engaging Global Property Services.

The audit will commence as soon as possible upon signing of this agreement.

(ii) Term (number of months from Effective Date, subject to Paragraph 3):

Not to exceed 3 months.

(iii) Amounts payable for Services / payment terms:

HMC will invoice Kmart for services performed for this audit at the rate of \$85 per hour. Expenses exceeding \$50 will be approved in advance by Shawn Husband, or his representative. Invoices will be submitted to Jeffrey Stollenwerck on a biweekly basis.

KMRT 0000018179

SERVICES AGREEMENT

Agreement entered into this ____ day of September, 2003 (the "Effective Date") by and between Kmart Management Corporation, having its principal place of business at 3100 West Big Beaver Road, Troy, Michigan 48084 ("Kmart"), and Horn Murdock Cole a _____ ("HMC"), having its principal place of business at 3001 West Big Beaver Road, Suite 210, Troy, Michigan 48084 ("Contractor").

In consideration of the mutual covenants, terms, and conditions herein contained, the parties agree as follows:

1. The services, products, software, equipment, and other materials provided to Kmart by Contractor (collectively, the "Services") are described, and must be provided at the times and in the manner set forth in, Exhibit A attached hereto and incorporated herein by this reference.
2. This Agreement is binding on the parties upon full signing hereof. The term of the Agreement commences on the Effective Date and, subject to early termination pursuant to Paragraph 3, remains in effect for the number of months set forth in Exhibit A. The term may be extended or renewed for an additional term only by written agreement of the parties. If the term of the Agreement expires without being formally renewed or extended, but both parties continue to perform as set forth in this Agreement, then this Agreement will continue in effect on a month-to-month basis until terminated by either party on thirty days prior written notice.
3. This Agreement may be terminated at any time without cause by either party with 30 days prior notice to the other party. This Agreement may also be immediately terminated by either party if the other party breaches or fails to perform any of its obligations in any material respect, attempts to assign or otherwise transfer its rights, obligations, or duties under this Agreement, or if the other party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws. Upon termination, there is nothing due from Kmart to Contractor beyond any fees due for services actually performed up to the date of termination, and both parties are relieved of any further obligations contained in this Agreement except for those that by their nature survive or may require performance after termination (e.g., indemnity). Contractor must remove all of its material, software, and/or equipment from the Kmart premises within three (3) days of the date of termination.
4. Contractor is responsible for and does represent that it will comply with all federal, state, and local laws, rules, and regulations applicable to this Agreement or to the performance thereof.

5. To the fullest extent permitted by law: Contractor must reimburse, indemnify, defend, and hold harmless Kmart, its parent, subsidiaries and affiliates and each of Kmart's, its parent's subsidiary's and affiliate's present, former, and future shareholders, employees, officers, and directors from and against all loss, damage, expense (including attorney's fees and expenses), and penalty, and any claim or action therefor by or on behalf of any person, (collectively, "Loss") arising out of or in connection with Contractor's performance or failure of performance of this Agreement including, without limitation, Loss arising out of or occurring in connection with: (i) any acts or omissions by Contractor or its employees or agents, including, without limitation, personal injury and death claims; (ii) all claims of Contractor's employees, agents, and subcontractors, whether for injury, death, compensation, social security, pension, unemployment compensation, etc.; (iii) the provision, ownership, installation, operation, maintenance, use, or repair of any of the Services; and (iv) all third-party claims alleging that any of the Services infringes any patent, copyright, trademark, or other proprietary right or constitutes a misuse of any trade secret information. Contractor will not be relieved of the foregoing indemnity and related obligations by allegations or any claim that Kmart was negligent; but Contractor is not liable to the extent any injury or damage is finally judicially determined by a court of competent jurisdiction to have been proximately caused by the sole negligence or willful act of Kmart. Kmart agrees to timely advise Contractor of any suit, claim, or proceeding, and to reasonably cooperate with Contractor in the defense or settlement of such suit, claim, or proceeding, but Contractor will have sole control thereof. If an injunction is obtained against Kmart's use of any of the Services, in whole or in part, Contractor must promptly at Kmart's option either: (i) procure right to continue using the Services enjoined from use or replace or modify them so that Contractor's use or possession is not subject to any such injunction, or (ii) refund to Kmart all amounts paid to Contractor for the Services. If this indemnification provision is construed by a court of competent jurisdiction to require indemnification over and above that permitted by applicable law or public policy, the parties intend that the Agreement be judicially modified to afford Kmart the maximum indemnification allowed.
6. Contractor must, during the performance of this Agreement, maintain the following insurance coverages as indicated or as required by law, whichever is greater, with insurers in good standing, possessing an A.M. Best rating of not less than A, Financial size X., and authorized to do business under the laws of the State(s) and/or Countr(y/ies) where performance occurs:
 - (a) Commercial General Liability written on an occurrence coverage form, naming Kmart as an additional insured, including, without limitation, Bodily Injury and Property Damage Liability, Products and Completed Operations Liability, Contractual Liability, and Personal and Advertising Liability. The minimum limits are Three Million Dollars (\$3,000,000) per each occurrence,

- Three Million Dollars (\$3,000,000) aggregate (Products and Completed Operations), and Three Million Dollars (\$3,000,000) general aggregate;
- (b) Automobile Liability covering all non-owned, leased, or rented vehicles with property damage and bodily injury coverage with minimum limits of One Million Dollars (\$1,000,000) per person, One Million Dollars (\$1,000,000) per accident, and One Million Dollars (\$1,000,000) annual aggregate;
 - (c) Workers' Compensation and Employers' Liability with statutory coverage for Workers' Compensation and minimum limits of One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) disease (each employee), and One Million Dollars (\$1,000,000) disease (policy limit) for Employers' Liability; and
 - (d) Umbrella/Excess Liability with minimum limits of Three Million Dollars (\$3,000,000) each occurrence and aggregate.

Contractor must tender to Kmart certificates of insurance evidencing the coverages required to be maintained by Contractor. The certificates must provide that no change or cancellation of insurance will be made without thirty (30) days prior written notice to Kmart. The insurance evidenced by the certificate must be primary over any and all other collectible insurance.

- 7. Contractor is an independent contractor in the performance of this Agreement, and nothing contained in this Agreement may be construed to create or constitute a joint venture, partnership, agency, franchise, lease, or any other arrangement other than as expressly granted in this Agreement. Contractor is responsible for its own operation. Contractor must exercise control over its employees, agents, representatives, subcontractors, and suppliers and is solely responsible for the verification of identity and employment eligibility, for the payment of any wages, salaries, or other remuneration of its employees, agents, representatives, subcontractors, and suppliers, and for the payment of any payroll taxes, contributions for unemployment or workers compensation, social security, pensions, or annuities that are imposed as a result of the employment of Contractor's employees, agents, representatives, subcontractors, and suppliers. Contractor must not pledge credit, incur any obligation or liability, hire any employee, nor purchase any merchandise or services in the name of Kmart or any subsidiary or affiliate thereof. Unless otherwise provided in this Agreement, all costs, charges, and expenses incurred in connection with Contractor's performance of this Agreement must be borne by Contractor.
- 8. Neither party may assign or otherwise transfer its rights, obligations, and/or duties under this Agreement without the prior written consent of the other party, given at the other party's sole option; but Kmart may assign this Agreement to a subsidiary or affiliate upon notice to Contractor. Any prohibited assignment is void.

9. Contractor hereby assigns, conveys, and transfers all right, title, and interest in and to the Services, which include all related work product of Contractor and its employees, to Kmart. Contractor understands that all Services produced, developed or otherwise created by Contractor or its employees hereunder are the exclusive property of Kmart. Consistent with this understanding, Contractor must not use the Services for the benefit of any party other than Kmart.
10. Contractor warrants that all creators and/or contributors to the Services, including but not limited to, all persons engaged by Contractor to make any contributions to the Services, were, at the time of the Services' creation, bona-fide employees of Contractor who made their contributions to the Services within the scope of their employment as work for hire or that Contractor has obtained and possesses a written assignment of the copyright, title, and interest from all the creators or contributors not otherwise considered bona-fide employees. Contractor must maintain an agreement with each of its employees consistent with the obligations set forth in Paragraphs 9, 10, and 11 and is responsible for enforcing such agreements. Contractor must provide a copy of such agreement at the request of Kmart.
11. Contractor agrees that all information (including the provisions of this Agreement) of or relating to Kmart, its parent, subsidiaries and/or affiliates, regardless of the manner or medium in which it is furnished to or otherwise obtained by Contractor or any Contractor representative, is provided to and received by Contractor in confidence. Contractor must at all times preserve and protect the confidentiality of this information and any other proprietary and non-public Kmart information that Contractor or any Contractor representative becomes aware of or acquires during the performance of this Agreement (collectively, the "Confidential Information"). Without limiting the generality of the foregoing, Contractor must not divulge to or discuss with third parties any trade secret; system, program, or any other matter on which Contractor is working hereunder; other program, system, or work product belonging to Kmart, its parent, subsidiaries and/or affiliates, which are disclosed on Contractor; or information regarding Kmart and any agreements or contracts which Kmart, its parent, subsidiaries and/or affiliates, has with other companies or firms. Contractor must take all necessary steps to ensure that the Confidential Information is not disclosed to, or used by any person, firm, or entity, except Contractor's own employees and agents, and then only to the extent necessary to permit Contractor to perform this Agreement. The confidentiality obligations set forth above do not apply to information (i) available to the public through no fault of Contractor; (ii) released by Kmart to any third party on a non-confidential basis without restrictions on disclosure; and (iii) to the extent disclosure of the information is required under any valid court or governmental order and Contractor provides Kmart immediate notice thereof so that Kmart will have an opportunity to contest disclosure or seek an appropriate protective order. The

confidentiality and non-disclosure obligations contained in this Agreement survive and continue after termination of this Agreement for any reason and bind Contractor's legal representatives, successors, and assigns.

12. Contractor acknowledges Kmart of Michigan, Inc.'s ("KMI's") exclusive right, title, and interest in and to all trademarks, trade names, service marks, logos, assignees, program and event names, identifications, and other proprietary rights and privileges that it licenses to Kmart with the right to sublicense (the "Kmart Marks"). This Agreement and its various provisions are not a license or assignment of any right, title, or interest in the Kmart Marks by KMI or Kmart to Contractor. Contractor must not, in any manner, represent that it has any ownership in the Kmart Marks. Contractor must not do or cause to be done anything that impairs Kmart's exclusive license in the Kmart Marks. Contractor must not use, print, or duplicate the Kmart Marks unless Contractor has obtained prior written approval from Kmart and KMI. Any permitted use by Contractor of the Kmart Marks is limited to the term of this Agreement. Upon termination, Contractor must immediately cease all use of the Kmart Marks. Contractor must not assign or attempt to assign any rights with regard to the Kmart Marks that arise under this Agreement and any such attempted assignment is void.
13. Except with respect to damages arising from Paragraphs 5, 9, 10, 11, and 12 herein, neither party is liable to the other party for incidental, consequential, punitive, or exemplary damages arising in connection with this Agreement or the performance, omission of performance, or termination hereof including, without limitation, lost sales and profits and other business interruption damages, even if the party has been advised of the possibility of such damages and without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, or otherwise).
14. Contractor represents and warrants that: (i) its performance under this Agreement will at all times conform to the highest professional and ethical standards; (ii) due care and its commercially reasonable efforts will be utilized by Contractor in the performance of this Agreement; (iii) it is under no obligation or restriction that would conflict with the Services required to be furnished by Contractor and its other obligations under this Agreement, or that otherwise would in any manner prevent the full performance by Contractor of the terms, conditions, and requirements of this Agreement (Contractor must immediately disclose to Kmart any actual or potential conflict of interest that may arise during the Contractor's performance of this Agreement); and (iv) the Services are Year 2000 Compliant. For purposes hereof, "Year 2000 Compliant" means that all Services, individually and collectively, accurately process date and time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology used in combination with the Services properly exchanges date/time data with

the Services. The foregoing warranties are in lieu of all other warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose. In the event Contractor breaches any of the above warranties in any material respect, Kmart may exercise all rights and remedies available to it under applicable laws and all other rights and remedies under this Agreement.

15. If any provision of this Agreement is held to be void or unenforceable by any judicial or administrative authority, or is unlawful or unenforceable under any applicable law, the remaining provisions are considered to be severable and their enforceability is not to be affected or impaired in any way by reason of such law or holding.
16. All notices under this Agreement must be in writing and must be given by either party by prepaid mail or by cable, telefax, telegram, telex, or hand delivery to the other party as follows:

If to Kmart:

Kmart Corporation
3100 West Big Beaver Road
Troy, Michigan 48084
Attn: Jeffrey Stollenwerck, Vice President

If to Contractor:

Horn Murdock Cole
3001 West Big Beaver Road
Troy, Michigan 48084
Attn: David Flynn, Vice President

With a copy to:

Attn: General Counsel
(at the above address)
Shawn Husband,
Divisional Vice President General Auditor
(at the above address)

Either party may change its address and/or addressee for notices at any time with fifteen (15) days prior notice to the other party in accordance with the foregoing.

17. Kmart agrees to pay Contractor for Services rendered the amounts set forth in Exhibit A after the receipt of a correct invoice from Contractor. All invoices must include, at a minimum, the following information: (i) Name and address of Contractor; (ii) Contractor DUNS number (if such a number has been assigned); (iii) Invoice number; (iv) Description of Services provided; (v) Date; and (vi) Dollar amount due. Kmart is not required to pay any disputed charge until after the resolution of the dispute. Contractor is responsible for the payment of all taxes, however designated, levied, or based on the purchase of the service. The

prices charged to Kmart are not to be increased during the term of this Agreement. In no case will Kmart be charged more for the Services than any other comparable purchaser of similar services.

18. THIS AGREEMENT, AND ALL OTHER ASPECTS OF THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, IS CONSTRUED, INTERPRETED, AND ENFORCED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO CHOICE OF LAW PROVISIONS. CONTRACTOR AGREES, WITH RESPECT TO ANY LITIGATION ARISING DIRECTLY OR INDIRECTLY OUT OF, OR THAT IN ANY WAY RELATES TO, THIS AGREEMENT, THE BUSINESS RELATIONSHIP OR ANY OTHER TRANSACTION, MATTER, OR ISSUE BETWEEN THE PARTIES, TO COMMENCE IT EXCLUSIVELY IN THE STATE OF MICHIGAN COURTS OF OAKLAND COUNTY, MICHIGAN OR THE UNITED STATES DISTRICT COURT AT DETROIT, MICHIGAN, AND CONTRACTOR BY THIS AGREEMENT CONSENTS TO THE JURISDICTION OF THESE COURTS.
19. Contractor must not subcontract any duty or obligation under this Agreement to a third party. All performance required under this Agreement must be solely by the named Contractor.
20. Each person signing below warrants and represents that he/she has full power and authority to execute this Agreement on behalf of the party he/she represents. Upon request, each party must provide a Certified Resolution or Certificate of Authority authorizing the undersigned to enter into and sign this Agreement.
21. Time is of the essence in the performance of all parts of this Agreement, but neither party is responsible for delays due to causes beyond its reasonable control during the continuance thereof that by reasonable diligence could not have been avoided or overcome; provided further, if substitute performance is available, Contractor must offer Kmart the substitute performance, which Kmart may accept or reject at its sole option.
22. This is an arms-length transaction and relationship. There exist no implied or otherwise unstated covenants, rights, or obligations by, of or against either party. The parties expressly disclaim the existence of any implied covenant of good faith and/or fair dealing.
23. Contractor and Kmart each expressly represent and warrant to the other that each has relied solely and exclusively on its own judgment and the advice of its own attorneys in entering into this Agreement, and that no representative or agent of the other has made any statement or representation to it beyond those in this Agreement that have induced signing of this Agreement.

24. Kmart has the right to audit all books and records of Contractor relating to Contractor's performance of this Agreement upon 3 days notice. During the term hereof and for a period of 7 years thereafter, Contractor must maintain its books and records in a manner that facilitates a full and complete review of Contractor's performance of this Agreement. At Kmart's option, audits may be conducted (i) by Kmart or its third party designee, and (ii) at Contractor's offices or at a different location specified by Kmart, in which latter case Contractor must deliver copies of all applicable books and records to that location. Kmart and Contractor will each bear their own costs associated with the audits
25. This Agreement is the final and complete agreement between Kmart and Contractor with respect to the subject matter hereof. No representations, inducements, promises, or understandings in relation to the subject matter hereof, whether oral or written, exist unless expressly set forth in this Agreement, and this Agreement supersedes all prior understandings, agreements, contracts, or arrangements between the parties, whether oral or written, unless otherwise expressly incorporated in this Agreement. No agreement or other understanding purporting to add to or to modify the terms and conditions hereof is binding unless agreed to by duly authorized representatives of the parties in writing. Any terms or conditions in any forms of the parties used in the performance of this Agreement that are in conflict with the terms and conditions hereof are void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day
and year set forth below.

Horn Murdock Cole
(Contractor)

Kmart Management Corporation

Signature

Signature

Name

Name

Title

Title

Date

Date

EXHIBIT A

(i) Description of Services (including times and manner of performance):

HMC will perform an audit of amounts invoiced to Kmart for facilities maintenance services, including snow removal, parking lot sweeping and landscaping, performed or subcontracted by its vendor Global Property Services. The audit will include a review of invoices for the past two years, or for such period of time as requested by Kmart management at the commencement of the audit. HMC will validate amounts invoiced against the contractual agreement(s) with Global Property Services to determine whether amounts invoiced and paid were in accordance with the contract(s).

HMC will plan and perform the audit according to its professional judgment, with advice and supervision of Kmart management. Prior to directly contacting the vendor, any of the vendor's subcontractors, or Kmart associates other than Shawn Husband, DVP General Auditor, Ben Lau, (Title/Role), Shawky Yoakim (Title/Role) or Carolyn Saint, Director, Corporate Audit, HMC will obtain Kmart management authorization and approval. Kmart will provide access to such information as it deems necessary to perform the audit, including accounts payable information, copies of paid invoices, copies of email correspondence from field personnel and copies of contracts, as available.

HMC will verbally report progress on the audit to Shawn Husband, or his representative, on a periodic basis to be determined, but not less than biweekly. Any written correspondence from HMC regarding this matter (including emails, memos, or written reports) shall be addressed to Kmart's Legal Counsel, James Defebaugh, and will be considered privileged and confidential information. HMC will include in any written correspondence with Kmart the following statement:

PRIVILEGED AND CONFIDENTIAL PREPARED AT THE REQUEST OF COUNSEL IN ANTICIPATION OF LITIGATION

HMC will include in its final report to Kmart an analysis of overpayments, if any, to Global Property Services, including amounts, dates and root causes of such overpayments. HMC's final report to Kmart will also include recommendations to improve the process of contracting with, supervising, validating invoices of and disbursing funds to facilities maintenance vendors generally and Global Property Services specifically. HMC will provide a trend analysis of facilities maintenance spending for Kmart, comparing costs incurred for the period prior to engaging Global Property Services to the periods subsequent to engaging Global Property Services.

The audit will commence as soon as possible upon signing of this agreement.

(ii) Term (number of months from Effective Date, subject to Paragraph 3):

Not to exceed 3 months.

(iii) Amounts payable for Services / payment terms:

HMC will invoice Kmart for services performed for this audit at the rate of \$85 per hour. Expenses exceeding \$50 will be approved in advance by Shawn Husband, or his representative. Invoices will be submitted to Jeffrey Stollenwerck on a biweekly basis.

KMRT 0000018191

SERVICES AGREEMENT

Agreement entered into this ____ day of September, 2003 (the "Effective Date") by and between Kmart Management Corporation, having its principal place of business at 3100 West Big Beaver Road, Troy, Michigan 48084 ("Kmart"), and Horn Murdock Cole a _____ ("HMC"), having its principal place of business at 3001 West Big Beaver Road, Suite 210, Troy, Michigan 48084 ("Contractor").

In consideration of the mutual covenants, terms, and conditions herein contained, the parties agree as follows:

1. The services, products, software, equipment, and other materials provided to Kmart by Contractor (collectively, the "Services") are described, and must be provided at the times and in the manner set forth in, Exhibit A attached hereto and incorporated herein by this reference.
2. This Agreement is binding on the parties upon full signing hereof. The term of the Agreement commences on the Effective Date and, subject to early termination pursuant to Paragraph 3, remains in effect for the number of months set forth in Exhibit A. The term may be extended or renewed for an additional term only by written agreement of the parties. If the term of the Agreement expires without being formally renewed or extended, but both parties continue to perform as set forth in this Agreement, then this Agreement will continue in effect on a month-to-month basis until terminated by either party on thirty days prior written notice.
3. This Agreement may be terminated at any time without cause by either party with 30 days prior notice to the other party. This Agreement may also be immediately terminated by either party if the other party breaches or fails to perform any of its obligations in any material respect, attempts to assign or otherwise transfer its rights, obligations, or duties under this Agreement, or if the other party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws. Upon termination, there is nothing due from Kmart to Contractor beyond any fees due for services actually performed up to the date of termination, and both parties are relieved of any further obligations contained in this Agreement except for those that by their nature survive or may require performance after termination (e.g., indemnity). Contractor must remove all of its material, software, and/or equipment from the Kmart premises within three (3) days of the date of termination.
4. Contractor is responsible for and does represent that it will comply with all federal, state, and local laws, rules, and regulations applicable to this Agreement or to the performance thereof.

5. To the fullest extent permitted by law: Contractor must reimburse, indemnify, defend, and hold harmless Kmart, its parent, subsidiaries and affiliates and each of Kmart's, its parent's subsidiary's and affiliate's present, former, and future shareholders, employees, officers, and directors from and against all loss, damage, expense (including attorney's fees and expenses), and penalty, and any claim or action therefor by or on behalf of any person, (collectively, "Loss") arising out of or in connection with Contractor's performance or failure of performance of this Agreement including, without limitation, Loss arising out of or occurring in connection with: (i) any acts or omissions by Contractor or its employees or agents, including, without limitation, personal injury and death claims; (ii) all claims of Contractor's employees, agents, and subcontractors, whether for injury, death, compensation, social security, pension, unemployment compensation, etc.; (iii) the provision, ownership, installation, operation, maintenance, use, or repair of any of the Services; and (iv) all third-party claims alleging that any of the Services infringes any patent, copyright, trademark, or other proprietary right or constitutes a misuse of any trade secret information. Contractor will not be relieved of the foregoing indemnity and related obligations by allegations or any claim that Kmart was negligent; but Contractor is not liable to the extent any injury or damage is finally judicially determined by a court of competent jurisdiction to have been proximately caused by the sole negligence or willful act of Kmart. Kmart agrees to timely advise Contractor of any suit, claim, or proceeding, and to reasonably cooperate with Contractor in the defense or settlement of such suit, claim, or proceeding, but Contractor will have sole control thereof. If an injunction is obtained against Kmart's use of any of the Services, in whole or in part, Contractor must promptly at Kmart's option either: (i) procure right to continue using the Services enjoined from use or replace or modify them so that Contractor's use or possession is not subject to any such injunction, or (ii) refund to Kmart all amounts paid to Contractor for the Services. If this indemnification provision is construed by a court of competent jurisdiction to require indemnification over and above that permitted by applicable law or public policy, the parties intend that the Agreement be judicially modified to afford Kmart the maximum indemnification allowed.
6. Contractor must, during the performance of this Agreement, maintain the following insurance coverages as indicated or as required by law, whichever is greater, with insurers in good standing, possessing an A.M. Best rating of not less than A, Financial size X., and authorized to do business under the laws of the State(s) and/or Countr(y/ies) where performance occurs:
 - (a) Commercial General Liability written on an occurrence coverage form, naming Kmart as an additional insured, including, without limitation, Bodily Injury and Property Damage Liability, Products and Completed Operations Liability, Contractual Liability, and Personal and Advertising Liability. The minimum limits are Three Million Dollars (\$3,000,000) per each occurrence,

- Three Million Dollars (\$3,000,000) aggregate (Products and Completed Operations), and Three Million Dollars (\$3,000,000) general aggregate;
- (b) Automobile Liability covering all non-owned, leased, or rented vehicles with property damage and bodily injury coverage with minimum limits of One Million Dollars (\$1,000,000) per person, One Million Dollars (\$1,000,000) per accident, and One Million Dollars (\$1,000,000) annual aggregate;
 - (c) Workers' Compensation and Employers' Liability with statutory coverage for Workers' Compensation and minimum limits of One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) disease (each employee), and One Million Dollars (\$1,000,000) disease (policy limit) for Employers' Liability; and
 - (d) Umbrella/Excess Liability with minimum limits of Three Million Dollars (\$3,000,000) each occurrence and aggregate.

Contractor must tender to Kmart certificates of insurance evidencing the coverages required to be maintained by Contractor. The certificates must provide that no change or cancellation of insurance will be made without thirty (30) days prior written notice to Kmart. The insurance evidenced by the certificate must be primary over any and all other collectible insurance.

- 7. Contractor is an independent contractor in the performance of this Agreement, and nothing contained in this Agreement may be construed to create or constitute a joint venture, partnership, agency, franchise, lease, or any other arrangement other than as expressly granted in this Agreement. Contractor is responsible for its own operation. Contractor must exercise control over its employees, agents, representatives, subcontractors, and suppliers and is solely responsible for the verification of identity and employment eligibility, for the payment of any wages, salaries, or other remuneration of its employees, agents, representatives, subcontractors, and suppliers, and for the payment of any payroll taxes, contributions for unemployment or workers compensation, social security, pensions, or annuities that are imposed as a result of the employment of Contractor's employees, agents, representatives, subcontractors, and suppliers. Contractor must not pledge credit, incur any obligation or liability, hire any employee, nor purchase any merchandise or services in the name of Kmart or any subsidiary or affiliate thereof. Unless otherwise provided in this Agreement, all costs, charges, and expenses incurred in connection with Contractor's performance of this Agreement must be borne by Contractor.
- 8. Neither party may assign or otherwise transfer its rights, obligations, and/or duties under this Agreement without the prior written consent of the other party, given at the other party's sole option; but Kmart may assign this Agreement to a subsidiary or affiliate upon notice to Contractor. Any prohibited assignment is void.

9. Contractor hereby assigns, conveys, and transfers all right, title, and interest in and to the Services, which include all related work product of Contractor and its employees, to Kmart. Contractor understands that all Services produced, developed or otherwise created by Contractor or its employees hereunder are the exclusive property of Kmart. Consistent with this understanding, Contractor must not use the Services for the benefit of any party other than Kmart.
10. Contractor warrants that all creators and/or contributors to the Services, including but not limited to, all persons engaged by Contractor to make any contributions to the Services, were, at the time of the Services' creation, bona-fide employees of Contractor who made their contributions to the Services within the scope of their employment as work for hire or that Contractor has obtained and possesses a written assignment of the copyright, title, and interest from all the creators or contributors not otherwise considered bona-fide employees. Contractor must maintain an agreement with each of its employees consistent with the obligations set forth in Paragraphs 9, 10, and 11 and is responsible for enforcing such agreements. Contractor must provide a copy of such agreement at the request of Kmart.
11. Contractor agrees that all information (including the provisions of this Agreement) of or relating to Kmart, its parent, subsidiaries and/or affiliates, regardless of the manner or medium in which it is furnished to or otherwise obtained by Contractor or any Contractor representative, is provided to and received by Contractor in confidence. Contractor must at all times preserve and protect the confidentiality of this information and any other proprietary and non-public Kmart information that Contractor or any Contractor representative becomes aware of or acquires during the performance of this Agreement (collectively, the "Confidential Information"). Without limiting the generality of the foregoing, Contractor must not divulge to or discuss with third parties any trade secret; system, program, or any other matter on which Contractor is working hereunder; other program, system, or work product belonging to Kmart, its parent, subsidiaries and/or affiliates, which are disclosed on Contractor; or information regarding Kmart and any agreements or contracts which Kmart, its parent, subsidiaries and/or affiliates, has with other companies or firms. Contractor must take all necessary steps to ensure that the Confidential Information is not disclosed to, or used by any person, firm, or entity, except Contractor's own employees and agents, and then only to the extent necessary to permit Contractor to perform this Agreement. The confidentiality obligations set forth above do not apply to information (i) available to the public through no fault of Contractor; (ii) released by Kmart to any third party on a non-confidential basis without restrictions on disclosure; and (iii) to the extent disclosure of the information is required under any valid court or governmental order and Contractor provides Kmart immediate notice thereof so that Kmart will have an opportunity to contest disclosure or seek an appropriate protective order. The

confidentiality and non-disclosure obligations contained in this Agreement survive and continue after termination of this Agreement for any reason and bind Contractor's legal representatives, successors, and assigns.

12. Contractor acknowledges Kmart of Michigan, Inc.'s ("KMI's") exclusive right, title, and interest in and to all trademarks, trade names, service marks, logos, assignees, program and event names, identifications, and other proprietary rights and privileges that it licenses to Kmart with the right to sublicense (the "Kmart Marks"). This Agreement and its various provisions are not a license or assignment of any right, title, or interest in the Kmart Marks by KMI or Kmart to Contractor. Contractor must not, in any manner, represent that it has any ownership in the Kmart Marks. Contractor must not do or cause to be done anything that impairs Kmart's exclusive license in the Kmart Marks. Contractor must not use, print, or duplicate the Kmart Marks unless Contractor has obtained prior written approval from Kmart and KMI. Any permitted use by Contractor of the Kmart Marks is limited to the term of this Agreement. Upon termination, Contractor must immediately cease all use of the Kmart Marks. Contractor must not assign or attempt to assign any rights with regard to the Kmart Marks that arise under this Agreement and any such attempted assignment is void.
13. Except with respect to damages arising from Paragraphs 5, 9, 10, 11, and 12 herein, neither party is liable to the other party for incidental, consequential, punitive, or exemplary damages arising in connection with this Agreement or the performance, omission of performance, or termination hereof including, without limitation, lost sales and profits and other business interruption damages, even if the party has been advised of the possibility of such damages and without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, or otherwise).
14. Contractor represents and warrants that: (i) its performance under this Agreement will at all times conform to the highest professional and ethical standards; (ii) due care and its commercially reasonable efforts will be utilized by Contractor in the performance of this Agreement; (iii) it is under no obligation or restriction that would conflict with the Services required to be furnished by Contractor and its other obligations under this Agreement, or that otherwise would in any manner prevent the full performance by Contractor of the terms, conditions, and requirements of this Agreement (Contractor must immediately disclose to Kmart any actual or potential conflict of interest that may arise during the Contractor's performance of this Agreement); and (iv) the Services are Year 2000 Compliant. For purposes hereof, "Year 2000 Compliant" means that all Services, individually and collectively, accurately process date and time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology used in combination with the Services properly exchanges date/time data with

the Services. The foregoing warranties are in lieu of all other warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose. In the event Contractor breaches any of the above warranties in any material respect, Kmart may exercise all rights and remedies available to it under applicable laws and all other rights and remedies under this Agreement.

15. If any provision of this Agreement is held to be void or unenforceable by any judicial or administrative authority, or is unlawful or unenforceable under any applicable law, the remaining provisions are considered to be severable and their enforceability is not to be affected or impaired in any way by reason of such law or holding.
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3100 West Big Beaver Road
Troy, Michigan 48084
Attn: Jeffrey Stollenwerck, Vice President

If to Contractor:

Horn Murdock Cole
3001 West Big Beaver Road
Troy, Michigan 48084
Attn: David Flynn, Vice President

With a copy to:

Attn: General Counsel
(at the above address)
Shawn Husband,
Divisional Vice President General Auditor
(at the above address)

Either party may change its address and/or addressee for notices at any time with fifteen (15) days prior notice to the other party in accordance with the foregoing.

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19. Contractor must not subcontract any duty or obligation under this Agreement to a third party. All performance required under this Agreement must be solely by the named Contractor.
20. Each person signing below warrants and represents that he/she has full power and authority to execute this Agreement on behalf of the party he/she represents. Upon request, each party must provide a Certified Resolution or Certificate of Authority authorizing the undersigned to enter into and sign this Agreement.
21. Time is of the essence in the performance of all parts of this Agreement, but neither party is responsible for delays due to causes beyond its reasonable control during the continuance thereof that by reasonable diligence could not have been avoided or overcome; provided further, if substitute performance is available, Contractor must offer Kmart the substitute performance, which Kmart may accept or reject at its sole option.
22. This is an arms-length transaction and relationship. There exist no implied or otherwise unstated covenants, rights, or obligations by, of or against either party. The parties expressly disclaim the existence of any implied covenant of good faith and/or fair dealing.
23. Contractor and Kmart each expressly represent and warrant to the other that each has relied solely and exclusively on its own judgment and the advice of its own attorneys in entering into this Agreement, and that no representative or agent of the other has made any statement or representation to it beyond those in this Agreement that have induced signing of this Agreement.

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25. This Agreement is the final and complete agreement between Kmart and Contractor with respect to the subject matter hereof. No representations, inducements, promises, or understandings in relation to the subject matter hereof, whether oral or written, exist unless expressly set forth in this Agreement, and this Agreement supersedes all prior understandings, agreements, contracts, or arrangements between the parties, whether oral or written, unless otherwise expressly incorporated in this Agreement. No agreement or other understanding purporting to add to or to modify the terms and conditions hereof is binding unless agreed to by duly authorized representatives of the parties in writing. Any terms or conditions in any forms of the parties used in the performance of this Agreement that are in conflict with the terms and conditions hereof are void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day
and year set forth below.

Horn Murdock Cole
(Contractor)

Kmart Management Corporation

Signature

Signature

Name

Name

Title

Title

Date

Date

EXHIBIT A

(i) Description of Services (including times and manner of performance):

HMC will perform an audit of amounts invoiced to Kmart for facilities maintenance services, including snow removal, parking lot sweeping and landscaping, performed or subcontracted by its vendor Global Property Services. The audit will include a review of invoices for the past two years, or for such period of time as requested by Kmart management at the commencement of the audit. HMC will validate amounts invoiced against the contractual agreement(s) with Global Property Services to determine whether amounts invoiced and paid were in accordance with the contract(s).

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PRIVILEGED AND CONFIDENTIAL WORK PRODUCT PREPARED IN ANTICIPATION OF POSSIBLE LITIGATION AND/OR AS PART OF AN AUDIT CONDUCTED AT THE REQUEST OF COUNSEL. DO NOT COPY, PRINT OR FORWARD,

HMC will include in its final report to Kmart an analysis of overpayments, if any, to Global Property Services, including amounts, dates and root causes of such overpayments. HMC's final report to Kmart will also include recommendations to improve the process of contracting with, supervising, validating invoices of and disbursing funds to facilities maintenance vendors generally and Global Property Services specifically. HMC will provide a trend analysis of facilities maintenance spending for Kmart, comparing costs incurred for the period prior to engaging Global Property Services to the periods subsequent to engaging Global Property Services.

The audit will commence as soon as possible upon signing of this agreement.

(ii) Term (number of months from Effective Date, subject to Paragraph 3):

Not to exceed 3 months.

(iii) Amounts payable for Services / payment terms:

HMC will invoice Kmart for services performed for this audit at the rate of \$85 per hour. Expenses exceeding \$50 will be approved in advance by Shawn Husband, or his representative. Invoices will be submitted to Jeffrey Stollenwerck on a biweekly basis.

SERVICES AGREEMENT

Agreement entered into this ____ day of September, 2003 (the "Effective Date") by and between Kmart Management Corporation, having its principal place of business at 3100 West Big Beaver Road, Troy, Michigan 48084 ("Kmart"), and Horn Murdock Cole a _____ ("HMC"), having its principal place of business at 3001 West Big Beaver Road, Suite 210, Troy, Michigan 48084 ("Contractor").

In consideration of the mutual covenants, terms, and conditions herein contained, the parties agree as follows:

1. The services, products, software, equipment, and other materials provided to Kmart by Contractor (collectively, the "Services") are described, and must be provided at the times and in the manner set forth in, Exhibit A attached hereto and incorporated herein by this reference.
2. This Agreement is binding on the parties upon full signing hereof. The term of the Agreement commences on the Effective Date and, subject to early termination pursuant to Paragraph 3, remains in effect for the number of months set forth in Exhibit A. The term may be extended or renewed for an additional term only by written agreement of the parties. If the term of the Agreement expires without being formally renewed or extended, but both parties continue to perform as set forth in this Agreement, then this Agreement will continue in effect on a month-to-month basis until terminated by either party on thirty days prior written notice.
3. This Agreement may be terminated at any time without cause by either party with 30 days prior notice to the other party. This Agreement may also be immediately terminated by either party if the other party breaches or fails to perform any of its obligations in any material respect, attempts to assign or otherwise transfer its rights, obligations, or duties under this Agreement, or if the other party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws. Upon termination, there is nothing due from Kmart to Contractor beyond any fees due for services actually performed up to the date of termination, and both parties are relieved of any further obligations contained in this Agreement except for those that by their nature survive or may require performance after termination (e.g., indemnity). Contractor must remove all of its material, software, and/or equipment from the Kmart premises within three (3) days of the date of termination.
4. Contractor is responsible for and does represent that it will comply with all federal, state, and local laws, rules, and regulations applicable to this Agreement or to the performance thereof.

5. To the fullest extent permitted by law: Contractor must reimburse, indemnify, defend, and hold harmless Kmart, its parent, subsidiaries and affiliates and each of Kmart's parent's subsidiary's and affiliate's present, former, and future shareholders, employees, officers, and directors from and against all loss, damage, expense (including attorney's fees and expenses), and penalty, and any claim or action therefor by or on behalf of any person, (collectively, "Loss") arising out of or in connection with Contractor's performance or failure of performance of this Agreement including, without limitation, Loss arising out of or occurring in connection with: (i) any acts or omissions by Contractor or its employees or agents, including, without limitation, personal injury and death claims; (ii) all claims of Contractor's employees, agents, and subcontractors, whether for injury, death, compensation, social security, pension, unemployment compensation, etc.; (iii) the provision, ownership, installation, operation, maintenance, use, or repair of any of the Services; and (iv) all third-party claims alleging that any of the Services infringes any patent, copyright, trademark, or other proprietary right or constitutes a misuse of any trade secret information. Contractor will not be relieved of the foregoing indemnity and related obligations by allegations or any claim that Kmart was negligent; but Contractor is not liable to the extent any injury or damage is finally judicially determined by a court of competent jurisdiction to have been proximately caused by the sole negligence or willful act of Kmart. Kmart agrees to timely advise Contractor of any suit, claim, or proceeding, and to reasonably cooperate with Contractor in the defense or settlement of such suit, claim, or proceeding, but Contractor will have sole control thereof. If an injunction is obtained against Kmart's use of any of the Services, in whole or in part, Contractor must promptly at Kmart's option either: (i) procure right to continue using the Services enjoined from use or replace or modify them so that Contractor's use or possession is not subject to any such injunction, or (ii) refund to Kmart all amounts paid to Contractor for the Services. If this indemnification provision is construed by a court of competent jurisdiction to require indemnification over and above that permitted by applicable law or public policy, the parties intend that the Agreement be judicially modified to afford Kmart the maximum indemnification allowed.
6. Contractor must, during the performance of this Agreement, maintain the following insurance coverages as indicated or as required by law, whichever is greater, with insurers in good standing, possessing an A.M. Best rating of not less than A, Financial size X., and authorized to do business under the laws of the State(s) and/or Countr(y/ies) where performance occurs:
 - (a) Commercial General Liability written on an occurrence coverage form, naming Kmart as an additional insured, including, without limitation, Bodily Injury and Property Damage Liability, Products and Completed Operations Liability, Contractual Liability, and Personal and Advertising Liability. The minimum limits are Three Million Dollars (\$3,000,000) per each occurrence,

- Three Million Dollars (\$3,000,000) aggregate (Products and Completed Operations), and Three Million Dollars (\$3,000,000) general aggregate;
- (b) Automobile Liability covering all non-owned, leased, or rented vehicles with property damage and bodily injury coverage with minimum limits of One Million Dollars (\$1,000,000) per person, One Million Dollars (\$1,000,000) per accident, and One Million Dollars (\$1,000,000) annual aggregate;
 - (c) Workers' Compensation and Employers' Liability with statutory coverage for Workers' Compensation and minimum limits of One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) disease (each employee), and One Million Dollars (\$1,000,000) disease (policy limit) for Employers' Liability; and
 - (d) Umbrella/Excess Liability with minimum limits of Three Million Dollars (\$3,000,000) each occurrence and aggregate.

Contractor must tender to Kmart certificates of insurance evidencing the coverages required to be maintained by Contractor. The certificates must provide that no change or cancellation of insurance will be made without thirty (30) days prior written notice to Kmart. The insurance evidenced by the certificate must be primary over any and all other collectible insurance.

- 7. Contractor is an independent contractor in the performance of this Agreement, and nothing contained in this Agreement may be construed to create or constitute a joint venture, partnership, agency, franchise, lease, or any other arrangement other than as expressly granted in this Agreement. Contractor is responsible for its own operation. Contractor must exercise control over its employees, agents, representatives, subcontractors, and suppliers and is solely responsible for the verification of identity and employment eligibility, for the payment of any wages, salaries, or other remuneration of its employees, agents, representatives, subcontractors, and suppliers, and for the payment of any payroll taxes, contributions for unemployment or workers compensation, social security, pensions, or annuities that are imposed as a result of the employment of Contractor's employees, agents, representatives, subcontractors, and suppliers. Contractor must not pledge credit, incur any obligation or liability, hire any employee, nor purchase any merchandise or services in the name of Kmart or any subsidiary or affiliate thereof. Unless otherwise provided in this Agreement, all costs, charges, and expenses incurred in connection with Contractor's performance of this Agreement must be borne by Contractor.
- 8. Neither party may assign or otherwise transfer its rights, obligations, and/or duties under this Agreement without the prior written consent of the other party, given at the other party's sole option; but Kmart may assign this Agreement to a subsidiary or affiliate upon notice to Contractor. Any prohibited assignment is void.

9. Contractor hereby assigns, conveys, and transfers all right, title, and interest in and to the Services, which include all related work product of Contractor and its employees, to Kmart. Contractor understands that all Services produced, developed or otherwise created by Contractor or its employees hereunder are the exclusive property of Kmart. Consistent with this understanding, Contractor must not use the Services for the benefit of any party other than Kmart.
10. Contractor warrants that all creators and/or contributors to the Services, including but not limited to, all persons engaged by Contractor to make any contributions to the Services, were, at the time of the Services' creation, bona-fide employees of Contractor who made their contributions to the Services within the scope of their employment as work for hire or that Contractor has obtained and possesses a written assignment of the copyright, title, and interest from all the creators or contributors not otherwise considered bona-fide employees. Contractor must maintain an agreement with each of its employees consistent with the obligations set forth in Paragraphs 9, 10, and 11 and is responsible for enforcing such agreements. Contractor must provide a copy of such agreement at the request of Kmart.
11. Contractor agrees that all information (including the provisions of this Agreement) of or relating to Kmart, its parent, subsidiaries and/or affiliates, regardless of the manner or medium in which it is furnished to or otherwise obtained by Contractor or any Contractor representative, is provided to and received by Contractor in confidence. Contractor must at all times preserve and protect the confidentiality of this information and any other proprietary and non-public Kmart information that Contractor or any Contractor representative becomes aware of or acquires during the performance of this Agreement (collectively, the "Confidential Information"). Without limiting the generality of the foregoing, Contractor must not divulge to or discuss with third parties any trade secret; system, program, or any other matter on which Contractor is working hereunder; other program, system, or work product belonging to Kmart, its parent, subsidiaries and/or affiliates, which are disclosed on Contractor; or information regarding Kmart and any agreements or contracts which Kmart, its parent, subsidiaries and/or affiliates, has with other companies or firms. Contractor must take all necessary steps to ensure that the Confidential Information is not disclosed to, or used by any person, firm, or entity, except Contractor's own employees and agents, and then only to the extent necessary to permit Contractor to perform this Agreement. The confidentiality obligations set forth above do not apply to information (i) available to the public through no fault of Contractor; (ii) released by Kmart to any third party on a non-confidential basis without restrictions on disclosure; and (iii) to the extent disclosure of the information is required under any valid court or governmental order and Contractor provides Kmart immediate notice thereof so that Kmart will have an opportunity to contest disclosure or seek an appropriate protective order. The

confidentiality and non-disclosure obligations contained in this Agreement survive and continue after termination of this Agreement for any reason and bind Contractor's legal representatives, successors, and assigns.

12. Contractor acknowledges Kmart of Michigan, Inc.'s ("KMI's") exclusive right, title, and interest in and to all trademarks, trade names, service marks, logos, assignees, program and event names, identifications, and other proprietary rights and privileges that it licenses to Kmart with the right to sublicense (the "Kmart Marks"). This Agreement and its various provisions are not a license or assignment of any right, title, or interest in the Kmart Marks by KMI or Kmart to Contractor. Contractor must not, in any manner, represent that it has any ownership in the Kmart Marks. Contractor must not do or cause to be done anything that impairs Kmart's exclusive license in the Kmart Marks. Contractor must not use, print, or duplicate the Kmart Marks unless Contractor has obtained prior written approval from Kmart and KMI. Any permitted use by Contractor of the Kmart Marks is limited to the term of this Agreement. Upon termination, Contractor must immediately cease all use of the Kmart Marks. Contractor must not assign or attempt to assign any rights with regard to the Kmart Marks that arise under this Agreement and any such attempted assignment is void.
13. Except with respect to damages arising from Paragraphs 5, 9, 10, 11, and 12 herein, neither party is liable to the other party for incidental, consequential, punitive, or exemplary damages arising in connection with this Agreement or the performance, omission of performance, or termination hereof including, without limitation, lost sales and profits and other business interruption damages, even if the party has been advised of the possibility of such damages and without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, or otherwise).
14. Contractor represents and warrants that: (i) its performance under this Agreement will at all times conform to the highest professional and ethical standards; (ii) due care and its commercially reasonable efforts will be utilized by Contractor in the performance of this Agreement; (iii) it is under no obligation or restriction that would conflict with the Services required to be furnished by Contractor and its other obligations under this Agreement, or that otherwise would in any manner prevent the full performance by Contractor of the terms, conditions, and requirements of this Agreement (Contractor must immediately disclose to Kmart any actual or potential conflict of interest that may arise during the Contractor's performance of this Agreement); and (iv) the Services are Year 2000 Compliant. For purposes hereof, "Year 2000 Compliant" means that all Services, individually and collectively, accurately process date and time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology used in combination with the Services properly exchanges date/time data with

the Services. The foregoing warranties are in lieu of all other warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose. In the event Contractor breaches any of the above warranties in any material respect, Kmart may exercise all rights and remedies available to it under applicable laws and all other rights and remedies under this Agreement.

15. If any provision of this Agreement is held to be void or unenforceable by any judicial or administrative authority, or is unlawful or unenforceable under any applicable law, the remaining provisions are considered to be severable and their enforceability is not to be affected or impaired in any way by reason of such law or holding.
16. All notices under this Agreement must be in writing and must be given by either party by prepaid mail or by cable, telefax, telegram, telex, or hand delivery to the other party as follows:

If to Kmart:

Kmart Corporation
3100 West Big Beaver Road
Troy, Michigan 48084
Attn: Jeffrey Stollenwerck, Vice President

If to Contractor:

Horn Murdock Cole
3001 West Big Beaver Road
Troy, Michigan 48084
Attn: David Flynn, Vice President

With a copy to:

Attn: General Counsel
(at the above address)
Shawn Husband,
Divisional Vice President General Auditor
(at the above address)

Either party may change its address and/or addressee for notices at any time with fifteen (15) days prior notice to the other party in accordance with the foregoing.

17. Kmart agrees to pay Contractor for Services rendered the amounts set forth in Exhibit A after the receipt of a correct invoice from Contractor. All invoices must include, at a minimum, the following information: (i) Name and address of Contractor; (ii) Contractor DUNS number (if such a number has been assigned); (iii) Invoice number; (iv) Description of Services provided; (v) Date; and (vi) Dollar amount due. Kmart is not required to pay any disputed charge until after the resolution of the dispute. Contractor is responsible for the payment of all taxes, however designated, levied, or based on the purchase of the service. The

prices charged to Kmart are not to be increased during the term of this Agreement. In no case will Kmart be charged more for the Services than any other comparable purchaser of similar services.

18. THIS AGREEMENT, AND ALL OTHER ASPECTS OF THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, IS CONSTRUED, INTERPRETED, AND ENFORCED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO CHOICE OF LAW PROVISIONS. CONTRACTOR AGREES, WITH RESPECT TO ANY LITIGATION ARISING DIRECTLY OR INDIRECTLY OUT OF, OR THAT IN ANY WAY RELATES TO, THIS AGREEMENT, THE BUSINESS RELATIONSHIP OR ANY OTHER TRANSACTION, MATTER, OR ISSUE BETWEEN THE PARTIES, TO COMMENCE IT EXCLUSIVELY IN THE STATE OF MICHIGAN COURTS OF OAKLAND COUNTY, MICHIGAN OR THE UNITED STATES DISTRICT COURT AT DETROIT, MICHIGAN, AND CONTRACTOR BY THIS AGREEMENT CONSENTS TO THE JURISDICTION OF THESE COURTS.
19. Contractor must not subcontract any duty or obligation under this Agreement to a third party. All performance required under this Agreement must be solely by the named Contractor.
20. Each person signing below warrants and represents that he/she has full power and authority to execute this Agreement on behalf of the party he/she represents. Upon request, each party must provide a Certified Resolution or Certificate of Authority authorizing the undersigned to enter into and sign this Agreement.
21. Time is of the essence in the performance of all parts of this Agreement, but neither party is responsible for delays due to causes beyond its reasonable control during the continuance thereof that by reasonable diligence could not have been avoided or overcome; provided further, if substitute performance is available, Contractor must offer Kmart the substitute performance, which Kmart may accept or reject at its sole option.
22. This is an arms-length transaction and relationship. There exist no implied or otherwise unstated covenants, rights, or obligations by, of or against either party. The parties expressly disclaim the existence of any implied covenant of good faith and/or fair dealing.
23. Contractor and Kmart each expressly represent and warrant to the other that each has relied solely and exclusively on its own judgment and the advice of its own attorneys in entering into this Agreement, and that no representative or agent of the other has made any statement or representation to it beyond those in this Agreement that have induced signing of this Agreement.

24. Kmart has the right to audit all books and records of Contractor relating to Contractor's performance of this Agreement upon 3 days notice. During the term hereof and for a period of 7 years thereafter, Contractor must maintain its books and records in a manner that facilitates a full and complete review of Contractor's performance of this Agreement. At Kmart's option, audits may be conducted (i) by Kmart or its third party designee, and (ii) at Contractor's offices or at a different location specified by Kmart, in which latter case Contractor must deliver copies of all applicable books and records to that location. Kmart and Contractor will each bear their own costs associated with the audits
25. This Agreement is the final and complete agreement between Kmart and Contractor with respect to the subject matter hereof. No representations, inducements, promises, or understandings in relation to the subject matter hereof, whether oral or written, exist unless expressly set forth in this Agreement, and this Agreement supersedes all prior understandings, agreements, contracts, or arrangements between the parties, whether oral or written, unless otherwise expressly incorporated in this Agreement. No agreement or other understanding purporting to add to or to modify the terms and conditions hereof is binding unless agreed to by duly authorized representatives of the parties in writing. Any terms or conditions in any forms of the parties used in the performance of this Agreement that are in conflict with the terms and conditions hereof are void.