

ORDINANCE NO. 2017-52
INTRODUCED BY: MS. DEBERNARDO

4040

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A
CONTRACT WITH PRADCO RESEARCH AND
DEVELOPMENT CORPORATION FOR EVALUATION OF
PROSPECTIVE EMPLOYEES OF THE VILLAGE AND
DECLARING AN EMERGENCY.**

WHEREAS, the Village has been utilizing the services of PRADCO Research and Development Corporation ("PRADCO") to provide testing and evaluation of employees or prospective employees of the Village of Chagrin Falls; and

WHEREAS, the terms of use and the general terms and conditions for use of PRADCO services which are found on their web site have provisions which are not acceptable to the Village; and

WHEREAS, PRADCO has agreed to enter into a contract with the Village to continue to provide employment related services without all of the Terms of Use and General Terms and Conditions (collectively the "Terms") applying based on the Agreement to be entered into between the Village and Chagrin Falls.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CHAGRIN FALLS, STATE OF OHIO:

SECTION 1. That the Mayor is authorized and directed to enter into an Agreement with PRADCO to eliminate certain of the Terms from applying to the services rendered by PRADCO to the Village of Chagrin Falls as set forth in the Agreement attached hereto and incorporated herein as Exhibit "A".

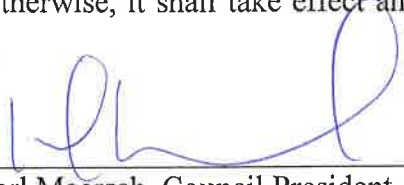
SECTION 2. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

SECTION 3. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.

SECTION 4. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of the inhabitants of

the Village and for the further reason that the Village Police Department needs to value prospective employees immediately and in order to modify the Terms before the PRADCO services are rendered it is necessary for this Ordinance to take immediate effect; wherefore provided it receives the affirmative vote of at least two-thirds (2/3) of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage by this Council and approval by the Mayor; otherwise, it shall take effect and be in force after the earliest period allowed by law.

PASSED: August 28, 2017



Karl Maersch, Council President

Submitted to the Mayor for his approval on this

29 day of August, 2017

Approved by the Mayor this

29 day of August, 2017



Mayor William Tomko

I hereby certify that Ordinance No. 2017- 52 was duly enacted on the 28 day of August, 2017, by the Council of the Village of Chagrin Falls and posted in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls.



Clerk of Council

EXHIBIT "A"

AGREEMENT FOR SERVICES

This Agreement for Services (the "**Contract**") is made and entered into as of this 28 day of August, 2017 by and between the Village of Chagrin Falls, an Ohio Municipality ("**Village**") and PRADCO Research and Development Corporation ("**PRADCO**").

WHEREAS, PRADCO provides testing and evaluation services to the Village for employees or prospective employees of the Village; and

WHEREAS, PRADCO posts Terms of Use and General Terms and Conditions on its web site which it intends to be controlling and binding upon PRADCO and its customers when it provides services to such customers; and

WHEREAS, the Village, as a Municipality, is unable and/or unwilling to accept certain of the Terms of Use and General Terms and Conditions (collectively "**Terms**") when utilizing the services of PRADCO; and

WHEREAS, PRADCO and the Village agree that whenever PRADCO provides services to the Village that the Terms that will be applicable shall be as set forth in this Contract.

NOW THEREFORE, the Village and PRADCO agree as follows:

1. The Terms that will be applicable to the Village and PRADCO shall be as set forth in Exhibit "1" attached hereto and made a part hereof, and in the event that either party wants to revise the Terms, any amendment thereto must be consented to by both parties and approved in writing as an amendment to this Contract.
2. Whenever the Village utilizes the services of PRADCO, the parties shall be bound by and subject to the Terms attached hereto as Exhibit "1" and as may thereafter be amended in writing by the Village and PRADCO.
3. PRADCO shall provide the services required herein strictly under a contractual relationship with the Village and is not, nor shall be, construed to be an agent or employee of the Village.
4. The term of this Contract shall remain in effect until either party serves written notice to the other party at least thirty (30) days prior to the date they elect to terminate this Agreement, but in no event shall this Agreement remain in effect beyond December 31, 2047.
5. The scope of services provided by PRADCO to the Village shall be established for each testing and/or evaluation made of an employee or prospective employee of the Village at the time the services are requested by the Village.

6. The compensation for the services provided by PRADCO shall be established at the time the service request is made by the Village.
7. The parties shall maintain such records pertaining to this Contract as may be prescribed by applicable federal and state laws, rules and regulations. The reports provided by PRADCO to the Village shall be deemed confidential, shall not be released by PRADCO to anyone, including any employee or prospective employee of the Village being tested and/or evaluated, without the express written consent of the Village, except when such records are deemed to be public records subject to inspection and copying when required by the Ohio Revised Code.
8. All notices pursuant to this Contract shall be sent to the following:

If to the Village: Chief Administrative Officer
Village of Chagrin Falls
21 Washington Street
Chagrin Falls, Ohio 44022

If to PRADCO: PRADCO Research and Development Corporation
Attn: President
178 East Washington Street
Chagrin Falls, Ohio 44022
9. This Contract constitutes the entire agreement between the parties, together with the Terms attached hereto as **Exhibit "1"**. There are no understandings or promises related hereto other than those which are expressed herein, all prior negotiations, agreements, and understandings, whether oral or written, are superseded by this Contract, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have made and executed this Contract the 29
day of August, 2017.

VILLAGE OF CHAGRIN FALLS

By: 
William Tomko, Mayor
Dated: August 29, 2017

PRADCO RESEARCH AND DEVELOPMENT CORPORATION


By: 
_____, its CFO
Date: 8.28.17

EXHIBIT "1"

TERMS OF USE

Welcome to the website of the Personnel Research and Development Corporation ("PRADCO") (the "Site"). These Terms of Use should be read carefully upon visiting or otherwise using the Site. Please check back periodically, as PRADCO reserves the right to modify these Terms of Use from time to time.

1. **ACCEPTANCE OF TERMS.** This Site provides information concerning PRADCO and its products and services. The sale of all goods supplied and services rendered by PRADCO to any purchaser thereof ("Customer") is governed by PRADCO's General Terms and Conditions. Certain PRADCO services are made available through the Site ("Web-based Services"), such as testing of employees or prospective employees. These Terms of Use apply to anyone who uses the Site ("you" and "your"), including visitors browsing the Site, Customers who contract with PRADCO for PRADCO to deliver Web-based Services or who purchase products through the Site, and those individuals who are directed by Customers to visit the Site in order to access Web-based Services, whether or not they are employed by the Customer ("Designees"). (Both the General Terms and Conditions and these Terms of Use apply to Customers who contract for Web-based Services or who purchase products through the Site.) If you do not agree with all of these Terms of Use, do not use the Site. Use of the Site is expressly conditioned upon your assent to all these Terms of Use.

2. **USER NAMES, PASSWORDS, AND UNAUTHORIZED USE.** Only Customers who have contracted with PRADCO for PRADCO to deliver Web-based Services, and the Designees of such Customers (collectively, "Permitted Users") are permitted to access Web-based Services. Access is accomplished through the use of user names, passwords, and other access controls which will be issued to each Customer by PRADCO. **EACH CUSTOMER IS RESPONSIBLE FOR KEEPING ITS USER NAMES, PASSWORDS AND ANY OTHER ACCESS CONTROLS CONFIDENTIAL AND FOR TAKING OTHER REASONABLE PRECAUTIONS TO PREVENT THEIR UNAUTHORIZED USE BY DESIGNEES OR OTHERS.** Each Customer agrees to notify PRADCO promptly of any unauthorized use of which it become aware of its user names, passwords, or other access controls. Each Designee agrees to notify the Customer who directed the Designee to use the Site promptly of any unauthorized use of which it become aware of such Customer's user names, passwords, or other access controls. Until a Customer provides such notice to PRADCO, PRADCO will presume that all use of that Customer's user names, passwords, and other access controls is authorized by that Client, and Customer will be responsible for any fees incurred, and for any activity on the Site, by anyone using that Client's user names, passwords and other access controls.

3. **CONDUCT.** The Site may be used solely for lawful purposes, and may not be used in such a manner as to violate any applicable law. The Site may not be used for the purposes of destroying, disrupting or interrupting any software, hardware or any part of the Internet, with respect to PRADCO or any other party, including denial of service attacks, imposition of an unreasonable or disproportionately large load on infrastructure, or virus dissemination. No user may use any robot, spider or other automated device to monitor or copy the web pages of the Site or its contents without the express written permission of PRADCO. PRADCO reserves the right to prohibit use of the Site by any user who, in PRADCO's sole discretion, violates any of these Terms of Use.

4. **INFORMATION SENT TO PRADCO.** All Permitted Users agree to provide PRADCO with accurate, complete and updated information as required by PRADCO during any registration process and in the course of using Web-based Services. Information supplied by Permitted Users of a particular Customer becomes the property of that Customer. Customer grants PRADCO a perpetual, irrevocable license to retain such information and to use it for purposes of documenting test results, validation of test methodology, and other research, and PRADCO may publish such information in the aggregate without identification of individual Permitted Users.

Credit card information, personally identifying information, and responses supplied by Permitted Users in the course of utilizing the Web-based Services will be treated as the confidential information of the applicable Customer. Any other communication or material you transmit to the Site by electronic mail or otherwise, including any questions, comments, suggestions, or the like, is, and will be treated as, non-confidential and non-proprietary, and anything you

transmit may be used by PRADCO or its affiliates for any purpose. Furthermore, PRADCO is free to use any ideas, concepts, know-how, or techniques contained in any communication you send to the Site for any purpose whatsoever.

PRADCO reserves the right to disclose any material transmitted to us, or information relating to such material, if required to do so by law or in good faith belief that such records or disclosures are reasonably necessary to (i) comply with legal process; (ii) enforce these Terms of Use or the General Terms and Conditions; (iii) respond to any claim that material contained on or associated with the Site is in violation of any right of any third party; or (iv) to protect the rights, property, or personal safety of PRADCO, its employees, Permitted Users, or members of the general public.

5. **CONTENT.** PRADCO uses reasonable efforts to include accurate information on the Site. However, PRADCO does not guarantee the accuracy, timeliness, completeness or quality of any material that is found on, in connection with, or posted to our Site. Further, PRADCO, although it may choose to do so, is under no obligation to record or retain any of the material on or associated with the Site, regardless of any requests to do so, other than responses of Permitted Users in connection with Web-based Services.

6. **OWNERSHIP.** Except as set forth above in Section 4, all materials on the Site created or provided by PRADCO, including text, graphics, logos, icons, text content, and images, are the property of PRADCO or its content providers, and are protected by United States and foreign intellectual property laws. The compilation of all the content on this Site is the exclusive property of PRADCO and is also protected by United States and foreign intellectual property laws. Web-based Services may be subject to special requirements for access, copying and printing, which will be accessible to users of such Web-based Services. Except as provided by such restrictions, you may download, view, copy, and print the materials on this Site for personal or internal business use only, provided that you do not remove or alter any trademark, service mark, or logo, or any copyright or other intellectual property notices. Except as provided above, you may not download, view, copy, print, reproduce, distribute, republish, display, post, transmit, or modify any material, or portion thereof, or resell any Web-based Services, located on the Site in any form or by any means without the prior written consent of PRADCO. PRADCO reserves the right to revoke any of the rights granted in these Terms of Use at any time, and those rights automatically terminate if you violate any of these Terms of Use. Unauthorized use of any material on the Site may violate copyright law, trademark law, and other laws of the United States and other jurisdictions. All rights not expressly granted in these Terms of Use are reserved.

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7. **LINKS TO OTHER SITES.** The Site may contain links to other websites. PRADCO has no control over, and accepts no liability, obligation, or responsibility for, the contents or performance of other websites. Any such links do not necessarily constitute an endorsement of or any representation regarding the linked website, its content, its owner, its performance, or its owner's products or services.

8. Disclaimer of Warranties. THE SITE AND ITS CONTENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WEB-BASED SERVICES ARE PROVIDED WITH THE LIMITED WARRANTY SET FORTH IN THE GENERAL TERMS AND CONDITIONS. PRADCO MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, NOR ANY WARRANTY OF NON-INFRINGEMENT, RELATING OR PERTAINING TO THE SITE OR THE WEB-BASED SERVICES. PRADCO EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. PRADCO MAKES NO WARRANTY THAT (i) THE SITE WILL MEET YOUR REQUIREMENTS; (ii) THE SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE OR THE WEB-BASED SERVICES WILL BE ACCURATE OR RELIABLE; AND (iv) ANY ERRORS IN THE SOFTWARE WHICH COMPRISES THE SITE WILL BE CORRECTED. No information or advice obtained through the Site, or any other affirmation of PRADCO, by words or actions, shall constitute a warranty.

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In particular, PRADCO makes no warranty pertaining to recommendations by PRADCO regarding hiring, firing, promotion or otherwise. PRADCO is not responsible for Customer's use of the information generated as part of the services provided to Customer and will not be liable for any loss or damage resulting from such use. In no event shall PRADCO's liability arising in connection with or under this Agreement exceed the purchase price of the services or goods provided.

9. DISCLAIMER OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL PRADCO BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES OR THE SALE OF GOODS TO OR THE PERFORMANCE OF SERVICES FOR CUSTOMER INCLUDING, WITHOUT LIMITATION, (i) BREACH OF ANY WARRANTY OR ANY OTHER OBLIGATION IMPOSED ON PRADCO HEREUNDER OR IN CONNECTION HERewith; (ii) THE USE OF OR INABILITY TO USE THE SITE OR THE WEB-BASED SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; AND (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE OR ELSEWHERE. Consequential damages for purposes hereof shall include without limitation, loss of use, loss of customers, income or profit, damages or losses resulting from claims of other persons against Customer, damages or losses sustained as the result of recommendations by PRADCO regarding hiring, firing, promotion or otherwise, or damages or losses resulting from any decision regarding the employment by Customer or any other party of any individual, including decisions regarding hiring, promotion, demotion, or discharge of any such individual, or for the acts or omissions of any such individual. ~~Customer shall indemnify PRADCO against all liability, cost or expense which may be sustained by PRADCO on account of any such loss, damage or injury.~~

PRADCO shall not be liable for any failure to perform under these Terms of Use where such failure results from any cause beyond PRADCO's reasonable control, including but not limited to mechanical, electronic, or communications failure or degradation.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, THOSE PROVISIONS SET FORTH ABOVE MAY NOT APPLY TO YOU.

10. GOVERNING LAW. This contract shall be governed by and construed under the laws of the State of Ohio, without regard to conflicts of laws principles thereof. The parties intended that Ohio Revised Code Section 1302.01, et. seq. be applied to this Agreement notwithstanding that the sale is for services rather than goods. The sole jurisdiction and venue of any action related to these Terms and Conditions shall be the Ohio state courts and the United States federal courts in Cuyahoga County, Ohio, and Customer and PRADCO agree to submit to personal and exclusive jurisdiction of these courts.

11. GENERAL. All agreements contained herein shall apply to and bind the assignees and successors in interest of PRADCO and Customer. This Agreement is not assignable by Customer without PRADCO's prior written consent. The waiver by PRADCO of any breach or default shall not be deemed to be a waiver of any later breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or of any other remedy at any time. If any provision or portion of this Agreement is held to be invalid or unenforceable, the other provisions and portions shall not be affected. The headings are used for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement. Any clerical errors are subject to correction.

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GENERAL TERMS AND CONDITIONS

The following General Terms and Conditions are applicable to the sale of all goods supplied or services rendered by Personnel Research and Development Corporation (hereinafter called "PRADCO") to any purchaser thereof (hereinafter called "Customer"). The terms and conditions set forth below and on the face or back hereof, as the case may be, constitute all of the terms of this Agreement between Customer and PRADCO. No course of prior dealings between the parties or usage in the trade shall be relevant to supplement or explain any term used in this Agreement. No waiver or alteration of terms herein shall be binding unless agreed to in writing and signed by both parties. No modification or waiver of any of these conditions shall be binding upon PRADCO unless approved by PRADCO in writing. **ANY CONFLICTING WARRANTIES, TERMS AND CONDITIONS IN THE PURCHASE ORDER OR ANY OTHER CUSTOMER DOCUMENTS ARE SPECIFICALLY REJECTED BY PRADCO.**

1. **SCOPE OF SERVICES; ACCEPTANCE OF ORDERS.** The fees quoted or otherwise agreed to by PRADCO are based upon the services requested by Customer and agreed to by PRADCO. Any change desired by Customer in the scope of the services must be expressly agreed to by PRADCO and may result in a change in the fees payable by Customer. In the event that personnel of PRADCO or any of its affiliates are required to testify in court or before any governmental agency or to be deposed or otherwise to participate in any litigation or governmental proceeding regarding Customer, its products, or any aspect of its business, PRADCO will be permitted to charge and Customer will pay for the time used to prepare for and give testimony and to otherwise participate in such litigation or governmental proceeding on an hourly or per diem basis plus out of pocket expenses in accordance with the fees and expenses normally charged by PRADCO or its affiliate for the services of such personnel, unless PRADCO is testifying as a fact witness or is a party to the proceeding, in which event no compensation or expense reimbursement will be provided.

2. **PAYMENT.** Invoices for goods and services shall be due and payable net thirty (30) days from date of invoice. If any payment is not received by PRADCO within the period such payment is due and payable, Customer shall be liable for interest on the unpaid amount from the date by which the payment was due, without further notice, at the rate of 1.5 percent per month; provided, however, that if such rate is in excess of the maximum rate permissible under applicable law, then interest shall be charged at the maximum possible interest rate. If due to Customer's financial condition or any other reason, PRADCO shall, in its sole discretion, deem itself to be insecure regarding Customer's ability to fulfill the terms of payment herein specified, PRADCO may by notice to Customer require full or partial payment in advance of delivery. Any modification to these payment terms must be in writing.

3. **ORDER CANCELLATION AND ORDER CHANGES.** Once an order is accepted by PRADCO, it may not be cancelled or changed by Customer, nor shall Customer be entitled to delay shipment or performance, except with the written consent and upon terms and conditions approved by PRADCO in writing.

4. **DELIVERY AND PERFORMANCE DATES.** Unless otherwise specifically stated to the contrary, any delivery or performance date set forth in any purchase order or acknowledgement to which these terms and conditions are applicable shall be construed as an estimated delivery or performance date, and time shall not be of the essence in any agreement between PRADCO and Customer. PRADCO's obligation to deliver goods or perform services shall be subject to the due performance of all of Customer's obligations, including but not limited to the Customer's delivery to PRADCO of all information and data necessary for PRADCO to prepare tests or otherwise perform its services for Customer.

5. **DELAYS.** PRADCO will not be liable for any delay or failure in the performance of its obligations, including the delivery or shipment of any goods or provision of any services, or for any damages suffered by Customer by reason of such delay or failure, when such a delay or failure is caused by or arises from any cause beyond PRADCO's reasonable control, including, without limitation, delays caused by fire, flood, acts of god, acts of terrorism, loss of basic utilities, strikes or other labor disputes, shortages in labor, material or transportation, or riots, governmental orders or regulations, or default on the part of manufacturers or PRADCO's suppliers or any cause which renders PRADCO's performance impracticable under Section 2-615(a) of the Uniform Commercial Code.

6. TITLE. Unless otherwise specifically agreed in writing by PRADCO, all tests or materials provided by PRADCO to Customer, including but not limited to, text, graphics, logos, icons, test content and images are and at all times shall remain the property of PRADCO or its content providers, and are protected by United States and foreign intellectual property laws.

7. LIMITATION OF WARRANTY; LIMITATION OF DAMAGES. PRADCO warrants that it will perform candidate evaluations and provide to the Customer results of the candidate's evaluation. In the event of a breach of this warranty, Customer's sole and exclusive remedy shall be the reperformance of such services, at no additional cost, in accordance therewith. If reperformance is impossible or impractical, PRADCO may, in its sole discretion, credit or refund to the Customer the fees attributable to the services in question. **PRADCO MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, RELATING OR PERTAINING TO GOODS SOLD OR SERVICES PERFORMED HEREUNDER OR ANY WARRANTY OF NON-INFRINGEMENT.** In particular, PRADCO makes no warranty pertaining to recommendations by PRADCO regarding hiring, firing, promotion or otherwise, or that the goods purchased or services provided will meet Customer's expectations, desires, or needs. No affirmation of PRADCO, by words or actions, shall constitute a warranty. PRADCO is not responsible for Customer's use of the information generated as part of the services provided to Customer and will not be liable for any loss or damage resulting from such use. In no event shall PRADCO's liability arising in connection with or under this Agreement exceed the purchase price of the services or goods provided.

8. DISCLAIMER OF CONSEQUENTIAL DAMAGES. **IN NO EVENT SHALL PRADCO BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES OR THE SALE OF GOODS TO OR THE PERFORMANCE OF SERVICES FOR CUSTOMER INCLUDING, WITHOUT LIMITATION, BREACH OF ANY WARRANTY OR ANY OTHER OBLIGATION IMPOSED ON PRADCO HEREUNDER OR IN CONNECTION HEREWITH.** Consequential damages for purposes hereof shall include without limitation, loss of use, loss of customers, income or profit, damages or losses resulting from claims of other persons against Customer, damages or losses sustained as the result of recommendations by PRADCO regarding hiring, firing, promotion or otherwise, or damages or losses resulting from any decision regarding the employment by Customer or any other party of any individual, including decisions regarding hiring, promotion, demotion, or discharge of any such individual, or for the acts or omissions of any such individual. ~~Customer shall indemnify PRADCO against all liability, cost or expense which may be sustained by PRADCO on account of any such loss, damage or injury.~~

9. INDEMNIFICATION. ~~Customer shall defend, indemnify and hold harmless PRADCO and its officers, directors, employees, successors and assigns, to the fullest extent permitted by law, from and against any and all claims, suits, liabilities, judgments, proceedings, losses and expenses (including, but not limited to, attorneys' fees and other costs of investigation or defense) (collectively, "Claims"), resulting from or arising out of or in connection with services provided hereunder, including but not limited to Claims by Customer or any other person or entity relating to or in connection with the implementation of tests, ideas, advice or recommendations made or provided by PRADCO.~~

10. ASSIGNMENT. ~~Neither party~~ Customer may not assign its right under or interest in any order without the prior written consent of ~~the other party~~ PRADCO. These terms and conditions of sale shall be binding upon and inure to the benefit of Customer and PRADCO, their successors and permitted assigns.

11. GOVERNING LAW. This contract shall be governed by and construed under the laws of the State of Ohio, without regard to conflicts of laws principles thereof. ~~The parties intended that Ohio Revised Code Section 1302.01, et. seq. be applied to this Agreement notwithstanding that the sale is for services rather than goods.~~ The sole jurisdiction and venue of any action related to these Terms and Conditions shall be the Ohio state courts and the United States federal courts in Cuyahoga County, Ohio, and Customer and PRADCO agree to submit to personal and exclusive jurisdiction of these courts.

12. GENERAL. All agreements contained herein shall apply to and bind the assignees and successors in interest of PRADCO and Customer. This Agreement is not assignable by either party ~~Customer~~ without ~~the other party's~~ PRADCO's prior written consent. The waiver by PRADCO of any breach or default shall not be deemed to be a waiver of any later breach or default. The exercise or failure to exercise any remedy shall not preclude the

exercise of that remedy at another time or of any other remedy at any time. If any provision or portion of this Agreement is held to be invalid or unenforceable, the other provisions and portions shall not be affected. The headings are used for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement. Any clerical errors are subject to correction.