

MATERIALS MANAGEMENT

Attachment 3 I. Mattresses



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Words followed by an asterisk are defined in GLOSSARY: Mattresses

Findings

1. California Used Mattress Recycling Program. The Used Mattress Recovery and Recycling Act PRC 42985-42994 ([Public Resources Code Sections 42985-42994](#)) established a program to increase mattress recycling and decrease mattress disposal.

2. Mattress Recycling Council. Manufacturers established the non-profit organization Mattress Recycling Council (MRC) to administer an implementation plan approved by CalRecycle.

3. MRC Recycling Services. MRC provides the following mattress recycling services at sites that participate in the program, including as of the Contract Date, County's Benton Crossing Landfill:

- A container to hold carpets after discard until transportation;
- Transportation of the container to its contract-recycler; and
- Funding the cost of the recycling.

4. Integrated Materials Management Center.

County intends to continue participating in MRC's Mattress Recycling Program.

Scope of Services / Specifications

I 3.01 Services

a. Commencement / Termination. Contractor will accept, unload, store, and mobilize mattresses for transport to recycling facilities beginning on the date directed by County at least 10 days in advance. County may terminate this contract if it no longer receives containers, transport, and recycling services for mattresses by MRC or through an alternative program.

b. Services Plan.

- 1. Means and Manner.** Contractor will append its Services Plan, satisfactory to County, to Attachment 3.01b:
 - describing *how* Contractor will provide services (the *manner*, such as storing, sorting), and
 - *what* it will use to provide those services (the *means*, such as storage container, trucks).

Contractor will append the address, description, and map of the materials management site in its Service Plan.

- 2. Annual Update.** As of each July 1, Contractor will annually update the Services Plan to reflect changes in operations.

b. MRC Contract Compliance.

- i. **Performance Obligations.** Contractor will comply with all requirements and perform all services under the *Used Mattress Collection Services Agreement* between MRC and the County ("**MRC Contract**"), appended to this Attachment, as if it were the Service Provider referenced in that Agreement, including:

- Article 3 (*General Obligations of the Service Provider*),
- Attachment A *Scopes of Services*,

If County enters into another or different contract with MRC, the provisions of that contract substantially the same as the subjects named parenthetically in this subsection will apply, although their numbering may vary.

- ii. **Representations and Warranties.** Contractor represents and warrants to County under Section 4.1a, c-e of the Article (*Representations and Warranties*) of the MRC Contract.

- iii. **Indemnities.** Contractor indemnifies, defends, and holds harmless the County under Section 11.1 of the MRC Contract, as County must do for MRC.

- iv. **Insurance.** Contractor will procure insurance required under Article 12 of the MRC Contract, making County and MRC additional insureds.

- v. **Law.** Contractor will comply with all law applicable to the MRC Contract and provisions under Article 18 (*Compliance with Law*) under the MRC Contract.

- vi. **Confidentiality.** Contractor will comply with Section 19.1 (*Confidentiality / Publicity*) of the MRC Contract.

- c. **Access.** Contractor will allow MRC access to the material's management site for determining compliance with MRC guidelines BS and Article 10 (Audit and Inspection Rights of MRC) of the MRC Collection Services Agreement.

There are no Sections I 3.02- I 3.04

I 3.05 Acceptance

- a. **Signage.** Upon County request, Contractor will design, produce, and post signs satisfactory to County including description of acceptable and unacceptable materials, directions to or location of the material's discard sites, and instructions for unloading materials.

b. Designated Drop-Off Areas. Contractor will designate areas for storing mattresses or different types of mattresses as required under its Service Plan, law and the RDSI.

c. Customer Unloading. Contractor may, but is not required, to post staff during receiving hours who will:

- Direct customers where to unload mattresses at Contractor’s designated materials management site,
- screen incoming mattresses to determine whether they are suitable for recycling; and remove those that are not suitable for recycling, such as
 - Excessively wet or frozen,
 - Severely twisted, punctured or crushed,
 - Infested with bed bugs or other living organisms,
 - Exceptionally soiled or moldy.

If Contractor does *not* post staff, it must describe in its Service Plan how it will direct unloading and do load check.

d. No Charge. Contractor may not charge customers for mattresses that they drop off.

e. Employee Training. Contractor will train its employees to identify bed bugs and best to protect themselves from bedbugs. At a minimum, Contractor will require its personnel to view the following: <https://mattressrecyclingcouncil.org/resources/>, or comparable educational presentation.

I 3.06 Stockpiling and Mobilization

a. Containers. Contractor may store mattresses on its materials management site. Immediately upon accepting mattresses Contractor must keep mattress dry either by storing them:

- in weatherproof containers, or
- under cover.

Contractor will use any containers designated by MRC.

b. Care. Contractor will not crush or puncture mattresses. It will keep them intact. It will stack them efficiently and maximize the number of mattresses loaded in each storage container in accordance with the MRC’s following expectations:

Loading Mattresses in Storage Containers

Container Type	Number of Mattresses
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20-foot sea container	30-45
40-foot sea container	75-95
40-yard roll-off container	35-50
28-foot trailer	60-95
48-foot trailer	
53-foot trailer	125-190
	110-180

c. Oversight. Contractor will keep unacceptable items out of MRC-designated storage containers.

d. Management. On the Contract date, as contractual obligations and not regulation, Contractor will do all the following:

- develop a fire safety plan, including how fire trucks can access the waste facility site and secure water, and stocking fire control equipment such as water tanks, fire extinguishers, pikes, and shovels,
- refrain from smoking, open burning, and use flammable equipment only at an appreciable distance from the stored mattresses.
- control mosquitos and rats in a manner satisfactory to County.

Contractor will practice good housekeeping standards, including keeping storage containers and program materials in a neat and orderly condition in the judgement of County or MRC.

e. Completion of Work. Contractor will remove any non-program materials from MRC-designated storage containers before MRC removes them for transport to MRC recyclers. Contractor will empty and clean its materials management site to County satisfaction after each mobilization, including:

- sweeping the site to collect all remaining tire debris, and
- removing residual materials that contaminated the mattresses.

f. Noncompliance with Law. In addition to provisions in the Master Contract and Materials Contract, Contractor will pay any fines or penalties assessed by a regulatory authority. County is not responsible for paying any fines, penalties, costs of clean up, abatement, or remediation.

There is no Section I 3.07

I 3.08 Removal and Transport

- a. **Notification.** Contractor will notify MRC's transporter at least 2 business days before a Contractor fills the storage container.
- b. **Access.** On the scheduled pickup day, Contractor will provide MRC's transporter easy access to stored mattresses.
- c. **Bill of Lading (BOL).** On the scheduled pickup day Contractor will have personnel present to sign the Bill of Lading (BOL) supplied by the transporter that details the quantity of mattresses in the container, and must provide appropriate copies of the BOL to the transporter.
- d. **Weigh.** When removing mattresses and any residual (such as contaminating trash or garbage) from its materials management site, Contractor will separately weigh residual. It will record all of the following for each load:
 - Date and time,
 - Truck identification,
 - Material type,
 - Material weight.

There is no Section I 3.09

I 3.10 Disposal

- a. **Residual.** Contractor will dispose of residual wastes, mattresses that were not recyclable and other contaminating solid waste delivered by Customers with mattresses.
- b. **Hazardous Waste.** Contractor will dispose or otherwise manage hazardous waste under law.
- c. **Cost.** Contractor will pay all disposal costs.

GLOSSARY: Mattresses

*

Mattresses means any sleep surface, including foam mattresses, of any size or shape which:

1. **Structure:** are
 - covered with ticking or fabric, and
 - supporting and containing

- foundations of resilient material such as steel innersprings (including box springs), and
 - foam, fiber or other filling or upholstery materials, used alone or in combination, regardless of whether the product is stationary or adjustable, and
2. **Provenance** : have been used and discarded in the state of California.

'mattresses' does *not* mean the following items:

- Out-of-state mattresses
- Severely damaged, twisted, wet, frozen or soiled mattresses
- Mattresses infested with bed bugs or other living organisms
- Air mattresses that contain no upholstery material (such as camping beds)
- Car beds
- Collapsible rollway beds
- Adjustable bases not covered in ticking or fabric
- Juvenile products including, carriages, baskets, dressing tables, strollers, playpens, infant carriers, lounge pad, crib bumpers
- Mattress pads and toppers
- Sleeping bags
- Pillows and cushions
- Loose bedding, blankets or sheets
- Water beds
- Fold-out sofa beds
- Futon frames or base

Futons or futon mattresses means mattresses that are detachable from the frame or base

ATTACHMENT 4.04 Compliance with Law

a. Waste Management. The Master Contract lists examples of laws related to managed materials as a convenience for the parties in performing and administering contracts.

Mattresses Management. This Attachment lists examples of laws related specifically to mattresses:

- **Used Mattress Recovery and Recycling Act** PRC 42985-42994 ([Public Resources Code Sections 42985-42994](#)),
- **MRC's Contingency Plan** [MRC Contingency Plan 4 30 2020.pdf](#)

ATTACHMENT 8.01 Service Fee Schedule

[INSERT FROM PROPOSAL]

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Form of Mattress Recycling Council mattress recycling contract:

California Used Mattress Recycling Program
Used Mattress Collection Services Agreement
Between
Mattress Recycling Council, Inc.
and

_____ 1

California Used Mattress Recycling Program
Collection Facility and Used Mattress Management Services Agreement

This Agreement is made on this _____ day of _____, 2015 ("Agreement") by
and between _____ located at

_____ (the "Service
Provider") and Mattress Recycling Council, a Delaware corporation having its offices at
501 Wythe Street, Alexandria, VA 22182 ("MRC").

RECITALS

Whereas MRC is the "mattress recycling organization" certified by the State of
California to plan and implement a mattress recycling program in California (the
"Program"), as set forth in California Public Resources Code §§ 42985 – 42994 (2014)
(the "Act"), and is organized (among other things) to negotiate and execute agreements
to collect and transport used mattresses for recycling;

Whereas, California Public Resources Code § 42987.1(o) requires that MRC develop
and submit to the state of California a recycling plan that (among other things) provides
for MRC to pay an amount to a municipal or solid waste facility or operation that
accepts

used mattresses dropped off by California residents at no charge (a facility) that both
MRC and the facility determine is reasonable for the facility to accept, store, and handle
such mattresses;

Whereas, the Service Provider operates one or more such facility(ies) in California;
Whereas, MRC and the Service Provider, pursuant to § 42987.1(o), wish to enter into
this Agreement, which describes the terms and conditions under which the Service
Provider will provide the Services described herein to MRC;

Now, therefore, for and in consideration of the terms of this Agreement and the mutual
promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 "Consolidate" means (as applicable) accepting, handling, storing, and packing
only acceptable Program Products into Collection Containers provided by, or
approved for use by, MRC or its subcontractors in a manner that is efficient,
complies with the requirements of MRC or its subcontractors, and is conducive to
safe and efficient transport.

1.2 "Collection Containers" are containers provided by, or approved for use by, MRC
or its contractors to hold and transport Program Products.

1.3 "Collection Facility(ies)" means all permanent or temporary collection facilities
that are owned, leased, subleased, or otherwise controlled by the Service 2

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Provider and designated by the Program to collect Program Products, and as specifically identified in Attachment E (“Collection Facility Information”).

1.4 “Effective Date” means the date that the parties’ obligations begin under this Agreement. The Effective Date is the first date shown above.

1.5 “Force Majeure” is defined in 14.2.

1.6 “Guidelines” are listed in Attachment D, and give a more specific overview of how the Program is to be implemented. MRC reserves the right to update, change, modify, amend, add or remove terms, or otherwise alter these Guidelines at any time with or without prior notice.

1.7 “Including” (whether or not capitalized) means “including but not limited to.”

1.8 “Initial Term” is defined in Article 2.1.

1.9 “Law” means all existing and future federal, state, and local statutes, laws, codes, ordinances, decrees, rules, regulations, requirements, and orders, of any governmental authority, entity, or agency whether federal, state, municipal, local, or other government body or subdivision, including those relating to unemployment compensation, worker’s compensation, disability, taxes, worker and public health and safety, the environment, and the Program.

1.10 “Materials and Activities” mean materials, supplies, tools, vehicles, equipment, labor, water, light, power, facilities, construction of any nature, supervision, and all other services, acts, activities, resources, and goods, but not Collection Containers, necessary for or otherwise used by the Service Provider to Collect, Pack, and otherwise comply with and fully perform its obligations under the Agreement.

1.11 “Non-Conforming Units” are Program Products that individual residents drop off at no-cost for recycling that are later determined to be contaminated or too damaged to recycle, and they must be disposed of as solid waste. NonConforming Units do not include any Units delivered by any entity other than an individual resident (i.e., a business or other entity).

1.12 “Non-Program Products” mean products not covered by the Program that are collected and/or managed by the Service Provider. Non-Program Products include: sleeping bags, pillows, an unattached mattress pad or mattress topper (even items with resilient filling intended to be used with or on top of a mattress), a car bed, crib or bassinet mattress, juvenile products or the pads used for such juvenile products, waterbeds, air mattresses that contain no upholstery material (such as a camping mattress), sofa beds and futons.

1.13 “Program Products” include “mattresses” (which are defined as a resilient material or combination of materials that is enclosed by a ticking [the outermost layer of fabric or related material of a mattress] and is intended or promoted for sleeping upon), “foundations” (for example, a box spring, which is used to support a mattress and may include constructed wood or other frames, steel springs, or other materials used alone or in combination), and a renovated mattress or renovated foundation. 3

1.14 “Program” means the California Used Mattress Recycling Program created by MRC.

1.15 “Services” means all services for which Service Provider is responsible, as described in this Agreement and in the Attachments hereto, including any and all Materials and Activities.

1.16 “State” means the State of California.

1.17 “Storage and Transportation Services Option” means the Service Provider’s option to provide its own storage and transportation of Program Products from their collection location to an MRC-contracted recycler. If this option is selected on Attachment A, Service Provider will be bound to the terms in Attachment F “Storage and Transportation Services” for such Services.

1.18 “Temporary Collection Events” mean an event hosted by the Service Provider to Consolidate Program Products at locations within the State that are short in duration and not at permanent collection facilities.

1.19 “Transportation Providers” or “Transporter” means a contractor hired by MRC or Service Provider to transport Program Products from the Collection Facilities or Temporary Collection Events. This term will apply to the Service Provider if Service Provider selects the Storage and Transportation Option listed on Attachment A.

1.20 “Unit” means a single Program Product dropped off at a facility by a California resident at no charge. For example, an individual mattress and an individual box spring would each be a single Unit.

ARTICLE 2 – TERM OF AGREEMENT

2.1 This Agreement will commence upon the Effective Date and will remain in full force and effect for a period of two (2) years (the “Initial Term”).

2.2 Immediately after expiration of the Initial Term, this Agreement will automatically renew for additional successive one (1) year terms unless either party notifies the other in writing at least sixty (60) days in advance of the renewal term commencement date that the Agreement will not be renewed. The consideration of each option year will be the same as the consideration during the previous contract period, unless otherwise agreed to in writing by MRC.

2.3 If either party provides notice that the Agreement will not be renewed, the Service Provider, before the end of the term of the Agreement or at another time agreed to in writing by the parties, will, at no additional cost to MRC (a) make all Collection Containers supplied by MRC or a subcontractor available for pick up by a Transportation Provider, (b) undertake the orderly cessation of the Services, and (c) cooperate fully at the direction of MRC in the orderly transition of the Services to its successor, if any.

ARTICLE 3 – GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

3.1 In consideration of MRC’s payments, if any, to the Service Provider for Services, and for activities undertaken at MRC’s expense, the Service Provider will perform the Services provided for in Attachment A (“Scope of Work”) in conformity with the Program and Guidelines, except to the extent the Program and/or Guidelines conflict with the terms of this Agreement or any applicable Law.

3.2 The Service Provider will manage all Program Products Collected at the Collection Facilities only in accordance with Attachment A (“Scope of Work”), and

will not dispose of Program Products in any other method without the prior written approval of MRC.

3.3 The Service Provider will be responsible for:

- a. making day-to-day and critical decisions regarding the Services, including the management and supervision of all activities comprising the Services;
- b. complying with all applicable Law; and
- c. securing and locking the Collection Facilities at all times when the facilities are closed or not attended.

3.4 The Service Provider may amend Attachment E (“Collection Facility Information”) to add or delete sites, subject to MRC’s prior written approval for each such addition/deletion.

3.5 The Service Provider is responsible for and will manage, at its sole expense, any and all Non-Program Products it collects at the Collection Facilities or places in Collection Containers. MRC accepts no responsibility for such Non-Program Products, and will not pay Service Provider any consideration in connection with such Non-Program Products.

3.6 The Service Provider will not charge a per-unit fee to California residents that drop off Program Products with the Service Provider. This section does not preclude the Service Provider from charging fees for curbside collection or services other than Program Product drop off. Nothing in this Agreement prohibits the Service Provider from charging fees to California residents, businesses, or other entities for dropping off Non-Program Products.

3.7 The Service Provider will inspect each Unit before placing it in a Collection Container to confirm whether it is a Program Product. Service Provider will separate and document Non-Conforming Units from individual residents, will invoice MRC for such Units at rates listed in Appendix A, and will dispose of such Units as solid waste. In addition, Service Provider will separate and document any other Units that are not suitable for recycling that were obtained from businesses or other entities and will dispose of such Units as solid waste, but without receiving compensation from MRC for such Units.

3.8 The Service Provider will provide the Services at its own risk and take every precaution to protect all public and private property during the performance of the Services. If the Service Provider’s personnel or equipment cause any damage to the property of MRC or its contractors, the Service Provider, at its sole expense, will promptly replace the damaged property or repair it to the condition existing before the damage.

3.9 The Service Provider will thoroughly familiarize itself with the nature and scope of the Services under this Agreement and with matters that may affect the Services, including the Law governing the Services, Guidelines, and this Agreement. Any failure by the Service Provider to thoroughly familiarize itself with such matters does not relieve the Service Provider of its obligations under this Agreement.

3.10 Work under this Agreement will be performed only by competent personnel under the indirect or direct management or supervision of the Service Provider.

3.11 The Service Provider will commit adequate resources to participate in the

Program and meet its obligations under this Agreement, including providing, at its sole expense, any and all Materials and Activities.

3.12 The reporting and notification requirements identified in Attachment A (“Scope of Work”) and elsewhere in this Agreement are an integral part of the Services. The Service Provider will comply with all reasonable requests from MRC for preparation, access, review, and/or adjustment of these deliverables throughout the term of this Agreement.

3.13 The Service Provider will inspect the Collection Containers upon arrival and determine whether they are in proper condition for use. MRC or its contractor is responsible for replacing any defective Collection Containers and repairing normal wear-and-tear to the Collection Containers. The Service Provider will immediately notify MRC if at any point during the term of the Agreement a Collection Container(s) is not in proper condition for use and will not use any such defective Collection Containers until they are repaired or replaced by MRC or its contractor. If a Collection Container is functional, but is delivered in a damaged condition, the Service Provider will notify MRC or its contractor in writing of the nature and location of such damage upon the arrival of the Collection Container.

ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES

4.1 The Service Provider represents, covenants, and warrants that:

- a. it is a _____ [specify entity type – e.g., corporation, limited liability company, municipality] in good standing and qualified to carry on business in California, and has all necessary approval, capacity, and authority to enter into this Agreement and fully perform its obligations under this Agreement;
- b. this Agreement does not in any way conflict with any other agreements of the Service Provider;
- c. it possesses the business, professional, and technical expertise, as well as training, Materials and Activities, facilities, and equipment necessary and required to perform the Services; 6
- d. it will perform the Services in a diligent, safe, and workmanlike manner that conforms with generally accepted industry, professional, and best management practices, and with the care and skill ordinarily exercised, for such Services; and
- e. it and/or its facilities, equipment, employees, or agents, have been issued, as of the date of this Agreement and throughout the term of the Agreement, all permits, licenses, certificates, or approvals required by applicable statutes, ordinances, orders, rules, regulations, and regulatory or administrative bodies necessary to perform the Services.

ARTICLE 5 – MRC OBLIGATIONS

5.1 Upon receiving a request from the Service Provider, MRC will arrange for timely pick-up (i.e., within five (5) days for sites located in urban areas or within fourteen (14) days for sites located in rural areas) by a Transportation Provider of Program Products Consolidated by the Service Provider. MRC or an MRC

contractor will, at its expense, arrange for the Transportation Provider to transport such Program Products after pick-up to intermediary locations, processors, or other final destinations that are part of the Program.

5.2 MRC will make available to the Service Provider consumer brochures and signage.

5.3 MRC's Transportation Provider will provide Collection Containers to the Service Provider, or approve use of the Service Provider's containers as Collection Containers, for each of the Collection Facilities. All Collection Containers supplied by MRC or a subcontractor will remain the property of the MRC or subcontractor (as applicable).

5.4 MRC has no authority to manage, direct, or supervise employees, representatives, or agents of the Service Provider, including how they perform the work and achieve compliance with applicable Law. MRC does not have responsibility for making day-to-day and critical decisions regarding the Services, including the management or supervision of any activities comprising the Services.

5.5 Nothing herein creates an exclusive arrangement between MRC and the Service Provider. The Service Provider may not restrict MRC from contracting with other entities under the Program.

ARTICLE 6 – COVENANTS OF MRC

6.1 MRC covenants, represents, and warrants that:

- a. it is a non-profit corporation validly existing under the laws of Delaware;
- b. it has the corporate power, capacity, and authority to enter into and complete this Agreement; and
- c. the execution and delivery of this Agreement has been validly authorized by all necessary corporate actions by MRC.

ARTICLE 7 – AGREEMENT TERMINATION

7.1 The Service Provider acknowledges that, except for any payments for rendering Services as specifically provided for in Attachment A ("Scope of Work") of this Agreement at the Compensation Rates set in Attachment B, it will not receive any other monetary payments under this Agreement.

7.2 MRC or the Service Provider may terminate this Agreement at any time without cause upon sixty (60) days' written notice to the other party.

7.3 Either party may terminate this Agreement or any Services under this Agreement immediately, upon prior written notice if the other party:

- a) has breached any material provision of this Agreement, and has failed to cure such breach within thirty (30) days of receiving written notification of such breach; or
- b) has violated applicable Law.

7.4 MRC may terminate this Agreement immediately:

- a) if Service Provider fails to maintain the insurance requirements described in this Agreement; or
- b) upon a finding by MRC in its sole and reasonable opinion that Service Provider has acted fraudulently or dishonestly in providing Storage and

Transportation Services (as applicable).

7.5 This Agreement is contingent upon MRC's ability to fund the Program through fees collected on Mattress sales in the State. MRC may terminate the Agreement upon thirty (30) days' written notice if such funding is reduced to such an extent that, in MRC's sole and reasonable opinion, it is unable to fulfill its duties under this Agreement.

ARTICLE 8 – TITLE AND RISK OF LOSS

8.1 The parties acknowledge that the Program Products are not household hazardous waste.

8.2 The Service Provider (and not MRC) has title to and risk of loss and liability for any and all Program Products, Non-Conforming Units and Non-Program Products that the Service Provider receives. Notwithstanding the foregoing, once a Transportation Provider accepts for transportation any Program Products Collected by the Service Provider under this Agreement and Consolidated on a Collection Container, title to and risk of loss as to those Program Products, will transfer to that Transportation Provider. MRC at no time takes title to or assumes liability for any Program Products, Non-Conforming Units or Non-Program Products. However, MRC will require in its contracts with its

8 Transportation Providers that they accept title and risk of loss immediately upon accepting any Program Products for transportation from the Service Provider.

8.3 MRC is not responsible for any damage to persons or property resulting from the use, misuse, or failure of any equipment used by the Service Provider, or by any of its employees or contractors, including the Collection Containers, even if such equipment is furnished, rented, or loaned to the Service Provider by MRC.

ARTICLE 9 – CONSIDERATION AND PAYMENT

9.1 As consideration under this Agreement, MRC or its contractors will (i) provide the Service Provider with Collection Containers, consumer brochures, and signage; (ii) facilitate the transportation of Program Products by Transportation Providers as set forth in this Agreement; (iii) pay the Service Provider for Services rendered as set forth in this Agreement; and (iv) perform other services incidental to the management of the Program.

9.2 MRC's payment to Service Provider for Services Rendered in the manner set forth in Attachment B ("Compensation Rates") will be made in U.S. currency. Other than such payments, MRC will not provide the Service Provider with any monetary compensation or reimbursement for the Service Provider's Collection of Program Products, furnishing of the Materials and Activities, or its performance of the Services.

9.3 The Service Provider will invoice MRC on a monthly basis, either by hardcopy or electronically, as determined by MRC. Invoices furnished by the Service Provider under this Agreement must include the information included in Attachment C ("Model Invoice") and must state:

- a. the unique, identifying invoice number;
- b. the specific work categories of Services provided for under the Agreement;

- c. the specific number of Units consolidated;
- d. copies of each Transportation Bill of Lading or equivalent shipping documentation that includes the information included in Attachment D's "Model Bill of Lading" validating the number of units consolidated; and
- e. any additional information as agreed to in writing by the parties that is relevant to the Services being performed by the Service Provider.

9.4 Each invoice must include the signature of the Service Provider employee responsible for submitting the invoice and a certification that the invoice accurately reflects the Services performed.

9.5 MRC reserves the right to refuse payment of any invoice or portion thereof that is not received in an acceptable form.

9.6 All amounts invoiced by the Service Provider to MRC, or paid by MRC to the Service Provider, are subject to audit by MRC, as described below in ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF MRC. 9

9.7 The Service Provider will submit all invoices to MRC by the method directed by MRC and/or at the address specified below. MRC will send all payments due to the Service Provider to the address specified below.

To: Mattress Recycling Council Inc.

Attn: Accounts Payable

Fax: 703-683-4503

Phone: 1-855-229-1691

E-mail: clyons@sleepproducts.org

Address: 501 Wythe Street Alexandria, VA 22314

MRC will send all payments due to the Service Provider to the address specified below.

To: _____

Attn: _____

Fax: _____

Phone: _____

E-mail: _____

Address: _____

9.8 Provided that the Service Provider has supplied the required information and otherwise performed its obligations under this Agreement, MRC will pay such invoice within forty-five (45) days of the date that MRC receives the invoice. In the event MRC has a good-faith objection to an invoice, MRC will pay the undisputed amount pursuant to the terms of this Agreement and notify in writing the Service Provider of said objections and describe in reasonable detail the basis for the objections. The Dispute Resolution provisions in ARTICLE 17 - DISPUTE RESOLUTION will be used to resolve such disputed portion of an invoice. During any such dispute, the Service Provider will continue with its responsibilities under this Agreement and will not stop providing the Services unless this Agreement is terminated pursuant to Article 7. MRC will make all payments due to the Service Provider over which there is no good-faith dispute.

9.9 MRC's payment of all or a part of an invoice neither relieves the Service Provider

of any of its obligations under this Agreement nor constitutes a waiver of any claims by MRC.

9.10 The Service Provider warrants that, to the best of its knowledge, all documents, including invoices, billings, back-up information for invoices, and reports, submitted by the Service Provider to MRC to support amounts invoiced in connection with the Services truly reflect the facts about the activities and transactions to which they pertain. The Service Provider warrants that MRC, for 10 whatever purpose, may rely upon all such documents and the data therein as being complete and accurate. The Service Provider will promptly notify MRC upon discovery of any instances where the Service Provider becomes aware of any discrepancies in relation to documents under this Article.

ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF MRC

10.1 MRC and its representatives may (a) monitor and verify that the Service Provider has complied with this Agreement, the applicable Law, and Guidelines; and (b) consult with the Service Provider about such compliance; provided, however, that MRC will not, and affirmatively disclaims any ability to, control, supervise or manage (1) the employees of the Service Provider; (2) the activities undertaken by the Service Provider in the performance of this Agreement; and (3) the means by which the Service Provider meets all requirements, including applicable Law.

10.2 MRC may audit and inspect, with full access, the Service Provider's Collection Facilities during the Collection Facilities' hours of operation, as well as any other site at which the Service Provider performs the Services. MRC will provide the Service Provider with at least twenty-four (24) hours' notice before any such audit or inspection.

10.3 The Service Provider will maintain and make available to MRC, during regular business hours, accurate books and accounting records relating to its Services under this Agreement. The Service Provider will permit MRC to audit, examine, and make excerpts and transcripts, for any books or records, and to make audits of any invoices, materials, records, and other data related to all other matters covered by this Agreement, unless such documents are confidential in accordance with the California Public Records Act (Govt. Code § 6250 – 6276.48). The Service Provider will maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date produced under this Agreement or until after final audit has been resolved, whichever is later. The Service Provider will include this requirement in any subcontract for the performance of any of the Services under this Agreement.

10.4 In addition to those reports detailed in Attachment A ("Scope of Work"), the Service Provider will maintain the following records:

- a. For each pick-up of Program Products by a Transportation Provider from a Collection Facility, a copy of the Bill of Lading or equivalent shipping documentation that includes the information included in Attachment D's "Model Bill of Lading", that will be provided by the Transporter;
- b. Records confirming the number of Units the Service Provider received at

each Collection Facility including:

- i. The number transported to MRC-contracted recyclers,
- ii. The number of Non-Conforming Units dropped off by individual residents that Service Provider disposes of as solid waste, and
- iii. The number transported to other entities;
- c. Records of any inspections required by Law; and
- d. Records of compliance for any required state and local employee trainings.

ARTICLE 11 – INDEMNIFICATION

11.1 The Service Provider, and its successors and assigns (collectively, the “Indemnifying Party”), will, to the fullest extent allowed by law, indemnify, defend, and hold harmless MRC and its sole member (as identified under MRC’s Certificate of Incorporation), and their member companies, officers, directors, stockholders, employees, successors, assigns, attorneys, agents, and invitees (collectively, the “Indemnified Parties”) from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively, “Claims”), including cost of defense, settlement, arbitration, and reasonable attorney’s fees, resulting from injuries to or death of persons, including but not limited to employees of either party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the Indemnifying Party, or the acts or omissions of anyone else directly or indirectly acting on behalf of the Indemnifying Party, its officers, agents, employees, or contractors, or for which the Indemnifying Party is legally liable under law regardless of whether caused in part by an Indemnified Party. The Indemnifying Party will not be liable for any Claims arising from the sole negligence or willful misconduct of an Indemnified Party where such indemnification would be invalid under Section 2782 of the Cal. Civil Code.

11.2 MRC, and its successors and assigns (collectively, the “MRC Indemnifying Party”), will, to the fullest extent allowed by law, indemnify, defend, and hold harmless the Service Provider and its officers, directors, stockholders, employees, successors, assigns, attorneys, agents, and invitees (collectively, the “MRC Indemnified Parties”) from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively, “Claims”), including cost of defense, settlement, arbitration, and reasonable attorney’s fees, resulting from injuries to or death of persons, including but not limited to employees of either party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the MRC Indemnifying Party, or the acts or omissions of anyone else directly or indirectly acting on behalf of the MRC Indemnifying Parties, or for which the MRC Indemnifying Party is legally liable under law 12 excepting only such injury, death, or damage to the extent caused by the active

negligence or willful misconduct of an MRC Indemnified Party.

11.3 The following provisions apply to Paragraphs 11.1 and 11.2 above:

- a. This indemnity will not be limited by the types and amounts of insurance or self-insurance maintained by the Indemnifying or Indemnified Parties or their contractors;
- b. Nothing in this indemnity will be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party; and
- c. The provisions of this indemnity will survive the expiration or termination of this Agreement.

11.4 MRC WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NOTHING IN THIS AGREEMENT CONSTITUTES A WAIVER OR LIMITATION OF ANY RIGHTS THAT MRC MAY HAVE UNDER THE APPLICABLE LAW.

ARTICLE 12 – INSURANCE

12.1 The Service Provider at its own expense must provide environmental and commercial general liability insurance with limits for each of not less than \$1 million for each occurrence, as well as any other insurance, such as, for example and without limitation, worker's compensation and automobile insurance, to the extent and in the amounts required by applicable law.

12.2 Service Provider must name MRC and its sole member (as identified under MRC's Certificate of Incorporation), and their officers, agents, and employees are named as additional insureds on its commercial general liability insurance policy. To the extent the Service Provider's commercial general liability insurance includes a blanket provision adding additional insureds where required by contract, this Agreement is deemed to require that MRC and its sole member (as identified under MRC's Certificate of Incorporation), and their officers, agents, and employees are named as additional insureds on the Service Provider's commercial general liability insurance by separate endorsement. Service Provider's general liability insurance must be on a primary and non-contributory basis to any coverage available to MRC.

12.3 If Service Provider exercises the Storage and Transportation Services Option, it will also provide business automobile insurance with limits of not less than \$1 million combined single limit. Service Provider will provide a Certificate of Insurance with regard to the business automobile coverage that names MRC and its sole member (as identified under MRC's Certificate of Incorporation), and their officers, agents, and employees are named as additional insureds. No exclusion will be permitted in any event if it conflicts with a coverage expressly required in this Agreement, including but not limited to the indemnity provisions in Article 11 of the Agreement.

12.4 Service Provider is required to provide MRC with notification of any cancellation

or change in Service Provider's insurance coverage during the period of the Agreement with MRC. Such notification must be made not less than sixty (60) days' prior to the date said cancellation or change becomes effective.

12.5 In the event a Certificate of Insurance required by this Article should expire or be cancelled during the term of this Agreement, Service Provider agrees to provide, at least sixty (60) days prior to said expiration or cancellation, a new Certificate of Insurance evidencing coverage, as provided for herein, for not less than the remainder of the Agreement. In the event Service Provider fails to keep in effect at all times insurance coverage as herein provided, MRC may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

12.6 Service Provider will require all third parties that it uses to provide any services under this contract with MRC to comply with the same insurance requirements specified above.

12.7 Compliance by Service Provider with the foregoing requirements to carry insurance and furnish certificates will not relieve Service Provider from liability assumed under the provisions of this Agreement.

12.8 Upon the request of MRC, Service Provider must be able to provide evidence of insurance.

ARTICLE 13 – ASSIGNMENT AND SUBCONTRACTING

13.1 The Service Provider may not assign, novate, or otherwise transfer (including transfer by operation of law) this Agreement or the obligations and rights hereunder without the express written consent of MRC, which consent will not be unreasonably withheld. Any change of control by the Service Provider constitutes an assignment that requires prior written consent. A "change of control" includes, among other items, any merger, consolidation, sale of all or substantially all of the assets, or sale of a substantial block of stock of the Service Provider. Any attempted assignment, novation, or other transfer made in violation of this Article is void and has no effect.

13.2 MRC may not assign, novate, or otherwise transfer (including transfer by operation of law) this Agreement or the obligations and rights hereunder without the express written consent of the Service Provider, which consent will not be unreasonably withheld. Any change of control by the Service Provider constitutes an assignment that requires prior written consent. A "change of control" includes, among other items, any merger, consolidation, sale of all or substantially all of the assets, or sale of a substantial block of stock of MRC. Any attempted assignment, novation, or other transfer made in violation of this Article is void and has no effect.

13.3 The Service Provider may subcontract any part of the Services with MRC's prior written permission, such permission not to be unreasonably withheld. As part of any subcontract relating to this Agreement, the Service Provider must include the following Articles and Attachments to the extent applicable for the Services being provided by the Subcontractor: ARTICLE 8 – TITLE AND RISK OF LOSS, ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF MRC, ARTICLE 12 -

INSURANCE, ARTICLE 18 – COMPLIANCE WITH LAW, ARTICLE 19 – CONFIDENTIALITY/PUBLICITY, Attachment A (“Scope of Work”), and Attachment D (“Guidelines”). Nothing contained in this Agreement or otherwise creates any contractual relationship between MRC and any subcontractor of the Service Provider. A subcontract does not relieve the Service Provider of its responsibilities and obligations hereunder. The Service Provider is as fully responsible to MRC for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Service Provider.

13.4 The Service Provider’s obligation to pay its subcontractors is an obligation independent from MRC’s obligation to make payments to the Service Provider. As a result, MRC has no obligation to pay or to enforce the payment of any moneys to any subcontractor of the Service Provider.

ARTICLE 14 – FORCE MAJEURE

14.1 Any delay or failure of either party to perform its obligations hereunder will be suspended if, and to the extent, it is caused by the occurrence of a Force Majeure. In the event that either party intends to rely upon the occurrence of a Force Majeure to suspend or to terminate its obligations, such party will notify the other party in writing, in accordance with the requirements of Article 15, within 2 business days after becoming aware of the Force Majeure, or as soon as reasonably possible, setting forth the particulars of the circumstances. Written notices will likewise be given after the effect of such occurrence has ceased.

14.2 An occurrence of a “Force Majeure” means riots, wars, civil disturbances, insurrections, labor strikes of MRC service providers, contractors or subcontractors, acts of terrorism, epidemics, acts of nature (or any threat of such occurrences) whose effects prevent safe passage of vehicles upon state or federal highways for a continuing period of not less than fourteen (14) days and federal or state government orders, any of which is beyond the reasonable anticipation or control of the applicable party and which prevents performance of this Agreement, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time.¹⁵

ARTICLE 15 – NOTICES

15.1 Except where otherwise expressly authorized, notice will be by, facsimile, first class certified or registered mail, or by commercial delivery service issuing a receipt for delivery. Notices will be addressed as set forth below. Either party may change the address information below by providing written notice to the other party. Notice is effective upon delivery, or if delivery is refused, when delivery is attempted.

To: Mattress Recycling Council Inc.

Attn: Accounts Payable

Fax: 703-683-4503

Phone: 1-855-229-1691

E-mail: clyons@sleepproducts.org

Address: 501 Wythe Street Alexandria, VA 22314

To: _____
Attn: _____
Fax: _____
Phone: _____
E-mail: _____
Address: _____

ARTICLE 16 – INDEPENDENT CONTRACTOR STATUS

16.1 The parties intend that the Service Provider, in performing the Services specified herein, is acting as an independent contractor and that the Service Provider will control the work and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association.

16.2 Each party, or its subcontractors, as appropriate, is solely liable and responsible for providing all compensation and benefits due to, or on behalf of, all persons performing work on its behalf in connection with this Agreement. Neither party has any liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the other party.

16.3 Each party understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of that party and not employees of the other party. Each party is solely liable and responsible for furnishing any and all Workers' Compensation 16 benefits to its employees as a result of any injuries arising from or connected with any work performed by or on behalf of that party pursuant to this Agreement.

16.4 Third-party Transportation Providers are independent contractors and are not employees, partners, or agents of either party. Neither party is liable for the acts or omissions of third-party Transportation Providers under this Agreement. However, if Service Provider exercises the Storage and Transportation Services Option, Service Provider will be liable for any acts or omissions in providing such services.

ARTICLE 17 - DISPUTE RESOLUTION

17.1 Subject to the conditions and limitations of this Article, any controversy or claim arising out of or relating to this Agreement will be exclusively settled by arbitration under the laws of the State of California, in accordance with the rules of the American Arbitration Association.

17.2 The parties agree to consolidation of any arbitration between them with any other arbitration involving, arising from, or relating to this Agreement.

17.3 Each party hereto accepts the jurisdiction of the courts of the State of California for the purposes of commencing, conducting, and enforcing an arbitration proceeding pursuant to this Article. Each party will accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party according to Article 15.1, and such

notice will have the same effect as if the party had been personally served within the State of California.

17.4 Any decision of an arbitrator engaged under this Article is final, binding, and enforceable upon both parties.

17.5 The Service Provider will continue with its responsibilities under this Agreement during any dispute.

17.6 The parties will continue to work during the dispute resolution process in a diligent and timely manner in accordance with all applicable provisions of this Agreement.

17.7 Each party hereto will bear the costs and expenses incurred by it in connection with such arbitration processes. The cost of any independent decision maker will be shared equally between the parties.

ARTICLE 18 – COMPLIANCE WITH LAW

18.1 Each party will comply with all Law applicable to this Agreement.

18.2 The Service Provider will promptly notify MRC in writing upon discovery of any failure, or any allegation of any failure, of the Service Provider or other persons or entities to comply with any applicable Law relevant to the performance of Services or any requirement of this Agreement.¹⁷

18.3 Duties and obligations imposed by this Agreement, and rights and remedies available thereunder, are in addition to (and not a limitation of) duties, obligations, rights, and remedies otherwise imposed or afforded by applicable Law.

18.4 MRC will comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implemented regulations.

18.5 If services under this Agreement are funded with state funds granted to Service Provider, MRC will not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and will comply with the provisions of Government Code Sections 16645 through 16649.

18.6 The Service Provider will provide MRC with sixty (60) days' prior written notice before entering into negotiations or engaging in any direct or indirect lobbying activities with any government authority or agency to develop any variance or revision to Cal. Public Resources Code §§ 42985 – 42994.

ARTICLE 19 – CONFIDENTIALITY/PUBLICITY

19.1 The Service Provider will not disclose any details in connection with this Agreement to any person or entity without MRC's prior written authorization, except as may be otherwise provided hereunder or required by law. However, in recognizing the Service Provider's need to identify its services and related clients to sustain it, MRC will not inhibit the Service Provider from publishing its role in the Program within the following conditions:

- a. The Service Provider may utilize and develop publicity material regarding the MRC Program only upon the prior written consent of MRC, which consent will not be unreasonably withheld; and
- b. During the term of the Agreement, the Service Provider will not, and will

not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of MRC without the prior written consent of MRC, which consent will not be unreasonably withheld.

19.2 The Collection Facilities may be listed, referenced, or advertised as collection sites by MRC for the Program during the term of this Agreement.

19.3 To the extent that the Service Provider is subject to disclosure requirements under the California Public Records Act (Govt. Code § 6250 – 6276.48) and other applicable federal, state, and local public record laws (collectively, "the Disclosure Laws"), the following additional terms apply:

- a. The Service Provider acknowledges that MRC claims that the pricing information in this Agreement constitutes proprietary information; and
- b. In the event the Service Provider receives a request for disclosure of such information or disclosure under the Disclosure Laws, the Service Provider will provide MRC with reasonable prior notice, and in no case less than 18 ten (10) days' notice, of the request prior to disclosing the information or documentation. If MRC claims the information or documentation is exempt from disclosure under the Disclosure Laws, it must obtain a protective order, injunctive order, or other appropriate remedy from a California court of law before the Service Provider's deadline for responding to the request. If MRC fails to obtain such judicial relief within that time, the Service Provider may disclose the requested information without any penalty or liability to MRC.

ARTICLE 20 – MISCELLANEOUS PROVISIONS

20.1 No Waiver. The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted does not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.

20.2 Selective Waiver. Either party may waive any default by the other party under this Agreement by an instrument in writing to that effect and no such waiver will extend to any subsequent or other default by the other party. No failure or delay on the part of either party to exercise any right hereunder operates as a waiver thereof. Either party may elect to selectively and successively enforce its rights hereunder, such rights being cumulative and not alternative.

20.3 Entire Contract/Order of Precedence. This Agreement and all Attachments and exhibits hereto, and all referenced documents, including the Guidelines, constitute the entire agreement between the parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this Agreement and the accompanying document are to be construed and interpreted as consistent whenever possible. Any conflicts in this Agreement and the accompanying documents will be resolved in accordance with the following descending order of precedence:

- a. Attachment A (“Scope of Work”);
- b. Attachment B (“Compensation Rates”);
- c. Attachment F (“Storage and Transportation Services”), if applicable;
- d. The terms of this Agreement;
- e. Attachment D Guidelines;
- f. Attachment E (“Collection Facility Information”); and
- g. Attachment C (“Model Invoice”).

20.4 Amendment or Modification. Unless otherwise provided herein, no amendments, changes, alterations, variations, or modifications to this Agreement will be effective unless in writing and signed by the respective duly authorized officers of the parties hereto.¹⁹

20.5 Governing Law/Venue. This Agreement is executed and intended to be performed in the State of California, and the laws of that State will govern its interpretation and effect. Any legal proceedings relating to this Agreement will initially be brought before a court of jurisdiction prescribed by law in the State of California.

20.6 Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby.

20.7 Calendar Days. Any reference to the word “day” or “days” herein will mean calendar day or calendars days, respectively, including weekends and Federal Holidays, unless otherwise expressly provided. If a deadline falls on a weekend or Federal Holiday, the next business day will be the applicable deadline.

20.8 No Third-Party Beneficiary. This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction by any party in connection therewith.

20.9 Authorization. Each party represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations set forth herein. The representative(s) signing this Agreement on behalf of each party represents that he/she has the authority to execute this Agreement on behalf of the applicable party and to bind it to its contractual obligations hereunder.

Survival of Terms. All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement will so survive, including but

not limited to: ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES; ARTICLE 8 – TITLE AND RISK OF LOSS; ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF MRC;

MATERIALS MANAGEMENT: Mattresses

20.10 ARTICLE 11 – INDEMNIFICATION; ARTICLE 12 – INSURANCE; ARTICLE 16 – INDEPENDENT CONTRACTOR STATUS; ARTICLE 17 - DISPUTE RESOLUTION; ARTICLE 18 – COMPLIANCE WITH LAW; ARTICLE 19 – CONFIDENTIALITY/PUBLICITY; and ARTICLE 20 - MISCELLANEOUS.20
IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by its duly authorized representative on the day and year set forth above.

By:

Authorized Signatory Authorized Signatory
Mattress Recycling Council, Inc. _____
[Name of Service Provider]

Print Name Print Name

Print Title Print Title

Date: _____ Date: _____