

PR#: \_\_\_\_\_  
Contract Number: \_\_\_\_\_  
RFP Number (if applicable): \_\_\_\_\_

**MILWAUKEE BOARD OF SCHOOL DIRECTORS  
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this **28<sup>th</sup> day of January, 2022**, by and between **Power Holdings Inc.-Fire Brick Engineers** (“Contractor”) and Milwaukee Board of School Directors (“MPS”).

**1. SCOPE OF SERVICES**

Contractor shall specifically perform the following tasks:

Provide all services as outlined in your proposal dated September 28, 2021, for Contract Labor Services in the following trades on an as-needed basis when requested by MPS: **Fire Brick Engineers**

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

**2. TERM: February 1, 2022 – January 31, 2025**

**No work** shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed contract with approval to proceed shall not be compensated pursuant to this contract. Any continuation of the contract beyond this term must be set forth in writing and signed by the original signatories to the contract.

**3. COMPENSATION**

The above-mentioned services will be provided per the hourly fee rate schedule as identified in the response to the RFP, dated December 14, 2021, which is outlined on Attachment A.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

**Milwaukee Public Schools  
Facilities & Maintenance Services  
1124 North 11<sup>th</sup> Street  
Milwaukee, WI 53233  
ATTN: Contract Labor Secretaries**

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

**4. NON APPROPRIATION OF FUNDS**

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

**5. NON-DISCRIMINATION**

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person’s sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not be limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation;

PR#: \_\_\_\_\_  
 Contract Number: \_\_\_\_\_  
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and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

**6. INDEMNITY**

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys fees or other expenses resulting therefrom.

**7. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY**

During the term of this Contract Agreement, the Contractor, Sub-subcontractor, and Subcontractor shall, at their own expense, purchase and maintain insurance policies and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or bodily injury to persons or property of employers, agents and third parties to pay for claims which may arise out of or result from the Contractor’s activities by whomever performed, with such coverage and amounts as required and specified below. The Contractor shall not commence Work under this Contract Agreement until he has obtained all insurance required under this Article and has provided the Board with certificates of insurance evidencing the required insurance coverage, nor shall the Contractor allow any Subcontractor or Sub-subcontractor to commence work on his Subcontract until all similar insurance required for the Subcontractor has been so retained and evidence has been submitted to the Board.

**Worker’s Compensation Insurance:** The Contractor shall take out and maintain during the life of this Contract Agreement, Worker's Compensation Insurance including occupational disease and employer's liability for all of his employees employed at the site of the Project and, in case any of the Work is sublet, the Contractor shall require the Subcontractor and/or the Sub-subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees. The Employer's Liability limits shall be sufficient to be scheduled under Contractor’s umbrella policy. Coverage shall include a Waiver of Subrogation Endorsement in favor of the Board, its directors, officers, employees and agents.

<u>Workers Compensation:</u> <u>Employers Liability:</u>	<u>Statutory Limits:</u>
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$100,000 each employee
Bodily Injury by Disease	\$500,000 policy limit

**If applicable**, include Longshoremen, Harbor Worker’s Coverage and all States Coverage with Worker’s Compensation Insurance.

**Commercial General Liability:** The Contractor shall purchase and maintain during the life of this Contract Agreement such Liability and Property Damage Insurance as shall protect him and any Subcontractor and Sub-subcontractor performing Work covered by this contract, from claims for damages for personal injury, including bodily injury, as well as from claims for property damages which may arise from operation under this Contract Agreement, whether such operations be by self or by anyone directly or indirectly employed by either of them. Insurance shall be:

1. Comprehensive General Liability

General Aggregate Limit	\$2,000,000
Products - Completed Operations	
Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage Limit – Any One Fire	\$ 100,000
Medical Expense Limit – Any One Person	\$ 5,000

The General Liability coverage shall apply to all operations of the contractor, sub-contractor and Subcontractor.

Completed Operations and Products Liability coverage must be maintained in force for at least two (2) years after final payment.

2. Automobile Liability - Owned, Hired and Non-Owned

Combined Single Limit	\$1,000,000
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3. Umbrella Liability Limits

General Aggregate Limit	\$5,000,000
Products Completed Operations Limit	\$5,000,000
Each Occurrence Limit	\$5,000,000

Above Liability limits may be provided by Commercial General Liability and Automobile Liability policies for the full limits required; or by a combination of underlying Commercial Liability policies for lesser limits with the remaining limits provided by an Umbrella Liability policy. MPS shall be named as an additional insured under Contractor's general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be given to MPS prior to the commencement of any work. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor's insurance providing the coverages required by MPS for the duration of this contract.

The Contractor shall require Subcontractors and Sub-subcontractors not protected under his insurance to take out and maintain Worker's Compensation Insurance and insurance of the same kind in the amounts specified above. The Contractor shall submit evidence of coverage of insurance required.

The Contractor shall carry sufficient all risk property insurance on his equipment at site of Work and on route to and from site to fully protect him; Contractor shall require same coverage of his Subcontractors and Sub-subcontractors. It is expressly understood and agreed that the Board and/or Architect(s)/Engineer(s) shall have no responsibility therefore.

For materials and equipment purchased separately by Owner for installation, the Contractor's responsibility for insuring the equipment under this Contract commences upon Contractor's taking custody of the equipment for the initial inspection and continues until MPS accepts ownership which is defined herein when the designated MPS representative accepts in writing the equipment that has been fully installed and successfully tested at the installation site as determined by MPS.

For Subcontractors and Sub-subcontractors, if any, not protected under the Contractor's insurance policies, the Contractor shall require same to take out and maintain insurance of such nature.

Property Insurance: The Contractor shall obtain at his expense any an all risk property insurance policy on his equipment on the work site as the same shall be at his risk until final completion and acceptance of the Project.

Informational Note: The Milwaukee Public Schools does **NOT** have insurance coverage for any of the Work related to this Contract Agreement. The Milwaukee Public Schools is self-insured in this area; therefore, any request to have MPS pick up the insurance coverage in lieu of the persons involved with this Contract Agreement will be denied. Because of being self-insured, any liability accepted with this regard by MPS will be administered as an extra to the Contract Agreement.

The Contractor shall take special precautions to comply with the State regulations regarding the Seven (7) Point Test relating to independent Contractors who are sole proprietors or partnerships and are not required to carry Worker's Compensation Insurance. In no case will the Board be responsible for any non-coverage situation.

Since the Board does not carry separate insurance coverage as noted above, note that the following are explicitly not the responsibility of MPS:

1. The Board **WILL NOT** effect and maintain property insurance for materials stored on the site to be incorporated in the Work.

2. The Board **WILL NOT** be responsible for losses due to glass and plastic glazing breakage caused by vandalism to the Work prior to final payment.
3. The Board **WILL NOT** be responsible for payment of professional fees required for services rendered which are directly related to any loss under the Contractor's policy.
4. The Board **WILL NOT** insure equipment such as tools owned by or borrowed by mechanics or tools, sheds, hoists, canvasses, tarpaulins, mixers, scaffolding, staging, towers, etc., owned or rented by the Contractor, or similar property not extended in the completion of, or to become a permanent part of the installation or structure. The Contractor may carry such additional property insurance as he may deem necessary to protect his equipment and property (i.e. theft, collapse, special hazards, etc., by providing "Difference in Conditions" policy).
5. The Board **WILL NOT** have responsibility for worker's compensation claims beyond its direct employees.

**NOTE:** The Property Insurance shall include the interests of MPS, the Contractor, the Subcontractor, and Sub-subcontractors in the Work and shall be on an all risk insuring agreement. The Division of Facilities and Maintenance Services shall file a copy of all policies at the construction project office before an exposure to loss may occur.

#### **8. SHIPPING/TAXES**

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

#### **9. IRREPARABLE HARM**

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

#### **10. TERMINATION BY CONTRACTOR**

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

#### **11. TERMINATION BY MPS - BREACH BY CONTRACTOR**

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation with five (5) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

#### **12. TERMINATION BY MPS**

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days notice, but reserves the right to give immediate notice. If In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

### **13. INDEPENDENT CONTRACTOR**

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS' sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

### **14. ASSIGNMENT LIMITATION**

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

### **15. PROHIBITED PRACTICES**

- A. Contractor during the period of this contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Resources Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this contract.

### **16. LIVING WAGE REQUIREMENT**

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

### **17. NOTICES**

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this contract, or to their designees.

### **18. WAIVER**

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

### **19. INTEGRATION/SEVERABILITY**

This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties

concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

## **20. CHOICE OF LAW & FORUM**

The state courts of Wisconsin shall be the sole forum for all disputes arising of this contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

## **21. TIMING**

Time is of the essence in this Contract.

## **22. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION**

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

## **23. FORCE MAJUERE**

MPS will not be liable to pay contractor for any work that the contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS' reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

## **24. STUDENT DATA**

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

## **25. NON-DISCLOSURE**

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

## **26. MPS LOGO/PUBLICITY**

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS' Executive Director of Communications & Outreach.

**27. ORDER OF PRIORITY**

Should Contractor and MPS sign Contractor’s Contract in addition to this Contract, the terms set forth in this Contract shall govern in the event of a conflict.

**28. PUBLIC RECORDS**

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

**29. CCS REQUIREMENT**

For contractors accumulating over \$49,999.00 per one (1) year-term in contractor labor fees, the minimum Contract Compliance Services requirements are as follows: minimum HUB assignment is 5% (the following trade classifications are **EXEMPT** from HUB assignment: Automotive Mechanic, Low Voltage Technician, Locksmith, Sheet Metal, Steamfitter); student employment requirement is on a sliding scale (100 hours/\$50,000 - \$74,999; 200 hours/\$75,000 - \$199,999; 300 hours/\$200,000 - \$399,999; 400 hours/\$400,000 - \$599,999; 600 hours/\$600,000 - \$799,999; 800 hours/\$800,000 - \$999,999; 1,500 hours/\$1,000,000 - \$4,999,999; 2,000 hours/\$5,000,000 – \$9,999,999; 3,000 hours - \$10,000,000 - \$49,999,999; 6,000 hours/\$50,000,000 - \$100,000,000), and the Career Education requirement is on a sliding scale (5 hours/\$50,000 - \$399,999; 10 hours/\$400,000 - \$999,999; 20 hours/\$1,000,000 - \$9,999,999; 30 hours - \$10,000,000 - \$49,999,999; 50 hours/\$50,000,000 - \$100,000,000).

**Requirements will apply per contractor, not per trade.** Failure to achieve this requirement may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR: **Powers Holding, Inc. Corporation**

**MILWAUKEE BOARD OF SCHOOL DIRECTORS**

By: \_\_\_\_\_

By: \_\_\_\_\_

(Principal or Administrator Signature)

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Address: 427 East Stewart Street  
Milwaukee, WI 53207

Phone Number: (414) 489-7000

Tax Id or SS \_\_\_\_\_

By: \_\_\_\_\_

Keith P. Posley, Ed.D.  
Superintendent of Schools

Budget Code: **Various**

By: \_\_\_\_\_

Robert E. Peterson, President  
Milwaukee Board of School Directors

**ATTACHMENT A  
CONTRACT LABOR SERVICES  
FEE RATE SCHEDULE**

<b>Doral Corporation</b>	
Position/Trade: Machinery Maintenance Mechanic	
Proposed Hourly Rate	\$116.00
Proposed Overtime Rate	\$164.00
Proposed Hourly Rate (With Truck)	\$146.00
Proposed Overtime Rate (With Truck)	\$194.00

Rate Increase Details

Adjustments will be allowed to the hourly rates as submitted, in order to accommodate wage rate increase for prevailing wage contracts that are settled during the contract period.

The proposed hourly rates must take into account all calendar year 2021 current and expected package increases to go in effect prior to January 1, 2022 as defined by the Milwaukee Building and Construction Trades Council, AFL-CIO. Increases in these proposed rates will be limited to package increase amounts as defined by the Milwaukee Building and Construction Trades Council, AFL-CIO starting in calendar year 2022 - no other cost increases will be allowed for the life of this agreement unless identified within Position Description, this includes but is not limited to FICA payroll taxes, fuel or other travel costs, and any other overhead costs.

For those that identify an annual percentage or rate increase for each year, the increase will be limited to the amount submitted.

All proposed cost increases, including those associated with wage positions, must be submitted in writing to MPS to [DFMSProcurement@milwaukee.k12.wi.us](mailto:DFMSProcurement@milwaukee.k12.wi.us) a minimum of 30 calendar days before the new rate shall be invoiced. For respondents that propose hourly rates adjusted based on the Milwaukee Building and Construction Trades Council, AFL-CIO rate increases, respondent must provide MPS with official package rate documentation from the MBCTC for the rate increase. MPS will provide a written response approving, disapproving, or amending the proposed cost increases within 5 business days after receipt of all required documentation. Passing proposed cost increases on through routine invoicing prior to receiving written approval from MPS will not be permitted and should be considered cause for termination of this agreement. There will be no retroactive billing (back pay) based upon delays associated with any package increases.