

**AM GENERAL LLC**Terms and Conditions for Purchase  
of**SERVICES****1. Acceptance Entire Agreement – Acceptance – Conflict in Terms.**

1.1 Entire Agreement. The Purchase Order, these Terms and Conditions for Purchase of Services, and any statement of work, statement of performance, requirement, or specification (“Statement of Work”) attached to or incorporated by reference in the Purchase Order, establish and constitute the complete and exclusive agreement between AM General LLC (“AMG”) and vendor (“Contractor”) with respect to the Services, Materials, and Work Product (as those terms are defined below) (together, “Deliverables”) described therein. Such agreement is referred to herein as “this Order.”

1.2 Acceptance. Acceptance of this Order is strictly limited to the Purchase Order, these Terms and Conditions, and the Statement of Work. Unless specifically agreed to in writing by AMG, AMG objects to, rejects, and is not bound by, any term or condition proposed by Contractor that differs from or adds to this Order, and any such proposed terms or conditions shall be null and void. Contractor’s commencement of performance or acknowledgement of this Order in any manner shall constitute an unequivocal acceptance of this Order. Unless otherwise agreed to in writing by AMG, this Order shall not give rise to any obligation of AMG to place with Contractor any orders for continued performance, in particular orders for the serial provision of Deliverables, in addition to the performances specified in this Order.

1.3 Conflict in Terms. If there is conflict between the Purchase Order, these Terms and Conditions, or the Statement of Work, the terms of the Purchase Order (excluding these Terms and Conditions and any Statement of Work attached to or incorporated by reference in the Purchase Order) shall control. These Terms and Conditions shall control over any document other than the Purchase Order, including, without limitation, any Statement of Work attached to or incorporated by reference in the Purchase Order. The Statement of Work shall control over any document other than the Purchase Order and these Terms and Conditions.

**2. Scope of Performance; Deliverables.**

2.1 Services. Contractor shall furnish to AMG the services described in this Order (“Services”). Unless otherwise specified, the Services shall include all labor, supervision, and other work necessary to satisfy the terms of this Order. Contractor shall execute the work so as to require minimum shut-downs, if any, of AMG’s operations, any such shut-downs to be scheduled by AMG. Contractor shall at all times keep the premises free from accumulations of waste material and rubbish resulting from its operations and, upon completion, it shall remove all surplus materials and leave the premises broom clean. During the progress of the work, Contractor shall take every precaution against the possibility of fire and any other hazard to persons or property and shall comply with all safety regulations and instructions of AMG. Contractor will not permit any attachment or lien arising out of work to be performed hereunder to be imposed upon AMG’s property.

2.2 Materials. Contractor shall furnish to AMG all materials, supplies, tools, and equipment necessary to perform the Services that are specified in this Order (“Materials”). All such Materials shall

conform to the requirements of this Order, shall be suitable for the purpose intended, and shall be new unless otherwise specified.

2.3 Work Product. Contractor shall furnish to AMG all concepts, documents, reports, ideas, designs, drafts, models, samples and any other results produced in connection with Contractor's performance described or referenced in this Order and contained on any media whatsoever ("Work Product").

2.4 Acceptance of Deliverables. All Deliverables must conform to the performance criteria and other requirements set forth in this Order and are subject to acceptance by AMG. AMG is not required to accept any Deliverable that does not conform with the performance criteria and other requirements set forth in this Order. Contractor shall notify AMG in writing of the completion and provision of the Deliverables. Notwithstanding any payment or prior test or inspection, AMG shall have a reasonable time after receipt of such notice to inspect and test the Deliverables. No inspection, test, delay, acceptance, failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Contractor of any of its obligations under this Order or impair any rights or remedies of AMG or AMG's customers.

2.5 Amendments. AMG may unilaterally make amendments or modifications to this Order ("Amendments"), and such Amendments shall apply to the Deliverables. If the Amendments require of Contractor substantial additional work, Contractor shall nonetheless accept AMG's amended Order and provide the Deliverables requested, and shall furnish proof of additional expenses acceptable to AMG within 15 days of receiving the Amendments. If acceptable proof is submitted, this Order shall be adjusted by AMG to account for the additional reasonable expenses to be incurred due to the Amendments.

2.6 Management of Performance. Contractor shall perform under this Order, using its best skills and attention, and Contractor shall be solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the work necessary to complete the Order. The direction and supervision of Contractor's working forces rest exclusively with Contractor. AMG shall not interfere with or restrict Contractor's working forces. Contractor shall provide AMG with periodic reports of Contractor's performance under this Order and respond within a reasonable period to time (and in no event more than 48 hours) to any and all inquiries from AMG regarding the progress of Contractor's performance under this Order.

2.7 Documents, Standards. Unless otherwise agreed in this Order, Contractor shall produce or maintain all drawings, data and other development and documentation records in accordance with the requirements, procedures and guidelines issued by AMG.

2.8 Best Efforts. Contractor shall use best efforts, employ the latest state of the art technology, draw on its own know-how and experience, and comply with all applicable statutory and regulatory provisions in rendering the Deliverables to AMG.

2.9 Stop Work Order. AMG may, from time to time, require Contractor to stop all or any portion of the work called for by this Order for a period of up to sixty (60) days ("Stop Work Period") per occurrence. Upon receipt of a written Stop Work Order from AMG, Contractor shall immediately comply with its terms at no charge. Within the Stop Work Period, AMG shall either: (i) cancel the stop-work order and Contractor shall resume work; or (ii) terminate the work covered by the stop-work order.

### **3. Price and Payment.**

3.1 Fees and Expenses. As consideration for the Deliverables provided by Contractor and accepted by AMG, and the rights and licenses granted under this Order, AMG agrees to pay the

Contractor the fees set forth in this Order. All payments to Contractor shall be in United States Dollars unless otherwise specified by AMG. Contractor must submit an invoice for each payment due that includes a description of and date upon which the Deliverables were rendered to AMG and a description of and date upon which AMG-directed or approved expenses were incurred. AMG will pay each invoice within sixty (60) days after the later of AMG's (a) receipt of a complete and accurate invoice or (b) acceptance by AMG of the Deliverables pursuant to Section 2.3 of these Terms and Conditions; provided, however, that prior to payment, Contractor shall deliver to AMG, if requested: (i) a release of all liens arising out of this Order or receipts in full covering all labor and materials for which a lien could be filed or a bond satisfactory to AMG indemnifying it against such liens; and (ii) a release discharging AMG, its successors and assigns, officers, employees and agents of and from all liabilities, obligations and claims arising under or by virtue of this Order. AMG shall have no liability for any expenses or costs incurred by Contractor not specifically authorized in, and invoiced in accordance with, this Order. If this Order is issued on a cost-reimbursable basis, Contractor will avail itself, for the benefit of AMG, of all refunds, rebates, credits, trade discounts, prompt payment discounts and insurance premium dividends that may be obtained.

AMG's failure to make timely payment, or to make payment in the manner preferred by Contractor, shall not excuse Contractor from delivering any outstanding Deliverables.

3.2 Taxes. Subject to Section 2.4, AMG shall pay Contractor the price stated in this Order and no more. Unless otherwise specified in this Order, the price shall include, and the Contractor shall be liable for and shall pay, any federal, state, municipal, income, or other governmental excise, sales, value-added, or use taxes now in force or enacted in the future.

3.3 Setoff; Retention; Withholding. AMG may set off or recoup any amount due to AMG from Contractor, whether or not under this Order, against any amount due Contractor hereunder. AMG may also retain and/or withhold from payment to Contractor an amount sufficient to reimburse AMG for any loss, damage, expense, cost or liability relating to Contractor's failure to comply with any requirements of this Order.

#### **4. Proprietary and Confidential Information.**

4.1 Existing PIA Governs. If a proprietary information, mutual confidentiality, or non-disclosure agreement ("PIA") exists between AMG and Contractor covering the Deliverables or this Order, the term of such PIA shall be and is hereby extended to be co-terminus with this Order, and such PIA is incorporated herein by reference and shall govern the use and disclosure of Proprietary Information hereunder.

4.2 In the event that no PIA covering the Deliverables or this Order exists between AMG and Contractor, the following terms shall apply:

a. *Definition of Proprietary Information.* "Proprietary Information" is any information that has value to AMG and is not generally known to its competitors, including but not limited to all of AMG's trade secrets, designs, specifications, ideas, concepts, plans, formulas, patterns, devices, software, drawings, machinery and equipment, processes, procedures, methods, applications, technologies, financial information, customer information (including identity, specific needs and any of such customer's information possessed by AMG) or any compilation or combination of the foregoing that is disclosed to Contractor and marked as confidential or proprietary. Any information that is transmitted orally shall be considered to be Proprietary Information, provided that notice is subsequently provided in writing of its confidential or proprietary nature by AMG and transmitted to Contractor within ten (10) days of such oral transmission. During such initial ten-day period, such information shall be treated as Proprietary Information.

b. *Disclosure of Proprietary Information.* Contractor shall not directly or indirectly reproduce, disclose, divulge, disseminate, publish, reveal, or otherwise make known to any third party any Proprietary Information that is now or in the future disclosed by AMG to Contractor or with which Contractor otherwise comes into contact during performance under this Order, unless otherwise specifically permitted in writing by AMG.

c. *Use of Proprietary Information.* Contractor shall not use Proprietary Information for any purposes other than performance under this Order, unless otherwise specifically permitted in writing by AMG, and shall only disclose Proprietary Information received hereunder to its employees with a specific need to know in order for Contractor to provide the Deliverables to AMG under this Order.

d. *Ownership of Proprietary Information.* All Proprietary Information of AMG that is disclosed to Contractor or with which Contractor otherwise comes into contact shall remain the property of AMG, and any Proprietary Information that is in writing, on a computer disk, or in any other form capable of being returned, shall be returned to AMG or destroyed (with certification of destruction for all copies provided in writing) immediately upon the written request of AMG.

e. *Protection of Proprietary Information.* Contractor shall use not less than the degree of care used to prevent disclosure of its own proprietary and confidential information to prevent disclosure of Proprietary Information. In no event, however, shall less than a reasonable degree of care be used. Contractor shall take all actions reasonably necessary to assure that its employees who have access to Proprietary Information comply with Contractor's obligations under this Order.

f. *Contractor Information.* Information furnished or to be furnished to AMG by Contractor, its agents, or subcontractors pursuant to this Order, including but not limited to technical information, drawings, and data, are not deemed submitted in confidence unless otherwise specifically agreed to in writing by AMG. Any restrictive markings affixed upon any such information furnished to AMG by Contractor shall be of no force or effect, and may be modified, removed, or ignored by AMG without incurring any liability to Contractor, and the information may be used by AMG in any way in the conduct of its business.

g. *Ownership, Use and Return of Other Information.* All information, records, documents, files, data, and other items relating to the business of AMG or its customers, whether prepared by Contractor or otherwise, coming into Contractor's possession in connection with performance under this Order or otherwise, including, without limitation, Proprietary Information, will remain the exclusive property of AMG, or its customers, as appropriate, and will not be removed from the premises of AMG or its customers' sites under any circumstances without the prior written consent of AMG, except when appropriate in the ordinary course of business during Contractor's performance under this Order.

## **5. Representations and Warranties.**

In addition to the express covenants, representations, and warranties contained herein, as a condition precedent to the obligations of AMG, including, without limitation, payment, Contractor makes the following covenants, representations and warranties as of the date of this Order and until the completion and delivery of all Deliverables:

5.1 Authority. Contractor has the right, power, and legal capacity and authority to enter into, execute and perform its obligations under this Order without obligation to obtain consent from any third party.

5.2 No Violation. Delivery of the Deliverables does not and will not constitute any default or event that, with notice or lapse of time, or both, would be a default, breach or violation of the instruments, contracts, orders, laws, or regulations by which the Contractor is bound.

5.3 No Infringement. To the extent Deliverables would otherwise infringe, dilute, misappropriate or violate any copyright, patent, trademark or other proprietary rights of any third party, or contain a trade secret of any third party, Contractor has the right to make, use, sell, offer to sell, copy and otherwise provide such Deliverables to and for the benefit of AMG in accordance with this Order.

5.4 Workmanship. The Services will be performed by competent personnel in a professional and workmanlike manner in compliance with prevailing industry standards and in accordance with this Order. The Deliverables will meet the requirements set forth in this Order.

5.5 Compliance. Contractor is and shall remain in compliance with all applicable laws, statutes, decrees, regulations, guidelines and policies. Without limiting the foregoing:

a. Contractor has or will obtain all governmental permits, license and approvals and satisfy all formalities which may be necessary to perform Contractor's obligations under this order.

b. Neither Contractor, nor any person or entity owning or controlling Contractor, nor any person employed or retained by Contractor in the performance of this Order, is identified on the list of Specially Designated Nationals maintained by the United States Department of the Treasury or the Table of Denial Orders maintained by the United States Department of Commerce or any other U.S. Government list of prohibited, denied or debarred parties.

c. Contractor complies and will comply with the anti-corruption provisions of the United States Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, *et seq.*, and its implementing regulations (collectively, the "FCPA"), the U.K. Bribery Act of 2010, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the United Nations Convention Against Corruption.

d. Contractor complies and will comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation, 22 C.F.R. 120 *et seq.*, the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774, including the requirement for obtaining any export license or agreement, if applicable.

5.6 Contractor is familiar with the premises, nature of the work, and conditions relating to performance of the work, and that the compensation specified herein is based on an independent examination of the site and Contractor will make no claim for additional compensation if conditions encountered differ from those anticipated by the Contractor.

## **6. Intellectual Property.**

6.1 Definition. "Intellectual Property" means, collectively, all current and future: concepts, trade secrets, works of authorship, copyright and trademark registrations and applications therefore, moral rights, patents (including re-issuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof), patent applications, registered and unregistered inventions, discoveries, improvements, data and databases, formulas, compositions, methods, procedures, manufacturing and production processes and techniques, utility models, industrial designs, know-how, mask works, proprietary information, and all intellectual property or other industrial property rights under the laws of the United States or any other State, country, or jurisdiction.

6.2 AMG Intellectual Property. AMG shall retain all right, title and interest in and to its Intellectual Property existing as of the date of this Order, all Foreground Intellectual Property as defined in Section 6.4 below, and any Intellectual Property developed by AMG independent of Contractor



(collectively, "AMG Intellectual Property"). To the extent that AMG's Intellectual Property is required by the Contractor to perform the Services and deliver the Work Product, AMG agrees to grant, and hereby grants to Contractor, a limited license to use such AMG Intellectual Property solely during the period of performance and solely for the performance of work under this Order for AMG's benefit. Any such license shall extinguish upon delivery of the last Deliverable called for in this Order or termination of this Order under Section 14.

6.3 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to its Intellectual Property existing as of the date of this Order or any Intellectual Property developed by Contractor that does not arise out of or relate to this Order (collectively, "Contractor Intellectual Property"). To the extent that Contractor Intellectual Property is required by AMG to use and enjoy the Services, Deliverables, or Work Product called for in this Order, Contractor agrees to grant, and hereby grants to AMG, a fully paid-up, irrevocable, royalty-free, assignable, worldwide license, with the right to sublicense, to such Intellectual Property pursuant to Section 7.

6.4 Foreground Intellectual Property. Subject to the terms of Section 7, Contractor agrees that all Intellectual Property conceived or actually or constructively reduced to practice or delivered by Contractor, alone or with others, while this Order is in effect, or within one year thereafter, which arises out of or relates to the Services, Work Product or modifications, improvements or enhancements thereto (the "Foreground Intellectual Property") shall be owned exclusively by AMG. Contractor hereby grants, conveys and assigns to AMG all right, title and interest in and to the Foreground Intellectual Property throughout the world, including, without limitation, (i) the right to make, reproduce, modify, produce derivative works based on, translate, publish, sell, offer to sell, use and dispose of the Foreground Intellectual Property, and to authorize others to do so; and (ii) the right to apply for and obtain patents, trademark registrations and copyright registrations for Foreground Intellectual Property and to own, use, and disclose any trade secrets included within Foreground Intellectual Property. Contractor further agrees, upon request of AMG, to execute all papers necessary or useful for, and to cooperate to the fullest degree with AMG, in securing, maintaining and enforcing any such patents, trademarks, copyrights and trade secrets and in recording AMG's title thereto, throughout the world. It is understood, however, that these obligations undertaken by Contractor will be at no expense to AMG. Contractor agrees that Foreground Intellectual Property shall be considered "work made for hire" as defined in Section 7.2 to the fullest extent permissible by law. Contractor and Contractor's agents and subcontractors shall promptly disclose all Foreground Intellectual Property to AMG.

## **7. Rights and Ownership of Deliverables.**

7.1 Disclosure of Work Product and Confidentiality. Contractor and Contractor's agents and subcontractors shall promptly disclose and provide to AMG all Work Product. Contractor shall treat the Work Product as AMG Proprietary Information under the terms of Section 4.

7.2 Ownership of Work Product; Assignment and Transfer. All Work Product shall be solely owned by AMG. Contractor acknowledges and agrees that all copyrightable materials of the Work Product will be deemed a "work made for hire" for the purposes of Title 17 of the United States Code, Section 101 et seq. (the "Copyright Act"). In the event that (i) any of the Work Product may not be considered "work made for hire," or (ii) ownership of all right, title and interest to the legal rights in and to the Work Product, including, without limitation, all worldwide copyrights, industrial design rights, trademarks, patents or other intellectual property rights therein, does not vest automatically and exclusively in AMG, then, without further consideration, Contractor agrees to, and hereby does irrevocably, assign, convey, and otherwise transfer to AMG, and AMG's respective successors and assigns, all such right, title and interest, in and to all Work Product and any derivative works thereof.

7.3 Rights for Use and Enjoyment of Deliverables. To the extent that the Deliverables include or utilize any Contractor Intellectual Property or Intellectual Property owned by a third party and not

developed, authored or invented in connection with the performance of Services under this Order, Contractor will notify AMG of its inclusion in the Deliverables and hereby grants to AMG, and agrees to obtain for AMG from the appropriate third party, a perpetual, unrestricted, assignable, royalty-free license, with the right to sublicense, to make, reproduce, modify, produce derivative works based on, translate, publish, sell, offer to sell, use and dispose of such Intellectual Property solely in connection with the use and enjoyment of said Deliverables.

7.4 Cooperation by Contractor; Additional Documents. Contractor will cooperate with AMG and cause Contractor's employees to cooperate with AMG to ensure the effective and complete transfer and license of rights contemplated under these Terms and Conditions. Without limiting the foregoing, at AMG's request and expense, Contractor agrees to perform any acts necessary or useful to vest fully recordable title in and to the Deliverables in AMG and to otherwise perfect, defend and enforce AMG's ownership of and rights in and to the Deliverables, including, but not limited to:

- a. reviewing, commenting on and executing all documents necessary or useful for securing patent, trademark and copyright protection for the Deliverables ("Applications");
- b. reasonably explaining the nature of the Deliverables to persons designated by AMG;
- c. providing any other assistance reasonably required for the orderly prosecution of Applications or defense of any patent, trademark, copyright, or other intellectual property-related claims or any litigation or other proceedings involving any Deliverables.

7.5 Cooperation by Contractor's Subcontractors and Employees. Subject to the requirements of Section 8, if Contractor uses subcontractors or employees of Contractor to perform any Services or produce or develop any Work Product, in whole or in part, Contractor will enter into written agreements reasonably acceptable to AMG with each employee or subcontractor to acquire the rights specified in Sections 6 and 7.1 through 7.4 from that employee or subcontractor. Contractor must furnish copies of those agreements to AMG upon request. In the event that Contractor terminates its relationship with such an employee or subcontractor, the Contractor shall provide written notice thereof without delay.

## **8. Assignment and Subcontracting.**

8.1 Assignment of Order Void. This Order, or any interest therein, including any claims for monies due or to become due with respect thereto, may only be assigned upon the written consent of AMG. Any payment to any assignee of any claim under this Order, in consequence of such consent, shall be subject to set-off, recoupment or other reduction for any claim that AMG may have against Contractor.

8.2 Use of Subcontractors. Contractor hereby represents, certifies and warrants that it shall not employ the use of any subcontractor for the performance of this Order without the prior written approval of AMG.

8.3 Non-U.S. Persons. Contractor shall not hire any employee or employ the use of any subcontractor who is a non-U.S. person to perform on this Order without first giving notice to AMG in writing and obtaining AMG's written approval.

## **9. Insurance, Indemnity and Limitation of Liability.**

9.1 Contractor and its subcontractors shall maintain for the performance of this Contract worker's compensation, commercial general liability (CGL) and automobile liability (AL) (third party bodily injury and property damage liability insurance) insurance with a minimum of \$1,000,000 per occurrence

limit. Such coverage shall be maintained with carriers acceptable to AMG. Additionally, Contractor shall maintain Professional Liability/Error & Omission insurance of not less than combined single limits of \$5 million and such other insurance as AMG may require. Contractor shall furnish to AMG certificates of insurance and Additional Insured endorsements showing compliance with these insurance requirements. All such certificates of insurance and endorsements shall not be subject to cancellation or material alteration except after thirty (30) days prior written notice by Certified Mail to the Additional Insured; provided however such notice shall not relieve Contractor of its obligations to maintain the required insurance. The limits of liability coverage set forth above are established as minimum coverage required of Contractor under any hold-harmless or indemnification provision contained in this Contract. The Contractor's policies shall contain a provision by the respective insurers waiving the right of such insurers to subrogation. Upon request of AMG, Contractor shall provide proof of insurance complying with the requirements of this paragraph.

9.2 Contractor will indemnify, defend, and hold AMG (and its successors, assigns, officers, directors, members, agents and employees) harmless for, from and against any and all actions, claims, demands, costs, liabilities, expenses, and damages, including, without limitation, attorneys' fees and expenses, for:

a. injury to or death of any person or persons and for loss of or damage to any real or tangible personal property occurring in connection with, or in any way incident to or arising under, this Order, resulting in whole or in part from any acts or omissions of Contractor to the extent permitted by applicable law;

b. any acts or omissions of Contractor, its employees, agents or subcontractors which constitute a breach of Contractor's representations and warranties to the extent permitted by applicable law; and

c. any claim that the Deliverables furnished under this Order infringe, dilute, misappropriate or otherwise violate any copyright, patent, trademark, trade secret or other proprietary right of any third party.

9.3 If so directed by AMG, Contractor will defend at its own expense, on behalf of AMG, any claims based upon contingencies against which Contractor is obligated to indemnify AMG hereunder.

9.4 Limitation of Liability. To the extent permitted by applicable law, AMG WILL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES FOR ANY ANTICIPATORY OR LOST PROFIT, GOODWILL, OR SIMILAR COMPENSATION FOR THE TERMINATION OR CANCELLATION OF THIS ORDER, OR FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS UNDER THIS ORDER, EVEN IF THOSE DAMAGES ARE ATTRIBUTED TO BREACH OF THIS ORDER, TORT, NEGLIGENCE, OR OTHER CAUSE OF ACTION. THE PARTIES AGREE THAT THIS LIMITATION WILL APPLY EVEN IF AMG HAS BEEN ADVISED OF THE POSSIBILITY OF NON-DIRECT DAMAGES OR IF, UNDER APPLICABLE LAW, NON-DIRECT DAMAGES ARE CONSIDERED TO BE DIRECT DAMAGES. NOTWITHSTANDING THIS SECTION 9.4, AMG'S LIABILITY FOR ANY CLAIM, INCLUDING, WITHOUT LIMITATION, ANY OF THE FOREGOING, WILL BE LIMITED TO THE PRICE FOR THE SERVICES AS STATED IN THIS ORDER.

## **10. Relationship of the Parties.**

This Order does not constitute, create, give effect to, or otherwise imply a joint venture, partnership, or business organization of any kind. AMG and Contractor are independent parties, and neither Party may act as an agent for or partner of the other for any purpose. Nothing in this Order grants to either Party any right to act or make any commitments of any kind for or on behalf of the other Party



without the prior written consent of the other Party. Contractor is an independent contractor and it is the expressed intent of the Parties that nothing in this Order will establish an employer-employee relationship between AMG and Contractor. To that end, each of the Parties shall have complete control of their respective employees and Contractor will not act under the direct supervision of any AMG employee and will not supervise any AMG employee. Except for procedures or processes explicitly set forth in this Order or specific criteria for acceptance of Deliverables AMG will not control or determine the manner in which Services are performed or set hours of work for Contractor. Contractor will not be restricted from performing services for others and will not be bound to AMG except as provided under this Order. Contractor will not be eligible for any fringe benefits, including, without limitation, health insurance, paid vacation, sick leave, retirement plans, or other employment benefits, that may be provided to employees of AMG and will not be a participant in any AMG qualified benefits plan.

## **11. Employees of Contractor.**

11.1 If Contractor engages any person or firm to perform work for Contractor in connection with the Services, either as an employee of Contractor or a subcontractor in accordance with the requirements of Section 8 above, Contractor will be solely responsible for payment to that person or firm, including, without limitation, payment of any taxes related to employment and workers' compensation insurance. Contractor's employees are not eligible for any AMG fringe benefits, including, without limitation, health insurance, paid vacation, sick leave, retirement plans, or other employment benefits, that may be provided to employees of AMG and will not be a participant in any AMG qualified benefit plan.

11.2 If Contractor performs any services on AMG premises, AMG reserves the right to interview and accept or reject any personnel Contractor provides prior to assignment to AMG's facility. AMG may require any such personnel to pass a drug screening test that AMG administers. Contractor agrees to employ only competent and skilled personnel to perform the Services and shall use all reasonable means to ensure the continued employment of personnel performing Services pursuant to this Order. Upon AMG's request, Contractor will immediately remove from all facilities and replace any personnel who are unsatisfactory to AMG for any reason. Contractor warrants that all Contractor personnel assigned to the AMG facility shall have a prior satisfactory work record in a responsible capacity; have no job-related criminal convictions; and be legally authorized to work in the United States. Employment authorization shall be verified by Contractor through E-verify. Contractor personnel will be capable of performing the essential functions of the job for which they are hired, with or without a reasonable accommodation. If Contractor is or becomes a party to any collective bargaining agreement regarding contracted personnel, no provision in that agreement shall be binding upon AMG, unless otherwise required by law. Contractor further agrees that while Contractor's personnel are on AMG's premises, they will abide by AMG's normal rules of work.

## **12. No Solicitation.**

To the extent permitted by applicable law, Contractor agrees that it will not, without the prior written consent of AMG, solicit, recruit, hire, or otherwise employ or retain any employee of AMG to perform any of the Services. This restriction includes any former employee of AMG who has performed work for AMG related to any of the Services any time during the period commencing 2 years preceding the date of this Order and ending on the date of Contractor's final completion of work under this Order. The provisions of this Section will not restrict in any way the right of Contractor to solicit or recruit generally, and will not prohibit either Party from hiring an employee of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been personally solicited or recruited by the hiring Party.

### **13. Release of Liens.**

Contractor hereby waives any and all right to assert any rights of retention or statutory liens.

### **14. Termination.**

14.1 Termination for Insolvency. If Contractor: (i) becomes or is declared insolvent or bankrupt; is the subject of any proceedings related to its liquidation, insolvency, or for the appointment of a receiver or similar officer for it; (ii) makes an assignment for the benefit of all or substantially all of its creditors; or (iii) enters into an agreement for the cancellation, extension, or readjustment of all or substantially all of its obligations, then AMG may, by giving written notice, terminate this Order effective on the date specified in the notice of termination.

14.2 Termination for Failure of Performance. All dates set forth in this Order are fixed dates. If Contractor fails to timely provide the Deliverables by the dates set forth in this Order or in conformance with the performance criteria set forth in this Order, and does not cure the failure within 10 calendar days (or other reasonable period stated in the notice) after receipt of written notice from AMG of the failure to perform, AMG may terminate this Order for default.

14.3 Termination for Breach. If Contractor materially breaches any of the terms or conditions of this Order and fails to cure the failure within 10 calendar days (or other reasonable period stated in the notice) of receipt of notice from AMG of the breach, AMG may, by written notice, terminate this Order for breach.

14.4 Termination for Convenience. Notwithstanding any other provision or requirement of this Order, AMG may terminate this Order, in whole or in part, at any time, for any reason or for no reason, with or without cause, by giving 14 calendar days prior written notice to Contractor.

#### **14.5 Effect of Termination:**

a. Upon termination, Contractor must immediately cease all work related to this Order and must cause its subcontractors, if any, to immediately cease all work related to this Order. In the event of termination AMG shall not be liable to Contractor for Deliverables not accepted and Contractor shall be liable to AMG for any and all rights and remedies provided by law.

b. In the event of a termination for convenience, as described in Section 14.4, AMG will pay Contractor an equitable amount for work already performed, which in no case will exceed the corresponding amount specified in this Order.

### **15. Remedies.**

15.1 Equitable Relief. If a material breach of Section 4 (Proprietary and Confidential Information), Section 6 (Intellectual Property), or Section 7 (Rights and Ownership of Deliverables by Contractor) occurs or is threatened, Contractor acknowledges that such breach may cause irreparable harm for which monetary damages would not be sufficient. Accordingly, Contractor agrees that AMG shall be entitled to seek, without a need to prove actual damages or post a bond, (i) injunctive relief restraining Contractor from using or disclosing, in whole or in part, directly or indirectly, any Proprietary Information of AMG or otherwise breaching any requirement of Sections 4, 6, or 7,; and (ii) recovery for damages, losses, and expenses of any nature, including without limitation, attorneys' fees arising out of, resulting from, or otherwise relating to such breach or threatened breach, in addition to all other remedies provided by law.

15.2 Limitation of Remedies. Contractor acknowledges and agrees that monetary damages shall be an adequate remedy in the event of any dispute or claim arising out of or related to any Deliverable and Contractor waives its right to seek and/or obtain temporary, preliminary, and/or permanent injunctive relief enjoining AMG from using in any manner, or disposing of, any or all Deliverables.

15.3 Cumulative Remedies. The remedies provided AMG herein shall be cumulative and in addition to any other remedies provided by law or equity or the terms of this Order. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach.

## **16. Miscellaneous.**

16.1 Time of the Essence. Time is of the essence in performing this Order. Should Contractor experience or anticipate any delay in performing this Order, whether or not such delay is excusable under any provision hereof, Contractor shall immediately notify AMG of such delay, its expected duration, and the reasons therefor. Neither such notification nor an acknowledgment by AMG shall constitute a waiver of this Order's delivery schedule. Contractor shall be liable for any direct or consequential damages resulting from a delay.

16.2 Partial Invalidity; Waiver. If any provision of this Order is or becomes void or unenforceable, the other provisions shall remain valid and enforceable. Waiver of one provision of this Order by AMG shall in no way act as a waiver of any other provision herein, nor shall it be construed as a waiver of that provision in any later instance.

16.3 Survival of Rights and Obligations. Sections 1, 3, 4, 5, 6, 7, 9, 14.5, 15, 16.2-16.9, and 16.12-16.19 of these Terms and Conditions shall survive the termination of this Order and remain valid after this Order has terminated. To the extent that any other provisions of these Terms and Conditions are meant to remain valid after this Order has terminated, expired or otherwise ended, such provisions shall have continued validity even after termination.

16.4 Headings. The headings used in these Terms and Conditions are merely for reference. The headings have no independent legal meaning and impose no obligations or conditions on the Parties.

16.5 Entire Agreement. Consistent with Section 1.1, this Order constitutes the entire understanding and agreement between the Parties and supersedes any prior agreements, written or oral, that are not specifically referenced and incorporated in this Order.

16.6 Modification. This Order may not be modified, amended, or supplemented, and no agreement to allow this Order to be modified orally will be valid or binding, unless made in writing and issued by AMG Supply Management. Contractor may submit requests for changes/adjustments; however, Contractor must continue performance while both parties are in discussion regarding any type of Order modification.

16.7 Force Majeure. Neither party shall be liable for any delay or failure of performance due solely to strikes, fires or other causes beyond its control and without its fault or negligence, provided that the party subject to such cause shall have given written notice thereof to the other as soon as the same could reasonably be anticipated, and if it could not reasonably be anticipated, promptly following the commencement thereof. If Contractor should be unable, due to such a cause, to meet all of its performance commitments as they become due, Contractor shall not discriminate against AMG or in favor of any other customer in rendering performance. Contractor shall use its best efforts to anticipate the effect of such cause and mitigate the effects of such cause and to render performance as expeditiously as possible. However, if AMG believes that the delay or anticipated delay in Contractor's

performance may impair AMG's ability to meet its production schedules or may otherwise interfere with its operations, AMG may, at its option and without liability to Contractor, cancel any outstanding performance hereunder wholly or in part. Notwithstanding any provision of this Order, Contractor agrees it will not claim that increased costs excuse its performance.

16.8 Third Parties. Nothing contained herein, express or implied, is intended to confer upon any person, other than AMG and Contractor and their permitted successors and assigns, any rights or remedies under or by reason of this Order.

16.9 Further Acts. The Parties agree to execute and deliver such further instruments and documents and to diligently undertake such further actions as may be required in order to consummate the transactions herein contemplated and to carry out the intent and purpose of this Order.

16.10 Publicity. Contractor shall not, without prior written consent of AMG, make any disclosure, news release or public announcement, denial or confirmation of same, of any part of the subject matter of this Order or in any manner advertise or publish the fact that Contractor has supplied or contracted to supply to AMG the Deliverables except as may be required to perform this Order. Contractor is not entitled to use any of AMG's trademarks or trade names in any advertising materials or other documents.

16.11 Gifts and Gratuities. AMG will not solicit, and Contractor shall not provide, any gifts (other than advertising items of nominal value) or gratuities (including but not limited to money, fees, commission, credits, gifts, things of value, or compensation) of any kind to any employee of AMG. Contractor shall report in writing any solicitation or suspected solicitation of gifts or gratuities by AMG's employees to the Executive Director, Supply Management, 13200 McKinley Highway, Mishawaka, IN 46545.

16.12 Governing Law. This Order, and the performance hereunder, shall in all respects be governed by the substantive laws of the State of Indiana, United States of America, without regard to its choice of law rules.

16.13 Disputes. All disputes arising in connection with this Order that cannot be resolved by mutual agreement of the parties shall be brought exclusively in the state courts for St. Joseph County, Indiana, United States of America, or in the United States District Court for the Northern District of Indiana, South Bend Division. Contractor hereby consents to the jurisdiction of the state courts for St. Joseph County, Indiana, and the United States District Court for the Northern District of Indiana, South Bend Division, over it and any such dispute and waives any objection which Contractor may have based on improper venue or forum non conveniens to the conduct of any proceeding in any such court. Contractor agrees to proceed with performance of this Order pending final resolution of any dispute arising under or relating to this Order. If the dispute arises out of a difference in interpretation between the parties as to the performance requirements of this Order, then Contractor shall continue performance in accordance with the interpretation of performance as determined by AMG.

16.14 Supplemental Terms and Conditions Applicable to Commercial Items. In the event that AMG determines in writing that any item covered by this Order is a "commercial item" as that term is defined in Federal Acquisition Regulation ("FAR") 2.101, the Supplemental Commercial Terms and Conditions in Appendix A hereto are incorporated by reference in these Terms and Conditions and shall apply to each such item.

16.15 Supplemental Term and Conditions Applicable to Non-Commercial Items. In the event that AMG determines in writing that any item covered by this Order is a noncommercial item for purposes of the FAR or Department of Defense FAR Supplement ("DFARS"), the Supplemental Non-Commercial Terms and Conditions in Appendix B hereto are incorporated by reference in these Terms and Conditions and shall apply to each such item.

16.16 Equal Opportunity. Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

16.17 Order of Precedence. In the event of a conflict between these Terms and Conditions and the Supplemental Terms and Conditions in Appendix A or Appendix B, these Terms and Conditions shall take precedence over anything to the contrary in Appendix A or Appendix B.