

**HMW CONTRACTING LLC**  
**GENERAL TERMS AND CONDITIONS – PROFESSIONAL SERVICES**

Except as otherwise expressly set forth in the SOW (as defined below), the parties agree that the following General Terms and Conditions (“Terms and Conditions”) shall govern the transaction contemplated under the SOW:

**1. Contract.**

1.1. Contract Formation. Each purchase order, statement of work or other type of written instruction(s) that HMW Contracting LLC, a Michigan limited liability company (“Company”), issues (“SOW”) is Company’s offer to purchase the services identified in the SOW (“Services”) from the entity identified therein (“Service Provider”). The SOW can be accepted only upon the terms and conditions expressed herein, which may not be modified, amended or waived except by express written consent executed by a duly authorized representative of Company (“Authorized Representative”). Service Provider will be deemed to have accepted the SOW as issued and all of the provisions of these Terms and Conditions (A) if Service Provider begins performance under the SOW, (B) if Service Provider acknowledges in writing its acceptance of the SOW, or (C) if Service Provider delivers any documents, sketches or plans relating to the Services to Company. Company may withdraw the SOW at any time before it is accepted by Service Provider. Upon acceptance, the SOW, these Terms and Conditions, and any other documents specifically incorporated in the SOW, including, without limitation, specifications, drawings, or quality requirements, constitute a binding contract between Company and Service Provider (the “Contract”). The Contract will constitute the entire agreement between the parties regarding the subject matter thereof and will replace any other agreements or understandings between the parties. If Service Provider objects to the SOW or proposes alternate or additional terms but commences or has commenced performance under the SOW before Company expressly agreed to such alternate or additional terms in writing, the SOW will still become the Contract as provided above but will not include the alternate or additional terms.

1.2. Term. The term of the Contract shall begin on the date set forth on the respective SOW and shall end either on the date set forth on the SOW, or, if no end date is set forth, when Service Provider and Company complete all of their respective obligations under the Contract.

1.3. Conflicting Provisions. In the event of a conflict between the Terms and Conditions, any other drawings or specifications specifically incorporated in the SOW and the SOW, the SOW shall prevail first, then the drawings, then the specifications, and then these Terms and Conditions.

1.4. Changes. Company may from time to time by notice to Service Provider make changes to the scope of services or similar requirements provided under the Contract. Any difference in price or time for performance resulting from such changes shall be equitably adjusted, and the SOW shall be modified in writing accordingly. Contract changes must be evidenced by a writing signed by Company’s Authorized Representative. Service Provider shall not make any changes in the design or composition of any Services to be provided hereunder without the prior written approval of Company. Without limiting the generality of the foregoing, the price(s) established in the Contract are “firm” and not subject to increase for any reason without the prior written consent of Company.

1.1. Competitive Prices or Terms. If, after formation of the Contract, but prior to payment by Company for all Services purchased thereunder, Service Provider (A) sells, or offers to, sell substantially similar services under similar circumstances to another customer at a lower price, (B) offers a reduction in price to any customer already purchasing substantially similar services, or (C) sells, or offers to sell, substantially similar services on commercial terms that are, in Company’s reasonable

judgment, more favorable than those set forth in the Contract, Service Provider shall promptly notify Company thereof and such lower price or more favorable terms will be applicable to all Services by Company hereunder.

1.2. Missing Terms. If performance schedules are not specified in the SOW, they will be as agreed to from time to time by Company and Service Provider in writing.

1.3. Right to Inspect. From time to time upon Company's request, Service Provider agrees to provide Company with reasonable access to Service Provider's books and records related to price, quantity, and other terms of various contracts of Service Provider. Company may, at any time, inspect or observe Service Provider's performance of the Services. All Services shall be performed subject to Company's review, inspection and rejection. Any Service that is rejected by Company as a result of nonconformance with the terms hereof or any of Service Provider's warranties shall be subject to Section 4 hereof.

1.4. Requirements and Conditions of Services. Service Provider acknowledges that (i) it has reviewed and considered the requirements to perform the Services, which are fully adequate to allow Service Provider to complete the Services, and (ii) it is familiar with all conditions relating to the Services and the site or sites where the Services will be performed and with all other matters and conditions which could affect the performance of the Contract and Services assumes all risks with regard thereto.

1.5. Other Service Providers. Company reserves the right to (i) retain other service providers, at Company's sole cost and expense, to perform similar work as the Service Provider; (ii) to retain such other service providers without obtaining Service Provider's approval; and (iii) Service Provider agrees to cooperate fully and to share information with any other service provider performing services for Company.

## **2. Contract Performance.**

2.1 Time is of the Essence. Service Provider acknowledges that time is of the essence with respect to Service Provider's obligations under the Contract, and Service Provider's prompt and timely performance of all such obligations is strictly required. If Services are not performed in accordance with the timing requirements established by Company, Service Provider will be responsible for any additional costs resulting therefrom. Service Provider must ensure it has adequate labor available to meet all scheduling demands set forth in the Contract.

2.2 Service Provider Obligations. Service Provider shall:

(a) in the performance of the Services, exercise that degree of skill and care regularly and consistently exercised by professional service providers of comparable size, experience and ability practicing in similar fields;

(b) be responsible to Company for loss, damage and expense suffered by Company which is directly attributable to Service Provider's failure to adhere to the standard set forth above;

(c) furnish all labor, materials, tools, equipment, supervision and services necessary to perform and complete the Services;

(d) perform the Services in a good and workmanlike manner strictly in accordance with the requirements set forth in the Contract;

(e) before the date on which the Services are to start, obtain, and at all times during the term of the Contract, maintain, all necessary licenses, permits, certificates, and consents and comply with all relevant laws applicable to the provision of the Services;

(f) comply with all rules, regulations and policies of Company which are communicated or provided to Service Provider, including security procedures concerning systems and data and remote access thereto, building security procedures, and general health and safety practices and procedures;

(g) maintain complete and accurate records relating to the provision of the Services under the Contract, including records of the time spent and materials used by Service Provider in providing the Services in such form as Company shall approve. During the term of the Contract, and for a period of one (1) year thereafter, upon Company's written request, Service Provider shall allow Company to inspect and make copies of such records and interview Service Provider personnel in connection with the provision of the Services;

(h) ensure that all persons, whether employees, agents, sub-service providers, or anyone acting for or on behalf of the Service Provider, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;

(i) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by Company; and

(j) keep and maintain any Company equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with Company's written instructions or authorization.

**3. Assignment and Subcontracting.** Service Provider may not assign this Contract and may not delegate any portion of its performance hereunder unless Service Provider first obtains Company's express written consent.

**4. Non-Conforming Services.** Without limiting any remedies available to Company at law or under the Contract, Company may, following its determination that the Services that do not conform to the Contract, require Service Provider, at Service Provider's sole expense, to either repair or replace the non-conforming Services. In the event Company is required to purchase similar services from a third party due to Service Provider's failure to meet the Contract requirements, Company shall be entitled to set off the costs it incurs in obtaining such alternative services against amounts otherwise owed to Service Provider.

**5. Insurance.** Service Provider shall, at its sole cost and expense and at all times during the course of performance under the Contract, and for a period of 12 months following the termination or expiration of the Contract, maintain, in form and substance satisfactory to Company:

5.1. all such worker's compensation or similar insurance as may be required under the laws of any state or jurisdiction where the Services are to be performed under the Contract; and

5.2. comprehensive general liability insurance, including products-completed operations, blanket contractual liability, automobile liability and such other policies as are customary in the case of companies engaged in businesses similar to Service Provider, in each case naming Company as an additional insured and with a limit of at least \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.

Upon Company's request, Service Provider shall furnish to Company (i) evidence of the maintenance of all such insurance, and (ii) additional insured endorsements in form and substance satisfactory to Company, naming Company as an additional insured under the policies.

## **6. Price and Payment.**

6.1. Company shall pay Service Provider for the full and complete performance of the Services in accordance with the terms of the Contract.

6.2. The price for Services set forth in the SOW includes all taxes of every kind imposed, levied or assessed by any governmental authority and with respect to the Services, including taxes for labor, materials and equipment utilized in connection with the Services and all sales, use, personal property, excise and payroll taxes. Upon request by Company, Service Provider shall furnish to Company satisfactory evidence of payment of such taxes.

6.3. Unless otherwise specified on the face of the SOW, on or before the last day of each month, Service Provider shall submit to Company an itemized progress statement showing the amount of labor and materials incorporated in the Services completed in such month. Company shall review such statement and, if Company confirms the accuracy of such statement, Company shall pay all properly invoiced amounts due thereunder to Service Provider within forty-five (45) days after Company's receipt of such statement, except for any amounts disputed by Company in good faith.

6.4. Company shall have the right to withhold payment for incomplete or incorrect work not remedied. In the event of any dispute between Company and Service Provider, Company shall be obligated to make all payments due to Service Provider over which there is no good faith dispute and Service Provider shall not, if it receives such payments, stop the performing the Services or terminate the Contract.

6.5. No payment made under the Contract, including final payment, shall be construed to be an acceptance of defective or improper workmanship or certificate of waiver of any claims by Company.

**7. Representations and Warranties.** Service Provider represents and warrants to Company that:

7.1 It shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under the Contract.

7.2 It shall, in connection with its performance under the Contract, implement and follow an industry standard safety program and otherwise comply with all applicable workplace safety laws, rules and regulations. Service Provider shall observe all safety and security rules, instructions and requests of Company whenever in Service Provider's performance hereunder causes Service Provider to enter upon Company's location or a location on behalf of Company.

7.3 Customer will receive good and valid title to the Work Product (as defined below) or any deliverables (collectively, the “Deliverables”) delivered in connection with the Services, free and clear of all encumbrances and liens of any kind.

7.4 (i) None of the Services or Company’s use thereof infringe or will infringe any registered or issued patent, copyright, trademark, or other intellectual property right of any third party (“Intellectual Property Rights”), and (ii) as of the date the Contract, there are no pending or, to Service Provider’s knowledge, threatened claims, litigation or other proceedings pending against Service Provider by any third party based on an alleged violation of such Intellectual Property Rights, in each case, excluding any infringement or claim, litigation or other proceedings to the extent arising out of (x) any Company materials or any instruction, information, designs, specifications or other materials provided by Company to Service Provider, (y) use of the Deliverables in combination with any materials or equipment not supplied or specified by Service Provider, if the infringement would have been avoided by the use of the such Deliverables not so combined, and (z) any modifications or changes made to any Deliverables by or on behalf of any person or entity other than Service Provider.

7.5 The Services will be in conformity in all respects with applicable laws, rules and regulations and all requirements or specifications stated in the Contract.

The warranties set forth in Section 7 are cumulative and in addition to any other warranty provided by law or equity. These warranties survive any acceptance of or payment for the Services by Company. Any applicable statute of limitations runs from the date of Company’s discovery of the noncompliance of the Services with the foregoing warranties.

## **8. Termination and Default.**

8.1. Termination for Convenience. Company may terminate Contract for its convenience and without cause upon five (5) days written notice to Service Provider. In such event, Service Provider shall be paid for all Services properly completed as of the effective date of termination, but Company shall not be liable for any damages or lost profit.

8.2. Default. Upon the happening of any one or more of the following events: (A) Service Provider fails to deliver the Services at the time specified in the Contract; (B) Service Provider fails to perform any of the other provisions of the Contract and does not cure such failure within a period of ten (10) days (or such longer period as Company’s Authorized Representative may authorize in writing) after receipt of notice from Company specifying such failure; (C) Service Provider becomes insolvent or is unable to meet its obligations as they become due; (D) the filing of a voluntary or involuntary petition of bankruptcy by or against Service Provider; (E) the institution of legal proceedings against Service Provider by its creditors or stockholders; or (F) the appointment of a receiver for Service Provider by any court of competent jurisdiction (each such event, a “Default”), Company shall have the right to, in addition to any other remedies available at law or in equity, exercise any one or more of the following remedies:

8.2.1. Require Service Provider to utilize, at its own expense, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to Service Provider’s Default;

8.2.2. Remedy the Default by whatever means Company may deem necessary and appropriate including, but not limited to, correcting, furnishing, performing or otherwise completing the Services, or any part thereof, by itself or through others and deducting the cost thereof from any monies due or to become due to Service Provider hereunder;

8.2.3. Immediately terminate the Contract without thereby waiving or releasing any rights or remedies against Service Provider, and by itself or through others take possession of the Services;

8.2.4. Recover from Service Provider all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential, and all reasonable attorneys' fees and other expenses suffered or incurred by Company by reason of or as a result of Service Provider's Default.

8.3. The acceptance of Services after the occurrence of any Default shall not affect the right of Company to cancel its additional obligations. If, after notice of Default under this Section, it is determined that Service Provider was not in default, work affected by the cancellation shall be deemed terminated pursuant to Section 8.1 above and the right and obligations of the parties shall be governed by such provisions.

## **9. Company's Property.**

9.1. Materials. Any materials furnished by Company to Service Provider shall be deemed held by Service Provider upon consignment. All such materials shall, as directed by Company, be returned to Company at Company's expense, and if not accounted for or so returned, shall be paid for by Service Provider.

9.2. Documents. Any drawings and/or specifications developed by Service Provider as the work product (collectively, "Work Product") under the Contract shall become the sole property of Company free and clear of any retention rights of Service Provider whether the Services for which they are made is developed or not. Work Product may not be used by Service Provider for other contractors and/or developers.

## **10. Confidentiality.**

10.1. All non-public, confidential or proprietary information of Company, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed or made available by Company to Service Provider, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the Services and the Contract is confidential, and shall not be disclosed or copied by Service Provider without the prior written consent of Company. Confidential Information does not include information that is (A) in the public domain; (B) known to Service Provider at the time of disclosure; or (C) rightfully obtained by Service Provider on a non-confidential basis from a third party.

10.2. Service Provider shall use the Confidential Information only for the purpose of providing Services under the Contract.

10.3. Company shall be entitled to injunctive relief for any violation of this Section.

**11. Indemnification.** Service Provider will indemnify and defend Company, its agents and employees against third-party claims, liens, or demands for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent caused by Service Provider's or its agents' (A) performance of the

Services, (B) breach of any provision of the Contract, (C) infringement of any third party intellectual property rights, (D) violation of applicable law, or (E) failure to timely pay any third-parties.

**12. Set-Off.** In addition to any right of set off provided by law, all amounts due to Service Provider under the Contract shall be considered net of indebtedness, including any amounts owed by Service Provider under Section 11 hereof, of Service Provider to Company, and Buyer may deduct any such indebtedness due or to become due from Service Provider to Buyer from such amounts due to Service Provider pursuant to the Contract or any other contract between Company and Service Provider.

**13. Force Majeure.** A delay or failure by either party to perform its obligations under the Contract will be excused, and will not constitute a default, only if (A) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence, including a labor dispute, and (B) the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or is reasonably likely to occur, followed by prompt notices of any material changes in the facts relative to its ability to perform and/or the anticipated duration of the non-performance. Service Provider and Company shall share information, confer, seek agreement and otherwise act cooperatively to avoid or mitigate the effects of the potential or actual excused non-performance. If Service Provider is unable to perform for any reason, Company may purchase Services from other sources and reduce its purchases from Service Provider accordingly without liability to Service Provider. Within three (3) business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed thirty (30) days. If the non-performing party does not provide those assurances, or if the non-performance exceeds thirty (30) days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes.

**14. Governing Law and Dispute Resolution.**

14.1 Service Provider agrees and warrants that it does not discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position.

14.2 Service Provider agrees and warrants that its name does not name appear in the current register of employers failing to correct an unfair labor practice compiled under Michigan Compiled Law 423.322, as compiled by The United States Labor Relations Board.

14.3 The Contract shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to the conflict of laws principles thereof. Any lawsuit arising directly or indirectly out of the Contract will be litigated in the Circuit Court for Wayne County, Michigan, or, if original jurisdiction can be established, in the United States District Court for the Eastern District of Michigan. Service Provider acknowledges and agrees that, in the event of any breach of the Contract, Company may be irreparably and immediately harmed and that money damages alone may not be a sufficient remedy for such breach. Accordingly, it is agreed that, in addition to any other remedy to which Company may be entitled at law, in equity or otherwise, Company shall be entitled to seek injunctive or other equitable relief (without the posting of any bond) to prevent any actual or threatened breach of the Contract and to compel specific performance of the Contract, and that Service Provider will not oppose the granting of such relief.

14.4 The relationship between Company and Service Provider is that of independent contractors. Nothing contained in the Contract shall be construed as creating any agency, partnership,

joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

14.5 If any term or provision of the Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

14.6 The Contract may only be amended or modified in a writing that specifically states that it amends the Contract and is signed by an authorized representative of each party.

14.7 Provisions of these Terms and Conditions, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of the Contract including, but not limited to, Section 1.3, Section 5, Section 7, Section 9, Section 10, Section 11, Section 12, and Section 14 of these Terms and Conditions.

[END OF TERMS AND CONDITIONS]