

1. Introduction

Welcome to the DMG Provider network! Divisions, Inc. dba Divisions Maintenance Group (“Divisions,” “DMG,” “we,” “us,” “our”) provides best-in-class facility maintenance services for commercial and residential multisite organizations nationwide. We are an essential partner to our customers and technicians, offering dedicated teams, local field support, 24/7 coverage, tailored products, and a customer-first commitment. We deliver uninterrupted peace of mind to our customers.

Below you will find DMG’s terms and conditions for its Providers (the “Agreement”). Throughout the Agreement, you may be referred to interchangeably as “you,” “your,” and “Provider.” If you are a company, organization, or other legal entity, “you,” “your,” and “Provider” also includes all representatives, agents, contractors, employees, and affiliates.

Please read this Agreement carefully and thoroughly. We want you to have as much knowledge about what we do so that you can help us deliver peace of mind to our customers. We do not want you to wonder about any of our processes or procedures or guess as to what your interaction with DMG means.

By accepting this Agreement, or otherwise using any of DMG’s services, including all associated features and functionalities, websites, user interfaces, content, and software applications associated with our services (collectively “Services”), you are agreeing to be bound by the terms of this Agreement. If you do not agree with (or cannot comply with) this Agreement, then you must not use the Services.

2. Changes to this Agreement

DMG may occasionally make changes to this Agreement. It is your responsibility to periodically review this Agreement to stay informed of any updates or changes. Changes to this Agreement shall be effective upon the date indicated in such notice or posting. Your continued use of the Services after changes have been made will constitute your acceptance of the changes. If you do not wish to continue using the Services under the new version of the Agreement, or you cannot comply with the terms of the new version of the Agreement, terminate your account by contacting DMG Provider Relations at (technician.relations@divisionsinc.com).

3. Use of Services

As a DMG Provider, you will be given access to premium job opportunities at our customer locations. In connection with that access, DMG grants you a limited, non-exclusive, non-transferable, and revocable license to use our Services. You may only use the Services in the way your access is intended by DMG and in strict compliance with the terms of this Agreement and applicable law. DMG reserves the right to terminate, suspend, or restrict your use of the Services without notice or liability, for any reason, at our sole discretion.

Specific Services may have additional terms and conditions (“Service Terms”). Your use of the Services will also be subject to the applicable Service Terms. If the terms of this Agreement are inconsistent with the Service Terms, you shall comply by the term providing the higher quality of services or greater obligation on you.

By using the Services, you agree: (1) that you are able to and have the appropriate authority and authorization to create a binding agreement with DMG; (2) to provide true, accurate, current, and complete information when requested by DMG; (3) to maintain and promptly update this information to keep it true, accurate, current, and complete; and (4) to use limited-access portions of the Services only using the access credentials issued to you by DMG. If you use Services on behalf of a legal entity (such as a Corporation or LLC), you further represent and warrant that: (1) the legal entity is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or organization; (2) the legal entity has taken all corporate or company action necessary to authorize its full performance under this Agreement; and (3) you are authorized to bind the legal entity to this Agreement.

You may not under any circumstances:

- Use the Services for any illegal purpose.
- Attempt to gain unauthorized access to DMG's data, personal data, or the data of other users of DMG's Services.
- Use the Services for creating a product, service, or software that is, directly or indirectly, competitive with or in any way a substitute for the Services.
- Use any proprietary information, user interfaces, user experiences, or other intellectual property of DMG without the prior written consent of DMG.
- If accessing the Services via a mobile application, decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt the application. Breaking our rules is a material breach of this Agreement and an unauthorized use of the Services.
- Provide any false, fake, or fictitious information.
- Remove any copyright, trademark or other proprietary rights notices.
- Use the Services if you have previously had your access to or use of the Services terminated.

4. Intellectual Property Rights

You understand that the Services are DMG's proprietary property and all trademarks, service marks, logos, source code, databases, functionality, software, website designs, audio, video, text, photographs, and graphics which form any part of the Services (collectively, the "Content") are owed by, controlled by, or licensed to DMG. No part of the Services or Content may be exploited for any commercial purpose whatsoever.

5. Service Orders and Contract Documents

In connection with DMG's service offerings to its customer, we may ask you to furnish labor, materials, and services ("Work") by issuing you a service order ("Service Order" or "Job"). DMG is not required to issue any Service Orders under this Agreement.

In the event a Service Order is issued to you, the "Contract Documents" for each Service Order are:

- This Agreement.
- The Service Order, including documents listed in or referenced in the Service Order.

- Any other signed agreement between DMG and Provider that is applicable to the Work (e.g., agreements that outline recurring or seasonal Work for specific properties).
- Any written agreement between DMG and the owner or manager of the subject property (the “Owner”) which relates to the Work (“Owner Agreement”).
- All drawings, specifications, and addenda applicable to the Work.

The Contract Documents are incorporated by reference into the Service Order and are intended to be read together and give effect to all provisions so that none are rendered meaningless. However, if there is an irreconcilable difference between or within any of the Contract Documents, you shall abide by the term providing the higher quality of Work or greater obligation on you.

The Contract Documents represent the entire and integrated agreement between Provider and DMG for the Work, superseding prior negotiations, representations, or agreements, either written or oral. To the extent any provision of the Owner Agreement applies to Provider’s Work, Provider shall assume towards DMG all obligations and responsibilities that DMG, under the Owner Agreement, assumes toward the Owner. DMG shall have the benefit of all rights, remedies, and redress against Provider that Owner, under the Owner Agreement, may have against DMG.

The Contract Documents may only be amended or modified by a writing signed by DMG and Provider.

6. Performance of the Work

DMG expects all Work to be performed diligently and in a good and workmanlike manner using your best skill and judgment. You must use an adequate number of properly trained personnel that are appropriately licensed to ensure the Work is completed in a timely manner, with time being of the essence. You must provide at your own cost all tools, equipment, materials, and labor necessary to complete the Work in accordance with the specifications of the applicable Contract Documents.

YOU CANNOT PERFORM WORK WITHOUT A VALID SERVICE ORDER FROM DMG. YOU EXPRESSLY WAIVE THE RIGHT TO PAYMENT FOR WORK PERFORMED WITHOUT A SERVICE ORDER.

A. Failure to Perform

DMG’s customers expect exceptional and timely service, which DMG Providers, including you, help us deliver. If DMG, or any customer of DMG determines, in its sole discretion, that you failed to adequately or timely provide the Work, DMG may provide replacement or backup service or materials and engage a third party to perform your duties agreed to under the Contract Documents. You will be responsible for all costs incurred by DMG and must indemnify and hold DMG harmless. DMG may offset any current or future invoices as partial payment of these costs.

B. Changes in the Work

DMG may make changes to any Service Order (e.g., scope or timing of Work) by providing notice to Provider. In the event of a change, Provider must promptly submit to DMG a detailed written breakdown showing the difference in quantity of labor and materials affected by such change and reasonable value of the change in accordance with the provisions of the Service Order. Provider shall not proceed with any change to its obligations under the applicable Service Order until DMG has approved of Provider’s updated breakdown of changes to labor, material, or other costs in

writing. Continuing performance without providing a change estimate means Provider does not estimate the change having any impact and Provider will not be entitled to any change.

C. Taxes, Permits, Notices, and Compliance with Laws

You are responsible for all taxes related to the Work. You must comply with all laws, statutes, ordinances, codes, rules, regulations, and lawful orders of public authorities which may apply to your Work. You are specifically required to comply with all applicable immigration laws and will fully cooperate with any audit, inquiry, inspection, or investigation that may be conducted by DMG or the USCIS.

You must provide all required notices and obtain all applicable permits, fees, licenses, and inspections necessary for completion of the Work. All costs associated with this section are your responsibility alone. DMG may, but has no obligation or responsibility, deduct any taxes, contributions, or other payments which may be due from Provider to ensure payment.

D. Site Investigation

For each Service Order, you should complete an investigation and inspection as to the nature and location of the Work and general and local conditions at the relevant site. By beginning the Work, you acknowledge the conditions of the site permit timely and satisfactory completion of the Work. No payment or allowance shall be made on account of Provider's error in or failure to properly investigate the site prior to performing the Services.

E. Professionalism

DMG expects the highest level of professionalism from our Providers, especially when working at DMG customer sites. When performing the Work, you agree:

- To use reliable transportation that does not detract from the appearance of the customer site or leak fluids that may damage parking lots, driveways or sidewalks.
- To not interfere with other work being performed at a customer site.
- To not allow any radios or electronic devices that interfere with or distract from the focus of the Work or otherwise create a nuisance or safety concern.
- To keep the worksite free from the influence or presence of smoking, tobacco, drugs, and alcohol.
- To dress in attire acceptable to DMG and reasonably appropriate for your applicable profession.
- To avoid vulgarity, sexual remarks, or professionally inappropriate behavior.
- To not have weapons on your person or in your vehicle(s).
- To use appropriate restroom facilities (DMG will not tolerate public urination at its customers' sites).
- To keep the customer site and surrounding area(s) free from waste materials or rubbish caused by your operations. If you fail to clean up as required, DMG may charge you, or deduct from any subsequent payment to you, one and a half times DMG's direct costs for cleaning up a customer site.
- To ensure the personnel performing the Work are professional and responsible, Provider shall, at a minimum (1) perform a criminal history and sex offender registry search as part of Provider's hiring process or prior to the

individual performing Work, (2) in the case of union workers, verify the individual is in good standing, and (3) perform periodic drug testing.

If Provider's personnel are found to be unacceptable to DMG for any reason, Provider shall promptly remove and replace such personnel with another who is acceptable to DMG, at no additional cost.

F. Accident and Safety Reporting

While performing Work, Provider shall inspect and immediately notify DMG by email (safetyreports@divisionsinc.com) regarding any condition in or around the Work site that could present a safety issue to person or property, unless such condition can be resolved through the immediate Work performed by such Provider. For purposes of this inspection requirement, the Work site shall mean any area within and around the area in which Provider is performing the Work.

In the event of an accident involving personal injury or property damage on or around the Work site, Provider shall notify DMG within twenty-four (24) hours after the occurrence. Provider's notice shall include a report identifying all relevant facts pertaining to the accident.

G. Liens

To the fullest extent permitted by law, Provider hereby waives and releases, on behalf of itself, and all of the Provider's subcontractors or sub subcontractors all liens now existing or which may hereafter arise for work or labor performed or material furnished under this Agreement and/or the Contract Documents, and Provider and Provider's subcontractors or sub subcontractors shall complete said work and labor and deliver the materials within the time specified, free and clear of all liens.

Provider shall pay all costs, losses, and expenses of any kind (including attorneys' fees) incurred by DMG, any Owner and/or any client of DMG in any suit or proceeding related to any lien filed in connection with any work or services performed, or materials furnished, pursuant to this Agreement and/or the Contract Documents. Notwithstanding any provision herein to the contrary, the law of the State where the Work is located shall control and govern with respect to interpretation and enforcement of this section, without regard to any conflicts of law provisions.

In any case, should this provision be deemed unenforceable under the applicable governing law then Provider agrees to: (i) take all necessary steps to keep sites lien free; (ii) obtain lien waivers from Provider's subcontractors and sub subcontractors as necessary to comply with these obligations; and (iii) remove any liens filed by Provider or Provider's subcontractors or sub subcontractors on a site by posting a bond or any other necessary steps upon demand by DMG.

H. Use of DMG Property

Provider may, in exchange for a mutually agreed upon fair rental payment and with DMG's consent, use equipment and supplies owned, leased and/or otherwise supplied by DMG. Provider agrees that DMG can offset any then-existing or future invoices of Provider as payment or partial payment to cover the costs incurred by DMG for such use.

Provider further expressly agrees to indemnify, defend and hold DMG harmless for any and all damages to and/or caused by any such equipment and/or supplies, which may result from such use and/or for any late charges, fees or other costs incurred by DMG relative to such equipment or supplies.

7. Taxes and Insurance

Provider shall obtain and maintain all insurance required under the Contract Documents from an insurance company that is reasonably acceptable to DMG and lawfully authorized to do business in the state where the Work is performed. Provider's insurance carrier must maintain, at a minimum, an AM Best rating of "A-." Prior to commencing Work, Provider shall, at its own expense, secure, and maintain during the term of each Service Order, including any applicable warranty period, all of the insurance required below, or as required under the Service Order, whichever obligation is greater.

A. General Liability Insurance

Comprehensive General Liability or Commercial General Liability insurance utilizing Insurance Services Organization (ISO) Forms CG 00 01 10 01 or CG 00 01 04 13 or an equivalent, covering all operations by or on behalf of Provider, providing insurance for bodily injury liability and property damage liability for the limits of liability and including coverage for Provider's premises and operations, products and completed operations, contractual liability insuring the obligations assumed by Provider in this Agreement, broad form property damage (including completed operations), explosion, collapse and underground hazards, and personal injury liability. ANY WORK INVOLVING EXTERIOR INSULATION FINISHING SYSTEMS (EIFS) OR SIMILAR SYSTEM SHALL NOT BE EXCLUDED FROM GENERAL LIABILITY COVERAGE PROVIDED BY PROVIDER AND/OR PROVIDER'S SUBCONTRACTORS. Completed Operations coverage will be maintained for two (2) years after completion of Work.

Provider's General Liability policy shall include a waiver of the insurance carrier's right of subrogation against the Additional Insureds using ISO form CG2404 or its equivalent.

If the Work entails snow removal services, then Provider's General Liability policy shall include an endorsement for snowplow operations coverage utilizing ISO form CG 22 92 12 07 or its equivalent.

Limits of Coverage should be provided in amounts not less than:

- \$1,000,000 per occurrence (Bodily Injury and Property Damage).
- \$1,000,000 products and completed operations aggregate.
- \$1,000,000 general aggregate that applies on a per project basis.
- \$1,000,000 personal and advertising injury.

Provider's General Liability policy shall name the following as additional insureds on a primary and non-contributory basis for ongoing and completed Work utilizing ISO form CG 2010 (07/04 or 04/13) and CG 2037 (07/04 or 04/13) or the combined equivalent: (i) DMG; (ii) the Owner; (iii) DMG's client, if not the Owner; (iv) any person or entity required by contract related to the Work; and (v) the respective directors, officers, employees, agents, affiliates, subsidiaries, and successors of the parties named in the immediately preceding subsections (the "Additional Insureds"). It is expressly agreed and understood by Provider and DMG that the insurance afforded the Additional Insureds shall be primary insurance and that any other insurance carried by DMG shall be excess of all other insurance carried by Provider and shall not contribute with Provider's insurance. It is further agreed that Provider's General Liability coverage shall not include exclusion endorsement CG2294 (Exclusion-Damage to Work Performed by Subcontractor) or its equivalent.

B. Automobile Liability Insurance

Provider shall carry Automobile Liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Provider's Automobile Liability insurance shall include the Additional Insureds as additional insureds. Provider's Automobile Liability insurance shall include a waiver of the insurance carrier's right of subrogation against the Additional Insureds.

C. Workers' Compensation and Employers' Liability Insurance

Provider shall maintain Workers' Compensation insurance as required by any applicable law or regulation along with Employers' Liability insurance shall be provided in amounts not less than:

- \$1,000,000 each accident for bodily injury by accident.
- \$1,000,000 policy limit for each bodily injury by disease.
- \$1,000,000 each employee for bodily injury by disease.

Jones Act and/or United States Longshoreman & Harbor Workers Act Coverage shall be included where applicable. The Workers' Compensation insurance shall include a waiver of the insurance carrier's right of subrogation against the Additional Insureds where permitted by state law.

- \$1,000,000 each accident for bodily injury by accident.
- \$1,000,000 policy limit for each bodily injury by disease.
- \$1,000,000 each employee for bodily injury by disease.

Provider shall ensure that all tiers of the Provider's subcontractors shall procure and maintain insurance in like form and amounts including the Additional Insured requirements, all as set forth above. Copies of the certificate must be provided upon request by DMG and be obtained prior to said subcontractor entering the Work site.

Provider shall obtain such additional insurance coverage as required by the Service Order or as reasonably requested by DMG from time to time.

Upon request, Provider shall provide DMG a current certificate of insurance executed by Provider's insurance company or its authorized agent indicating that the Provider has the insurance policies and coverage required. Upon request, Provider shall provide DMG a copy of insurance policies and endorsements with a certification from Provider's insurance company(s) that such policies are in full force and effect. Provider acknowledges that DMG may share and use, for any legitimate business purpose, the Provider's insurance and other business information with the Owner, DMG's clients, affiliates, and any third parties from time to time in DMG's sole discretion.

Provider shall be responsible to DMG, at no cost to DMG, for the payment of any required deductible in connection with the insurance coverages provided above. Provider shall be responsible for any loss arising out of the denial of coverage by Provider's insurance carrier.

8. Warranty

Provider represents and warrants that all work, supplies, and materials furnished by Provider will be new and of merchantable quality, fit for its intended purpose, and in conformance with the Contract Documents.

For a period of twelve (12) months, or such longer time as the Contract Documents may require, from the date Work

has been fully performed in accordance with the Contract Documents (the “Warranty Period”), Provider will correct any default or defect in the Work, supplies, or materials that is discovered or occurring within the Warranty Period at Provider’s sole expense. Neither payment nor acceptance of the Work shall relieve Provider from the responsibility of correcting any default or defect. Provider shall also take all necessary action in order to activate, deliver, and maintain any existing manufacturers’ warranties and shall not take any action that shall void any such warranty.

9. Invoicing and Payment

To receive payment, you must complete the Work and submit invoices pursuant to the Contract Documents. Invoicing and payment requirements are outlined in more detail below. Please read this section carefully to ensure that you complete all steps and requirements necessary for payment. If you have any questions, please reach out to DMG’s Provider Relations team (technician.relations@divisionsinc.com).

THIS SECTION CONTAINS EXPRESS REQUIREMENTS FOR PAYMENT. BY AGREEING TO THIS AGREEMENT, OR OTHERWISE USING THE SERVICES, YOU AGREE TO COMPLY WITH THIS SECTION AND ANY OTHER INVOICING AND PAYMENT REQUIREMENTS UNDER THE CONTRACT DOCUMENTS. FAILURE TO ADHERE WITH INVOICING AND PAYMENT REQUIREMENTS WILL RESULT IN FORFEITING ANY SUCH AMOUNTS OWED.

A. Required Invoice Information

All proposals and Service Order pricing shall be inclusive of all taxes associated with the Work. All invoices must contain the following information:

- Invoice number.
- Invoice date.
- Service Order number.
- Detailed description of Work provided.
- Itemized invoice amount.

Any invoice that fails to include the required information will be rejected and must be resubmitted within the original time period permitted below. If you fail to correct invoices with insufficient information within the original period permitted below, you forfeit any such amounts owed.

B. Invoicing Deadlines

Unless the terms of a Service Order provide otherwise, for Service Orders relating to routine Work, Provider shall invoice DMG monthly for Work performed during the previous calendar month and Provider shall submit each invoice no later than the 15th day of the month.

Unless the terms of a Service Order provide otherwise, for Service Orders relating to non-routine or service call Work, Provider shall invoice DMG in accordance with the requirements of the Service Order and no later than sixteen (16) calendar days after substantial completion of the Work. DMG reserves the right to auto-submit any Provider invoice to DMG’s customer after sixteen (16) days. In the event DMG auto-submits an invoice, Provider agrees and acknowledges it will only be entitled to payment for items contained on invoice as submitted.

If Work is not invoiced by Provider within the deadlines set forth above, or Provider fails to adhere to invoicing requirements or fails to provide the necessary payment and account information detailed below, Provider shall forfeit any such amounts owed.

C. Required Payment Information

In order to receive payment for invoices submitted on time and with the required information, you must:

- Be able to receive payment via ACH/ECH.
- Provide DMG your remittance information in the DMG Pro application.
- Submit your federal tax identification number in the DMG Pro application.

Failure to provide any of the required information to DMG or keep your account up to date will result in forfeiting any such amounts owed.

D. Payment Terms

Provider shall pay promptly when due its labor, material, equipment, and transportation costs. If Provider fails to do so, DMG shall, with or without notice to Provider, at its election, make such payments directly and deduct the costs from any compensation due Provider under any Service Order. If the payments made by DMG exceed the balance due to Provider, Provider shall reimburse DMG any excess amounts immediately upon demand.

Unless otherwise permitted by DMG or required by law, DMG will pay Provider all undisputed amounts within 55 days of receipt. However, under no circumstances will DMG be liable to Provider for a greater sum than DMG obtains from the Owner for the invoiced Work. DMG's receipt of payment from the Owner is an express condition precedent to DMG's obligation to make payment to Provider, and Provider expressly assumes the risk of the Owner's nonpayment. In the event DMG releases payment to Provider but DMG does not ultimately receive payment from the Owner, Provider agrees to remit such payments to DMG upon request.

10. Confidentiality

Provider acknowledges that (a) DMG has valuable customer and referral relationships, (b) as part of a Service Order, Provider may interact with DMG's customers and referral sources, and (c) Provider may receive or be exposed to Confidential Information.

"Confidential Information" means any information concerning DMG, whether written or oral, including but not limited to information concerning DMG's business, markets, intellectual property, use of technology, proprietary technology, business plans, projections, financial results or financial information, products, services, pricing, actual or prospective customers, suppliers, or vendors, furnished by or on behalf of DMG (including, but not limited to any and all trade secrets of DMG), whether disclosed now, hereafter or at any time in the past, to the extent that the same are treated as confidential or proprietary by DMG. Notwithstanding the forgoing, Confidential Information shall not include information which: (i) is or becomes generally available to or known by the public at large (other than as a result of a disclosure by Provider in breach of any of its obligations under this Agreement); or (ii) which Provider can demonstrate is or becomes available to Provider from a source other than DMG or DMG's customers or referral sources, provided that such source is not subject to a confidentiality agreement or similar agreement with DMG. "Confidential

Information” shall also include, but not be limited to, all memoranda, notes, reports, lists, documents, and other media, whether in written, electronic or any other form, to the extent that the foregoing contain or are related in any way to any Confidential Information.

Provider shall maintain strict confidentiality of any Confidential Information that it receives and shall not use the Confidential Information nor disclose any part of it to any other person, other than to carry out Provider’s duties under a Service Order. Provider shall be strictly liable for enforcing the terms of this provision as to Provider’s employees, contractors, and any other related party, and shall take all such actions, legal or otherwise, to the extent necessary to cause them to comply with the terms and conditions of this provision and thereby prevent any disclosure of the Confidential Information.

Provider acknowledges Section 10 shall survive the termination of this Agreement and the scope and duration of this Section are reasonable. If any of the covenants or provisions of this Section 10 are determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the tribunal making such determination shall reduce such extent, duration, scope or other provision and enforce it in its reduced form for all purposes contemplated by this Agreement. Provider agrees to pay all legal costs of DMG, including reasonable attorneys’ fees and discovery costs, in any successful legal action brought by DMG to enforce this Section 10.

11. Non-Circumvention & and Non-Solicitation

DMG has created and maintained multi-year relationships with its customers. We have also created world-class facilities maintenance applications and solutions. You acknowledge that your use of the Services is expressly conditioned on your agreement to not, directly or indirectly, interfere with DMG’s interest in or relationship with any DMG customer, nor shall you circumvent or attempt to circumvent DMG by contacting any DMG customer concerning a Service Order without the prior written consent of DMG.

DMG acknowledges that Provider may have performed services for DMG’s customers prior to Provider entering into this Agreement and may continue its working relationship with any such customer after the termination of this Agreement, provided that, for a period of one (1) year after termination of this Agreement, Provider shall not, on Provider’s own behalf or on behalf of others, solicit, divert or appropriate, or attempt to solicit, divert or appropriate, any business from any of DMG’s customers with whom Provider had any material contact, for purposes of providing products or services that are competitive with those provided by DMG.

This Section 11 is material to DMG’s agreement to engage Provider for Work, and if not for this Section, DMG would not offer, enter, or continue a relationship with Provider. Provider agrees the obligations created above are necessary and reasonable to protect DMG and expressly agrees that monetary damages alone would be inadequate to compensate DMG for any breach by Provider. Accordingly, Provider agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to DMG and that, in addition to any other remedies that may be available, in law, in equity or otherwise, DMG shall be entitled to obtain injunctive relief against Provider for the actual or threatened breach of this Agreement without the necessity of proving actual damages.

Provider acknowledges Section 11 shall survive the termination of this Agreement and the scope and duration of this Section are reasonable. If any of the covenants or provisions of this Section 11 are determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the tribunal making such determination shall reduce such extent, duration, scope or other provision and enforce it in its reduced form for all purposes contemplated by this Agreement. Provider agrees to pay all legal costs of DMG, including reasonable attorneys’ fees and discovery costs, in any successful legal action brought by DMG to enforce this Section 11.

12. Subcontracting and Assignment Prohibited

DMG expects Provider to be performing the Work directly and the use of subcontractors is expressly prohibited. This Agreement may not, in part or in whole, be assigned nor subcontracted by Provider without the prior written consent of DMG, which may be withheld by DMG in its sole discretion. In the event DMG so consents, Provider shall remain directly responsible and liable to DMG for the Work and activities of its assignee, for each such person's compliance with this Agreement and for each such person's acts and omissions, as well as for any payments required to be made to such persons. DMG may assign this Agreement or any Service Order, in whole or in part, in its sole discretion.

References to Provider's subcontractors or sub subcontractors elsewhere in this Agreement shall not be interpreted as granting Provider permission to subcontract.

13. Termination

DMG may, at any time, terminate this Agreement or any individual Service Order for DMG's convenience and without cause by providing notice to Provider. Upon receipt of notice from DMG of such termination, Provider shall (i) cease operations as directed by DMG in the notice, (ii) take all action necessary for the protection and preservation of the Work, and (iii) terminate all existing subcontracts and purchase orders. In the event of termination, DMG will pay Provider for Work properly performed prior to the effective date of termination.

Upon the termination of this Agreement or any individual Service Order for any reason at any time, Provider shall immediately return to DMG all of DMG's property, documentation, trade secrets, Confidential Information, and proprietary materials in Provider's possession, custody, or control. Provider acknowledges that continued possession or use of this information after termination may be deemed a conversion or theft of proprietary materials.

After termination, Provider further agrees to cooperate reasonably with all matters requested by DMG relating to matters within the scope of the parties' relationship under this Agreement.

Provider's covenants, representations, warranties and other provisions under this Agreement, including Provider's obligation to indemnify, defend, and hold harmless, shall survive any termination of this Agreement and any Service Order.

14. Disputes and Limitation of Liability

PROVIDER AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTES, PROBLEMS, OR DISSATISFACTION WITH DMG IS TO CEASE THE USE OF DMG'S SERVICES.

IN NO EVENT WILL DMG, ITS OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS, DIRECTORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, ASSIGNS, SUPPLIERS, OR LICENSORS BE LIABLE FOR (1) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES; (2) ANY LOSS OF USE, DATA, BUSINESS, OR PROFITS (WHETHER DIRECT OR INDIRECT), IN ALL CASES ARISING OUT OF THE USE OF OR INABILITY TO USE DMG'S SERVICES, THE AGREEMENT, OR ANY SERVICE ORDER, REGARDLESS OF LEGAL THEORY, WITHOUT REGARD TO WHETHER DMG HAS BEEN WARNED OF THE POSSIBILITY OF THOSE DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE; OR (3) AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO DMG'S SERVICES, THE AGREEMENT, AND SERVICE ORDERS IN

EXCESS OF THE COMPENSATION PAID TO PROVIDER UNDER THE APPLICABLE SERVICE ORDERS.

Nothing in the Agreement removes or limits DMG's liability for fraud, fraudulent misrepresentation, death or personal injury caused by its negligence, and, if required by applicable law, gross negligence.

PROVIDER AGREES THAT ANY CLAIM AGAINST DMG MUST BE COMMENCED, BY FILING AN INDIVIDUAL ACTION IN ACCORDANCE WITH THIS SECTION, WITHIN ONE (1) YEAR AFTER THE DATE THE PARTY ASSERTING THE CLAIM FIRST KNOWS OR REASONABLY SHOULD KNOW OF THE ACT, OMISSION, OR DEFAULT GIVING RISE TO THE CLAIM; AND THERE SHALL BE NO RIGHT TO ANY REMEDY FOR ANY CLAIM NOT ASSERTED WITHIN THAT TIME PERIOD. THIS SECTION APPLIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.[\[AS3\]](#)

This Agreement and all Service Orders will be governed by and construed in accordance with the laws of the State of Ohio applicable to agreements made and entirely to be performed within such jurisdiction, without regard to its conflict of law provisions; provided, however, that if an obligation of Provider hereunder is invalid or unenforceable under the laws of the State of Ohio, but such obligation would be valid and enforceable under the State where the Work is performed or the jurisdiction where Provider's principal office is located, then the laws of such other State shall control with respect to such obligation only.

Provider agrees that any action to interpret or enforce this Agreement shall be brought and maintained only in the state or federal courts located in Hamilton County, Ohio. Provider consents to the exclusive jurisdiction of such courts and waives any objection Provider might otherwise have to jurisdiction and venue in such courts and Provider consents to service by any method permitted by such courts. If Provider files an action in any other court, then Provider shall pay DMG's attorneys' fees and costs associated with moving the action to the courts of exclusive jurisdiction. Final judgment (certified or any indebtedness therein described) in any such action or proceeding shall be conclusive and may be enforced in any court of competent jurisdiction by suit on the judgment. Notwithstanding the above, DMG shall have the right to bring an action or claim, including but not limited to a cross claim or third party claim against Provider to interpret or enforce this Agreement or any Service Order in a state or federal court in which a claim or demand has been asserted against DMG arising out of, relating to, or in connection, in whole or in part, with any services or product that were provided or were supposed to be provided by Provider pursuant to the applicable Service Order.

15. Indemnification

DMG and Provider agree that, to the fullest extent permitted by law, Provider shall indemnify, defend, and hold harmless DMG, its clients and customers, the Owner and all of their respective tenants, lessees, shareholders, members, managers, officers, directors, representatives, agents, other subcontractors, employees and any other person or entity claiming through them and any other person or entity acting in a similar capacity (collectively, "Indemnitees") from and against all claims, actions, demands, suits, judgments, damages, losses, awards, expenses and any other charges of any other kind (singularly, "Loss" and collectively, "Losses") including, but not limited to, reasonable attorneys' fees that are alleged to or actually arise out of, relate to, or are incurred in connection, in whole or in part with: (a) the acts or omissions of Provider, its agents, representatives, officers, directors, shareholders, members, managers, employees, subcontractors, material suppliers, equipment providers, or any other person or entity acting in a similar capacity on behalf of Provider; (b) the performance or non-performance of Provider's Work under any Service Order; and/or (c) breach by Provider of any representation, warranty or other provision of this Agreement or any Service Order, including but not limited to the enforcement of Provider's duty to defend and indemnify against Losses. By entering into this indemnification agreement, Provider expressly and specifically waives any workers' compensation immunity or any non-waivable rights to which it would otherwise have been entitled whether said immunity or rights are constitutional, statutory or otherwise.

Provider's duty to defend or pay for the defense (including but not limited to legal representation) of any and all Indemnitees against potential Losses arises as soon as any of the named Losses are alleged to have occurred regardless of whether Provider intends to assert a defense against liability for such Losses and whether Provider is ultimately held not to be liable as a result of Provider's asserted defense. DMG shall have the right to offset any amount owed to Provider under or in connection with any Service Order ("Offset") against any payments deemed owed to Provider by DMG under all Service Orders, including, without limitation, Offset for any indemnification deemed by DMG to be due by Provider under this provision. In the event DMG determines a Loss has occurred or Provider's insurance carrier has refused to accept written tender requesting indemnification or defense for any such Loss, in addition to any right of Offset, DMG may withhold any amounts due Provider at the sole discretion of DMG, not as a liquidated damage, but as an advance ("Advance") towards any indemnifiable amounts. Any Offset or Advance, as provided herein, shall be in addition to and in no way limit any other rights or remedies available under this Agreement and applicable law.

16. Notices

All notices, requests, demands and other communications required by or permitted hereunder shall be in writing and shall be deemed to have been duly given when received by the other party to whom directed, provided however, that notice shall be conclusively deemed given at the time of its deposit in the United States mail when sent by certified or registered mail, postage prepaid, to the other party at such party's principal place of business or sent by private carrier when signed by the receiving party.

Any notice to DMG shall be sent to its principal office at 50 W. 5th St., Cincinnati, OH 45202.

17. Miscellaneous

DMG reserves the right to audit Provider's books and records with respect to performance under this Agreement or any Service Order.

The relationship of the parties established by this Agreement is one of independent contractor, and nothing herein shall be construed to establish a principal-agent, employer-employee, partnership or joint venture relationship between the parties. Provider, its employees, and its agents shall not be entitled to receive any holiday pay, sick pay, vacation pay or any other benefits from DMG.

Provider shall not be an agent of DMG and shall not be authorized to enter into contracts or agreements binding on DMG without the express written approval of DMG.

Unless otherwise provided in this Agreement, you are free to perform services for any other company at any time provided such engagements do not interfere your obligations to DMG.

This Agreement and any of the other Contract Documents may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Delivery of an executed counterpart of a signature page to a Contract Document, regardless of whether such signature is evidenced by electronic signature, manual signature or any other means intended to evidence a party's consent and execution of such Contract Document, and regardless of whether such counterpart is delivered by telecopy or other verified electronic communication, will have the same effect and evidentiary value as a manually executed and delivered counterpart original to such Contract Document.

DMG shall be deemed to have executed this Agreement resulting in an enforceable contract once Provider has agreed to the terms and conditions of this Agreement, submitted the same to DMG as herein described and DMG recognizes Provider as an approved independent contractor and/or assigns Work to Provider.

No waiver of any right by DMG will act to waive any future enforcement of any right.

If any provision of this Agreement is invalidated for any reason, it will be considered severable and will not affect the validity of the Agreement as a whole.

[\[AS3\]](#)Let's confirm with some case law on how to best draft a contractual statute of limitations. I recall an MSJ I filed that dealt with this issue.