

**CONSULTING SERVICES AGREEMENT Agreement No.:**

|  |  |
| --- | --- |
| Consultant:  | Consultant Address:  |
|  |   |
| Consultant Phone:  |  |
|  |  |
| Taxpayer Identification # (or SS #):  |  |
|  |  |

This Consulting Services Agreement ("**Agreement**") is effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Effective Date**”), by and between Consultant and Energy Systems Group, LLC**,** an Indiana Limited Liability Company, with principal offices at 9877 Eastgate Court, Newburgh, IN 47630 (“**ESG**”). ESG and Consultant are each a “**Party**” and together the “**Parties**”. The Parties hereto agree as follows:

 **Work Orders.** Under this Agreement, Consultant shall provide the services (the “**Services**”) and Deliverables (as defined below), as requested by ESG on a Work Order basis (a "**Work Order**"). Individual Work Orders will be issued pursuant to this Agreement and shall be subject to the terms and conditions of this Agreement. Attached to this Agreement as **Attachment A** is the Work Order template. Each Work Order shall set forth the Scope of Work for both Services and Deliverables to be performed by Consultant, payment amount and project schedule. The deliverables identified in the Work Orders, and all notes, drafts, drawings, works authored, inventions, electronic files associated with the Services being performed, including but not limited to Word, Excel, Trane Trace, AutoCAD, and other information and materials created, conceived, or reduced to practice by Consultant in completing those deliverables shall be collectively referred to as the "**Deliverables**".  Each Work Order shall be subject to all the terms and conditions of this Agreement, but shall constitute a separate and independent performance obligation of the part of Consultant and payment obligation on the part of ESG. In addition, the Work Order will identify any special provisions contained in a customer agreement between ESG and ESG’s customer for a specific Work Order (the “**Customer**”) and Consultant shall adhere to such special provisions as they apply to ESG.

 **Use of Subcontractors.** Consultant shall not subcontract, assign, or transfer any of its rights or obligations under this Agreement without the prior written consent of ESG. If ESG so consents, Consultant shall remain liable and responsible to ESG for the work of any subcontractor to the same extent as if the work had been performed by Consultant. Consultant is responsible to flow down in its subcontracts and agreements with lower-tiered subcontractors all special provisions contained in a customer agreement incorporated in a Work Order, and these special provisions shall apply to Consultant and its lower-tiered subcontractors as they apply to ESG.

 **Changes in Scope of Work.** ESG requested changes in the Scope of Work, including Services to be provided and Deliverables, and changes to compensation and project schedule shall be made by a subsequently executed Change Order, or new Work Order. Prior to issuing a Change Order or new Work Order, ESG may request from Consultant a detailed estimate in writing of the cost for such extra work, and its impact on current work and scheduled completion dates, including (i) a description of work to be performed, including detailed breakdown by identifiable tasks; (ii) the estimated cost of each task; and (iii) the expected date of completion of each task. Consultant shall not proceed with any such additional requested work prior to receiving written Change Order or new Work Order authorizing the Consultant to perform the requested changes. If ESG requests certain changes to the work that Consultant believes is outside an existing Scope of Work, before proceeding with such work, Consultant shall notify ESG in writing stating why it believes such work is not included in an existing Scope of Work, and Consultant’s estimate of the additional cost of such work and additional time required to perform, if applicable. If the parties disagree on whether or not certain work is within an existing Scope of Work, Consultant shall proceed with performing such work under protest and such dispute shall be resolved in accordance with Section 21.

 **Term.** Consultant shall complete the Services and complete and deliver to ESG the Deliverables on or before the date set forth in the applicable Work Order, unless this Agreement is terminated earlier pursuant to Section 16. Notwithstanding the foregoing, ESG may suspend or extend time for Consultant's performance at any time, and from time-to-time, upon two (2) days prior written notice. Thereafter, Consultant shall resume performance as directed by ESG. In the event of such suspension or extension, Consultant shall be entitled to reimbursement for additional costs reasonably and necessarily incurred by Consultant in effecting such suspension or extension period, to the extent that such additional costs are actually incurred, if claimed within thirty (30) days after resumption of performance or early termination of the Agreement.

 **Compensation.** ESG shall pay Consultant for the Services and Deliverables to be performed and delivered in connection with the work as described and identified in the applicable Work Order. This amount includes all royalties or other charges for patents, copyrights, trademarks, trade secrets used by Consultant in the performance of this Agreement; all allowances for wages, payroll burden (i.e., insurance, payroll taxes, vacations, fringe benefits, etc.), overhead, general and administrative expenses, local telephone calls, postage, insurance, profits, fees; all social security, employment withholdings and taxes, unemployment, gross receipts, income, sales, use, occupation or other taxes; and all costs and expenses of whatever kind, except as otherwise expressly set forth in the applicable Work Order.

 **Billing and Payment.** Consultant shall bill ESG monthly for work performed during the month. Consultant shall submit to ESG, on the form provided by ESG or a form mutually acceptable to the parties, a written requisition for payment showing the aggregate value of the Work performed and completed through the last billing date. Consultant's invoices shall set forth in reasonable detail the work performed and amounts due. In addition, Consultant shall submit to ESG with its invoice, copies of receipts for each Reimbursable Expense (as defined in the applicable Work Order) over $25. Consultant shall provide copies of any other receipts for expenses for which Consultant has requested reimbursement promptly upon ESG's request. Consultant shall submit invoices and copies of receipts to the address set forth in the applicable Work Order. ESG shall pay Consultant the undisputed amount of such invoices within forty-five (45) days after ESG’s receipt and approval of the invoice unless otherwise required under Applicable Law. No payment to Consultant will be authorized until ESG receives a Payment and Performance Bond (if required), a current Certificate of Insurance, and any lien waivers and releases (as required).

 **Notices.** All notices in connection with this Agreement shall be in writing, addressed to the addresses set forth below, and shall refer to ESG’s Agreement Number and the number of the applicable Work Order. All notices or other communications so addressed shall be effective when received. Either Party may change its address for notices by providing written notice to the other.

|  |  |  |
| --- | --- | --- |
| **To ESG:** | **With copy to:** | **To Consultant:** |
| Send to: ESG Project Manager As Specified on Work Order | Energy Systems Group, LLC.Attn: Contract Administrator,  Legal Department |  |

 **Access to Premises and Equipment.** ESG will arrange for access to premises, facilities, equipment, personnel, and data to the extent reasonably required in order for Consultant to perform the Services and provide the Deliverables. Such access shall be provided during business hours as directed by ESG, unless the parties agree on other arrangements. Consultant agrees to comply, and to cause its employees, subcontractors, consultants and any other representatives to comply, with such arrangements, including without limitation, any rules pertaining to use of designated access areas, logging in and out of the premises, or securing permits or identification required to enter the premises. Consultant shall not enter any areas outside of those for which access is provided, without prior written permission from ESG.

 **Independent Contractor.** In performing this Agreement, Consultant agrees that it is acting as an independent contractor and not as an employee or agent of ESG. As an independent contractor, Consultant shall not be eligible for any benefits ESG may provide its employees. All persons, if any, hired by Consultant shall be employees of Consultant and shall not be construed as employees or agents of ESG in any respect. Consultant shall be responsible for all taxes, insurance and other costs and payments legally required to be withheld or provided in connection with Consultant's performance of this Agreement, including without limitation, all withholding taxes, worker's compensation insurance, and similar costs.

 **Conflict of Interest.** Conflicts of interest relating to this Agreement are strictly prohibited. Except as otherwise expressly provided herein, neither Consultant nor any director, employee, or agent of Consultant or its subcontractors or vendors shall give to or receive from any director, employee, or agent of ESG any gift, entertainment, or other favor of significant value, or any commission, fee, or rebate. Likewise, neither Consultant nor any director, employee, or agent of Consultant or its subcontractors or vendors shall, without prior written notification thereof to ESG, enter into any business relationship with any director, employee, or agent of ESG or any Affiliate, unless such Person is acting for and on behalf of ESG. Consultant shall promptly notify ESG of any violation of this Section and any consideration received as a result of such violation shall be paid over or credited to ESG. Additionally, in the event of any violation of this Section, including any violation occurring prior to the date of this Agreement, resulting directly or indirectly in ESG's consent to enter into this Agreement, ESG may, at ESG's sole option, terminate this Agreement at any time and notwithstanding any other provision of this Agreement, pay Consultant only for that part of the Services performed prior to the date of termination. Any representatives authorized by ESG may audit any and all records of Consultant and its subcontractors and vendors for the sole purpose of determining whether there has been compliance with this Conflicts of Interest Section. “Affiliate” means any legal entity that controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to “control” another if it owns directly or indirectly at least fifty percent of either of the shares entitled to vote at a general election of directors of such other entity or the voting interest in such other entity if such entity does not have either shares or directors.

Consultant is not authorized to make or offer to make and shall not cause to be made any political contribution, gift, honoraria or any other payments, goods or services that benefit any U.S. and/or non-U.S. public officials, whether they are elected, appointed or staff, including any government or public international organization, or NGO, or their respective staff/employees, on behalf of ESG without ESG’s prior written approval. Payments to or for the benefit of any such official include, but are not limited to, gifts of money, entertainment expenses, goods or services, honoraria, or political contributions of any kind. Consultant shall immediately notify ESG of any violation of this paragraph and shall immediately reimburse ESG out of any and all monies paid by ESG to Consultant in an amount equal to the value of such payments.

 **Non-Compete.** Unless otherwise specified in a Work Order or agreed to in writing by both Parties, during the period of performance of a Work Order, Consultant shall not perform any services for the Customer on the same Project site that it is performing services under a Work Order for that Project site. This requirement does not apply to services that (a) Consultant was contracted to perform prior to execution of a Work Order for the same Project site; and (b) Consultant has disclosed such pre-contracted services to ESG prior to executing the Work Order.

 **Performance.** Consultant represents to ESG that Consultant possesses the degree of skill and knowledge necessary to perform its obligations under this Agreement, and that the Services and Deliverables provided by Consultant under this Agreement shall be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the work is performed. If Consultant's performance of this Agreement requires any permits, licenses, or performance bonds, Consultant has obtained all such permits, licenses, and performance bonds in the states which the work will be performed, and shall maintain them in full force and effect throughout the term of this Agreement. Consultant shall provide copies of all such permits, licenses, and performance bonds to ESG, upon request. Consultant shall comply with all applicable federal, state, and local laws, codes, and regulations in performing this Agreement. Consultant will, at its own expense, promptly and properly perform, at the written request of ESG, all corrective services necessary to conform the Services and Deliverables to the foregoing representations. Consultant understands and acknowledges that ESG will rely upon the competence and completeness of Consultant's Services in fulfilling ESG's contractual commitments to third parties.

 **Indemnification.** **CONSULTANT WILL DEFEND, INDEMNIFY AND HOLD HARMLESS CUSTOMER, ESG, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE “INDEMNITEES”) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, COSTS, LIABILITIES, JUDGMENTS AND EXPENSES ARISING OUT OF INJURY TO OR DEATH OF ANY PERSON (INCLUDING EMPLOYEES OF CONSULTANT AND INDEMNITEES) AND DAMAGE TO OR DESTRUCTION OF ANY PROPERTY, INCLUDING PROPERTY OF THE INDEMNITEES AND CONSULTANT, AND FOR LOSS OR DAMAGE ARISING FROM ATTACHMENTS, LIENS OR CLAIMS OF MATERIALMEN OR LABORERS, AND PATENT INFRINGEMENT, INCLUDING CLAIMS AND REASONABLE ATTORNEY’S FEES RELATING TO ANY OF THE FOREGOING, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR WITH CONSULTANT’S PERFORMANCE OF THIS AGREEMENT OR FROM CONSULTANT’S USE OF INDEMNITEES’ TOOLS, MOTOR VEHICLES OR OTHER EQUIPMENT, HOWEVER CAUSED AND REGARDLESS OF THE ACTIVE, PASSIVE, OR CONCURRENT NEGLIGENCE OR NEGLIGENCE PER SE OF ANY INDEMNITEE OR OTHERS AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT, OR BREACH OF EXPRESS OR IMPLIED WARRANTY, IS IMPOSED OR SOUGHT TO BE IMPOSED ON ONE OR MORE OF THE INDEMNITEES.  THIS INDEMNITY WILL NOT APPLY TO THE EXTENT THAT SUCH INDEMNITY IS VOID OR OTHERWISE UNENFORCEABLE UNDER APPLICABLE LAW IN EFFECT ON OR VALIDLY RETROACTIVE TO THE DATE OF THIS AGREEMENT, AND WILL NOT APPLY WHERE SUCH LOSS, DAMAGE, INJURY, LIABILITY, JUDGMENT OR CLAIM IS THE RESULT OF THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.  THE INDEMNITEES’ RIGHTS TO INDEMNIFICATION UNDER THE FOREGOING WILL BE INDEPENDENT OF RIGHTS UNDER THE INSURANCE TO BE PROVIDED HEREIN.**

## ESG will have the right to be present and represented by counsel at all times during the litigation and other discussions relating to any claims covered by an indemnity obligation imposed on Consultant by this Agreement. Neither Consultant nor ESG will settle or compromise any such litigation without the consent of the other if such settlement or compromise obligates the other to make any payment or part with any property or assume any obligation or grant any license or other rights or be subject to any injunction by reason of such settlement or compromise.

 **Confidential Information.** All oral or written records, reports, computer programs, written procedures, materials, documents, data or information in whatever form ESG or its affiliates, agents or customers may provide Consultant in connection with this Agreement (the "**Information**") and all Deliverables shall be considered the confidential and proprietary information of ESG. Consultant agrees not to disclose, and to cause its employees, subcontractors and any other representatives not to disclose, any of the Information or Deliverables to any third party or use any such Information or Deliverables for any purpose other than the performance of this Agreement, without the prior written consent of ESG. Without limiting the foregoing, (i) if Consultant knew the same information or deliverables before ESG disclosed it or caused it to be disclosed to Consultant or before Consultant created it for this Agreement; (ii) if Consultant obtains the same information or deliverable from a third party who did not receive it directly or indirectly from ESG or its affiliates, agents or customers; or (iii) if such Information or Deliverable is, at the time of disclosure by Consultant, in the public domain through no act or omission of Consultant, Consultant may use or disclose such information or deliverable as permitted by Consultant's other obligations. The obligations imposed by this Section shall survive termination of this Agreement. All Information and Deliverables shall be returned to ESG at the earlier of ESG's request or termination or completion of this Agreement. As damages may not be an adequate remedy for Consultant's breach of this Section, Consultant agrees that ESG also shall be entitled to the remedies of injunctive relief and specific performance for any breach by Consultant of this Section or Section 15.

 **Ownership.** ESG shall own and have the right to transfer them to the Customer, and Consultant shall provide to ESG, all Information and Deliverables (“Deliverables” in all cases shall include all electronic files associated with the Services being performed, including but not limited to Word, Excel, Trane Trace, AutoCAD, etc.) and all rights therein, including without limitation, all patent, copyright, trademark, service mark, trade secret or other intellectual property rights therein. Consultant shall obtain and/or retain no right, title or interest in or to the Information and/or the Deliverables, including without limitation, any patent, copyright, trademark, service mark, trade secret or other intellectual property rights therein, and hereby assigns and transfers to ESG any such rights Consultant may have in such Information and Deliverables. Consultant agrees that any copyrightable Deliverables are a work for hire. Consultant further agrees to execute, deliver, and perform all documents, acts, or things that may be necessary to assign or transfer to ESG the rights granted hereby. Notice of copyright ownership of ESG shall be placed by Consultant on all Deliverables in a manner and location as to give reasonable notice of the claim of copyright. To Consultant's actual knowledge, the Services and the Deliverables do not infringe on the ownership or intellectual property rights of any third party. Application for copyright and/or patent registration shall be the responsibility of ESG. Consultant shall deliver such Information and Deliverables free and clear of all liens, claims, and encumbrances of any kind. The obligations imposed by this Section shall survive termination of this Agreement.

 **Termination.** ESG may terminate this Agreement or any Work Order hereto at any time for any reason by providing two (2) days prior written notice to Consultant, such termination to be effective at the end of the two (2) day notice period. In the event of such termination, ESG shall pay Consultant for Services and Deliverables satisfactorily performed and for all Reimbursable Expenses, if any, incurred by Consultant on or before the effective date of termination. Upon receipt of notice of termination from ESG, Consultant shall thereafter seek to minimize further charges under this Agreement or the applicable Work Order, whichever has been terminated. Unless earlier terminated, each Work Order shall terminate effective as of the date set forth thereon, subject to any extensions pursuant to Section 4.

 **Access to Work and Records.** ESG shall have, during the term of the Agreement and for two years thereafter, access at all reasonable times to all of the Consultant's and Consultant’s subcontractors’ personnel, accounts and records of all description pertaining to the Agreement, including but not limited to computer files, to verify or review the quantity, quality, and progress of the Services, reimbursable costs, amounts claimed by the Consultant, estimates of cost for fixed rates including those applicable to proposed changes, and for any other reasonable purposes.

 **Insurance.** During the Term and for a period of three years with the exception of Professional Liability (if required in the Work Order) for a period of four years thereafter, Consultant shall, at its own expense, maintain and carry insurance in full force and effect with insurance carriers having an AM Best’s Rating of A- VIII or better, and authorized to provide insurance in the state in which the Work is located. Such insurance shall be primary to any insurance maintained by ESG, and shall include, but not be limited to the following:

|  |  |  |
| --- | --- | --- |
| **INSURANCE TYPE** | **INSURANCE LIMITS** | **ADDITIONAL REQUIREMENTS** |
| Worker’s Compensation and Employer’s Liability  | Not less than $1,000,000 per accident |  |
| Commercial General Liability | Not less than $1,000,000 per occurrence (if coverage is subject to aggregate, the aggregate limit shall be $2,000,000) | * Coverage at least as broad as the Insurance Services Office Commercial General Liability Coverage “occurrence” form CG 00 01 04 13
 |
| Business Auto | Not less than $1,000,000 per accident | * Coverage at least as broad as the Insurance Services Office Business Auto Coverage form CA 00 01 11 20 covering Automobile Liability, symbol 1 “any auto”
 |
| Excess / Umbrella | Provided on Work Order | * Excess over and no less broad than the underlying Employer’s Liability, Commercial General Liability & Business Auto requirements listed above
 |
| Professional Liability (if required in the Work Order) | Not less than $1,000,000 per claim (if coverage is subject to aggregate, the aggregate limit shall be $2,000,000) | * Coverage shall be for a professional error, act, or omission arising out of the Scope of Work;
* Consultant shall maintain such coverage continuously throughout its performance of its Work and for a period of four (4) years thereafter
 |
| Pollution Liability (if required in the Work Order) | Not less than $1,000,000 per claim (if coverage is subject to aggregate, the aggregate limit shall be $1,000,000) | * Coverage shall be for pollution exposures arising out of the Scope of Work
 |

a)   Additional Insurance Provisions.

1. Upon execution of this Agreement, and at each insurance renewal thereafter, Consultant shall furnish ESG with certificates of insurance and endorsements of all required insurance for Consultant satisfactory to ESG. ESG may inspect the original policies or require complete certified copies at any time.
2. The certificates shall state neither Consultant nor insurance carriers shall substantially modify or cancel its insurance coverage except after providing 30 days prior written notice to ESG and 10 days in the event of cancellation for non-payment of premium.
3. Upon request, Consultant shall furnish ESG the same evidence of insurance for its subcontractors as ESG requires of Consultant or as required under Applicable Law.
4. Acceptance by ESG of an improper certificate shall not constitute a waiver, release, or modification of any of the insurance coverages and endorsements required hereunder.
5. Waiver of subrogation, as permitted by law, in favor of ESG’s insurers, ESG, Customer and all officers, directors, employees, agents, affiliates, subsidiaries and parent companies of ESG or Customer.
6. Additional insured coverage (excluding Professional Liability and Worker’s Compensation policies)on a primary and non-contributory basis in favor of ESG and Customer, all officers, directors, employees, agents, affiliate, subsidiary, and parent companies of ESG and Customer.
7. Underlying limit requirements may be satisfied by a combination of primary, umbrella, or excess insurance.

 **Limitation of Liability.** ***NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, ESG SHALL NOT BE LIABLE TO CONSULTANT FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF EITHER PARTY’S FAULT, NEGLIGENCE (IN WHOLE OR PART), OR STRICT LIABILITY.***

 **Precautions and Protection to Property.** Consultant shall plan and perform all Services, including without limitation, any Services to be performed on the premises of ESG, its customers, or other third parties, so as to safeguard persons and property from injury, and to assure compliance with all reasonable and safe work practices, and federal, state, and local laws, rules and regulations, including without limitation, those applicable to work in areas adjacent to electrically charged facilities. ESG may require, at ESG's expense, the provision of any additional safeguards not in use but considered necessary or prudent, in ESG's reasonable judgment. As part of these efforts, Consultant will assure that all of its employees, subcontractors and any other representatives that perform any Services on the premises of ESG, its customers or other third parties refrain from the use, abuse, possession, selling or purchasing of illegal drugs or controlled substances, as defined under applicable federal or state law, and from the use at any time (including without limitation at meals) of alcohol, prescription drugs, or any other substance that could impair the ability to perform the Services in accordance with this Agreement or to maintain a safe work place. Where reasonable cause exists to believe the foregoing provision has been violated, Consultant shall notify ESG and take all appropriate steps to determine the existence of and eliminate any violation.

 **Dispute Resolution.** In the event of a dispute, controversy, or claim arising out of or relating to this Agreement, the Parties shall confer and attempt to resolve such matter informally. If such dispute or claim cannot be resolved in this manner, then the dispute or claim shall be referred first to the Parties’ executive officers for their review and resolution. If the dispute or claim still cannot be resolved by such officers, then the matter shall be arbitrated and either Party may file a written demand for arbitration with the American Arbitration Association (“AAA”) and shall send a copy of such demand to the other Party. The arbitration shall be conducted pursuant to the appropriate AAA Arbitration Rules in effect at the time the arbitration is commenced. For disputed amounts in excess of $75,000, AAA Regular Track Procedures shall apply. For disputed amounts less than $75,000, AAA Fast Track Procedures shall apply. The award rendered by the arbitrator shall be final and binding on the Parties and shall be deemed enforceable in any court having jurisdiction thereof and of the Parties. The arbitration shall be heard by one arbitrator, who shall have experience in the general subject matter to which the dispute relates. The arbitration shall take place at the AAA office geographically closest to the Project site where the Work or Services has been performed.

 Fee Shifting: If either Party becomes involved in arbitration or litigation (“**Proceeding**”) arising from or relating to this Agreement or the performance of it, the court or arbitrator(s) in such Proceeding, or in a separate proceeding, shall award to the prevailing Party or Parties all reasonable attorney fees, expert witness fees, and all other costs and expenses incurred in, arising from, or relating to such Proceeding.

 **Hazardous Materials.** Consultant shall be responsible for complying with all Applicable Laws with respect to the removal and proper disposal of all Hazardous Materials brought onto or generated by Consultant or by any of its subcontractors in the course of performing the Work. Consultant shall defend, indemnify and hold ESG and Customer harmless from and against any and all losses, damages, expenses, fees, claims, costs and liabilities (including, but not limited to, attorneys’ fees and costs of litigation) arising out of or in any manner related to the release or threatened released of any Hazardous Materials brought onto or generated by Consultant during the course of performing the Work. It is expressly understood that this responsibility includes protecting ESG and Customer from any clean-up responsibility imposed on ESG or Customer under Applicable Laws.

 Consultant shall not be responsible for any pre-existing Hazardous Materials at the Project site. Consultant shall provide written notice to ESG immediately upon the discovery of any pre-existing Hazardous Materials. Except in case of emergency, Consultant, or any of its subcontractors, shall not disturb, disrupt, remove, alter, dislodge, or otherwise handle any pre-existing Hazardous Materials at the Project site without the prior written consent of ESG. As appropriate, ESG will issue a Work Order to Consultant for the removal of any pre-existing Hazardous Materials from the Project site. Consultant shall defend, indemnify and hold ESG and Customer harmless from and against any and all losses, damages, expenses, fees, claims, costs and liabilities (including, but not limited to, attorneys’ fees and costs of litigation) arising directly out of Consultant disturbing or causing a release of any Hazardous Materials at the Project site.

 UNDER NO CIRCUMSTANCES SHALL ESG BE LIABLE FOR ANY INJURY TO CONSULTANT, WHICH IS THE RESULT OF CONSULTANT’S EXPOSURE TO HAZARDOUS MATERIALS.

 The term "**Hazardous Materials**" as used herein means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

## 23. Company Policies. Consultant shall comply with ESG’s Ethics and Compliance Code of Conduct for Consultants, Contractors, Suppliers and Vendors found at this link: <https://energysystemsgroup.com/terms/> . Consultant shall also comply with any applicable ESG Policies provided to Consultant by ESG.

1. **Miscellaneous.** (a) Choice of Laws. ***THIS AGREEMENT SHALL BE GOVERNED BY THE LAW OF THE STATE OF INDIANA, UNITED STATES OF AMERICA, WITHOUT THE APPLICATION OF ITS CHOICE OF LAW RULES AND SHALL BE BINDING UPON THE PARTIES HERETO AND THEIR SUCCESSORS AND ASSIGNS IN THE UNITED STATES AND WORLD WIDE, EXCLUDING ANY CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.*** ***THE PARTIES CONSENT TO PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS IN WARRICK COUNTY, INDIANA AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA THAT IS LOCATED IN EVANSVILLE, INDIANA. THE PREVAILING PARTY IN ANY ACTION OR PROCEEDING BROUGHT TO ENFORCE THE TERMS OF THIS AGREEMENT OR ARISING OUT OF THIS AGREEMENT MAY RECOVER ITS REASONABLE COSTS AND ATTORNEYS’ FEES EXPENDED IN CONNECTION WITH SUCH AN ACTION OR PROCEEDING FROM THE OTHER PARTY.*** (b) Waiver. The waiver by either Party of any provision of this Agreement shall not be deemed to be a waiver of the entire Agreement, nor a continuing waiver of the same provision. (c) Severability. If any provision of this Agreement is determined to be unenforceable, such unenforceable provision shall be deemed deleted from this Agreement and this Agreement shall be enforced without such provision. (d) Prior Work. Services performed by Consultant pursuant to ESG's authorization, but before the execution of this Agreement, shall be considered as having been performed subject to the provisions of this Agreement. (e) Publicity. Consultant shall not release any Information or Deliverables or any other information relating to this Agreement, including without limitation, its existence, without the prior written approval of ESG, and without giving ESG the opportunity to review and comment upon any requested release, unless the disclosure is otherwise required by law. (f) Entire Agreement. This Agreement, including any applicable Work Order attached hereto, contains the entire agreement and understanding between the parties as to the subject matter of the Agreement and supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between ESG and Consultant, whether oral or written. (g) Public Testimony. If requested by ESG, Consultant shall provide testimony before any public agency to substantiate the Deliverables, at additional compensation to the Consultant. (h) Amendment. This Agreement may not be amended except by a writing executed by both parties hereto. No oral amendment shall be enforceable, even if supported by new consideration. (i) Conflicting Terms. In the event of any conflict between the terms of this Agreement and the terms of a Work Order, the terms of the Work Order shall control. If all or a portion of Consultant’s proposal or quote is attached to this Agreement or Work Order, only the portion of the proposal or quote that defines the scope of the Work shall be binding on the Parties. Any other terms and conditions in the proposal or quote shall not be part of this Agreement or Work Order and shall not be binding on the Parties. If there is a conflict between the terms of this Agreement or Work Order and the Consultant’s proposal, the terms of this Agreement or Work Order shall control. (j) Energy Policy Act. Consultant agrees that for the Work on the project hereunder, ESG shall be the “designer” as that term is identified in Internal Revenue Code (IRC) Section 179D, and ESG shall have the exclusive right to report to any federal, state, or local agency, authority or other Party, including without limitation under IRC Section 179D, any tax benefit associated with the Work. To assist in ESG’s tax compliance, upon job completion, Consultant agrees to have an authorized representative execute the required Inspection, Certification and Calculation documents related to Section 179D of the Internal Revenue Code. ESG shall be responsible for preparing these Documents, all accompanying documentation and the contents therein.
2. **Communication.** Unless otherwise provided in writing, Consultant communications by and with the Customer, architect, and other consultants and suppliers of ESG, regardless of tier, shall be through ESG.
3. **Data Privacy.** Consultant will process all Personal Data it processes on behalf of ESG in accordance with all applicable laws and ESG’s reasonable requests with respect to protecting Personal Data, including but not limited to: restricting employee and agent/subcontractor access to Personal Data, following ESG’s instructions in connection with processing Personal Data, not disclosing Personal Data to any third party without ESG’s written permission, applying appropriate security measures to protect Personal Data, and deleting any Personal Data in its possession or control at the expiry or termination of this Agreement unless otherwise agreed between the Parties. In the event of any unauthorized, unlawful, and/or unintended processing, access, disclosure, exposure, alteration, loss, or destruction of Personal Data, Consultant will immediately notify ESG and cooperate with ESG’s reasonable requests to investigate and remediate such incident and provide appropriate response and redress. “Personal Data” means any information that can be used directly or indirectly, alone or in combination with other information, to identify an individual.
4. **Successors and Assigns**. This Agreement may not be assigned by either Party in whole or in part without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed; provided however, that ESG  may assign this Agreement and all related agreements without the consent of Consultant (i) to an affiliate; (ii) to an entity that is controlled by, controls, or is under common control with ESG; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law; and provided further that ESG may assign its rights, but not its obligations, under this Agreement and all related agreements without the consent of Consultant to (x) a lender providing financing to ESG, or (y) a special purpose entity that is an affiliate of or is controlled by such lender. This Agreement will be binding on, enforceable by, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.
5. **Prohibited Parties and Transactions.** ESG is a United States company with a policy requiring it to comply with all applicable laws, including economic sanctions and trade restrictions imposed by the United States government. Accordingly, Consultant shall provide ESG with ninety (90) days advance notice of the names and addresses of any member of Consultant’s organization which may be any of the following:

### The target of, or owned or subject to control by any country, institution, organization, entity or person that is the target of, economic sanctions and trade restrictions imposed by the United States government.

### Debarred or otherwise excluded or declared ineligible to participate in United States government contracts or contracts, grants or other programs financed in whole or in part by the United States government.

### Listed by the United States Departments of Commerce or State as an entity with which United States persons may not engage in export or re-export related transactions.

(d) Debarred or otherwise excluded or declared ineligible to participate in state or local government contracts or contracts, grants or other programs financed in whole or in part by any state or local government.

1. **Export Control**. Consultant is responsible for exporting and importing all property that it requires to perform the Services, including the export of such property when it is no longer needed to perform the Services. Consultant shall obtain any and all necessary permits, licenses, authorizations and clearances for the export and import of property Consultant requires to perform under this Agreement. All import and export costs, including any temporary import bonds shall be paid at Consultant’s sole cost.
2. **Flowdown Provisions.** Consultant shall fully comply with all laws and contract provisions that ESG is required to flow down from ESG’s contract with its Customer (the “**Flowdowns**”). For all Services on a Project for a federal customer, Consultant shall also fully comply with all federal Flowdowns as listed in the Federal Business Services Addendum found at this link: <https://energysystemsgroup.com/terms/>. The Parties shall amend this Federal Business Services Addendum accordingly and promptly via an amendment if a federal customer requires ESG to amend the contract provisions in its contract with its federal customer.

### Lobbying Prohibition. Consultant shall not act as a lobbyist, make any payments, or engage in any activities on behalf of ESG, which are subject to regulation by any federal, state or local laws regulating lobbying activities, whether such activities are direct lobbying, or lobbying support activities or in any representation or support activities that involve lobbying activities or the payment of any monies (collectively, “Lobbying”). Any Lobbying that ESG may ask Consultant to perform shall be done only under a separate written agreement to be established between ESG and Consultant on mutually agreeable terms and conditions.

### Employee Rights Under The National Labor Relations Act.

Consultant must post a notice of employee rights under the National Labor Relations Act (NLRA) in conspicuous places in its plants and offices where employees covered by the NLRA engage in activities relating to the performance of this Agreement and/or individual Work Order. The contract clause set forth in 29 CFR Part 471, Appendix A to Subpart A, is incorporated by reference as if fully set forth herein. The Consultant will include this provision in every lower-tiered subcontract or purchase order entered into in connection with this Agreement and/or an individual Work Order, unless otherwise exempt, so that such provisions will be binding upon each lower-tiered subcontractor.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

|  |  |
| --- | --- |
|  | **ENERGY SYSTEMS GROUP, LLC** |
|  |  |
| **By:** XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX | **By:**  |
| (Signature) | (Signature) |
| **Print** | **Print** |
| **Name:** | **Name:** |
|  |  |
| **Title:** | **Title:** |

 **ATTACHMENT A**

**WORK ORDER #**

**TO CONSULTING SERVICES AGREEMENT #**

|  |  |
| --- | --- |
| Consultant:  | Consultant Address:  |
|  |   |
| Consultant Phone:  |  |
|  |  |
| Not-to-Exceed Work Order Amount: $  |  |
| (which shall include all applicable taxes pursuant to Section 5 of the Consulting Services Agreement) |  |
| Bond Required: Yes / No  |  |

#  This Work Order dated WORK ORDER DATE (“Work Order Effective Date”) is issued pursuant to and is subject to the terms and conditions of the Consulting Services Agreement (“Agreement”) by and between Energy Systems Group, LLC (ESG) and Consultant dated CONSULTING AGREEMENT DATE. All capitalized terms not specifically defined in this Work Order shall be as defined in the Agreement.

**A. SCOPE OF WORK:**

1. **Services to be Provided**. Consultant will perform services as agreed with ESG including specifically:

INSERT DESCRIPTION or attach a Scope of Work document

 **II.** **Deliverables.**

 INSERT DESCRIPTION or refer to the attached SOW

1. **SCHEDULE:**

Consultant shall commence Work on DATE and complete performance of its Work hereunder by DATE, unless otherwise directed by the Company in writing. Consultant will meet with the ESG regularly to keep the Company informed of the progress of his activities.

1. **INVOICING AND PAYMENT:**

**I**. Consultant shall prepare and present to the Company, monthly, an **original** invoice using a form mutually acceptable to the parties for services rendered and approved costs incurred as provided herein. Within thirty (30) days after Company’s receipt and approval of Consultant's invoice, the Company shall pay Consultant the invoiced amount in U.S. dollars.

 Consultant shall send all invoices to:

#### Energy Systems Group, LLC

**9877 Eastgate Court**

**Newburgh, IN 47630**

**Attn: Accounts Payable**

 If submitting electronically, please email invoices to ap@energysystemsgroup.com

**II.** Since Consultant is not an employee of the Company, Consultant is not entitled to participate in any benefit programs provided by the Company. The Company will not provide consultant with office space, telephone, or secretarial services, except on a temporary basis, as related to a specific project assignment and for the Company’s own convenience. Work hours and work location shall be separately determined for each individual assignment.

**III.** No overtime shall be performed on the services hereunder nor shall any claim therefore be valid, unless the same shall have been authorized in writing by the Company prior to the performance thereof. Overtime which does not result in any extra charge to the Company may be authorized orally. As used in this section, overtime is all time in excess of eight hours per person per day or in excess of forty hours per person per week and any other time for which a rate higher than a straight time rate will be charged to the Company pursuant to this Work Order.

**IV.** No payment to Consultant will be authorized until Company receives a Payment and Performance Bond (if required) and a current Certificate of Insurance.

1. **SAFETY:**
2. Consultant and its subcontractors, if any, shall work safely at all times while at Customer’s facilities. Consultant shall provide adequate training and supervision to ensure that its employees and its subcontractors work safely. If the job cannot be done safely, Consultant shall stop work immediately and notify Company. Also, Company may stop work if it deems that Consultant is doing the work in an unsafe manner. Consultant shall not restart work until the work can be done safely. Consultant shall not be entitled to additional compensation or an extension of time if work is stopped due to unsafe conditions. Consultant and its subcontractors, if any, will comply with all of Customer’s safety procedures and protocols, as well as local, state, and federal safety codes and requirements, including OSHA. Prior to starting work, Consultant will provide Company with a written copy of its Injury and Illness Prevention Plan for review. Any lost time accident sustained by any of Consultant’s employees or Consultant’s subcontractors’ employees shall be reported to theESG Safety Manager within 24 hours (Gary Nelson, Phone Number 651-905-5740, Fax Number 651-905-5701).

## Upon execution of this Work Order, it shall become part of and subject to all the terms and conditions of the Agreement, to which this Work Order shall be attached. All other terms and conditions provided in the Agreement remain unchanged. Consultant agrees that for the Services, ESG shall be the “designer” as that term is identified in Internal Revenue Code (IRC) Section 179D, and ESG shall have the exclusive right to report to any federal, state, or local agency, authority or other party, including without limitation under IRC Section 179D, any tax benefit associated with the Work.

1. **EXCESS/UMBRELLA INSURANCE**

Consultant’s insurance policy shall include Excess/Umbrella Insurance with limits of not less than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the aggregate.

 **PROFESSIONAL LIABILITY INSURANCE**

Consultant’s insurance policy shall include Professional Liability insurance with limits of not less than $1,000,000 per claim (if coverage is subject to aggregate, the aggregate limit shall be $2,000,000).

 **POLLUTION LIABILITY INSURANCE**

Consultant’s insurance policy shall include Pollution Liability insurance with limits of not less than $1,000,000 per claim.

IN WITNESS WHEREOF, the duly authorized representative of each of the parties hereto has executed this Work Order in duplicate originals to be effective as of Insert Date.

|  |  |
| --- | --- |
| **CONSULTANT** | **ENERGY SYSTEMS GROUP, LLC** |
|  |  |
| **By:**  | **By:**  |
| (Signature) | (Signature) |
| **Print** | **Print** |
| **Name:** | **Name:** |
|  |  |
| **Title:** | **Title:** |