



## **PURCHASE ORDER TERMS & CONDITIONS**

(Revision Date: December 12, 2019)

These Purchase Order Terms and Conditions (the “Terms and Conditions”) are incorporated in and made a part of each purchase order issued by AmeriGas Propane (“AmeriGas”). In these Terms and Conditions: (a) “Vendor” means the seller named in the order; (b) “Goods” and “Services” mean the products and/or services being purchased from Seller as described in the purchase order; (c) “Purchase Order” means the purchase order and these Terms and Conditions collectively; and (d) “Term” means a period of one (1) year(s) commencing on the Effective Date.

- 1. Entire Agreement; Amendment and Waiver.** If there is a written agreement between AmeriGas and Vendor related to the subject matter of the Purchase Order addressing the terms set forth in these Terms and Conditions, then that agreement shall govern the purchase and sale of the Goods and Services set forth on the Purchase Order. If not, or if these Terms and Conditions are attached to the Purchase Order or expressly referenced in the Purchase Order (including, but not limited to, a reference to the web address where these Terms and Conditions may be found), then these Terms and Conditions shall apply to the purchase and sale of the Goods and Services set forth on the Purchase Order and the Purchase Order, these Terms and Conditions and any exhibits attached thereto shall supersede all written or oral prior agreements or understandings with respect thereto. The Purchase Order may not be modified or amended except by a written instrument signed by both parties. E-mail communications containing typed name and/or typed signature blocks do not constitute a written instrument within the context of this Section. No waiver will be implied from conduct or failure to enforce rights, and no waiver will be effective unless in writing signed on behalf of the party against whom the waiver is asserted. AmeriGas and Vendor intend that the Purchase Order be construed without any rule requiring construction or interpretation against AmeriGas, whose representatives drafted the Purchase Order. These Terms and Conditions and the Purchase Order shall be interpreted together as a single agreement; however, if there is an irreconcilable conflict, these Terms and Conditions will control.
- 2. Acceptance of Purchase Order.** The Purchase Order is deemed accepted, upon the earlier of: (i) Vendor’s return of an acknowledgement of the Purchase Order, (ii) Vendor’s commencement of performance, or (iii) five (5) business days from Vendor’s receipt of the Purchase Order, unless AmeriGas receives Vendor’s written rejection of the Purchase Order within five business days from Vendor’s receipt of the Purchase Order. Any acceptance of the Purchase Order is limited to acceptance of the express terms contained in the Purchase Order (including the terms of these Terms and Conditions). No additional or different terms (including any of the Vendor’s terms and conditions of quotation, acceptance or supply) or attempted exclusions or modifications by way of any document, proposal, course of performance or otherwise will be effective against AmeriGas in the absence of the express

written consent by AmeriGas. Vendor shall not begin providing Goods until the applicable Purchase Order has been issued by AmeriGas. Any attempt by Vendor to add, exclude, or modify the terms contained in the Purchase Order will be deemed material, is objected to and will be of no effect. Neither the submission of the Purchase Order nor anything contained in the Purchase Order will be construed to be an acceptance or confirmation of any prior or subsequent document, proposal or course of performance. The Purchase Order will be a rejection and counter-offer with respect to any such document, proposal or course of performance.

### **3. Changes.**

(a) Before delivery of any Goods pursuant to a Purchase Order and/or during the progress of the Services, AmeriGas shall have the right to make alterations, additions, omissions, deletions, modifications, changes, or departures in the scope, schedule, sequence, delivery, method, or performance of the Goods or Services previously specified in the Purchase Order, and to make changes in any specifications, plans, or drawings, that it may desire, without invalidating the Purchase Order, and Vendor agrees to use commercially reasonable efforts to effect all such changes. Any such changes AmeriGas elects to make shall be by change order issued by AmeriGas. Vendor shall not perform or provide extra Services or supply extra Goods or material until a written change order has been obtained and approved by both parties. Failure to comply with this requirement shall constitute a waiver of any claim for additional compensation.

(b) If Vendor believes it is entitled to a change order and prior to providing any Goods and/or performing any Services not described in a Purchase Order, Vendor shall submit to AmeriGas a change request in a form acceptable to AmeriGas, which shall include a description of the changes and the related provision(s) of the previous Purchase Order to which such change applies, and the associated costs. The failure to submit said change request prior to the delivery of any out-of-scope goods and/or performance of any out-of-scope services, shall operate as a waiver of Vendor's right to any additional compensation or time to provide such goods and/or perform such services.

**4. Acceptance and Rejection of Goods.** Acceptance of each Good shall not be deemed complete until: (a) actual delivery to the place specified by AmeriGas in the applicable Purchase Order or in another writing, and AmeriGas has not rejected any such Good as non-conforming within thirty (30) days after the delivery date (the "Acceptance Period"), regardless of any payment terms or payment for such Good; or (b) AmeriGas accepts the Good in an express writing. Acceptance of Goods will occur at the earliest of the date AmeriGas provides Vendor with written notice of its acceptance of such Goods and the end of the Acceptance Period. The receipt, use, or consumption of any Goods does not constitute acceptance of such Goods. Acceptance of any Good will not preclude a subsequent warranty or other claim with respect to any such Good and shall not be construed to relieve Vendor of any of its obligations in this Agreement. Notwithstanding any payments made by AmeriGas, AmeriGas may reject any non-conforming Good at any time during the Acceptance Period. If not previously accepted or deemed accepted, AmeriGas may reject each non-conforming Good by providing Vendor with written notice (a "Rejection Notice") and may return each such Good to Vendor at Vendor's risk and expense (including, without limitation, all costs of transport and handling incurred by

AmeriGas) without waiving or prejudicing any other AmeriGas rights or remedies. Upon receipt of a Rejection Notice, Vendor will, at Vendor's sole expense, have ten (10) business days to replace or bring into conformity the rejected Good. Should Vendor be unable to replace or bring into conformity such Good within twenty (20) business days, AmeriGas may, at its sole option, cancel the applicable portion of any applicable Purchase Order and Vendor shall refund to AmeriGas that portion of any amounts paid by AmeriGas to Vendor attributable to each such Good that remains in nonconformance, and pursue any other remedies available under applicable Law. Upon delivery of replacement or re-performed Goods, AmeriGas will accept or reject such Goods in accordance with this Section.

5. **Design and Process Changes.** Vendor shall notify AmeriGas at least 90 days in advance and in writing of all proposed changes to the Goods or their components, including but not limited to changes that affect product form, appearance, fit or function, usable life, shelf life, cost, or any other matter deemed material in AmeriGas' sole discretion. Examples of changes include, but are not limited to: (i) composition or source of any raw material; (ii) method of producing, processing or testing; (iii) change in subcontractors for producing, processing or testing; (iv) site of manufacture and (v) labeling. No such change shall be made without AmeriGas' prior written consent and nothing herein shall be deemed a waiver of said written consent requirement.
6. **Recalls.** Vendor shall promptly inform AmeriGas in writing of (i) any Good(s) recall suggested or required by any governmental authority, (ii) any voluntary product recall by Vendor and/or its suppliers, and (iii) any notices from any governmental authority relating to Good(s) recalls and/or defects concerning safety (including a copy of the notice). Vendor shall (a) bear all costs and expenses of any Good(s) recall regardless of who initiates the action, including any costs associated with retrieval or removal of Good(s), the shipment of recalled Good(s) from AmeriGas' customers to AmeriGas or Vendor and the shipment of replacement Good(s) to AmeriGas or AmeriGas' customers, and (b) reimburse AmeriGas for its reasonable costs and expenses incident to such recall. Subject to legal requirements, AmeriGas may assume primary responsibility for communicating with its customers in connection with a recall. Each of the parties hereto agrees to notify the other in writing in the event either identifies a need for a Good(s) recall. Vendor shall correct as soon as possible problems or other issues which result in recalls. Vendor shall be responsible for the costs of making any changes to Good(s) required in connection with a recall. Vendor agrees to respond within a reasonable period to any question or request for information received by AmeriGas from its customers pertaining to the recall of the Goods. Each party agrees to provide to the other party all necessary information in its possession arising out of a recall or corrective action program or similar program, including a Vendor quality assurance program.
7. **Continuity of Supply.** Vendor will provide Goods and/or Services to AmeriGas in the quantity and quality ordered by AmeriGas as set forth in the Purchase Order. In support of this obligation, Vendor will adopt and implement commercially reasonable continuity of business plans and procedures.
8. **Delivery.** TIME IS OF THE ESSENCE WITH RESPECT TO FULFILLMENT OF

PURCHASE ORDER. Vendor will deliver Goods and/or provide the Services on the dates and in the quantities specified in the Purchase Order. Unless otherwise agreed to, delivery of the Goods shall be DDP (Incoterms 2010). Vendor will preserve, pack, package and handle Goods ordered by AmeriGas so as to protect Goods from loss or damage. In the event of any delays to the scheduled delivery date, Vendor will notify AmeriGas of such delay and work diligently to remedy such delay immediately. In the event of any delay in delivery of more than five (5) days, AmeriGas may, at its sole option, cancel or reschedule the Purchase Order in whole or in part without penalty or liability. No change in the scheduled delivery date or performance will be permitted, unless AmeriGas has otherwise agreed in writing.

- 9. Risk of Loss; Title.** Vendor shall bear all risk of loss on Goods until physical delivery to AmeriGas at the place specified in the Purchase Order or as otherwise directed by AmeriGas in writing, at which time title to and risk of loss will transfer to AmeriGas. Vendor agrees to indemnify, defend and hold harmless AmeriGas and AmeriGas Indemnitees, arising out of, resulting from, or relating to, such delivery or challenging AmeriGas' complete ownership rights to the Goods after delivery.
- 10. Pricing.** Pricing for Goods and/or Services is set forth in the Purchase Order. The pricing includes (a) all taxes except those taxes that Vendor is required by law to collect from AmeriGas, including state or local sales or use tax, (b) all packaging and freight to the ship-to address designated in the Purchase Order, and (c) all customs duties, fees or charges. Sales and use taxes, if any, will be separately stated in Vendor's invoices unless AmeriGas has indicated in the Purchase Order that Goods and/or Services ordered are exempt from such taxes. Vendor warrants that the prices for Goods and Services, in the aggregate, shall be at least as favorable to AmeriGas as the prices offered by Vendor to any third party purchasing Goods and Services of a kind, grade or quality similar to the Goods and Services requested by AmeriGas, in similar quantities.
- 11. Invoicing.** Vendor shall invoice AmeriGas for Goods ordered at the time of shipment, and in no event later than one hundred eighty (180) days after the delivery of the applicable Goods or performance of the applicable Services. AmeriGas shall not be obligated to pay amounts improperly invoiced by Vendor. Invoices should be sent via email to vendor\_invoice@amerigas.com (with each invoice in a separate PDF format file and including the following typed information: vendor number, cost center or district number, GL code, and Purchase Order number if applicable). Provided that Vendor has delivered conforming Goods and fully performed the Services contracted for consistent with the applicable Purchase Order, AmeriGas will pay undisputed Vendor's invoices within ninety (90) days after the date of the applicable invoice unless otherwise specifically addressed in the Purchase Order. If AmeriGas in good faith disputes an invoice, AmeriGas may withhold payment of such disputed invoice amounts. AmeriGas' payment of invoices billed does not bar its ability to dispute whether invoices billed were correct. In the event of any such dispute, AmeriGas and Vendor shall use their respective good faith efforts to resolve such dispute as promptly as possible.
- 12. Termination for Convenience.** AmeriGas may terminate the Purchase Order in whole or in part at any time for its sole convenience by providing ten (10) days' advance notice to Vendor.

**13. Termination for Cause.** Either party may terminate the Purchase Order in whole or in part at any time for cause in the event the other party commits a material breach of any of its obligations, which the breaching party fails to cure within thirty (30) days after receiving written notice of such breach from the non-breaching party.

**14. Effect of Termination.** In the event of termination, AmeriGas' sole liability to Vendor, and Vendor's sole and exclusive remedy, is payment for: (i) Goods received and accepted by AmeriGas before the date of termination, (ii) Goods ordered, but not received by AmeriGas before the date of termination, subject to AmeriGas' acceptance of such Goods, and (iii) Services actually completed through the effective date of the termination. Any fees paid in advance by AmeriGas for Goods not actually delivered prior to the date of termination or scheduled to be delivered after the date of termination under the terminated Purchase Order and any advance fees paid for Services not actually rendered as of the date of termination, shall be returned, in their entirety, by Vendor within ten (10) business days after the effective date of termination.

**15. Warranties.**

(a) Goods. Vendor represents and warrants that, on the date of delivery of Goods to AmeriGas and for the longer of Vendor's standard warranty period and the period of one (1) year from the date of delivery (the "Warranty Period"), all Goods, including all repaired, replacement and re-performed Goods, and the materials incorporated into all Goods: (i) shall be conveyed to AmeriGas free and clear of claim of ownership by others; (ii) shall not violate or infringe, or cause AmeriGas to violate or infringe, any rights of any third party, including, without limitation: (x) proprietary information and non-disclosure rights; (y) copyrights, patents, trademark, trade secret, or other intellectual property rights; and (z) contractual rights; (iii) shall not violate any applicable Law; (iv), shall meet the Specifications applicable to the type of Goods being provided; (v) shall be free from defects in material, workmanship, manufacture and design; (vi) shall be merchantable, be fit for the intended purpose, and operate as intended; and (vii) shall be new and unused. Vendor's warranty will extend to AmeriGas and to any subsequent buyer to whom a certain Goods have been delivered in new and unused condition and who places such Goods into service (the "Buyer"). In the event of a breach of the foregoing warranty which occurs during the Warranty Period, AmeriGas may, at its sole option, (a) require Vendor to correct Goods that do not conform to the warranty by repair, replacement or re-performance, at Vendor's risk and expense, within seven (7) business days after the request of AmeriGas, (b) return Goods that do not conform to the warranty to Vendor, at Vendor's risk and expense, and recover from Vendor the price for such Goods, (c) utilize Goods that do not conform to the warranty and require an appropriate reduction in the price for such Goods, or (d) seek any other remedies available under applicable Law.

(b) Services. Vendor represents and warrants that the Services and any related work product, including computer programs and/or new code or code modifications to computer programs if applicable (collectively, the "Deliverables"): (i) will be conveyed to AmeriGas free and clear of claim of ownership by Vendor and others; (ii) will not violate or infringe upon the rights of any third party, including: (x) proprietary information and non-disclosure rights; (y) copyrights, patents or other intellectual property rights; and (z) contractual rights; (iii) will not violate any applicable law, rule, regulation, or code; (v) will be provided in a workmanlike manner,

in accordance with the highest standards of care and diligence, and levels of skill, knowledge and judgment that are consistent with the best practices of other providers of such Deliverables in the industry; (vi) will not include any destructive or malicious code (e.g., Trojan Horses, Trap Doors, Logic Bombs, Viruses, or Worms); and (vii) upon completion and/or delivery, may be acceptance tested by AmeriGas, as set forth in the applicable Purchase Order, to verify whether the Deliverables substantially conform to the Purchase Order, and, if any Deliverables are found to not substantially conform, AmeriGas may reject such Deliverables without penalty and have the Vendor re-perform the Services, without additional cost to AmeriGas, until the Deliverables conform with the applicable Purchase Order and all specifications set forth therein or as otherwise agreed-to by the parties in an accepted change order. Should Vendor be unable to have the Deliverables conform to the applicable Purchase Order and specifications, Vendor shall refund to AmeriGas that portion of the fees attributable to such Services and non-conforming Deliverables. Vendor further represents and warrants that all employees, workmen, agents and subcontractors performing Services are fully trained, properly licensed, and qualified under the laws of the state where the Services are to be performed. Vendor will be responsible for and will supervise the execution of all Services covered by the Purchase Order, either personally or through a representative and will be responsible for the coordination of the Services. If Vendor uses a representative, Vendor agrees that the representative shall be competent and qualified, shall give his/her personal attention to the Services hereunder at all times, and shall represent Vendor with full power to act in all matters pertaining to the Purchase Order.

(c) Vendor represents and warrants that it is free to enter into the Purchase Order, and to perform its associated obligations without objection from or claim of anyone. Vendor will be solely and entirely responsible for its acts and for the acts of anyone acting on its behalf, including Vendor's subcontractors, during the provision of the Goods and/or the performance of the Services, including conduct that may be in violation of any Laws (hereinafter defined).

**16. Lien Waiver.** Vendor shall not encumber, and shall not allow its subcontractors or suppliers to encumber, AmeriGas' property or any delivered Goods that are the subject of the Purchase Order, so long as AmeriGas is not in default of its payment obligations for the Goods provided in accordance with the Purchase Order. Vendor agrees that if requested by AmeriGas, Vendor shall, and Vendor shall cause its subcontractors and/or suppliers to execute and deliver a "lien waiver" signed under the penalties of perjury by a duly authorized representative of Vendor and its subcontractors and/or suppliers in a form enforceable under applicable Law and acceptable to AmeriGas.

**17. Confidentiality.**

(a) "Confidential Information" means any confidential or proprietary information of a party or any of its affiliates that is disclosed in any manner to the other party in connection with or related to the Purchase Order, and which at the time of disclosure either: (i) is marked as being "Confidential" or "Proprietary"; (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing party; or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing party. Confidential Information includes, but is not limited to, these Terms and Conditions and the Purchase Order; and all types of proprietary technical or business information, including, without

limitation, data, know-how, formulas, algorithms, processes, designs, drawings, schematics, plans, strategies, specifications, requirements, standards and documentation, reports, pricing, market, sales, marketing or demographic information, software, trade secrets, research, analyses, inventions, ideas and other types of nonpublic information, together with all analyses, compilations, reports, notes, and other written or electronic materials which contain, reflect or are based, in whole or in part, upon such information.

(b) Confidential Information does not include information: (i) that is already and separately available in the public domain; (ii) approved for disclosure in advance in a signed writing; (iii) known to the non-disclosing party prior to disclosure by the disclosing party as evidenced in writing; (iv) independently developed by the non-disclosing party without reference to the disclosing party's Confidential Information; or (v) acquired by the non-disclosing party from a third party that was not prohibited by agreement or otherwise from disclosing the Confidential Information.

(c) The receiving party will hold the disclosing party's Confidential Information in strict confidence and use it only as reasonably required to perform its obligations under these Terms and Conditions and in accordance with all applicable Laws. The receiving party may disclose the disclosing party's Confidential Information only to its and its affiliates' employees, directors, and agents (including subcontractors and vendors) who need to know such Confidential Information to perform its obligations under these Terms and Conditions, who have been advised of the confidential nature of such Confidential Information, and who are bound by obligations of confidentiality materially similar to those required of the receiving party in these Terms and Conditions.

(d) The receiving party may disclose the Confidential Information of the disclosing party in response to a valid court order, law, rule, regulation, or other governmental action provided that the disclosing party is notified of such requirement in writing prior to any disclosure of information, and the receiving party assists the disclosing party, as necessary and at the disclosing party's expense, in any attempt by the disclosing party to limit or prevent the disclosure of the Confidential Information. If the disclosing party waives compliance with these Terms and Conditions with respect to such disclosure or is unable to obtain a protective order or other remedy, then the receiving party may disclose only that portion of the Confidential Information necessary for compliance. Each party agrees that the other party shall have no adequate remedy at law if there is a breach or threatened breach of this Section and, accordingly, that either party shall be entitled (in addition to any legal or equitable remedies available to such party) to injunctive or other equitable relief to prevent or remedy such breach.

(e) Upon the termination or expiration of this Agreement, or upon the earlier request of the disclosing party, the receiving party shall: (i) at its own expense, promptly return to the disclosing party all associated Confidential Information (and all copies thereof) of the disclosing party, or upon written request from the disclosing party, destroy such Confidential Information and provide the disclosing party with a written certification of such destruction; and (ii) cease all further use of the disclosing party's Confidential Information, whether in tangible or intangible form. Notwithstanding the above, the receiving party may retain copies of any computer records or files containing Confidential Information which have been created pursuant to automatic

archiving or back-up procedures on secured storage servers which cannot reasonably be deleted. Regardless of the return or destruction of any Confidential Information, the receiving party's obligations with respect to the disclosing party's Confidential Information shall continue for three years after termination or expiration of the Purchase Order.

**18. Access to AmeriGas Systems.** If Vendor is provided access to proprietary computer systems and technologies owned or operated by AmeriGas and/or its parent, subsidiary, and affiliated companies (the "Systems"), then:

(a) Vendor agrees that the Systems will be used only for the business purposes of AmeriGas. Vendor further agrees to maintain internal security systems and policies that, at a minimum, comply with this Section and common industry standards and that protect the integrity of the Systems and information stored on or transferred between the Systems. The Systems and information contained in the Systems must at all times be protected from unauthorized use, theft, misuse, accidental or unauthorized modification, disclosure, transfer or destruction. Vendor accepts the liability of managing its users' access to the Systems as outlined in this Section. Each employee of Vendor having access to the Systems will: (i) only utilize such access to perform their obligations to AmeriGas; (ii) not perform any unauthorized exploring or mining of the Systems; and (iii) only have access to the portion of the Systems necessary to perform the Vendor's obligations.

(b) Vendor agrees not to introduce any viruses, time or logic bombs, Trojan horses, worms, timers, clocks, back doors, or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down the Systems or any component of the Systems, including its security or user data. If Vendor discovers or is notified of a failure to satisfy this Section or a breach or potential breach of security relating to any Systems information, the Systems, the data, or any applicable law or regulation, Vendor will: (i) promptly notify AmeriGas of such breach or potential breach; (ii) cooperate in any investigation of the breach; (iii) use its commercially reasonable efforts to mitigate the effects of the breach or potential breach; and (iv) provide AmeriGas with assurance reasonably satisfactory to AmeriGas that such breach or potential breach will not recur. AmeriGas retains the right to suspend Vendor's access to the Systems pending resolution of an investigation. Except as otherwise expressly provided herein, AmeriGas retains all right, title and interest in and to the Systems and any data or information contained therein, including derivatives thereof.

(c) Up to one time during any twelve-month period, AmeriGas may require Vendor to complete a Vendor Security Assessment questionnaire and may perform an on-site Vendor Security Assessment at Vendor's primary location and at any Vendor location associated with performance of the Services. In addition, Vendor shall, at any time upon AmeriGas' request and at no cost to AmeriGas, provide AmeriGas with Vendor's relevant and available SOC 2, Type 2 report covering the Security Principle under the AICPA Professional Standards as may be updated and certain areas of its environment (or equivalent) or other SOC type reports. Vendor agrees to cooperate with AmeriGas in subsequent actions deemed necessary to ensure Vendor's security programs are in compliance with AmeriGas standards.

(d) In addition to Vendor's obligations in this Section and Vendor's confidentiality obligation under these Terms and Conditions, if Vendor will have access to any information



relating to an identified or identifiable natural person or legal entity in connection with the Purchase Order, then Vendor and AmeriGas will execute a Privacy and Data Security Addendum in the form reasonably required by AmeriGas.

**19. Indemnification. TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS AMERIGAS AND EACH OF ITS PARENT COMPANIES, AFFILIATES, AND SUBSIDIARIES AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, CUSTOMERS, AND END USERS (COLLECTIVELY, THE “AMERIGAS INDEMNITEES”) FROM AND AGAINST ANY AND ALL ALLEGATIONS, CLAIMS, LAWSUITS, JUDGMENTS, LOSSES, CIVIL PENALTIES, LIABILITIES, DAMAGES, COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES, COURT COSTS, AND THE COST OF SETTLEMENT, JUDGMENT OR VERDICT INCURRED BY OR DEMANDED FROM ANY OF THE AMERIGAS INDEMNITEES (EACH A “CLAIM”), ARISING OUT OF, RESULTING FROM OR RELATED TO: (A) ANY INJURY, DEATH, OR PROPERTY DAMAGE CAUSED BY THE GOODS, SERVICES, DELIVERABLES OR BY ANY ACT OR OMISSION OF VENDOR; (B) ANY NEGLIGENT OR GROSSLY NEGLIGENT ACTION, INACTION, OMISSION, INTENTIONAL MISCONDUCT OF VENDOR AND ANY OF ITS SUBCONTRACTORS OR SUPPLIERS, IN THEIR PERFORMANCE OF THE PURCHASE ORDER; (C) VENDOR’S BREACH OF ANY REPRESENTATION, WARRANTY, TERM, COVENANT, OR OTHER OBLIGATION UNDER THE PURCHASE ORDER, INCLUDING COMPLIANCE WITH ALL LAWS; (D) ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS BY ANY GOODS, SERVICES, OR DELIVERABLES DELIVERED PURSUANT TO THE PURCHASE ORDER; AND/OR (E) ANY CLAIMS FOR PAYMENT BY VENDOR’S EMPLOYEES, SUBCONTRACTORS, OR SUPPLIERS, WHICH INDEMNIFICATION OBLIGATION FOR SUCH CLAIMS SHALL INCLUDE REIMBURSING AMERIGAS FOR ALL COSTS ASSOCIATED WITH THE RELEASE OR EXTINGUISHMENT OF ANY LIENS THAT MAY ARISE DUE TO CLAIMED NON-PAYMENT TO VENDOR’S EMPLOYEES, SUBCONTRACTORS, OR SUPPLIERS IN CONNECTION WITH THE GOODS, SERVICES AND DELIVERABLES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION. IN NO EVENT WILL VENDOR ENTER INTO ANY SETTLEMENT WITHOUT AMERIGAS’ PRIOR WRITTEN CONSENT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF ANY PURCHASE ORDER.**

**20. Limitation of Liability. IN NO EVENT SHALL AMERIGAS BE LIABLE TO VENDOR FOR INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR VENDOR’S ATTORNEY FEES (COLLECTIVELY, “INDIRECT DAMAGES”), REGARDLESS OF THE NATURE OF THE CLAIM, EXCEPT WHERE SUCH INDIRECT DAMAGES ARE**

**ATTRIBUTABLE TO THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, ACT OF FRAUD OR BAD FAITH OF AN AMERIGAS INDEMNITEE. THIS SECTION AND ITS LIMITATIONS SHALL SURVIVE THE TERMINATION OF THE PURCHASE ORDER. EXCEPT FOR ANY ACTION RELATED TO DISCREPANCIES IN AMOUNTS PAID OR DEDUCTED, WHICH ACTIONS MUST BE BROUGHT WITHIN 180 DAYS OF THE DATE OF SUCH PAYMENT OR DEDUCTION, ANY ACTION AGAINST AMERIGAS ARISING OUT OF THE PURCHASE ORDER INCLUDING THESE TERMS AND CONDITIONS MUST BE FILED WITHIN ONE (1) YEAR AFTER THE CLAIM ACCRUES.**

**21. Insurance.**

(a) Vendor, at its own cost and expense, agrees to procure and maintain at a minimum the following insurance with respect to all Goods to be delivered and Services to be performed under the Purchase Order for the duration of the Purchase Order:

- (i) workers' compensation insurance at a level consistent with the Laws of the state in which Vendor operates or where applicable Service work is performed;
- (ii) commercial general liability (CGL) and, if necessary, commercial umbrella insurance with limits of not less than \$5,000,000 each occurrence, \$5,000,000 general aggregate, arising from premises, operations, contractual liability, independent contractors, products-completed operations, personal injury and advertising injury and fire damage legal liability. AmeriGas shall be included as an additional insured under the CGL and under the commercial umbrella, if any. This insurance, including insurance provided under the commercial umbrella, if any, shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by, AmeriGas. Vendor waives all rights against AmeriGas and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance and hereby agrees to provide a "Waiver of Subrogation" Endorsement in favor of AmeriGas, unless due to the negligence of AmeriGas.
- (iii) auto liability, if applicable, with a limit of not less than \$2,000,000 each occurrence. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos). Vendor agrees to provide a "Waiver of Subrogation" Endorsement in favor of AmeriGas, unless due to the negligence of AmeriGas; and
- (iv) to the extent applicable: professional liability or errors and omissions insurance including information security, cyber liability, technology/professional liability insurance, intellectual property infringement, and data protection liability insurance (separately, or as part of a broad errors and omissions policy) throughout the duration of the Purchase Order and for three (3) years thereafter, in an amount not less than five million dollars (\$5,000,000) for each and every claim and in the aggregate covering liabilities for financial loss and any other losses resulting or

arising from acts, errors, or omissions by Vendor, its employees, subcontractors, and agents, in connection with any services or otherwise committed in the performance of or failure to perform any Services or support Services under any Purchase Order, including but not limited to claims, demands, regulatory investigations, fines or penalties or any other payments Vendor may become legally or contractually obligated to pay arising from: (i) intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets); (ii) breaches of security, including ransomware attacks; (iii) violation or infringement of any right, privacy, breach of federal, state, or foreign security and/or privacy laws or regulations including; and, data theft, data processing liability, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on a third party. Such policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world. The policy must be kept in force during the life of the Purchase Order and for three years (either as a policy in force or under an extended reporting provision) after Purchase Order termination.

(b) Vendor shall provide AmeriGas with certificates of insurance evidencing all required coverages and stating that AmeriGas will be given at least thirty (30) days' prior written notice of cancellation of or any changes in such coverage. Failure of Vendor to provide such certificates of insurance does not abrogate Vendor's obligations under this Section. Vendor's failure to maintain the insurance required shall constitute an event of default under the Purchase Order and shall allow AmeriGas to terminate any Purchase Order if such failure is not cured within thirty (30) days following the provision of written notice. AmeriGas shall be entitled to change these insurance requirements at any time, and Vendor agrees to comply with any new insurance requirements within thirty (30) days following the provision of written notice. Vendor shall maintain all required insurance in effect until the later of such time as: (i) all ordered Goods have been delivered and all Services have been fully performed, and (ii) all active purchase orders have been terminated or have otherwise expired.

**22. Ownership of Deliverables.** All of Vendor's work product prepared, produced or developed for AmeriGas under the Purchase Order, including all concepts, designs, files, reports, programs, source code, technology, software, manuals, listings, data bases and any other materials (whether complete or incomplete, whether acceptable to AmeriGas or not, and regardless of the form they take) will belong exclusively to AmeriGas. Vendor unconditionally assigns and transfers to AmeriGas all right, title, interest and claim which it now has or may in the future have to that work product. Vendor agrees to indemnify, defend and hold AmeriGas harmless from any claims of any of its individual employees or any third parties, including any permitted subcontractors or suppliers, challenging AmeriGas' complete ownership rights to all work product. If applicable, Vendor shall have each of its employees assign to AmeriGas, at the commencement of the Services to be performed under any Purchase Order, his or her rights to the work product produced, created or prepared in the course of providing the Services

hereunder during the term of the applicable Purchase Order.

Notwithstanding the foregoing, any pre-existing materials (including software source code, object code and documentation related thereto), and other creative and technical content, developed before the applicable Purchase Order by Vendor or its suppliers (the “Vendor Intellectual Property” or “Vendor IP”), shall be the sole and exclusive property of Vendor or such supplier(s), as appropriate, and all rights related thereto, including, without limitation, copyrights, trademarks, trade secrets, patents, and other intellectual property or proprietary rights, are exclusively reserved to Vendor or its applicable owner. It is understood that no title to or ownership of the Vendor IP is transferred to AmeriGas under this MSA or any Purchase Order unless explicitly set forth in a Purchase Order. To the extent the Vendor IP is integrated into any Deliverables, Vendor hereby grants AmeriGas an irrevocable, non-exclusive, worldwide, royalty-free license to use, execute and copy any such Vendor IP.

**23. Independent Contractor.** Vendor acknowledges and agrees that it is an independent contractor, that neither it nor any of its employees are agents of AmeriGas or any AmeriGas affiliate for any purpose or to any degree, and that Vendor and its employees will at all times conduct themselves in a manner that is consistent with its and their independent contractor, non-employee, and non-agent status. Vendor has no authority to assume or create any obligation, express or implied, on behalf of AmeriGas. Because of its status as an independent contractor, Vendor agrees that its employees and subcontractors are not entitled to receive unemployment or disability compensation or other employee benefits or compensation from AmeriGas. Vendor is solely responsible for paying all salaries, wages and other forms of compensation or reimbursement and all applicable federal, state and local withholdings, taxes and unemployment taxes, as well as social security, state disability insurance and all other payroll charges payable to or on behalf of Vendor’s personnel working pursuant to any Purchase Order. Vendor also acknowledges and agrees to (a) comply with all employment laws; and (b) provide workers’ compensation insurance for Vendor’s employees. In the event that Vendor or Vendor’s employees are provided hardware or property of AmeriGas (“AmeriGas Property”) while providing Goods or Services to AmeriGas, upon termination or expiration of the applicable Purchase Order, Vendor shall immediately return such AmeriGas Property to AmeriGas.

**24. Subcontracting.** Vendor may not, without prior written notice to and consent from AmeriGas, subcontract any of its obligations relating to the Goods or Services provided under the Purchase Order. If AmeriGas consents in its sole discretion to any such subcontracting: (a) each subcontractor must have a written agreement between Vendor and the subcontractor to include provisions of confidentiality, insurance, warranties, compliance, ethical standards, and audit and inspection that are no less stringent than those in the Purchase Order; (b) Vendor shall exercise appropriate supervision of subcontractors and shall be solely responsible for the payment of any compensation to subcontractors; and (c) AmeriGas may require that an agreement between Vendor and a subcontractor shall name AmeriGas as a third-party beneficiary and shall provide for a right of assignment to AmeriGas or any designee of AmeriGas, if the applicable Purchase Order is terminated. Vendor shall remain liable for the performance of any of its obligations under the Purchase Order that it delegates to any subcontractor.

## **25. Compliance.**

(a) Vendor agrees to be responsible for knowledge of and full compliance with all federal, state and local laws, statutes, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof or self-regulatory organization (collectively “Laws”) applicable to Vendor in the performance of the Purchase Order. All Goods will be provided and Services will be performed in accordance with applicable Laws, including the federal Occupational Safety & Health Act of 1970, as amended. Vendor shall maintain a safety program conforming to the best practices of organizations of its type and in full compliance with Laws, including drug and alcohol testing.

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

(c) If applicable, Vendor agrees to comply with all applicable environmental laws and regulations, including Laws governing the safe handling and disposal of hazardous materials, oil products and waste, in fulfilling its responsibilities under the Purchase Order. Vendor also agrees to use its best management practices so as to fulfill its obligations under the Purchase Order in an environmentally sound and energy conserving manner as reasonably possible.

(d) If Vendor's delivery or installation of Goods or performance of Services involves operations by its employees, agents or subcontractors on AmeriGas' premises or the premises of an AmeriGas customer, then: (i) Vendor shall comply with all AmeriGas' or AmeriGas' customer's, as the case may be, policies and procedures governing on-site work as well as all fire prevention, health, environmental, and safety rules and regulations in force at the premises, (ii) Vendor shall communicate these policies and procedures to all employees, agents, and subcontractors who will be present at any AmeriGas property or AmeriGas' customer's property on behalf of Vendor, and (iii) Vendor's performance under this Agreement shall not interfere with AmeriGas' or AmeriGas' customer's use of the premises or pose any danger to AmeriGas' or AmeriGas' customer's employees or invitees.

**26. Force Majeure.** Neither party will be liable for any delay or failure to perform as required by the Purchase Order to the extent that such delay or failure to perform is caused by circumstances beyond either party's reasonable control, and is not caused by the negligence, intentional conduct or misconduct of the defaulting party, and the defaulting party has exercised all reasonable efforts to avoid or remedy such force majeure, including, without limitation, labor disputes, accidents, any law, order or requirement of any governmental agency or authority, civil disorders or commotions, acts of aggression, fire or other casualty, strikes,

acts of God, explosions or material shortages. The defaulting party must provide written notice of the force majeure event to the other party within two (2) business days of such event. Performance time will be considered extended for a period of time equivalent to the time lost because of any such delay or failure to perform; however, in any event, this extension of time will not exceed fifteen (15) days unless the parties agree otherwise in writing, after which time the non-affected party may terminate the affected Purchase Order.

**27. Assignment.** None of Vendors' rights or duties are assignable or delegable to other third party providers, in whole or in part, without AmeriGas' prior written consent, which AmeriGas may withhold without having or giving a reason. Except as specifically provided herein, the Purchase Order is not intended to and does not create any rights in favor of any person or entity not a party hereto.

**28. Non-Solicitation.** During the duration of a Purchase Order and for a period of one year thereafter, Vendor will not, except with the prior written approval of AmeriGas, solicit the employment of any AmeriGas employees with whom Vendor had contact in connection with the sale and purchase of any goods or performance of any services under the Purchase Order.

**29. Ethical Standards.** AmeriGas is dedicated to conducting its business operations with honesty, integrity, accountability, and respect. AmeriGas expects its vendors and suppliers to operate with the highest standards of ethical and legal behavior as a condition of their continuing business relationship with AmeriGas. If Vendor has any questions regarding an ethical issue, these questions should be directed to the AmeriGas Integrity Helpline at 1-866-384-4272.

**30. Audit and Inspection.**

(e) Upon thirty (30) days written notice, AmeriGas, at a time and place mutually agreeable to the parties, has the right to audit and inspect Vendor's facilities and/or records relating to Vendor's obligations under the Purchase Order and with respect to the Goods and Services provided pursuant to the Purchase Order.

(f) Vendor shall maintain records of all contracts, papers, correspondence, employee time sheets or ledgers, books, accounts and other information, as applicable, related to Goods sold to AmeriGas, payments made and Vendor's performance under the Purchase Order for at least five (5) years from the dates the records were created. Upon reasonable advance notice to Vendor, AmeriGas shall have the right to audit and inspect, at Vendor's places of business and during normal business hours, during the duration of the Purchase Order and for five (5) years after its termination or expiration, such books and records pertinent to Goods sold to AmeriGas, payments made and Vendor's performance of its obligations under the Purchase Order, and Vendor agrees to cooperate with respect to any such audit; provided, however, that Vendor may redact any portion of such books and records containing confidential information of third parties. AmeriGas may request electronic delivery of books and records applicable to the audit. Upon reasonable request and at no cost to AmeriGas, Vendor shall provide AmeriGas with copies of third party audit reports applicable to Vendor's performance under the Purchase Order.

(g) AmeriGas' right to audit shall include subcontractors in which goods or services are subcontracted by Vendor. Vendor shall ensure AmeriGas has these rights with

subcontractor(s). Each party will bear its own costs in connection with the audit, including costs of the time spent by each party's representatives in performing and cooperating with the audit. Vendor will bear all on-site photocopy costs. However, in the event that the audit reveals either or both: (a) deficiencies in Vendor's record keeping or accounting resulting in overcharges to AmeriGas of more than 5%; or (b) that Vendor failed to comply with Law or with the requirements of the Purchase Order, Vendor shall reimburse AmeriGas for all costs associated with such audit, as well as any overcharges within thirty (30) days of its receipt of AmeriGas' notice.

### **31. Dispute Resolution.**

(a) Vendor agrees that the rights and benefits of AmeriGas pursuant to the Purchase Order are special, unique, and of extraordinary character, that no adequate remedy exists at law if Vendor fails to perform, or breaches, any of its obligations, that it will be difficult to determine the amount of damages resulting therefrom, and that such breach will cause irreparable injury to AmeriGas. Therefore, AmeriGas shall be entitled to injunctive relief, and Vendor will not oppose any such efforts to seek injunctive relief, to prevent or restrain any breach of the Purchase Order, without prejudice to any other rights and remedies AmeriGas may have and without any requirement to post a bond.

(b) Additionally, except for the right of either party to apply to a court of competent jurisdiction for interim or interlocutory relief or other provisional remedy to prevent irreparable harm pending final determination, any dispute or controversy between the parties arising out of or relating to the Purchase Order shall be resolved by good faith negotiations between the parties which negotiations shall not terminate until the dispute has been considered by a corporate officer of each party. In the event that the dispute is not resolved within thirty (30) days, the parties are free to pursue any and all legal remedies.

**32. Advertisement.** Vendor shall not without first obtaining the written consent of AmeriGas, in any manner advertise or use any trademarks, trade names, or descriptions of AmeriGas' products or business in any of Vendor's advertising or promotional materials.

**33. Notice.** Any notice required under the Purchase Order must be in writing and sent by express overnight courier, hand-delivered, or may be served by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with a return receipt requested. The address for Vendor for receipt of notice shall be the address set forth in the Purchase Order. The addresses of AmeriGas for receipt of notice shall be as follows:

If to AmeriGas: AmeriGas Propane, L.P.  
460 North Gulph Road  
King of Prussia, PA 19406  
**Attention: Procurement Director**  
Phone: (610) 337-7000

With a copy to: AmeriGas Propane, L.P.  
460 North Gulph Road

King of Prussia, PA 19406  
**Attention: Law Department**  
Phone: (610) 337-7000

Each notice given by registered or certified mail shall be deemed delivered and effective on the date of delivery as shown on the return receipt, and each notice delivered in any other manner shall be deemed to be effective as of the time of actual delivery thereof. Each party may change its address for notice by giving notice thereof in the manner provided above.

- 34. Severability.** If any part, term or provision of the Purchase Order is declared unlawful or unenforceable, by judicial determination or otherwise, the remainder of the Purchase Order, as well as the whole of any other Purchase Order, shall remain in full force and effect.
- 35. Governing Law.** The Purchase Order will be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of law principles. Each party hereto consents to exclusive jurisdiction before the United States District Court for the Eastern District of Pennsylvania or state courts located in Montgomery County, Pennsylvania having appropriate jurisdiction. Both parties agree to waive trial by jury.
- 36. Rights and Remedies.** All of AmeriGas' rights and remedies set forth in the Purchase Order are in addition to, and will in no way limit, any other rights and remedies that may be available to AmeriGas at law, in equity or otherwise.
- 37. Set Off.** AmeriGas shall have the right to set off any sums due to Vendor under the Purchase Order against any sums due from Vendor to AmeriGas for deficiencies, damages, refunds or otherwise, whether or not those sums are due to AmeriGas under such Purchase Order.
- 38. Waiver.** All rights and remedies of the parties shall be cumulative and none shall exclude any other right or remedy at law and/or equity and all rights or remedies may be exercised and enforced concurrently. The failure of either party to enforce any provisions of the Purchase Order, at any time or for any period of time, shall not constitute a waiver of such provision or the right of either party thereafter to enforce such provision or any other provision of the Purchase Order.
- 39. Survival.** All provisions of the Purchase Order which by their nature should, apply beyond the term of the Purchase Order will remain in force after any termination or expiration of the Purchase Order, including, without limitation, those provisions addressing indemnification, insurance, warranty, confidentiality, audit, survival, choice of law, and dispute resolution.