

**SERVICES AGREEMENT  
For  
GAS UTILITY CONSTRUCTION SERVICES**

**THIS SERVICES AGREEMENT** (the "**Services Agreement**") is made and entered into to be effective as of this XX day of XXX, 2016 (the "**Effective Date**") by and between Duke Energy Ohio/Kentucky, Inc./LLC, ("**Duke Energy**"), and XXX, with a business address of \_\_\_\_\_ (the "**Contractor**"). Duke Energy and Contractor may sometimes be hereinafter individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

**WITNESSETH:**

**WHEREAS**, Duke Energy desires to engage Contractor to perform certain natural gas utility construction services as more fully set forth in the Specifications attached hereto as Exhibit A (hereinafter the "**Services**"); and

**WHEREAS**, Contractor desires to furnish labor, supervision, tools, equipment, transportation, and all other aspects related to the performance of the Services, as needed to perform the Services described herein as requested by Duke Energy.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein, the Parties agree as follows:

**AGREEMENT:**

**I. DEFINITIONS**

**"Agreement"** means this Services Agreement, the applicable Purchase Order ("**PO**"), all Exhibits, Amendments, and Change Orders to the Services Agreement, Exhibits or PO, as applicable, and any and all other documents related hereto that are incorporated by reference herein or therein.

**"Amendment"** means a revision to or modification of the Agreement, which must be in writing and must be executed by Duke Energy and Contractor.

**"Change in Law"** means (a) any binding adoption, promulgation, issuance, modification, or change in administrative or judicial interpretation of Laws after the Effective Date (excluding any other Laws relating to Taxes or to the organization, existence, good standing, qualification, or licensing of Contractor or its Subcontractors in any jurisdiction) or (b) the imposition of any material condition or requirement (except for any conditions or requirements which result from the acts or omissions of Contractor or any Subcontractor) not required as of the Effective Date affecting the issuance, renewal, or extension of any Government Approval (excluding any Government Approval relating to the organization, existence, good standing, qualification, or licensing of Contractor or its Subcontractors in any jurisdiction), and in each case (a) and (b) above, renders a Party unable, as demonstrated by credible evidence, to perform its respective obligations under this Agreement (excluding payment obligations).

**"Change Order"** has the meaning given to such term as set forth in Article 2.E.

**"Confidential Information"** means, with respect to any Party, all written, verbal, electronic, and other information and documents such Party provides or makes available to the other Party relating in any way to this Agreement.. "Confidential Information" expressly includes PII.

**"Day" or "Days" and "day" or "days"** both lower and upper case herein means a calendar day or calendar days, whichever is applicable.

**"Drug and Alcohol Policy"** has the meaning set forth in Article 5.G.

**“Effective Date”** means the date which appears in the first sentence of this Services Agreement.

**“Force Majeure”** means the occurrence of an act or event that (i) directly impacts the Services and are beyond the reasonable control of the Party claiming Force Majeure, (ii) is not the result of the negligence or willful or wrongful conduct of such Party (or any Person over whom that Party has control), (iii) is not an act, event, or condition, the risk or consequence of which such Party has expressly assumed under the Agreement, and (iv) cannot be cured, remedied, avoided, offset, or otherwise overcome by the prompt exercise of reasonable diligence by the Party (or any Person over whom that Party has control). Force Majeure includes, without limitation: (a) war, riots, insurrection, rebellion, floods, hurricanes, tornadoes, earthquakes, lightning, and other natural calamities; (b) acts or inaction of any Government Authority that directly impacts the Services; (c) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (d) a Change in Law; (e) acts of terrorist or the public enemy and (f) delays in obtaining goods or services from any Subcontractor caused solely by the occurrence of any of the events described in the immediately preceding subparts (a) through (f).

**“Government Authority”** means any federal, state, city, county, local, municipal, or foreign government, authority or body, and any department, agency, subdivision, court, or other tribunal of any of the foregoing.

**“Government Approvals”** means all permits, licenses, authorizations, consents, decrees, waivers, privileges, and approvals from and filings with any Government Authority required for, or material to, the performance of the Services in accordance with the Agreement, including work permits, environmental permits, licenses, and construction permits.

**“Hazardous Materials”** means:

- i. those substances defined as “hazardous substances” pursuant to Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Sections 9601 et seq.);
- ii. those substances designated as a “hazardous substance” pursuant to Section 311(b)(2)(A) or as a “toxic pollutant” pursuant to Section 307(a)(1) of the Clean Water Act (33 U.S.C. Sections 1251 et seq.);
- iii. those substances defined as “hazardous materials” pursuant to Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 et seq.);
- iv. those substances regulated as a “chemical substance or mixture” or as an “imminently hazardous chemical substance or mixture” pursuant to Section 6 or 7 of the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.);
- v. those substances defined as “contaminants” pursuant to Section 1401 of the Safe Drinking Water Act (42 U.S.C. Sections 300f et seq.), if present in excess of permissible levels;
- vi. those substances regulated pursuant to the Oil Pollution Act of 1990 (33 U.S.C. Sections 2701 et seq.);
- vii. those substances defined as a “pesticide” pursuant to Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by the Federal Environmental Pesticide Control Act of 1972 and by the Federal Pesticide Act of 1978 (7 U.S.C. Sections 136 et seq.);
- viii. those substances defined as a “source”, “special nuclear” or “by-product” material pursuant to Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. Section 2015 et seq.);
- ix. those substances defined as “residual radioactive material” in Section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7901 et seq.);
- x. those substances defined as “toxic materials” or “harmful physical agents” pursuant to Section 6 of the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.);
- xi. those substances defined as “hazardous air pollutants” pursuant to Section 112(a)(6), or “regulated substance” pursuant to Section 112(a)(2)(B) of the Clean Air Act (42 U.S.C. Sections 7401 et seq.);
- xii. those substances defined as “extremely hazardous substances” pursuant to Section 302(a)(2) of the Emergency Planning & Community Right-to-Know Act of 1986 (42 U.S.C. Sections 11001 et seq.);
- xiii. those other hazardous substances, toxic pollutants, hazardous materials, chemical substances or mixtures, imminently hazardous chemical substances or mixtures, contaminants, pesticides, source materials, special nuclear materials, by-product materials, residual radioactive materials, toxic

xiv. materials, harmful physical agents, air pollutants, regulated substances, or extremely hazardous substances defined in any regulations promulgated pursuant to any environmental Law, and all other contaminants, toxins, pollutants, hazardous substances, substances, materials and contaminants, polluted, toxic and hazardous materials, the use, disposition, possession or control of which is regulated by one or more Laws.

**"Hazardous Wastes"** means those substances defined as "hazardous waste" pursuant to Section 1004(5) of the Resource, Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), and those other hazardous wastes defined in any regulations promulgated pursuant to any environmental Laws.

**"Laws"** means all statutes, laws, codes, ordinances, orders, judgments, decrees, injunctions, licenses, rules, permits, approvals, agreements, and regulations, including all Government Approvals and all applicable codes, standards, rules, and regulations of the State.

**"Liens"** means any lien, mortgage, pledge, encumbrance, charge, security interest, adverse condition or claim, easement, right of way, covenant, infringement claims or other defect in title or other restriction of any kind or nature.

**"Materials"** means all materials, structures, buildings, apparatus, inventory, equipment, hardware, documentation, goods, tools, supplies, and other personal property that Contractor is required to furnish under this Agreement for incorporation into the Services. "Material" includes all of the items that Contractor furnished through a Subcontractor.

**"OSHA"** means the Occupational, Health and Safety Administration and any successor Government Authority thereto.

**"Person"** means any individual, company, corporation, partnership, joint venture, association, joint stock company, limited liability company, trust, estate, unincorporated organization, Government Authority or other entity having legal capacity.

**"PII"** means Duke Energy Personally Identifiable Information which is that portion of Duke Energy Confidential Information that is subject to any Privacy Laws, including without limitation, any information collected by Duke Energy or its subsidiaries and affiliates that uniquely identifies a person, or from which a person can be reasonably identified, and the collection, use or disclosure of which is governed by applicable law or regulation.

**"Privacy Laws"** includes but it not limited to all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of the Duke Energy Confidential Information.

**"Prudent Industry Practice"** means those practices, methods, equipment, specifications, and standards of safety and performance, as the same may be changed from time to time, as are commonly used in construction, operation, maintenance, or repair of natural gas utilities similar to those identified in the Specifications, which in the exercise of reasonable judgment and in light of the facts known at the time of the decision being made are considered good, safe and prudent practices in connection with such construction, operation, maintenance or repair of the facilities and commensurate with the standards of safety, performance, dependability, efficiency and economy, and as are in accordance with generally accepted standards of professional care, skill, diligence, and competence applicable to such construction, operation, maintenance or repair practices in the United States.

**"Sales Taxes"** means all present and future sales, use, and similar taxes imposed by the State or any other Government Authority on the sale or transfer of any Materials from Contractor to Duke Energy during the performance of the Services by Contractor.

**"Screening Measures"** means all applicable immigration checks (including compliance with the Immigration Reform Control Act of 1986 and I-9 requirements), drug and alcohol tests, a terrorist watch database search, a social security trace, all reference checks, criminal background checks (including but not limited to checks for any felony convictions within the last seven years) and such other screening measures as a reasonably prudent employer would deem appropriate; provided that, nothing will require Contractor to perform any screening



activities that violate the federal Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964 or any other applicable Laws.

**"Services"** means all labor, services, Material, equipment, tools, vehicles, transportation, storage, design, engineering, procurement, Site preparation, construction, installation, equipping, testing, training, and other things and actions necessary to complete and to perform the Services set forth in the Specifications that reference this Agreement. "Services" includes all work Contractor performs through a Subcontractor.

**"Site"** means the physical location where the Contractor will perform the Services as identified in the Specifications.

**"Specification"** means the detailed scoping document that sets forth the technical requirements for the performance of the Services and is attached hereto as Exhibit A, as may be modified or supplemented from time to time.

**"State"** means the State in which the Services are performed, provided that, if the Services are being performed in more than one State, then the State of North Carolina.

**"Subcontractor"** means a Person who has a direct or indirect contract with Contractor or another subcontractor of any tier to perform any of the Services or to furnish any Material to Contractor, at the Site or elsewhere.

**"Taxes"** means all present and future license, documentation, recording and registration fees, all taxes (including income, gross receipts, unincorporated business income, payroll, sales, use, personal property (tangible and intangible), real estate, excise, and stamp taxes), levies, imports, duties, assessments, fees, charges, and withholdings of any nature whatsoever, and all penalties, fines, additions to tax, and interest imposed by any Government Authority. Taxes will also include all present and future customs, duties, or levies or other import or export fees, including but not limited to any charges imposed by North American Free Trade Association ("NAFTA").

## **II. SCOPE OF SERVICES**

A. **Contractor Tasks.** Contractor will perform the Services as specified by Duke Energy issued to the Contractor in this Agreement, including, but not exclusive to, those Services set forth in the Specifications attached to this Agreement as Exhibit A, which is incorporated herein by reference. Contractor must diligently, duly, and properly perform and complete the Services and its other obligations in accordance with this Agreement, and must provide and pay for all items and services necessary for the proper execution and completion of the Services. Contractor must perform and provide all Services not specifically delineated in this Agreement to the extent necessary to complete the Services in accordance with Prudent Industry Practices. Contractor will be solely responsible for all means, methods, techniques, sequences, procedures, safety, and quality assurance, and quality control programs in connection with the performance of the Services. This Agreement does not establish any commitment or requirement on the part of Duke Energy to purchase any minimum level of Services from Contractor. Duke Energy may use, at its sole discretion, other contractors to perform the Services described in this Agreement. This Agreement will be governed solely by the terms of this Agreement as expressly indicated. Contractor must complete the Services in accordance with the schedule agreed upon in this Agreement.

B. **Site of Services.** Contractor will provide the Services at the Sites identified in Exhibit A and at such other locations as mutually agreed to in writing by the Parties. Duke Energy reserves the right to modify, supplement, suspend, or terminate the Contractor's Services at any one or more of the Sites at any time upon prior written notice. Contractor has reviewed the various Sites and the access to the Sites, and acknowledges that they are sufficient for the performance of the Services. Contractor represents and warrants that it has taken all steps necessary to ascertain the nature and location of the Services and that it has investigated and satisfied itself as to the general and local conditions that can affect the Site or the performance of the Services, including: (a) conditions bearing on access, egress, transportation, waste disposal, handling, lay down, parking and storage of Materials; (b) the availability of labor, water, electric power, other utilities, roads and rail transportation; (c) uncertainties of weather and observable physical conditions at the Site; (d) any natural physical condition of the surface of the Site which influences the suitability of the Site for the Services; and (e) the character of equipment and facilities needed before and during the performance of the Services. Duke



Energy will arrange reasonable access to the Site for additional inspection and testing by Contractor after receiving adequate notice from Contractor of its desire to review the Site. Contractor will not be entitled to any adjustment in the Billing Rates or schedules for any Site conditions that Contractor would have or should have reasonably discovered if it had taken such reasonable steps.

C. Equipment. Duke Energy will provide the Duke Energy tools and equipment listed in Exhibit A, if any, at no cost to Contractor, for Contractor to perform the Services for Duke Energy. Contractor must make no alterations to the Duke Energy equipment without the prior written authorization of Duke Energy. Title to the Duke Energy equipment, and all additions, enhancements and accessions thereto, will remain in Duke Energy during the Term of this Agreement and upon termination or expiration of this Agreement. Contractor will be responsible for risk of loss of or damage to the Duke Energy equipment during the Term of this Agreement. Except as expressly provided in Exhibit A, Contractor must provide and Duke Energy will not be required to provide any equipment or supplies to Contractor for the performance of Services by Contractor.

D. Inspections and Rights of Access. Duke Energy reserves the right to monitor and inspect the performance of the Services at all times and will have the right to monitor and reject any items brought onto the Duke Energy premises by the Contractor or any of its employees, agents or assigns. Contractor must at all times maintain an accurate record of all costs and transactions relating to the Services under this Agreement, and Duke Energy will have the right to inspect and copy such records at all reasonable times during normal business hours.

E. Changes and Change Orders. Without invalidating the Agreement, Duke Energy may change the scope of Services from time to time through the use of a "Change Order". If Contractor's price or schedule will be affected by the change, Contractor may submit a request for a Change Order under the Agreement, and Duke Energy must approve such change in scope in writing through the issuance of a Change Order prior to Contractor starting the changed Services. Additionally, in the event the parties are unable to agree to the terms of the Change Order, or in the event of an emergency, Duke Energy may, at any time, provide Contractor with a written change directive to make changes in, additions to and omissions from the Services or the schedule, and Contractor will promptly proceed with the performance of Services so changed. Claims for additional compensation or time for performance must be itemized and supported with adequate documentation. Services performed outside the scope or schedule set forth in this Agreement which are not requested by a Change Order or written change directive may not form the basis of a claim for additional compensation or time. If an omission or a reduction in scope is made from the Services, a decrease in compensation will be agreed to by both parties. If the Parties cannot agree on the increase or decrease in Billing Rates associated with a Change Order, upon receiving written notice from Duke Energy but not before, Contractor must continue the Services ordered in the Change Order and submit the Dispute (as defined herein in Section XVI(H)(1)) to the dispute resolution procedures pursuant to this Agreement, and during such dispute resolution process, Duke Energy will pay Contractor its actual direct cost plus seven percent (7%) for overhead and profit for Contractor, minus any savings associated with the Change. Contractor's "direct cost" as used in this Article, includes labor and material actually, additionally, specifically, reasonably and necessarily expended or provided in accomplishing the work ordered in the Change Order, and the actual costs not to exceed reasonable rental charges for equipment utilized in such Services.

F. Permits. Contractor will obtain and maintain, at its expense, all permits and licenses required to perform the Services.

### III. TRAINING AND QUALIFICATIONS OF PERSONNEL

A. Sufficient Personnel. At all times during the Term of the Agreement, Contractor must employ a sufficient number of qualified employees, who are licensed if required by Laws, so that Contractor completes the Services and Contractor's other obligations under this Agreement in an efficient, prompt, economical, and professional manner. Contractor's service personnel must be capable, qualified, and able to perform the duties required to the satisfaction of Duke Energy. In addition, as it may be necessary to access protected areas of the Site to provide services, appropriate service personnel must be fully qualified (or retain the ability to be qualified on an expedited emergency basis) for unescorted access in accordance with Duke Energy's regulations and procedures (including if applicable, fitness for duty compliance, background check, radiation protection and security training). Duke Energy will have the right to require Contractor to remove any personnel from the Services who is (are) not acceptable to Duke Energy. In such event, Contractor will bear any reasonable



expenses associated with the removal and replacement of such unacceptable employee(s) during the Term of this Agreement. Any Person who is removed from the Site or from performing the Services hereunder at Duke Energy's request or for violation of any term or condition set forth in this Agreement will not be eligible to provide any future Services for Duke Energy under this Agreement without the express prior written consent of Duke Energy.

B. Qualifications; Supervision. Contractor must comply, and must require its subcontractors to comply, with all applicable labor, employment, and immigration laws that may impact Contractor's obligations under this Agreement, including but not limited to federal, state and local laws, rules and regulations, and executive orders that are now or that become applicable to the Contractor during the period the Contractor is performing the Services hereunder. Without limiting the foregoing, Contractor must comply strictly with all laws relating to the verification of its workers' eligibility to work in the United States, including the Immigration Reform and Control Act of 1986 and Form I-9 requirements. For any Services performed at a Duke Energy site or Duke Energy customer site and/or requiring access to Duke Energy assets, Contractor and its subcontractors must participate in E-Verify, perform all required employment eligibility and verification checks, and cooperate with the scope, timing, documentation, etc., of audits requested by Duke Energy, which may be performed by a third party immigration attorney selected by Duke Energy. Contractor must maintain all required employment records for at least three years following an employee's date of hire or one year following an employee's termination.

By providing an employee or subcontractor under this Agreement to perform Services at a Duke Energy site, a Duke Energy customer site and/or requiring access to Duke Energy assets, Contractor warrants and represents that the Minimum Screening Guidelines (as set forth at <http://www.duke-energy.com/pdfs/legal/minimumscreeningguidelines.pdf>) have been completed with respect to such employee or subcontractor and that they did not reveal any information that could adversely affect such employee's or subcontractor's suitability for employment by Contractor or competence or ability to perform duties under this Agreement following an individualized assessment of the specific facts and circumstances and consideration of Duke Energy's Potential Disqualification Criteria, which are set forth at <http://www.duke-energy.com/pdfs/legal/PotentialDisqualificationCriteria.pdf>. For Contractor's employees or subcontractors who are performing Services on a Duke Energy site or a Duke Energy customer site, the screening measures set forth under "Supplemental Labor with Access to Duke Energy Assets" in the Minimum Screening Guidelines must have been completed. For Contractor's employees or subcontractors who are not performing Services on a Duke Energy site, but have access to Duke Energy's assets, the screening measures set forth under "Turnkey Services Labor with Access to Duke Energy Assets" in the Minimum Screening Guidelines must have been completed. Generally, Duke Energy will rely on Contractor to make a determination as to whether to disqualify a candidate based on the Potential Disqualification Criteria. However, if there is a question as to a candidate's qualifications, Contractor may seek additional input from Duke Energy. Contractor may also perform other screening measures as a reasonably prudent employer would deem appropriate; provided, however, that nothing in this Section will be interpreted as authorizing or requiring Contractor to perform any screening measures or disqualify any worker in a manner that violates the federal Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964 or any other applicable law. Contractor agrees to use additional screening measures that may be required by Duke Energy based upon audit results to ensure Contractor's compliance with this Section. Except where prohibited by law, Contractor will have the ongoing duty to inform Duke Energy immediately upon learning that one of Contractor's or its subcontractors' employees, agents or independent contractors is not suitable for performance of the Services. Except where prohibited by law, if Contractor learns after assigning an individual to provide Services at a Duke Energy site or requiring access to the Duke Energy assets that Contractor, acting reasonably, considers would adversely affect such personnel's suitability for performance of the Services, Contractor will promptly advise Duke Energy and remove the individual immediately from performing Services at a Duke Energy site or on the Duke Energy assets. Duke Energy, in its sole discretion, will have the option of barring from the Site any person whom Duke Energy determines does not meet the qualification requirements set forth above.

C. Discipline. Contractor will enforce strict discipline and good order among Contractor's employees, Subcontractors' employees, and all other Persons carrying out the Services. Contractor must at all times take all necessary precautions to prevent any unlawful or disorderly conduct by or among its employees, employees of Subcontractors, and other Persons performing the Services and for the preservation of the peace and the protection of Persons and property at, or in the proximity of, the Site. Contractor will only permit the employment of Persons who are fit at the time they are employed and on each day they perform Services, who are skilled in the tasks assigned to them, and who are qualified to perform the tasks assigned to them.



Contractor will be responsible for labor peace on the Site and must at all times exert its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, and strikes where reasonably possible and practical under the circumstances. Duke Energy will have the right to object to, and bar from the Site, any Person employed or engaged by Contractor who engages in misconduct or is incompetent or negligent while on the Site or while performing the Services, which will be at Duke Energy's sole discretion. Contractor must remove those Persons to whom Duke Energy objects from the Site and from the performance of the Services. Any cost for replacement Persons will be at Contractor's expense.

D. Quality Control. Contractor must develop, implement, and maintain a written plan for the Services, which must include: safety; security at the Site; quality assurance; management and control of the Services; and management and control of Subcontractors and their subcontracts. That plan will, at a minimum, meet the requirements of Duke Energy's then-current safety and security policies and regulations, including Duke Energy's Health and Safety Handbook and Duke Energy's Health and Safety Supplemental Requirements and all Laws. If Contractor has not already done so, Contractor will deliver the plan to Duke Energy for review and comment within ten (10) Days after Contractor's execution of this Agreement. Contractor must also require all Subcontractors to establish, implement, and maintain such quality control and safety programs for their respective portions of the Services.

E. Training. Contractor must comply with all federal, state, and local laws, rules, orders, ordinances, regulations, and other requirements applicable to the Work and the performance thereof, including the Operator Qualification ("OQ") rule (49 CFR 192 & 195), Department of Transportation. If available, the Contractor's current written OQ plan that fulfills this requirement should be sent via email to [Barbara.Kaiser@duke-energy.com](mailto:Barbara.Kaiser@duke-energy.com) for file.

Contractor is solely responsible to insure that all employees and/or Subcontractors performing OQ covered task associated with the Services are trained on the Duke Energy requirements and policies. Before placing an employee or Subcontractor in the field to perform gas sensitive work, Contractor is responsible to either contact Duke Energy OH/KY Gas Operations Technical Training division to schedule the necessary training or obtain the necessary training by other means acceptable to Duke Energy, which must be approved by Duke Energy in advance. Duke Energy will provide a representative to train the Contractor's employees during normal business hours. Contractor should appoint a project manager to coordinate training and interact with Duke Energy. All training materials provided by Duke Energy are proprietary and may not be reproduced and/or shared beyond Contractor and its employees who have a need to know. Any training or qualifications provided by Duke Energy are only for work that is performed on our facilities.

A review of Contractor's Operator Qualification Plan will occur along with spot checks for compliance at random job sites. Communication of these circumstances where the individual could be expected to recognize and react to abnormal operating conditions (as defined in Title 49 Code of Federal Regulations Part 192.803) during the performance of the dovered task will occur prior to the performance of a covered task.

#### IV. BILLING AND PAYMENT

A. Billing Rates. Payment for the Services performed pursuant to this Agreement will be in accordance with the terms for payment set forth in Exhibit A and Duke Energy agrees to pay the Contractor the rates and fees set forth in Exhibit A (the "Billing Rates"). The Parties may from time to time agree on alternative or supplemental Billing Rates for the Services, including but not limited to lump sum, unit rate, or time and materials rates, and such alternative rates shall be set forth in an applicable Change Order.

B. Invoicing. Time is of the essence with respect to the Services to be performed hereunder. Any tax paid on material or equipment must be shown separately from the sale or rental price of those items. Unless otherwise mutually agreed, Contractor should submit weekly invoices to Duke Energy for its Services. If Services are being performed on a time-and-materials basis, the invoice must include a statement or be accompanied by time sheets showing each employee's name, classification, hours worked, and the applicable rate of compensation to Seller. Overtime and holiday Billing Rates may be invoiced only if specifically requested by Duke Energy and only for time actually worked, and, to the extent permitted by applicable law, overtime may be invoiced only for time in excess of forty (40) hours per week and not on a daily basis. If any equipment has been used for which a charge applies, the invoice must also specify the equipment used, hours of usage and



rate of reimbursement for use. Each such invoice must be in a form mutually acceptable to the Parties and must be accompanied by such time sheets, payroll, and other documentation as may be necessary or reasonably requested by Duke Energy to evidence to the satisfaction of Duke Energy the number of hours worked by each employee during the invoiced period and any other item appearing on such invoice. Each invoice must contain the following information as required by Duke Energy:

- (i) Weekly and year-to-date total amounts for the Services;
- (ii) Monthly subtotals for Services at each Site; and
- (iii) A detailed description of any extraordinary or additional expenses for which Contractor is seeking payment by Duke Energy.

C. **Payment.** Subject to any withholding or offset for disputed amounts, Duke Energy's standard payment terms are 45 days from receipt of a correct and properly submitted invoice unless otherwise specified in this Agreement. Any prompt payment discount Seller offers Duke Energy will be determined using the date Duke Energy receives a correct invoice. Duke Energy will be entitled to review and audit such invoices within a reasonable amount of time prior to payment. No payment made by Duke Energy hereunder will be deemed to constitute an admission by Duke Energy that the charges covered thereby are correct under the terms of this Agreement. Any dispute by Duke Energy of an invoice will be subject to the dispute resolution procedures set forth in this Agreement. Duke Energy may withhold from any payment amounts incorrectly invoiced, amounts in dispute, or an amount sufficient to reasonably protect Duke Energy from loss, damage or expense arising out of assertions by other parties of any claim or lien against Duke Energy arising in connection with this Agreement.

## V. SAFETY AND SECURITY

A. **Safety Practices.** All Services performed by Contractor or its Subcontractors on Duke Energy's Site, and the design of all equipment and systems used in the performance of Services hereunder, must comply fully with the Occupational Safety and Health Act of 1970 and the regulations and standards issued thereunder (hereinafter "**OSHA requirements**") and Duke Energy's safety and security policies and regulations, including Duke Energy's Health and Safety Handbook and Duke Energy's Health and Safety Supplemental Requirements when such documents are provided by Duke Energy, all as may be amended from time to time. During the course of its performance of Services, Contractor must erect, maintain, or undertake, as required by existing conditions and the performance of the Agreement, all reasonable safeguards for the safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Duke Energy and users of adjacent sites and utilities. Those precautions may include providing security guards. When the use or storage of explosives or other dangerous materials or equipment or unusual methods are necessary for the execution of the Services, Contractor must exercise utmost care and carry on its activities only under the supervision of properly qualified personnel. Contractor will designate a responsible, qualified full-time member of Contractor's organization at the Site whose duty shall be the prevention of incidents and injuries and addressing unsafe and undesirable behavior during the course of its performance of Services. Contractor must not load or permit any equipment or materials to be loaded at the Site so as to endanger the safety of persons or property. If Contractor employs non-English speaking persons, Contractor must ensure that a bilingual person fluent in speaking, reading and writing both English and the applicable non-English language is available at the jobsite where the non-English speaking person(s) are working for purposes of safety and hazard related communications, communicating technical information, emergency response, and similar issues. Contractor must further ensure that all written and verbal safety training, hazard communications, and work rules are provided in the appropriate language for non-English speaking employees and persons. Contractor must not, and must not permit any worker, employee, or other party to bring any firearm or other weapon of any type upon any property owned or controlled by Duke Energy. Further, Contractor will not permit or tolerate the introduction or use of intoxicating liquor, narcotic drugs, gambling, or gambling paraphernalia at any Duke Energy site or during the performance of any Services. Any employee, independent contractor, or agent of Contractor found engaging in such activities will be removed and permanently barred from Duke Energy property, including any and all Sites.

B. **Incident Reporting.** In addition to reporting to the government as required by federal, state, and local laws, Contractor must promptly report in writing to Duke Energy all accidents arising out of or in connection with the Services in accordance with Duke Energy's site policies and procedures including but not limited to the Duke Energy's Health and Safety Handbook and Duke Energy Health and Safety Supplemental Requirements. For all accidents which cause death, serious bodily injury or property damage, Contractor must immediately

notify Duke Energy's health and safety representative by telephone or messenger giving full details and statements of any witnesses. In the event of a serious accident, the accident scene must not be disturbed until released by Duke Energy, except for circumstances where imminent danger exists to those performing any emergency services. Contractor must complete a report for Duke Energy within 24 hours for all damage, injuries and near misses. Contractor will collect and maintain safety and health data for the performance of the Services, which will include but not be limited to total hours worked, incidents, near misses, lost work days, restricted duty, recordable injuries, workers compensation experience modifier, and any OSHA or state plan citation history. Upon request, Contractor will provide this data to Duke Energy.

C. Readiness for Services: Appearance. Contractor's employees, agents, or other personnel will at all times be dressed in clean, neat clothing, and must observe all Duke Energy hygiene regulations and rules in effect while at the Sites.

D. Hazardous Materials Management.

(i) Any Services performed by Seller involving the generation, storage, handling, packaging, marking, labeling, transportation, or disposal of materials, substances, or wastes that may be hazardous, and any work in an area defined as a confined space must be performed in accordance with any and all applicable Laws. At least two weeks before any Services are performed on a Duke Energy Site, Contractor must deliver to Duke Energy: (a) a copy of Contractor's hazard communication program; (b) a list of all hazardous chemicals and other substances Contractor proposes to bring onto the Site, if any, and the quantities of each; and (c) safety data sheets for each chemical and substance on the list.

If inapplicable, Contractor must provide copies of a document certifying that no MSDS are required under any applicable federal, state, or local laws.

(ii) If Contractor desires to introduce additional chemicals to the Site during the course of performance of the Services, Contractor must notify Duke Energy's authorized representative prior to such introduction. Contractor must comply with, and, at its expense, train its personnel to comply with, Duke Energy's PCB and Oil Spill Response Process. Contractor will adhere to Duke Energy's disposal, recycling, and housekeeping programs during the performance of the Services at any Site owned or operated by Duke Energy. Contractor will take all reasonable measures to minimize wastes generated at any Site owned or operated by Duke Energy. Contractor must notify promptly Duke Energy's environmental contact person of any waste that is generated at any Duke Energy Site. At the completion of the Services, Contractor will remove any chemical products brought onto the Site. Contractor shall leave the work Site clean and orderly, and Contractor shall be responsible for the disposal of all debris, including all scrap wire, reels, packaging materials.

(iii) Contractor must not furnish, use, apply, store, or construct at the Duke Energy Site any materials that contain methylene chloride, lead, asbestos or hexavalent chromium. Contractor must provide written notice of the presence at the Site of hazardous materials which Contractor or its subcontractors bring onto the Site to local fire, medical, and law enforcement agencies as required by all applicable Laws and must deliver a copy of each notice promptly to Duke Energy's Hazard Communication Program Administrator. Contractor must obtain Duke Energy approval to the extent required by Duke Energy's policies prior to bringing hazardous materials, including but not limited to, pesticides, onto the Duke Energy Site. Contractor must label all containers of hazardous materials and train all employees and other persons as necessary in the safe use of those hazardous materials as required under all applicable Laws. Contractor will be responsible for the proper handling, collection, removal, transportation, and disposal of all hazardous materials brought by Contractor or any subcontractor onto the Site or introduced into or on the Duke Energy Site by Contractor or any subcontractor, including hazardous materials furnished, used, applied or stored at the Site by Contractor or emanating from the Site as a result of Services at the Duke Energy site including, used oils, greases, and solvents from flushing and cleaning processes performed under the Agreement. All activities in connection with the foregoing must be performed in accordance with the requirements of all governments and federal, state, and local laws. Duke Energy will be responsible for the removal from the Site and disposal off of the Duke Energy Site of all hazardous materials brought onto the Site or



introduced into or on the Duke Energy Site by Duke Energy or any third party (other than Contractor or any Subcontractor). Contractor will be responsible for the collection and clean up of hazardous wastes it produces or causes to be produced. Contractor shall provide prompt written notice to Duke Energy of all suspected hazardous materials and hazardous wastes that it finds during performance of the Services and must stop work in the area until otherwise directed by Duke Energy.

(iv) Contractor must notify and summarize for Duke Energy any material or significant alleged or actual violations, noncompliance or deficiencies that the Contractor has received from regulatory agencies when such violations are related to or could negatively impact the Services performed under this Agreement. Notifications are to be forwarded to:

**Duke Energy**  
**139 East Fourth Street**  
**Cincinnati, OH 45202**  
**Attn: Jeff Dierker**  
**EHS Manager, EHS Field Support**

F. Use of Explosives. Use of explosives in a manner that might disturb or endanger the stability, safety or quality of the Services will not be allowed. Explosives must be stored, handled, and used as mandated by the laws and regulations of the United States and the State in which the Services are being performed, their agencies, and any political subdivisions thereof. Contractor will be responsible for removal of all unused explosives.

G. Minimum Screening Guidelines: Drug Policy. Contractor acknowledges that it is aware of Duke Energy's Alcohol and Drug Free Workplace Policy ("**Drug and Alcohol Policy**"). Contractor and its subcontractors must implement and administer an alcohol/drug abuse policy acceptable to Duke Energy and at least as stringent as that of Duke Energy and further acknowledges that any employee, contractor or subcontractor of Contractor performing Services under this Agreement will be subject to "for cause" testing on the basis of Duke Energy's reasonable suspicion of a violation of Duke Energy's Drug and Alcohol Policy. Duke Energy may, at its sole discretion, upon notice to Contractor, audit Contractor's substance abuse testing records relating to the Services. Duke Energy encourages Contractor to offer employee assistance to all employees who test positive and to have employees visit a Substance Abuse Program ("**SAP**").

(i) For any Services to be performed by Contractor at Duke Energy Fossil/Hydroelectric generation properties for Power Generation Operations, Non-Regulated Generation, and Project Management & Construction within Duke Energy Indiana, Duke Energy Ohio, Duke Energy Kentucky, Duke Energy Carolinas, Duke Energy Progress and Duke Energy Florida, Contractor's drug and alcohol policy must be consistent with either the Coalition for Construction Safety ("**CCS**", formerly "**MICCS**") and/or the Construction Owners Association of the Tri-State ("**COATS**") COATS/Bethesda substance abuse testing programs and Contractor and its subcontractor(s) will use those programs, which includes initial testing and random testing. In order to be eligible to work on a Duke Energy site, Contractor's and its subcontractors' employees must have either a valid CCS/COATS card or a valid drug screen chain-of-custody form documenting a pending result of a drug test performed within the past five days. The following are the minimum substance abuse testing parameters:

(a) Use of a Substance Abuse and Mental Health Services Administration ("**SAMHSA**") approved laboratory.

(b) Use of a Medical Review Officer ("**MRO**") for confirmation of positive test results.

(c) Use of a NIDA 5 Panel Drug Screen with the following ng/ml cutoff and confirmation levels:

Drug	Cutoff	Ng/ml	Ng/ml Confirmation
Marijuana (THC, Cannabinoids)		50	15
Amphetamines		500	250
MDMA		500	250



- Ecstasy		
Cocain	150	100
e Phencyclidine (PCP)	25	25
s Opiate	2000	2000
6-AM - Heroin	10	10

(D) Use of an evidential breath-testing device to detect the consumption of alcohol with a positive cutoff level of .04 percent.

(E) Contractor and its subcontractors must test all employees involved in any accident requiring consultation with a doctor or medical treatment beyond first aid, or when there is probable cause as determined by Contractor or by Duke Energy.

(ii) While performing services for Duke Energy, Contractor and its subcontractors may be subject to random drug and alcohol testing. The random selection method used by CCS/COATS will be truly random and credible. Random substance abuse testing may be on any day or night and generally encompasses up to approximately 15% of Contractor's employees on site at a given time. At Duke Energy's discretion, random testing percentages may be adjusted higher or lower where Duke Energy deems appropriate.

(iii) Immediately upon receipt of test results, Contractor must remove from the job site any Contractor or subcontractor employee who tests positive or in any way does not comply with the Policy. Contractor must not allow an employee who tests positive to return to the Services for the duration of the project, unless, at a minimum, the following steps are completed by the employee: (a) the employee completes an evaluation with an SAP; (b) the SAP must, at a minimum, recommend the following: (1) some type of treatment or education beyond the initial assessment; (2) at least 3 follow-up tests in the 12 months following the return-to-duty test; (c) a minimum of 14 days must pass from the date of the positive test (date of that collection) before a test can be administered; and (d) the employee presents Midwest Toxicology with written documentation from a qualified SAP that states the employee is fit for duty (ready to return to work), has completed an evaluation, and has at least started some form of education or treatment beyond the initial evaluation. The written documentation should be on the SAP's letterhead and be personally signed by the SAP.

**DRUG AND ALCOHOL PLAN & SAFETY PLAN:**

Contractor is required to submit their Drug and Alcohol Plan and their Safety Plan for approval as follows:

**For Drug and Alcohol Plan Approval**

E-mail [terry.hoppenjans@duke-energy.com](mailto:terry.hoppenjans@duke-energy.com)  
 With questions call:  
 Terry Hoppenjans  
 HR Director-Occ Med Svcs & Alcohol Drug Programs  
 Phone 513-287-4118  
 Fax 513-287-1760

**For Safety Plan Approval**

E-mail [jeff.dierker@duke-energy.com](mailto:jeff.dierker@duke-energy.com)  
 With questions call:  
 Jeff Dierker  
 EHS Manager  
 Phone 513-287-1234  
 Fax 513-287-3499

**VI. TERM, DEFAULT, TERMINATION AND DAMAGES**

A. **Term.** The term of this Agreement will be from XXXXX XX, 2016 to XXXXX XX, 2016 ("**Term**"), provided that this Agreement may be terminated immediately by Duke Energy for its convenience by giving written notice of its intent to terminate this Agreement. Termination of this Agreement will not affect the respective liabilities and obligations of both Parties incurred up to the date of termination. Prior to the expiration of this Agreement, both Parties will have the opportunity to confer and mutually agree to extend this Agreement from year to year, provided however, either Party may withhold such agreement in its sole discretion. If either Party desires to extend or renew this Agreement, such Party may provide the other Party with a sixty (60) day



written notice, which will result in the commencement of discussions between the Parties about a renewal or extension of this Agreement.

B. Default. Each of the following events is an event of default under the Agreement:

(1) Duke Energy fails to pay Contractor in a timely manner any sum due under the Agreement and such failure continues for thirty (30) days after Duke Energy receives written notice from Contractor that the payment is past due.

(2) Contractor abandons the Services, fails to adhere to the schedule or complete the Services by the completion date set forth in this Agreement. Time is of the essence in performance of the Services under this Agreement.

(3) Contractor fails to obtain or maintain the insurance required by the Agreement.

(4) Contractor assigns or transfers, or attempts to assign or transfer, this Agreement or any right or interest herein, except as expressly authorized by Duke Energy in writing.

(5) Either Party files a petition commencing a voluntary case under the U.S. Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other U.S. or state bankruptcy Laws, or is adjudicated a debtor or declared bankrupt or insolvent under the U.S. Bankruptcy Code, or any other U.S. federal or state Laws relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the U.S. Bankruptcy Code or an answer proposing the adjudication of such Party as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code or any other U.S. federal or state bankruptcy Laws is filed in any court.

(6) A custodian, receiver, trustee, or liquidator of Contractor, all or substantially all of the assets or business of Contractor, or of Contractor's interest in the Agreement is appointed in any proceeding brought against Contractor and not discharged within sixty (60) days after that appointment, or if Contractor consents to or acquiesces in that appointment.

(7) Contractor breaches any other covenant, condition, or obligation in this Agreement other than those set forth above and fails to cure such breach within ten (10) days after Duke Energy give Contractor written notice specifying the default and demanding that the same be remedied; **provided** that if such breach is not capable of being cured within such 10-day period and Contractor commences and diligently proceeds to cure the alleged default within such 10-day, the time for such cure will be extended to thirty (30) days after the original notice.

C. Remedies for Default. Upon the occurrence and continuation of an event of default, a Party at its option may take one or more of the following actions: (a) terminate the Agreement by giving the other Party written notice; (b) if Contractor is the defaulting Party, Duke Energy may recover from Contractor immediately, as damages for loss of bargain and not as a penalty, and in addition to all other amounts Duke Energy is entitled to recover under the Agreement, an amount equal to the cost of completing the Services; (c) if Contractor is the defaulting Party, Duke Energy may cure the default at Contractor's expense and offset the amounts against future payments; (d) recover from the other Party any other damages described in this Agreement; and (e) pursue any other equitable or legal remedies available to the non-defaulting Party.

D. Upon the termination of this Agreement for any reason, Contractor must vacate the Sites immediately and must return the Site and the Duke Energy Equipment to Duke Energy in the same condition as when originally made available to Contractor, reasonable wear and tear excepted. If Contractor fails to remove its personal property from the Site(s) upon termination of this Agreement within a reasonable time, Duke Energy will have the right to remove and store all of said property at the expense of Contractor. Duke will not be required to store the property longer than sixty (60) days. After such sixty (60) day period then Duke Energy will have the right to sell such property or assume ownership of the same with no further liability to Contractor.

E. Duke Energy will have the right at any time to cancel for convenience all or a portion of this Agreement or to delay some of all of the Services by giving Contractor written notice. If Duke Energy cancels all or a portion of this Agreement for convenience, Duke Energy will pay Contractor reasonable cancellation charges on which the parties agree which will consist solely of direct costs for labor and materials for the Agreement reasonably expended by Contractor before the cancellation, minus the salvage amount that Contractor can realize by selling or using any materials. Contractor must take all reasonable actions to minimize any cancellation or delay charges and must provide an accurate accounting of all charges to Duke Energy at the time Contractor makes a request for payment of those charges. Cancellation and delay charges will not include any incidental or indirect charges or expenses or any lost or anticipated profits. If the sum of Duke Energy's prior payments and deposits under this Agreement exceeds the cancellation and delay charges and other amounts due hereunder, Contractor must promptly refund the balance to Duke Energy.

F. The Parties may agree in this Agreement that Contractor must perform and complete the Services on or before a guaranteed completion date. The parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Duke Energy would incur if Contractor does not perform and complete that Services by the guaranteed completion date. Accordingly, the Parties agree that if Contractor does not meet the guaranteed completion date, Duke Energy's remedy for that delay will be to recover from Contractor as liquidated damages, and not as a penalty, the amount of liquidated damages, if any, set forth in this Agreement, for each day or portion of a day performance and/or completion is delayed beyond the guaranteed completion date. The agreed upon delay liquidated damages will not limit Duke Energy's remedies for other breaches, actions or omissions of Contractor. The delay liquidated damages will be due and payable by Contractor to Duke Energy within ten days after written demand by Duke Energy. In addition to its other rights and remedies, Duke Energy will have the right to offset the amount of any unpaid liquidated damages plus interest against any amounts due or that may become due Contractor under this Agreement.

G. In the event this Agreement is re-bid early or at the conclusion of the Term of this Agreement, a transition plan will be developed and mutually agreed by both Parties to minimize additional cost and maintain performance levels. Failure of the Contractor to follow the plan will result in the non-payment of the final month's invoice to Contractor.

## **VII. INSURANCE**

Commencing with the performance of the Services hereunder, and continuing until the termination of this Agreement including during the performance of any warranty services, Contractor (and any tier subcontractors) must maintain or cause to be maintained occurrence form insurance policies as follows:

- a. Worker's Compensation specific to the applicable statutory requirements for the Services to be performed; provided that Contractor (or its subcontractor(s)) must notify Duke Energy if it is exempt from the statutory Worker's Compensation requirements;
- b. Employer's Liability Insurance of not less than \$1,000,000 each accident/employee/disease;
- c. Commercial General Liability having an available limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and/or loss of use or damage to property, including but not limited to products and completed operations liability (which must continue for at least three (3) after completion), premises and operations liability, explosion, collapse, and underground hazard, and if the Services will be performed within fifty (50) feet of a railroad, contractual liability – railroads coverage;
- d. Commercial/Business Automobile Liability insurance (including owned (if any), non-owned or hired autos) having an available limit of at least \$1,000,000 each accident for bodily injury death, property damage and contractual liability and no fellow employee exclusion;
- e. Umbrella/Excess Liability insurance with available limits of at least \$4,000,000 per occurrence and follow form of the underlying Employer's Commercial General and Auto Liability insurance, and provide at least the same scope of coverages thereunder;



- f. If engineering, consulting, design, or other professional services are to be performed under this Agreement, Professional Liability/Errors & Omissions ("E&O") Insurance (claims-made form acceptable with reporting requirements of at least three (3) years after completion) with no resulting bodily injury or property damage exclusion with available limits of at least \$1,000,000 each claim;
- g. If handling environmentally regulated or hazardous materials, Pollution Legal Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with available limits of at least \$1,000,000 per occurrence (claims-made form acceptable with reporting requirements of at least three (3) years after completion);
- h. If providing equipment to be transferred to Duke Energy's ownership under this Agreement, inland marine transit and/or ocean cargo and/or installation floater for the replacement cost value of such items for physical loss or damage during transit, loading/unloading, conducting services and/or installation; and
- i. If accessing PII Cyber Risk/Privacy Data protection liability insurance covering claims arising from breaches of security; violation or infringement of any right privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; data theft, damage, destruction or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of PII, transmission of a computer virus or other type of malicious code information, security or data breaches, or misappropriation of data; with available limits of at least \$1,000,000 each occurrence and in the aggregate.

All insurance policies provided and maintained by Contractor and each subcontractor must: (i) be underwritten by insurers which are rated A. M. Best "A-VII" or higher; (ii) specifically include Duke Energy and its directors, officers, employees, affiliates, subcontractors, and joint owners of any facilities as additional insureds, including for completed operations, with respect to Contractor's or its subcontractors' acts, omissions, services, products or operations whether in whole or in part, excluding, however, for Worker's Compensation/Employer's Liability and, if applicable, those coverages set forth in Sections (f) through (i) above; (iii) be endorsed to provide, where permitted by applicable law, waiver of any rights of subrogation against Duke Energy and its directors officers, employees, affiliates and subcontractors and joint owners of any facilities; (iv) provide that such policies and additional insured provisions are primary with respect to the acts, omissions, services, products or operations of Contractor or its subcontractors, whether in whole or in part, and without right of contribution from any other insurance, self-insurance or coverage available to Duke Energy and its affiliates and (v) contain a standard cross liability clause and separation of insured and severability of interest provisions except with respect to the limits of the insurer's liability. Any deductibles or retentions will be the sole responsibility of Contractor and its subcontractors. Evidence of such coverage must be provided via Contractor's certificate of insurance furnished to Duke Energy prior to the start of Services, upon any policy replacement or renewal and upon Duke Energy's request. All insurance policies must provide that the insurer will provide at least thirty (30) days' written notice to Contractor, who in turn must provide at least thirty (30) days' written notice to Duke Energy prior to cancellation or non-renewal of any policy (or ten (10) days' notice in the case of non-payment of premium). Contractor's compliance with these provisions and the limits of insurance specified herein will not constitute a limitation of Contractor's liability or otherwise affect Contractor's indemnification obligations pursuant to this Agreement. Any failure to comply with all of these provisions will permit Duke Energy to suspend all Service until compliance is achieved. The failure by Contractor to provide any or accurate certificates of insurance, or Duke Energy to insist upon any or accurate certificates of insurance, will not be deemed a waiver of any rights of Duke Energy under this Agreement or with respect to any insurance coverage required hereunder. If there is a claim related to the Services under this Agreement, Contractor or its applicable subcontractors must, upon Duke Energy's request, provide a copy of any or all of its required insurance policies, including endorsements in which Duke Energy is included as an additional insured.

## VIII. INDEMNIFICATION

To the maximum extent permitted by applicable law, Contractor will indemnify, defend and hold harmless Duke Energy (including its parent, subsidiary and affiliate companies), its officers, employees, agents, and any other party with an ownership interest in the premises from and against all liability, loss, costs, claims,

damages, expenses, judgments, and awards, whether or not covered by insurance, arising or claimed to have arisen in whole or in part: (a) from acts or omissions of, or as a result of Services performed or omitted from being provided or performed, or as a result of negligence by Contractor, its subcontractors, materialmen, or assignees and their agents or employees, which resulted in: (i) injury (including mental or emotional) to or death of any person, including employees of Duke Energy (including its parent, subsidiary and affiliate companies) or (ii) damage to or destruction of any property, real or personal, including without limitation property of Duke Energy (including its parent, subsidiary and affiliate companies) and its other contractors, Duke Energy's (including its parent, subsidiary and affiliate companies') employees and fellow employees; (b) out of injuries sustained and/or occupational diseases contracted by Contractor, its employees, Contractor's subcontractors or Contractor's assignee's employees, if any, of such a nature and arising under such circumstances as to create liability by Duke Energy (or its parent, subsidiary or affiliate companies) or Contractor under the Workers' Compensation Act, and all amendments thereto, of the state having jurisdiction, including all claims and causes of action of any character against Duke Energy (and its parent, subsidiary and affiliate companies) by any employee of Contractor, its subcontractors or assignees, or the employer of such employees, or any person or concern claiming by, under or through them resulting from or in any manner growing out of such injuries or occupational diseases; (c) from demands, actions or disputes asserted by any subcontractors, employees or suppliers of Contractor; (d) from any claim that the Services or Duke Energy's use of the Services infringes any patent, copyright, trademark, trade name, service mark or other property right; (e) from any breach of warranty by Contractor; and (f) from any claim that the Services are defective. Indemnification will include all costs, including attorneys' fees reasonably incurred in pursuing indemnity claims under or enforcement of this Agreement. In the case of a claim that the Services are infringing, Contractor shall have the right, at its sole expense, to obtain for Duke Energy the right to continue using the Services without interference or to modify or replace the Services in a manner acceptable to Duke Energy in its sole discretion. Duke Energy will give Contractor reasonable notice of any claim Duke Energy contends falls within this indemnification. Contractor waives all rights of recovery, including for contribution, against Duke Energy and its directors, officers, employees, affiliates and subcontractors, and joint owners of any facilities for any matters to which this Section may apply. Contractor's indemnification obligation will not be limited in any way by any limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any third party under worker's damages, compensation, disability or other employee benefits acts, nor by the provisions of any required insurance. The foregoing notwithstanding, Duke Energy agrees to hold harmless, defend and indemnify Contractor against any claim or liability arising from the presence or release of mercury, or any damage or expense caused by such mercury, at the time of the Services or any subsequent time thereafter, at customer premises in connections with its operations in removing gas meters and regulators, except for claims and/or liabilities that arise from Contractor's negligence or any third party working under the direction of Contractor.

#### **IX. LIMITATION ON LIABILITY**

EXCLUDING CONTRACTOR'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION VIII ABOVE AND EXCLUDING CONTRACTOR'S LIABILITY UNDER ARTICLE XI, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT UNLESS SUCH CONSEQUENTIAL DAMAGES ARE DUE IN WHOLE OR IN PART TO A PARTY'S MISREPRESENTATION; FRAUD; WILLFUL, WANTON, OR RECKLESS ACT OR OMISSION; OR ANY OTHER INTENTIONAL CONDUCT OF SUCH PARTY. FOR THE PURPOSES OF THIS SECTION IX "CONSEQUENTIAL DAMAGES" MEANS ANY DAMAGES OTHER THAN DIRECT ACTUAL DAMAGES AND INCLUDES, WITHOUT LIMITATION, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, DUE TO ANY ACT OR OMISSION UNDER THIS AGREEMENT.

#### **X. WARRANTIES**

A. Warranty. Contractor represents and warrants to Duke Energy that through the end of the Warranty Period: (a) the Services will be performed in a professional and competent manner, in accordance with Prudent Industry Practices and in full compliance with all final written descriptions, specifications, drawings and representations, including the Specifications in this Agreement; (b) any Material delivered will be handled, and stored (whether on-Site or off-Site) in accordance with all manufacturer's instructions and in a manner that does not void or impair manufacturer warranties; (c) Contractor will employ only competent and experienced personnel to perform the Services; (d) Contractor will perform and complete the Services within the schedule



established in this Agreement; and (e) no federal, state, local or foreign statute, law, rule, regulation or order has been or will be violated in the performance of the Services.

B. Performance of Warranty Services. If Duke Energy or Contractor discovers deviations from, breaches of, or failures of the foregoing warranties ("**Defects**"), Contractor must, at its sole expense, correct, repair, modify, or replace those Defects, including repair, disassembly, removal, transportation, reassembly, or re-performance of any affected portion of the Material immediately upon notice or being given notice and Contractor must demonstrate that the Defects have been properly corrected. Contractor must provide Duke Energy with prior notice of any Subcontractor hired by Contractor to perform the warranty Services.

C. Breach of Warranty. Contractor must use its best efforts to remedy any failure or breach of warranty promptly so as to minimize revenue loss to Duke Energy and to avoid disruption of Duke Energy's operations at the Site. If Contractor fails to initiate and diligently take steps to pursue corrective action within five (5) days after Contractor receives Duke Energy's notice and to pursue that corrective action fully and continuously thereafter, Duke Energy may undertake or arrange corrective action and all costs to make such correction will be paid by or back charged to Contractor. If Duke Energy makes a good faith determination that corrective action is necessary in a shorter time than that provided in this Article, Duke Energy will promptly notify Contractor of such need and, if Contractor fails to take steps to pursue such corrective action, Duke Energy may undertake or arrange corrective action and all costs to make such correction will be paid by or back charged to Contractor. If Duke Energy determines, in its sole discretion, that re-performance of the Services is not practical, Contractor must refund the price paid by Duke Energy for such Services. The correction of a Defect by Duke Energy pursuant to the previous sentence will not limit or void Contractor's warranty.

D. Subcontractor Warranties. Contractor will use its best efforts to obtain written warranties for the benefit of Contractor and Duke Energy from Material suppliers, vendors, and Subcontractors in relation to their respective portions of the Services that (a) are consistent with and at least equal to Contractor's warranty to Duke Energy, and (b) warrant against defects and deficiencies in each Subcontractor's Services. Contractor will provide to Duke Energy promptly copies of all Subcontractor warranties and guarantees Contractor obtains. Those warranties and guarantees should provide that they survive Duke Energy and Contractor tests, inspections and approvals and should be assignable to Duke Energy. On or after the expiration of the entire Warranty Period, as extended, at the request of Duke Energy, Contractor will assign to Duke Energy any Subcontractor warranty for Services or Material that has not expired. Contractor represents and warrants that upon assignment, all Subcontractor warranties and guarantees will be in full force and effect in accordance with their respective terms.

E. Primary Liability. Contractor will have primary liability with respect to the warranties in the Agreement, whether or not any Defect or other matter is also covered by a warranty of a Subcontractor or other third party, and Duke Energy need only look to Contractor for corrective action. In addition, Contractor's warranties will not be restricted in any manner by any warranty of a Subcontractor or other third party, and the refusal of a Subcontractor or other third party to provide or honor a warranty or to correct defective, deficient or nonconforming Services will not excuse Contractor from its liability on its warranties to Duke Energy.

F. Reasonable Access. Duke Energy will provide Contractor's representatives reasonable access to the Site, consistent with Duke Energy's policies and procedures in effect from time to time, for the purpose of performing warranty Services during times on which Duke Energy and Contractor agree. Contractor acknowledges that warranty Services, at the request of Duke Energy, must be coordinated with the ongoing operations of the Equipment and the Site to assure, among other things, that Duke Energy will be able to fulfill its obligations with respect to the Site.

## XI. CONFIDENTIALITY

A. Contractor agrees that any information relating to Duke Energy's generation plans and customer, employee, retiree, shareholder or supplier information, or technical, financial, administrative and internal activities or any business plans and methods, operating and technical data, reports, drawings, operating documents, project documents, reports, and all non-public information, financial or otherwise, specific to each Duke Energy and its business or its customer or group of customers, including, but not limited to, electricity or natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by



Duke Energy in connection with supplying electric services or gas services to such customers, is considered confidential and proprietary information constitutes Confidential Information as defined in this Agreement. Such information must not be disclosed by the Contractor for any reason to any third party unless approved in writing by Duke Energy prior to such disclosure. Contractor acknowledges that Duke Energy is under regulatory requirements to maintain outage schedule and customer information as Confidential Information. Contractor agrees to use Confidential Information solely for the purpose of providing the Services to Duke Energy and must disclose Duke Energy Confidential Information only to its employees with a need to know such information for the performance of Contractor's Services pursuant to this Agreement and only after such employees understand and agree to be bound by terms at least as restrictive as the terms of this Article XI.

B. Contractor agrees to protect the Confidential Information of Duke Energy with at least the same degree of care used to protect its own most confidential information. Contractor must not disclose the Confidential Information of a Duke Energy business unit to any other Duke Energy entity without prior written consent. The Contractor agrees that in the event of a breach of this Agreement, Duke Energy will be entitled to seek equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity. Notwithstanding any limitation of liability that would otherwise apply to a breach of this Article XI, a Party will be entitled to all damages, whether or not considered consequential or incidental, that arises out of a breach of this Article XI.

C. Confidential Information does not include any information that: (a) was already known to the Contractor at the time it was disclosed by Duke Energy; (b) was available to the public at the time it was disclosed by Duke Energy; (c) becomes available to the public after being disclosed by such Duke Energy through no wrongful act of, or breach of this Agreement by, Contractor; (d) is received by Contractor without restriction as to use or disclosure from a third party; or (e) is independently developed by Contractor without benefit of any disclosure of information by Duke Energy.

D. If Contractor is requested or ordered by a court or governmental entity to disclose any or all of the Confidential Information, Contractor must (i) promptly notify Duke Energy of the existence, terms, and circumstances surrounding the request or order; (ii) consult with Duke Energy on the advisability of taking steps to resist or narrow the request or order; (iii) cooperate with Duke Energy in any lawful effort Duke Energy undertakes to obtain any such relief and with any efforts to obtain reliable assurance that confidential treatment will be given to that portion of Confidential Information that is disclosed; and (iv) furnish only such portions of Confidential Information as Contractor is advised by counsel is legally required to be disclosed, unless Duke Energy expressly authorizes broader disclosure.

**E. Storage and Encryption of Duke Energy Confidential Information and Duke Energy PII:**

- i. Contractor must not store, access, or maintain any Duke Energy Confidential Information outside the United States (including its territories and protectorates), or in any cloud service or facility, without the express prior written consent of Duke Energy.
- ii. Contractor must encrypt all Duke Energy electronically stored Duke Energy Confidential Information in its possession both at rest and in transit
- iii. Contractor must encrypt all Duke Energy electronically-stored PII data elements listed in Exhibit C, using the following design elements:
  - a. The PII must be encrypted in all applications where the PII is initially acquired.
  - b. Decryption of data elements of the PII must only occur in a consuming application, or in output, with a Legitimate Business Requirement for native data elements of the Personal Information. (A "Legitimate Business Requirement" is a need that supports or fulfills the provision of a Service under this Agreement.)
  - c. Access to a fully decrypted data element of the PII is provided only to individuals/entities with a Legitimate Business Requirement for such access, where such access is authenticated using identity management techniques.
  - d. Masking output is utilized to provide access to, or display, a portion of decrypted data in the absence of a Legitimate Business Requirement for decrypted access (i.e. mask all but last 4 digits of social security number on reports).



- e. Custom application(s) will be developed to accommodate ad hoc database queries returning decrypted results appropriate for the individual's Legitimate Business Requirement.
- iv. Contractor must use encryption algorithms used for the Duke Energy Confidential Information and the PII that are currently endorsed by NIST ([www.nist.gov](http://www.nist.gov)), and such algorithms must be updated as such NIST endorsements are updated from time-to-time. Contractor may not use proprietary encryption algorithms.
- v. Contractor must employ encryption / decryption key management such that the keys are managed confidentially.

F. Promptly upon the expiration or earlier termination of this Agreement, or such earlier time as Duke Energy requests in writing, Contractor will return to Duke Energy or its designee, or render unreadable or undecipherable if return is not reasonably feasible or desirable to Duke Energy (which decision will be at Duke Energy's sole discretion), each and every original and copy in every media of all Duke Energy Confidential Information in Contractor's possession, custody or control including all information and materials that contain or are derived from Duke Energy Confidential Information ("**Data Return Requirements**"), unless Contractor is required to keep copies of such Duke Energy Confidential Information by law, and then only to the extent necessary for compliance. Promptly following any return or alternate action taken to comply with the Data Return Requirements, Contractor will provide to Duke Energy a written certification from one of Contractor's officers certifying that such return or alternate action occurred.

G. Upon request, Duke Energy may provide Contractor access to an external network to access the Internet ("**Vendor Network**") while Contractor works on-premises at a Duke Energy facility. Contractor agrees that any use of the Internet and electronic mail through the Vendor Network will be solely for necessary business purposes.

H. Duke Energy's internal network ("**Internal Network**") is independent of the Vendor Network. Contractor agrees that it may access the Internal Network, solely for the purpose of performing the Services. The Internal Network contains Duke Energy Confidential Information, which Contractor may be required to access to perform the Services. Contractor agrees that access to the Internal Network for other purposes, or the use of the Internal Network to access other non-Services-related networks, is strictly forbidden, and Contractor is responsible and liable for all damages or unauthorized access resulting from such actions, and such activity may result in the discontinuation of any and all Duke Energy network access.

I. In accordance with Duke Energy's existing Internet usage policies, Contractor and its employees must not access any gambling, pornography or hate or violence sites from either the Vendor Network or the Internal Network; introduce any viruses, worms, Trojan horses or other bugs or errors in any Duke Energy network; or forward any chain letters, executable "ready to run" files or other files which may cause damage to Duke Energy's computer or network systems. Duke Energy reserves the right to monitor Contractor's use of the Internet through the Vendor Network and Internal Network for these activities.

J. Duke Energy reserves the right, in its sole discretion, to terminate Contractor's access to and use of the Vendor Network or Internal Network at any time, for any reason, and without notice to Contractor.

K. In addition to, and not in limitation of, the requirements of Article XV hereof, Contractor will comply with (i) all applicable Privacy Laws in effect and as they become effective relating in any way to the privacy, confidentiality or security of the Duke Energy Confidential Information and (iii) applicable provisions of every Contractor privacy policy, statement or notice and every Duke Energy privacy policy, statement or notice that is provided to Contractor in writing.

L. In addition to any other privacy, confidentiality or security requirements set forth herein, Contractor will develop, implement and maintain (i) for any of Contractor's goods that contain software (including firmware) ("**Software**") that is executed or installed on any device that will be connected to a Duke Energy information system or network (including, but not limited to the Vendor Network and the Internal Network), and for any of Contractor's Services that support or maintain such Software or connect to a Duke Energy information system or network (including but not limited to the Vendor Network and Internal Network), a comprehensive data and systems security program ("**Security Program**"), which shall include, but may not be limited to, reasonable and appropriate technical, organizational and security measures in the Software and Contractor's information



systems and networks providing intrusion detection and interception procedures, practices and controls designed to protect the Contractor systems used to provide the Services, and against the destruction, loss, unauthorized access, acquisition, disclosure or alteration of: (x) Duke Energy Confidential Information, (y) Duke Energy's information systems, and (z) Duke Energy's networks. (ii) With respect to Software (including firmware), Contractor's Security Program must, (unless otherwise agreed in advance, in writing) at a minimum: (y) use industry standard software and hardware data and system security tools generally available on the market and must not use Contractor's proprietary technology; and (z) use best practice cyber security and coding practices that address issues identified in the then current Open Web Application Security Project Top 10, and the SysAdmin, Audit, Networking, and Security ("SANS") Top 25 Programming Errors, and SANS top 20 critical controls. (iii) Contractor must promptly, upon Duke Energy's request: (y) disclose to Duke Energy IT Security all backdoors, embedded credentials and interactive remote management/support capabilities, and (z) verify that unused features have been disabled. The content and implementation of Contractor's Security Program must be fully documented in writing by Contractor. Upon Duke Energy's request, Contractor will permit Duke Energy to review such documentation and/or inspect Contractor's compliance with the Security Program.

M. Contractor agrees to: (i) notify Duke Energy, in accordance with Section XVI.E hereof, and with a copy to [cirhotline@duke-energy.com](mailto:cirhotline@duke-energy.com), as soon as reasonably possible of any threatened, attempted or successful breach or unauthorized access to, acquisition of, or disclosure of (a) Duke Energy Confidential Information (b) Duke Energy's information systems, or (c) Duke Energy's networks; that Contractor reasonably believes has occurred, or will imminently occur (collectively, a "Security Event"); (ii) immediately investigate (with Duke Energy's participation if desired by Duke Energy) and (iii) remediate the effects of such Security Event.

N. If Contractor: (i) provides any Software that is installed on a Duke Energy computer or network; (ii) stores or processes any Duke Energy Confidential Information; or (iii) connects its computer systems, Software, and/or applications to any Duke Energy network, including but not limited to, the Vendor Network or Internal Network, then Duke Energy will have the right to monitor Contractor's compliance with the terms of this Article and perform data security and system integrity audits ("**Audits**") on any of Contractor's applicable systems and/or applications used to provide the Software or Services. Contractor hereby grants permission to Duke Energy to perform such Audits.

- a. Such Audits may include, but not be limited to, physical inspection of facilities and equipment, external scan, process reviews, and reviews of system configurations, including firewall rule sets, and any information or materials in Contractor's possession, custody or control, relating in any way to Contractor's obligations under this Article. Duke Energy has the right to review copies of the internal scans that have been performed on Contractor's internal servers connected to the Internal Network.
- b. Such Audits may be conducted in Duke Energy's discretion, by Duke Energy or its designated representative, and at Duke Energy's expense at a date and time mutually agreed to by Duke Energy and Contractor.
- c. To the fullest extent permitted by law, Contractor hereby waives the benefit of any state or federal law which may provide a cause of action against Duke Energy based on actions permitted under this Section.
- d. If the Audits result in the discovery of material data security or system integrity risks to Duke Energy, Duke Energy will immediately notify Contractor of such risks and Contractor must respond to Duke Energy in writing with Contractor's plan to take reasonable measures to promptly correct, repair or modify its network or application to effectively eliminate the risk, at no cost to Duke Energy, and Contractor will have 10 (ten) business days to cure such data security or system integrity risks, unless Duke Energy agrees to a longer period of time for such cure. If a data security or system integrity risk is, in good faith, found by Duke Energy and such risk cannot be alleviated in the timeframe contemplated by this Section, based on the nature of the risk, Duke Energy may terminate its network connection to Contractor immediately with or without notice to Contractor without cost or liability to Duke Energy.

O. Contractor agrees that any use, disclosure or handling of Confidential Information in violation of this Section or any applicable Privacy Law, or any other violation of this Section may cause immediate and irreparable harm to Duke Energy for which money damages may not constitute an adequate remedy. Therefore, Contractor agrees that Duke Energy may obtain specific performance and injunctive or other



equitable relief for any such violation, in addition to its remedies at law, without proof of actual damages and without the necessity of securing or posting any bond in connection with such remedy.

P. Contractor may not use the name of Duke Energy or any of its affiliates or the fact that Contractor is performing Services for Duke Energy or any of its affiliates in any press releases, media statements or public communications, or otherwise publicize this Agreement. Contractor may not use Duke Energy's (including its subsidiaries and affiliates) name, logos, trademarks, service marks, trade names or trade secrets in any way, and Duke Energy will not be deemed to have granted Contractor a license of, or granted Contractor any rights in, any of the foregoing by entering into this Agreement.

## **XII. SUPERVISORS/MANAGING PERSONNEL**

Contractor will designate a Contractor Representative ("**Services Coordinator**") to work with Duke Energy and who will serve as a single point of contact for all inquiries and concerns by Duke Energy. The Services Coordinator will represent Contractor in resolving any personnel problems that occur and will coordinate and ensure all of Contractor's employee documentation is completed as requested, as well as helping to resolve any other problems that may occur. The resume of the Services Coordinator will be provided to Duke Energy for approval. If the Services Coordinator is removed from the position or leaves his or her position for any reason whatsoever, he or she will be promptly replaced with at least an equally qualified person, reasonably accepted by Duke Energy.

The Parties will reasonably cooperate in the performance of the Services, including without limitation, Duke Energy providing Contractor with reasonable facilities and timely access to data and information of Duke Energy. Contractor will cooperate with Duke Energy by ensuring the continuity of its personnel assigned to perform the Services for Duke Energy by (i) obtaining fifteen (15) day prior written consent of Duke Energy before removal or reassignment of any key personnel, (ii) replacing personnel with other personnel that have substantially the same or superior qualifications as those being replaced or reassigned, and (iii) providing a minimum of ten (10) days transition period, at no additional cost to Duke Energy, during which time the replacement will work with the incumbent.

## **XIII. TAXES**

(A) Contractor will be responsible for, and will pay directly, any and all Taxes imposed by any governmental authority on Contractor, its employees or subcontractors due to the execution of this Agreement or the performance of or payment for Services in accordance with this Agreement. The price for the Services must include all applicable foreign, federal, state and local Taxes payable with respect to this Agreement. Contractor assumes exclusive liability for all sales, use or privilege taxes applicable to any materials, supplies, equipment or tools purchased, rented, leased, used or otherwise consumed by Contractor in conjunction with the performance of the Services. Contractor must invoice the sale of tangible personal property separately from the provision of labor or services. Tangible personal property includes materials, parts or other property that Contractor installs, incorporates, furnishes or otherwise supplies for Duke Energy's use or consumption that becomes the property of Duke Energy. Invoices for tangible personal property sold or leased to Duke Energy must contain a note stating, "Property Transferred to Duke Energy". Taxes must be billed as a separate line item on the original invoice for taxable purchases. When sales tax is not billed on the original invoice for taxable purchases, Duke Energy is not responsible for the sales tax and such tax is the sole obligation of the Contractor. If Duke Energy is exempt from the payment of any applicable sales, use or other taxes or has a direct payment permit with respect to such taxes, Contractor may access such certificate or permit, duly executed and issued by the appropriate governmental authority in the following link: <http://www.duke-energy.com/pdfs/legal/DirectPayPermit.pdf>. If Contractor fails to avail itself of such certificate or permit, Contractor will be responsible for and must pay any sales, use or privilege tax resulting from such failure. The language in the following link will apply to Services to be delivered or performed for the applicable Duke Energy utility entity or entities: <http://www.duke-energy.com/pdfs/legal/StateSpecificTaxLanguage.pdf>. (B) Contractor assumes exclusive liability for all contributions, taxes or payments required to be made under the applicable federal and state Unemployment Compensation Acts, Social Security Acts and all amendments, and all other current or future acts, federal or state, requiring payment by the Contractor on account of the person hired, employed or paid by Contractor for Services performed under this Agreement. When Services are to be performed in South Carolina, Contractor must submit prior to commencement of Services, a properly completed State of South Carolina, Department of Revenue, Nonresident Taxpayer Registration Affidavit Income Tax



Withholding form, Form I-312. (c) Duke Energy will be solely responsible for any ad valorem, property, license, privilege, excise, or similar taxes lawfully imposed on property owned by Duke Energy. Contractor and its subcontractors will be solely responsible for any ad valorem, property, license, privilege, excise or similar taxes lawfully imposed on property owned by Contractor and its subcontractors, respectively that is used for but not incorporated into the Services.

Contractor must impose a similar obligation on all Subcontractors and must ensure that no Subcontractor will have any claim against Duke Energy for reimbursement of those Taxes. Contractor agrees to cooperate in obtaining exemption certificates necessary to claim such exemptions.

#### **XIV. RECORD KEEPING; AUDIT**

**The prices specified in this Agreement are the total prices for the Services to Duke Energy and Duke Energy will not be responsible for any other charges, fees, taxes or expenses, including Sales Tax unless otherwise expressly provided in this Agreement.**

A For all Services to be performed at the Duke Energy Site, Contractor must maintain in good order at the Duke Energy Site and make available for Duke Energy's inspection at all reasonable times at least one record copy of all current drawings and plans reflecting changes made during the performance of the Services.

B Contractor agrees to maintain records to support all Services performed and all items billed to Duke Energy and must retain all such records for a period of four (4) years following final payment all information and records related to the Services performed under the Agreement. During the term of this Agreement and for a period of four (4) years after the completion of the Services, Duke Energy, its auditors, or other representatives will be afforded access at reasonable times at Contractor's offices the books and records of Contractor relevant to this Agreement, including any amounts owing under this Agreement and compliance by Contractor with each of its obligations under this Agreement. If any audit by Duke Energy reveals charges or costs charged to or paid by Duke Energy that are not proper, are not supported by necessary documentation or records, or exceed the rates or amounts permitted hereunder, then Duke Energy will be entitled upon demand a refund from Contractor of all such amounts, plus interest thereon from the date of payment by Duke Energy until the date of refund by Contractor at a rate of the lesser of (i) one percent (1%) per month or (ii) the maximum rate permitted by applicable law. To permit an efficient audit of the books and records of Contractor, Contractor will require that each employee or subcontractor of Contractor at all times records his or her time of actual work on time sheets in a form reasonably acceptable to Duke Energy.

C Contractor must provide Duke Energy with a written report of its investigation and settlement of all accidents arising out of or related to the Services. Quarterly broken seal self audits will be reported to the Duke Energy protection coordinator. Contractor must, at least once per quarter, provide Duke Energy with written documentation of its ongoing safety program.

D Duke Energy reserves the right to audit records necessary to permit evaluation and verification of claims submitted, and Contractor's compliance, in the performance of this Agreement and its dealings with Duke Energy, with (a) the Agreement requirements; (b) Duke Energy's Supplier Code of Conduct and Code of Business Ethics, and (c) the Screening Measures undertaken by Contractor.

E If requested by Duke Energy, Contractor will provide, in a format acceptable to Duke Energy, monthly status reports containing detailed information related to the Services performed for Duke Energy during the previous calendar month or satisfactory documentation of Contractor's compliance with this Agreement. Each monthly report must be submitted by the tenth (10<sup>th</sup>) of the month following the month in which the Services were performed.

#### **XV. COMPLIANCE**

A. Compliance with Laws, Policies and Procedures. (i) Contractor and its subcontractors, if any, must observe and abide by all applicable laws, federal, state and local, and the rules and regulations of any lawful regulatory body acting thereunder in connection with the Services, including but not limited to the following: Executive Order 11246, Executive Order 13672 and Executive Order 13496 (29 CFR Part 471,

Appendix A to Subpart A), and all amendments of the foregoing that may be made from time to time, the Americans with Disabilities Act, Fair Labor Standards Act of 1938, the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and their respective implementing regulations, which are made a part hereof as if set out herein. **This contractor (Duke Energy) and subcontractor (Contractor) must abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.** Contractor and its subcontractors, if any, must also comply with all applicable Duke Energy health, safety and security rules, programs or procedures. To the extent applicable, during the performance of this Agreement, Contractor must observe and abide by the Equal Employment Opportunity provisions contained in 41 C.F.R. 60-1.4, 41 C.F.R. 60-300.5(a) and 41 C.F.R. 60-741.5(a), and the reporting clause set forth in 41 C.F.R. 61-300.10, and all amendments of the foregoing that may be made from time to time, all of which are incorporated herein by reference. In addition, Contractor must comply with the following Federal Acquisition Regulation ("FAR") clauses as indicated and as applicable: (a) FAR 52.203-13, Contractor Code of Business Ethics and Conduct (Purchase Orders that exceed \$5 million and have a performance period of more than 120 days); (b) 52.219-8, Utilization of Small Business Concerns (Purchase Orders that exceed \$150,000); (c) 52.222-26, Equal Opportunity (all Purchase Orders unless Contractor is exempt from EO 11246); (d) 52.222-35, Equal Opportunity for Veterans (all Purchase Orders of \$100,000 or more unless Contractor is exempt); (e) 52.222-36, Affirmative Action for Workers with Disabilities (Purchase Orders that exceed \$15,000 unless Contractor is exempt); (f) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Purchase Orders that exceed \$10,000 unless Contractor is exempt); (g) 52.222-50, Combating Trafficking in Persons (all Purchase Orders) and (h) 52.222-55, Minimum Wages Under Executive Order 13658 (all Purchase Orders). (ii) Contractor must fully comply with all export and import control laws and regulations with regard to any Services performed by Contractor or with regard to information supplied by Duke Energy to Contractor under this Agreement. In particular, Contractor must not directly or indirectly use, export, re-export, distribute, transfer or transmit any such Services or information in whole or in part, in any form without all required United States and foreign government licenses and authorizations, including but not limited to any applicable export controls of the U.S. Nuclear Regulatory Commission, the U.S. Department of Energy or the U.S. Department of Commerce. In no event will Duke Energy be obligated under this Agreement or any other agreement to provide access to or furnish any services or information except in compliance with applicable United States export control laws, regulations, policies, licenses and approvals. For any Services that are to be performed in South Carolina, Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide, upon request any documentation required to establish that Contractor and its subcontractors are in compliance with Title 8, Chapter 14 of the South Carolina Code of Laws. Contractor must provide to Duke Energy written evidence of Contractor's compliance with this requirement at least five days prior to beginning any Services subject to this requirement. (c) To the extent applicable, by entering into this Agreement, Contractor and its subcontractors agree to comply with the provisions of the Foreign Corrupt Practices Act (FCPA) for any business transactions occurring outside the United States of America.

In addition, Contractor must comply with all policies, procedures, and rules applicable to any Duke Energy Site, including but not limited to Duke Energy's environmental, health, safety and security rules, programs or procedures ("EHS Rules") and Duke Energy's "**Contractor Operating Procedure**" attached hereto as part of Exhibit A, which is incorporated herein in full. Duke Energy reserves the right, in its sole discretion, to update, amend, or modify its Site policies and procedures, including the EHS Rules and Contractor Operating Procedures and standards, at any time upon written notice.

B. Compliance with Regulatory Code of Conduct. Contractor acknowledges that Contractor may be given access to or otherwise become aware of certain operational information of Duke Energy, the disclosure of which to other departments or affiliates of Duke Energy is prohibited by federal law. Such confidential information includes, but is not limited to (i) planned outage schedules, (ii) events of forced outages and derates, (iii) construction schedules, (iv) operational practices at the Duke Energy's generating stations, and (v) transmission system planning and operational data. Contractor must, and must require its Subcontractors to (a) maintain the strict confidentiality of such operational information, and (b) not share such operational information with any third parties, including any other departments or affiliated entities of Duke Energy, without prior written consent which consent may be granted only in Duke Energy's sole discretion.



C. Fraud and Ethics. Contractor and/or its Subcontractors should be familiar with and must adhere to the principles of Duke Energy's Code of Conduct applicable to suppliers and contractors located at <http://www.duke-energy.com/pdfs/Supplier Code of Conduct.PDF> as well as Contractor's ethics and compliance guidelines. Contractor must promptly report any fraud, illegal activity, fiscal waste or abuse, or other violations of Duke Energy's Code of Conduct by any Person, including but not limited to Contractor's Subcontractors, sub-suppliers, and other service providers. Such activity may be reported by contacting: (i) the applicable Duke Energy Contract Administrator or assigned project manager, (ii) by sending an e-mail to Duke Energy's Ethics and Compliance Officer at [EthicsOfficer@duke-energy.com](mailto:EthicsOfficer@duke-energy.com) or (iii) Duke Energy's EthicsLine which is managed by an independent third party at 866.8ETHICS (866.838.4427) which may be called anonymously or by web submittal at <https://ethicsline.duke-energy.com>

D. Diverse Suppliers. For any Agreement in which the total compensation to Contractor will equal or exceed \$700,000, Contractor should adopt and utilize a subcontracting plan (i) to use subcontractors who meet the description of at least one of the categories of diverse suppliers set forth at <http://www.duke-energy.com/suppliers/supplier-diversity-definitions.asp> ("**Diverse Suppliers**") and (ii) to use Local Suppliers, as defined below. Contractor must (i) use all commercially reasonable efforts to utilize Diverse Suppliers and Local Suppliers; and (ii) provide Duke Energy a quarterly status report in Duke Energy's reporting tool and in a format reasonably acceptable to Duke Energy containing Contractor's Diverse Suppliers and Local Suppliers spend. Duke Energy's designated auditors will have the right of access during normal business hours to inspect Contractor's records related to compliance with this Section. For the purposes of this Section, "**Local Supplier**") means a Subcontractor who has a headquarters or branch within at least one of the states in which the Services are provided under this Agreement.

## **XVI. GENERAL**

A. Independent Contractor. Contractor will perform and execute the provisions of this Agreement as an independent contractor to Duke Energy and will not in any respect be deemed or act, or hold itself out as an agent of Duke Energy for any purpose or reason whatsoever, nor will anything contained in this Agreement be construed to justify a finding of the existence of any relationship between Duke Energy and Contractor inconsistent with Contractor's status as an independent contractor. Contractor is an independent contractor and all of its agents and employees will be subject solely to the control, supervision, and authority of Contractor. Duke Energy and Contractor disclaim any intention to create a partnership or joint venture. Contractor will not be entitled to act for, or have any power or authority to assume any obligation or responsibility on behalf of, Duke Energy.

B. Subcontracting. Upon prior written notice to and consent of Duke Energy (not to be unreasonably withheld), Contractor may have any portion of the Services performed by any Subcontractors of, including Persons related to or affiliated with, Contractor. Contractor and any proposed Subcontractors must meet the specific safety criteria as defined in the Duke Energy Health and Safety Supplemental Requirements. If subcontracting is permitted by Duke Energy, Contractor will still continue to be responsible for the performance and completion of the Services. If requested by Duke Energy, Contractor must provide Duke Energy with copies of any contracts with third parties regarding the assignment of rights or delegation of duties hereunder. Contractor must obtain terms and conditions in its contracts with Subcontractors and suppliers which are consistent with the rights of Duke Energy and the duties of Contractors pursuant to this Agreement. Contractor will deliver to Duke Energy for Duke Energy's review a written list of the Subcontractors that the Contractor proposes to engage or use in the performance of the Services before the Contractor enters any contract with any Subcontractor, and Duke Energy will have the right to approve or reject each proposed Subcontractor. No contractual relationship will exist between Duke Energy and any Subcontractor with respect to the Services. Contractor will be fully responsible to Duke Energy and any applicable third party for all acts, omissions, failures, and faults of all Subcontractors as fully as if they were the acts, omissions, failures, and faults of Contractor.

C. Inclusion; Order of Precedence. This Agreement and the Exhibits will be considered complementary. However, in the event of irreconcilable conflict between the Agreement and the Exhibits, the Agreement will govern and the conflicting provisions will be interpreted so as to accord with the provisions of the Agreement. In the event of a conflict between Exhibits, the Exhibit that addresses the issue with more specificity will prevail over an Exhibit more general in nature. An Amendment or Change Order will control that part of the Agreement which it supersedes. Except as otherwise provided below, this Agreement will govern all



Services furnished by Contractor to Duke Energy subsequent to the Effective Date of this Agreement. Duke Energy may specify additions, deletions, or qualifications to this Agreement in a Change Order and such changes will be deemed to be a modification or supplement to this Agreement. Except as expressly provided herein, if there is a conflict between the terms of a Change Order and the terms of this Agreement, the terms of such Change Order will prevail over the terms of this Agreement; provided, however, that in no event will the provisions hereof be modified except pursuant to a separate Amendment executed by an authorized representative of each Party. Notwithstanding the foregoing, conflicts regarding purely technical matters will be governed by Duke Energy's Change Order for the Services. Any and all additional or different terms and conditions contained in any of Contractor's acceptance, invoices, bills or other commercial documents are hereby rejected and will not become part of the Agreement between the parties and any reference to Contractor's proposal is solely for the purpose of incorporating the description and specifications of the Services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of this Agreement.

D. No Publication. Contractor may not use Duke Energy's name or the fact that Contractor is providing Services to Duke Energy in any press releases, media statements, public communications, or otherwise publicize the Agreement. Contractor may not use Duke Energy's (including its subsidiaries and affiliates) name, logos, trademark, service marks, trade names, or trade secrets in any way, and Duke Energy will not be deemed to have granted Contractor a license of, or granted Contractor any rights in, any of the foregoing by entering into this Agreement.

E. Notices. All notices required or permitted to be given by this Agreement, except where oral notice is specifically authorized, must be in writing, must identify the appropriate Service request, and must be mailed, hand delivered, electronically sent or sent via facsimile to the relevant party at the address set out in the Service request. Written notices will be deemed delivered on the date of actual delivery, or the date that a facsimile or email is actually received, if a business day or, if not a business day, the next business day. Each Party may change its address for notices by written notice given in accordance with this Article.

F. Force Majeure. If, because of a Force Majeure event, the business operations at the locations are interrupted or stopped, performance of this Agreement will be suspended and excused to the extent commensurate with such interfering occurrence and the time for performance will be extended on a day for day basis. The Party claiming Force Majeure must exercise commercially reasonable efforts to overcome and mitigate the effects of any force majeure.

G. Severability. If any provision or part thereof, of this Agreement is held to be invalid or unenforceable for any reason, the invalid provision or part thereof will be stricken from this Agreement, and the remainder of the Agreement or provision will be valid and enforceable to the fullest extent allowed by law.

H. Dispute Resolution. The Parties agree to attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Disputes") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Notice of any claim by Contractor must be made in writing to Duke Energy within five (5) calendar days after the first day of the event giving rise to such claim or Contractor will be deemed to have waived the claim. Contractor will proceed diligently with the performance of the Services under this Agreement, as directed by Duke Energy, regardless of any pending claim or dispute. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. All negotiations pursuant to this clause are to be deemed confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Dispute has not been resolved by negotiation within sixty (60) days after receipt of the Disputing Party's notice, then either Party may initiate litigation. Either Party will have the right, in its discretion, to include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in any litigation.

I. No Waiver. Remedies Cumulative. For any waiver of any right, obligation, or privilege to be binding, the waiver must be in writing and signed by the Party against whom such waiver is sought to be enforced. No delay in exercising or failure to exercise a right of remedy will impair that or any other right or remedy or be construed as a waiver of any default. A waiver by Duke Energy of any one or more obligations, defaults, or breaches under this Agreement will not operate as a waiver of any future obligation, default, or



defaults, whether of a like or different character. The remedies in the Agreement are cumulative and in addition to all rights and remedies at law and in equity.

J. Assignment. Contractor may not assign this Agreement or delegate any of its rights, duties and/or obligations hereunder without the prior written consent of Duke Energy, and any such attempted assignment or delegation without such consent will be null and void. Any such consent may be withheld at Duke Energy's sole discretion and any such consent to assignment or delegation, if granted, will not relieve Contractor of any of its liabilities and responsibilities hereunder unless otherwise expressly provided in such consent. The terms and conditions of this Agreement will be binding upon and inure to the benefit of any and all successors and/or assigns of Duke Energy and Contractor. Notwithstanding any provision herein, this Agreement will not confer or be construed in any manner to confer, directly or indirectly, any rights, privileges, benefits, and/or remedies, upon any parties other than the parties hereto and their respective successors and/or permitted assigns.

K. Non-Solicitation. In order for Duke Energy to retain adequate personnel to maintain its business operations, including personnel it has trained, Contractor may not, without Duke Energy's prior written consent, directly solicit for employment as an employee or contractor, any person who is an employee of Duke Energy. Duke Energy may consider any breach of this provision by Contractor a material breach. Nothing in this paragraph, however, will prohibit or prevent Contractor and/or any of its Subcontractors from actually employing, hiring or otherwise engaging the services of any employee of Duke Energy provided that such employee responded to an advertisement or other public solicitation for the employment position and initiated the contact/conversations of such employment with Contractor.

L. Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the State Contractor and Duke Energy agree to relinquish and waive their rights to a trial by jury in any action brought hereunder.

M. Entire Agreement. The terms and conditions set forth herein, including Exhibits A, B and C, are intended by Contractor and Duke Energy to constitute the complete statement of their agreement and all prior communications relating to the subject matter of this Agreement, whether oral or written, are hereby superseded. No modification or amendment of this Agreement will be effective unless the same is in writing and signed by both Parties.

N. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

O. Mechanic's Lien Waiver. Contractor must not file or permit to be filed any lien with respect to the Services, and to the extent permitted by law, expressly waives any right to file or cause to be filed a lien. Contractor, in its subcontracts, must require all subcontractors, to the extent permitted by law, to expressly waive the right to file any liens against Duke Energy's property and, if requested, provide Duke Energy with copies of such waivers. Contractor must immediately bond off any lien against Duke Energy and must indemnify Duke Energy for any costs or expenses resulting from a breach of this Section. In the event that rights to a mechanic's lien are claimed upon Duke Energy's property by a Subcontractor, Contractor must expeditiously obtain a bond or release of said mechanic's lien. If Contractor fails to expeditiously obtain said bond or release, Duke Energy may withhold payment to Contractor and proceed to obtain the bond or release of the mechanic's lien and Contractor will be liable to Duke Energy for any costs and expenses which are incurred by Duke Energy in obtaining said release. Any amounts owed by the Contractor to Duke Energy under this Section, may be offset by Duke Energy by any amounts owed to the Contractor, which will include, but not be limited to, the retention of any retained funds held by Duke Energy pursuant to any portion of the Agreement. Further, upon Duke Energy's communication to Contractor that any Subcontractor has contacted Duke Energy about any amounts owed to such Subcontractor by Contractor, Contractor must immediately resolve the matter with the Subcontractor. If Contractor fails to expeditiously resolve the matter to Duke Energy's satisfaction, Duke Energy may offset any invoices owed to Contractor under this Agreement between the Parties for the performance of any Contractor's Services herein or any services or work performed at any other Duke Energy property, site, or station related to any other purchase order or agreement between the Parties.

P. Survival. The provisions of the following Articles and Sections of this Services Agreement and all other provisions of the Agreement providing for indemnification or limitation of or protection against liability

will survive the termination, cancellation, or expiration of this Agreement: Article I and IV, Sections VI.C, VI.D, and VI.G. Articles VIII, IX, X, XI, XIII and XIV, Sections XVI.A, XVI.C-E, XVI.G-I, XVI.L-P.

*(Signatures on following page)*

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]**



**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be signed by a duly authorized representative as of the Effective Date first above written.

**DUKE ENERGY OHIO INC/ KENTUCKY, LLC**

By: \_\_\_\_\_

Name: Amy Roberts

Title: Sourcing Specialist

Date: XXX

**CONTRACTOR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
SPECIFICATIONS / SCOPE OF WORK**

All of the Services to be provided herein must be performed in accordance with the terms and conditions included in this Agreement, Duke Energy Ohio Inc./Kentucky, LLC - Gas Standards, Welding Specifications, Specification GD-150, Specification GD-147, Technical Specifications, Bid Documents within the PowerAdvocate event, Construction Drawings, and any other documents, drawings, specifications, or other instruments ("**Documents**") that are to be used and considered by Contractor, as applicable, for the performance of the Services. The Specifications GD-150 and all other necessary Documents will be obtained by Contractor and/or provided by Duke Energy to Contractor or other Party upon request, and all such Documents will be incorporated herein by reference. Contractor must ensure that it has any and all such Documents for the performance of the Work prior to the commencement of such Work.

All Work must be completed by labor under a collective bargaining agreement.

**INVOICING NOTE:**

Mail All Invoices To:

Duke Energy Ohio Inc./Kentucky, LLC  
139 East Fourth Street  
PO Box 960, Rm 405-A  
Cincinnati, OH 45201-0960  
Attn: Steve Farley

You must include on your invoice:

- ▶ Purchase Contract #XXXXX
- ▶ Invoice number
- ▶ Invoice amount (split out labor and material prices)
- ▶ Invoice date

In the future, electronic invoice settlement may be implemented at Duke Energy. Notice is given that it will be necessary for the Contractor to have the capabilities to transmit invoices and/or receive payment in electronic form. Electronic invoice and receipt settlements will assist both Parties in reducing transaction cost.

***Purchase Contract #XXXX - 2016 Gas Operations Territory***



**EXHIBIT B  
CONSTRUCTION NOTES**

**EXHIBIT C  
DUKE ENERGY PII**

Duke Energy Personally Identifiable Information ("Duke Energy PII") means that portion of Duke Energy Confidential Information that is subject to any Privacy Laws, including but not limited to, any information collected by Duke Energy or its subsidiaries and affiliates that uniquely identifies a person, or from which a person can be reasonably identified, and the collection, use or disclosure of which is governed by applicable law or regulation.

***Encryption requirements***

The following Duke Energy PII data elements must be encrypted:

1. Social Security Number
2. State ID Card Number
3. Driver's License
4. Checking Account Number
5. Savings Account Number
6. Credit Card Number
7. Debit Card Number
8. Passport Number
9. Fingerprints
10. Biometric Data
11. Digital Signatures
12. Stock or other security certificate or account number
13. Parent's Legal Surname prior to marriage
14. Medical Information
15. Health insurance information
16. Employer or taxpayer identification number
17. Insurance policy number
18. Passwords, PINs, or other access codes
19. Private Phone Numbers
20. Vital record
21. Unique electronic identifier, routing code, account number, credit card number, or debit card number, in combination with any required security code, PIN, access code, or password that would permit access to an individual's financial account
22. Other numbers or information which may be used to access a person's financial accounts or numbers or information issued by a governmental or regulatory entity that uniquely will identify an individual