

## DUKE ENERGY STANDARD TERMS AND CONDITIONS FOR ON-SITE CONSTRUCTION SERVICES

Under these Standard Terms and Conditions, the word "Duke Energy" shall mean the Duke Energy legal entity listed on the face of the Agreement, Purchase Order or Contract Order to which these Standard Terms and Conditions are attached, or one of Duke Energy's authorized assigns.

1. **Definitions.** "Services" means all construction, installation, erection and other on-site labor services and related obligations to be performed by Contractor under the Agreement. "Deliverables" means: (a) all drawings (stamped or certified as required by applicable laws), all charts, graphs, studies, reports, computer programs and other related documents; (b) all supporting documentation for such drawings, charts, graphs, studies, programs, and all training documentation related thereto; and (c) all tangible media upon which the information is recorded, including disks, tapes, chips, all of which are specified for delivery by Contractor to Duke Energy in the Agreement. "Specifications" means any specifications or standards relating to the Services which are set forth in the Agreement.
2. **Order of Precedence.** The "Agreement" shall mean and shall consist of the following documents, listed in their order of priority in the event of a conflict: (a) the signed written contract or the Duke Energy Purchase Order (without the pre-printed terms and conditions) to which these terms and conditions are attached; (b) these Duke Energy Standard Terms and Conditions; and (c) any exhibit(s), schedule(s), or other proposal(s) incorporated into the contract or Purchase Order, as applicable. Additional or different terms contained in Contractor's proposal or Contractor's acceptance shall not become a part of this Agreement unless expressly agreed to in writing and signed by Duke Energy.
3. **Schedule.** Contractor shall meet the scheduled completion dates set forth in the Agreement. Contractor shall notify Duke Energy within 24 hours of the first knowledge that any completion date(s) will not be met. Contractor shall be liable for all direct damages (or agreed upon liquidated damages) incurred by Duke Energy arising out of Contractor's failure to meet the scheduled completion dates in the Agreement.
4. **Inspection and Acceptance.** Duke Energy shall have free access to the Services for inspection purposes. Duke Energy's inspection or acceptance of the Services shall not relieve Contractor of its obligation to comply with the terms of the Agreement. Duke Energy may reject non-conforming Services and Contractor shall correct such non-conformity at Contractor's expense. Duke Energy shall have ninety (90) days from the successful completion of the Services under the Agreement to confirm that the Services were performed substantially in accordance with the Specifications. Any Services not rejected by Duke Energy during such ninety (90) day period shall be deemed accepted. If Duke Energy determines that the Services were not performed substantially in accordance with the Specifications, Duke Energy must notify Contractor in writing, during such acceptance period, of the discrepancies. Duke Energy and Contractor agree to work together for a period not to exceed thirty (30) days to resolve these discrepancies. If these discrepancies are not resolved to Duke Energy's reasonable satisfaction within the thirty (30) days, Duke Energy has the option of terminating the Agreement and recovering all direct damages and/or any agreed upon liquidated damages incurred by Duke Energy.
5. **Assigned Personnel.** Contractor shall assign qualified and competent supervision and personnel to perform the Services. Key personnel shall not be removed or replaced without prior consent of Duke Energy, which consent shall not be unreasonably withheld. Contractor shall reasonably cooperate and coordinate with Duke Energy and others who are performing work at or near the area of the Services. Contractor shall promptly report to Duke Energy any defects observed in the work of third parties not under the control of Contractor or its subcontractors, and any effects (or potential effects) on the Contractor's Services. Failure to report such defects by third parties constitutes acceptance of the conditions by Contractor. Contractor shall secure and protect its own materials, tools, equipment and the Services, including Duke Energy provided materials and equipment. Contractor shall provide Duke Energy with periodic progress reports as requested by Duke Energy. The price shall include, and the Contractor shall be responsible for the payment to its employees of all compensation, taxes, assessments for unemployment insurance, social security and disability benefits, and other fees, benefits (including health and retirement) and taxes which are based upon the compensation paid to persons employed by Contractor or its subcontractors for the performance of any Services. Contractor agrees to indemnify, defend and hold Duke Energy and its directors, officers, employees and administrators of Duke Energy's benefit and health plans harmless from all claims, liabilities or expenses related to such compensation.
6. **Sufficient Personnel.** At all times during the term of the Agreement, Contractor shall employ or utilize a sufficient number of qualified persons, who shall be licensed if required by federal, state and local laws, so that Contractor has the capability to complete the Services under the Agreement in an efficient, prompt and professional manner. Contractor's personnel shall be properly certified and licensed and able to perform the duties required in the Specifications or other technical documents. In addition, as it may be necessary to access protected areas of the Duke Energy site to provide the Services, appropriate service personnel must be fully qualified (or retain the ability to be qualified on an expedited emergency basis) for unescorted Duke Energy site access in accordance with Duke Energy's regulations and procedures (including fitness for duty compliance, background check, radiation protection and security training). Contractor shall cooperate with, and shall cause all of its employees and subcontractors to cooperate with, Duke Energy in any investigations or reviews which Duke Energy or any federal, state or local government conducts and which are related to the Services. Duke Energy shall have the right to require Contractor to remove any personnel from the Duke Energy site who is (are) not acceptable to Duke Energy. In such event, Contractor shall bear any reasonable expenses associated with the removal and replacement of such unacceptable employee(s). Any Person who is removed from the Site or from the Services at Duke Energy's request or for violation of a requirement set forth in this Agreement shall not be eligible to provide any future work for Duke Energy under this Agreement without the express written consent of Duke Energy.
7. **Qualifications; Supervision.** Contractor shall comply, and shall require its authorized subcontractors to comply, with all applicable labor and immigration laws that may impact Contractor's obligations under this Agreement, including the Immigration Reform and Control Act of 1986 and Form I-9 requirements. Without limiting the foregoing, Contractor and its authorized subcontractors shall perform all required employment eligibility and verification checks and maintain all required employment records. Contractor acknowledges and agrees that it is responsible for conducting adequate screening of its employees and agents prior to starting the Services. Duke Energy has an Alcohol/Drug Abuse Procedure (MICCS). Contractor and its authorized subcontractors shall implement and administer an alcohol/drug abuse policy acceptable to Duke Energy and at least as stringent as that of Duke Energy. By providing an employee under this Agreement, Contractor warrants and represents that it has completed the Screening Measures (as defined below) with respect to such employee and that such Screening Measures did not reveal any information that could adversely affect such employee's suitability for employment by Contractor or competence or ability to perform duties under this Agreement. If in doubt whether a suitability, competence or ability concern exists, Contractor shall discuss with Duke Energy the relevant facts and Duke Energy will determine, in its sole discretion, whether such person should be allowed to perform the Services. As used in this Section, the term "Screening Measures" means reference checks, social security trace, terrorist database search, 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, however, that nothing in this Section shall be interpreted as authorizing or requiring 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 law. Duke Energy, in its sole discretion, shall have the option of barring from the Site any person whom Duke Energy determines does not meet the qualification requirements set

forth above. In all circumstances, Contractor shall ensure, and shall require that its subcontractors ensure, that the substance and manner of any and all background checks performed by Contractor pursuant to this Article conform fully to applicable federal, state and local laws. Contractor shall supervise, coordinate and direct the Services using Contractor's best skill, judgment and attention.

8. **Duke Energy Site Review; Local Conditions.** Prior to performing Services at the Duke Energy site, Contractor shall have taken all steps reasonably necessary, in accordance with prudent construction industry practices, to ascertain the nature and location of the Services and shall have investigated and satisfied itself as to the general and local conditions that can affect the Duke Energy 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 water, electric power, other utilities, roads and rail transportation; (c) uncertainties of weather and observable physical conditions at the Duke Energy site; (d) any natural physical condition of the surface or subsurface of the Duke Energy site which influences the suitability of the Duke Energy 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 Duke Energy site for additional inspection and testing by Contractor after receiving adequate notice from Contractor that it wishes to review the Duke Energy site. If Contractor has failed to take all reasonable steps as described in this Section above, then Contractor will not be entitled to any adjustment in the price or schedule for any unknown Site conditions which Contractor would have discovered if it had taken such reasonable steps.
9. **Access to Services.** Contractor shall provide Duke Energy and its employees, agents, representatives and individuals or entities having regulatory authority over Duke Energy with reasonable access during normal business hours to the Services wherever located for observation and inspection, including but not limited to auditing of all activities for conformance with the requirements of Contractor's quality assurance program and all requirements of the Agreement. Duke Energy shall give reasonable prior notice before any access to Services is granted for Services which are not being performed at the Duke Energy site. Inspections and audits of Contractor's suppliers and subcontractors will be coordinated with Contractor. Duke Energy shall have the right to assign dedicated representatives to Contractor's manufacturing facility at Duke Energy's cost and upon terms and conditions reasonably acceptable to Contractor on a full time basis.
10. **Changes in Services.** Duke Energy may change the scope of Services from time to time. If Contractor's price or schedule will be affected by the change, Contractor must 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 Services for the change.
11. **Payment.** Contractor shall invoice Duke Energy, with proper documentation, for all Services performed during the prior month. Duke Energy shall pay Contractor, upon submission of proper invoices, the price for Services performed within 45 days after receipt of the invoice. Duke Energy may withhold and offset payment if Duke Energy disputes Contractor's compliance with the terms of the Agreement. Duke Energy's payment does not constitute acceptance of the Services. The Agreement number must appear on all invoices and notices.
12. **Delay Liquidated Damages; Offset.** Duke Energy may specify in the Agreement that Contractor shall complete the Services on or before a guaranteed delivery 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 complete the Services by the guaranteed date. Accordingly, the Parties agree that if Contractor does not meet the guaranteed date, Duke Energy's remedy for that delay shall be to recover from Contractor as liquidated damages, and not as a penalty, the amount of liquidated damages, if any, set forth in the Agreement, for each day or portion of a day delivery is delayed beyond the guaranteed delivery date. These liquidated damages shall not limit Duke Energy's remedies for other breaches, actions or omissions of Contractor. The delay liquidated damages shall be due and payable by Contractor to Duke Energy within twenty (20) days after written demand by Duke Energy. In addition to its other rights and remedies, Duke Energy shall have the right to offset the amount of any unpaid balance by Contractor (including liquidated damages) against any amounts due or that may become due Contractor under the Agreement.
13. **Taxes.** The price for the Services shall include all applicable foreign, federal, state and local taxes payable with respect to this Agreement. However, if Duke Energy specifies additional services or tangible personal property to be furnished by Contractor which qualify for exemption from sales or use taxes, Contractor shall, at the direction of Duke Energy, not include sales or use taxes in its price. Duke Energy shall provide Contractor with Duke Energy's direct pay permit or exemption certificate where applicable. Contractor agrees to cooperate in obtaining exemption certificates necessary to claim such exemptions.
14. **Warranty.** Contractor warrants that the Services provided: (i) will be performed in accordance with the highest applicable standards in the construction industry, (ii) will be performed in a timely manner as required by the Agreement and performed and supervised by qualified personnel, and (iii) will conform in all material respects for one year after acceptance to the Specifications. Contractor further represents and warrants that it is not a party to nor subject to any agreement or order which would limit, prevent or restrict its performance of any Services. In the event any portion of the Services furnished to Duke Energy fails to comply with this warranty obligation within one (1) year of acceptance of such portion of the Services, Contractor will promptly re-perform such portion of the Services without additional compensation from Duke Energy or, if re-performance is impractical or impossible as mutually agreed by the Parties, will refund the amount of the compensation paid to Contractor for such portion of the Services. For the foregoing warranty and remedy to apply, written claim must be made by Duke Energy within a reasonably prompt period of time and in no event later than thirty (30) days after the expiration of the aforementioned warranty period. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CONTRACTOR MAKES NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF THE LAW OR COURSE OF PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
15. **Insurance.** Commencing with the performance of the Services hereunder, and continuing until the termination of the Services, Contractor shall maintain or cause to be maintained standard insurance policies as follows: (a) Worker's Compensation in accordance with the statutory requirements of the state, and Employer's Liability Insurance of not less than \$1,000,000 each accident for bodily injury by accident, and \$1,000,000 each employee and policy limit for bodily injury by disease; (b) Commercial General Liability Insurance in a combined single limit of \$2,000,000 each occurrence for bodily injury and property damage liability and \$2,000,000 in the aggregate, including Contractual Liability coverage, bodily injury to or death of persons, and/or loss of or damage to property of parties other than Owner; (c) Automobile Insurance (owned, non-owned or hired) in a combined single limit of \$1,000,000 per accident for bodily injury and property damage liability; (d) Errors & Omissions Insurance in the amount of \$2,000,000. Unless otherwise specified in the applicable Agreement, all insurance policies provided and maintained by Contractor and each of its subcontractors shall: (i) be underwritten by insurers which are rated "A- VII" or higher; (ii) be endorsed to specifically name Duke Energy and its affiliates as additional insured, excluding, however, Worker's Compensation and Errors and Omissions; (iii) be endorsed to provide that each underwriter waives its rights of subrogation against Duke Energy and its affiliates; (iv) provide that such policies are without right of contribution from any other insurance available to Duke Energy and its affiliates; and (v) contain cross liability and severability of interest provisions. Evidence of such specific endorsements shall be provided with Contractor's certificate of insurance furnished to Duke Energy prior to the start of Services. Such certificates and policy endorsements shall provide that the insurer will provide thirty (30) days' written notice to Duke Energy prior to cancellation of any policy. Contractor's compliance with this provision and the limits of insurance specified herein shall 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 shall permit Duke Energy to suspend all Services until compliance is achieved. At the option of Duke Energy, Duke Energy may pay any insurance premiums for Contractor in order to achieve

compliance for Contractor and may deduct the amount of the premiums and all other costs incurred by Duke Energy in achieving compliance from amounts to be paid to Contractor.

**16. Force Majeure.** The performance by Duke Energy or Contractor pursuant to this Agreement shall be excused to the extent the performance is delayed or prevented by reason of an event of Force Majeure, which is an event that (a) adversely and directly affects, prevents or delays either Party (including such Party's subcontractors) in the performance of its obligations in accordance with the terms of this Agreement; (b) is beyond the reasonable control of the affected Party; and (c) is not the result of the willful misconduct, negligent act or omission or unlawful conduct of, or the breach of this Agreement by, such Party. If a Party is reasonably prevented from performing its obligations under this Agreement by an event of Force Majeure, such party shall use all commercially reasonable efforts to remove the cause affecting such non-performance. If a Force Majeure occurs, the Parties shall negotiate an equitable adjustment to the date of delivery or time for performance under the Agreement by a period of time reasonably necessary to overcome the effect of the delay. If a Party claims there is an event of Force Majeure, such Party shall notify the other Party of the nature and cause of the event in writing within five (5) business days after such Party becomes aware, or should have become aware with the exercise of reasonable diligence, of the Force Majeure event. If any condition of Force Majeure delays Contractor's performance for a time period greater than 180 Days in the aggregate under the Agreement, Duke Energy in its discretion shall have the right to terminate this Agreement and such termination shall be deemed to be a termination for convenience.

**17. Compliance with Laws.** Unless Contractor is exempted by the applicable rules, regulations or orders, Contractor shall comply fully at all times relevant to the Agreement with all applicable laws, rules, regulations and court orders and all amendments of the foregoing that may be made from time to time.

**18. Safety.** Contractor and its personnel involved in performance of the Services including, but not limited to, employees, subcontractors and agents shall comply with all Duke Energy safety and security procedures (including Duke Energy's Safe Work Practices Manual) while on Duke Energy's premises to achieve an injury-free work place, provided that such rules and procedures do not conflict with OSHA or other safety laws, rules and regulations. Written alternative work practices that provide equivalent safety may be submitted to Duke Energy and used by Contractor in the performance of Services upon Duke Energy's written approval. In addition, Contractor must follow detailed technical safety specifications when they are provided. Contractor shall comply with and enforce all laws, rules and regulations applicable to safety and health standards, including but not limited to the Occupational Safety and Health Act of 1970 (OSHA), and any revisions to OSHA or successor legislation. Contractor shall provide Duke Energy with Material Safety Data Sheets for all hazardous materials prior to delivery to the site. During the course of its performance of Services, Contractor shall 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 shall exercise utmost care and carry on its activities only under the supervision of properly qualified personnel. Contractor shall designate a responsible, qualified full-time member of Contractor's organization at the Duke Energy 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 shall not load or permit any equipment or materials to be loaded at the Duke Energy site so as to endanger the safety of persons or property.

**19. Incident Reporting.** In addition to reporting to government as required by federal, state and local laws, Contractor shall 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. For all accidents which cause death,

serious bodily injury or property damage, Contractor shall immediately notify Duke Energy's health and safety representative by telephone or messenger giving full details and statements of any witnesses. Contractor shall complete a human resources 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.

**20. Environmental Hazards.** Contractor shall provide to Duke Energy, in advance for review and approval, all Material Safety Data Sheets (MSDS) covering all hazardous materials and other chemical to be furnished, used, applied, or stored by Contractor or any subcontractor at the Duke Energy site or shall provide copies of a document certifying that no MSDS are required under any applicable federal, state or local laws. Seller shall not furnish, use, apply, store, or construct at the Duke Energy site any materials that contain methylene chloride, lead, or hexavalent chromium. Contractor shall 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 federal, state and local laws and shall deliver a copy of each notice promptly to Duke Energy's Hazard Communication Program Administrator. Contractor shall 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 shall 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 federal, state and local laws. Contractor shall 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 shall be performed in accordance with the requirements of all governments and federal, state and local laws. Duke Energy shall 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 shall be responsible for the collection and clean up of hazardous wastes it produces or causes to be produced. The Contractor's collection and clean up of such hazardous wastes shall be performed under the direction of Duke Energy. Duke Energy shall be responsible for the removal and disposal of all hazardous wastes. Contractor shall provide prompt written notice to Duke Energy of all suspected hazardous materials and hazardous wastes which it finds during performance of the Services and shall stop work in the area until Duke Energy abates these hazardous materials and hazardous wastes.

**21. Infringement.** Contractor warrants that its performance of the Services will not infringe upon or violate any trademarks, patents, copyrights, trade secrets or other third party property rights, If the performance of Services is held in any action to constitute infringement, or the use of the Services is enjoined, Contractor, at its expense, shall procure for Duke Energy the right to continue use of the Services, or replace the Services with non-infringing materials or methods satisfactory to Duke Energy, or modify the Services in a manner satisfactory to Duke Energy so that the Services become non-infringing. Contractor agrees to indemnify, defend and save Duke Energy harmless from and against any liability or damages, including attorneys' fees, arising out of any alleged infringement or violation..

**22. Intellectual Property.** During the performance of the Services, Duke Energy may provide Contractor with technical data, web content, customer lists, and other data. All right and interest in the Duke Energy data will remain with Duke Energy. Duke Energy will own the Deliverables set forth in the Agreement and any and all intellectual property, including trademarks, patents, copyrights and trade secrets, related to the Deliverables. Services performed hereunder shall be deemed "work made for hire". Contractor will execute documents, including agreements with its employees and agents, necessary to effectuate Duke Energy's ownership of such intellectual property. In the event the Deliverables do not qualify as "work for hire" or if a third-party

retains any interest in the Deliverables, Contractor hereby agrees to grant Duke Energy a world-wide, fully paid, perpetual and transferable license to run, repair, copy and otherwise use such Deliverables.

23. **Confidentiality.** Contractor shall keep confidential and not disclose to any person or entity any information that Duke Energy designates as being confidential. "Confidential Information" shall include, but not be limited to, business plans and methods; customer information; engineering, operating and technical data; and the dates of Duke Energy's outage schedule(s). Contractor shall not use Duke Energy's name or the fact that Contractor is providing Services to Duke Energy in any press releases, media statements or public communications or otherwise publicize the Agreement. Seller shall 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 shall not be deemed to have granted Seller a license of, or granted Contractor any rights in, any of the foregoing by entering into this Agreement. Notwithstanding any limitation of liability which would otherwise apply to a breach of this Article, a Party shall be entitled to all damages, whether or not considered consequential or incidental, that arise out of a breach of this Article.
24. **Termination.** Duke Energy may terminate, for its convenience or for cause, all or any part of the Agreement upon written notice to Contractor. Upon termination for convenience, Contractor shall immediately stop work on the terminated portion of the Agreement and shall submit to Duke Energy an invoice with supporting information setting forth the fees for the Services performed prior to the notice of termination, plus Contractor's actual, direct, unavoidable costs resulting from the termination, less salvage value, in no event to exceed the Agreement price. Upon termination for cause, Duke Energy may pursue all rights and remedies available under the law. Upon termination for convenience or cause, Duke Energy shall not be liable to Contractor for Contractor's lost profits on the terminated portion of the Agreement.
25. **Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AT ITS EXPENSE, AND SAVE DUKE ENERGY HARMLESS, FROM ANY LIABILITIES, COST AND CLAIMS, INCLUDING JUDGMENT RENDERED AGAINST, AND FINES AND PENALTIES IMPOSED UPON, DUKE ENERGY, INCLUDING ALL COSTS OF LITIGATION, ARISING OUT OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING INJURIES OR DEATH TO PERSONS, OR DAMAGE TO PROPERTY, CAUSED BY CONTRACTOR, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, EXCEPT THAT CONTRACTOR'S OBLIGATION TO INDEMNIFY DUKE ENERGY SHALL NOT APPLY TO ANY LIABILITIES TO THE EXTENT CAUSED BY DUKE ENERGY'S NEGLIGENCE.
26. **Limitation of Damages.** Except as otherwise expressly provided in this Agreement, neither Party shall be liable to the other for any special, punitive, exemplary or consequential damages.
27. **Liens.** Contractor shall 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, shall 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 shall immediately bond off any lien against Duke Energy and shall indemnify Duke Energy for any costs or expenses resulting from a breach of this paragraph. In the event that rights to a mechanic's lien are claimed upon Duke Energy's property by a subcontractor, Contractor shall expeditiously obtain a bond or release of said mechanic's lien. Upon Contractor's failure to expeditiously obtain said bond or release, Duke Energy may proceed to obtain the bond or release of the mechanic's lien and Seller shall be liable to Duke Energy for any costs and expenses including attorneys' fees, which are incurred by Duke Energy in obtaining said bond or release.
28. **Assignment and Subcontracting.** Contractor may not subcontract, assign, or otherwise dispose of the Agreement without the prior written consent of Duke Energy. If subcontracting is permitted by Duke Energy, Contractor shall continue to be responsible for the completion of this Agreement.
29. **Records.** For all Services to be performed at the Duke Energy site, Contractor shall 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. 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. Contractor shall retain for a period of four years following final payment all information and records relating to the Services performed under the Agreement. Duke Energy may examine and copy such information and records at Contractor's premises during regular business hours.
30. **Cooperation.** The Parties shall 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. If so requested by Duke Energy, Contractor shall 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. Each monthly report shall be submitted by the tenth (10<sup>th</sup>) of the month following the month in which the Services were performed. Contractor shall 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 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.
31. **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 (a) planned outage schedules, (b) events of forced outages and derates, (c) construction schedules, (d) operational practices at the Duke Energy's generating stations, and (e) transmission system planning and operational data. Contractor shall, and shall require its subcontractors to (i) maintain the strict confidentiality of such operational information, and (ii) not share such operational information with any third parties, including any other departments or affiliated entities of Duke Energy, without prior written consent.
32. **Fraud and Ethics.** Contractor shall be familiar with and shall adhere to the principles of Duke Energy's Supplier Code of Conduct located at <http://www.duke-energy.com/suppliers/code-of-conduct.asp>. Contractor shall promptly report any fraud, illegal activity, fiscal waste or abuse, or other violations of Duke Energy's Code of Conduct by any party, including Contractor's suppliers and service providers. Such activity may be reported by contacting: (a) your Duke Energy Contract Administrator, (b) Duke Energy's Ethics-Line managed by an independent third party at 800-525-3783, which may be called anonymously, or by web submittal at [www.dukeenergy-ethicsline.com](http://www.dukeenergy-ethicsline.com), (c) or by sending an e-mail to Duke Energy's Ethics and Compliance Office at [ethicsofficer@duke-energy.com](mailto:ethicsofficer@duke-energy.com).
33. **Diverse Suppliers.** For any Agreement in which the total compensation to Contractor will equal or exceed \$550,000, Contractor shall adopt and utilize a subcontracting plan that complies with 48 C.F.R. 52-219-9 for Small Diverse Suppliers ("SDS"). Contractor shall: (i) use all commercially reasonable efforts to utilize SDS (and Large Diverse Suppliers) as required by law; and (ii) provide Duke Energy a quarterly status report in a format reasonably acceptable to Duke Energy. Such report shall be entered on Duke Energy's website at <http://www.duke-energy.com/suppliers/supplier-diversity.asp>. Duke Energy, its designated auditors and any applicable government agency shall have the right of access during normal business hours to inspect Contractor's records related to SDS and compliance with this section.
34. **Permits.** Contractor will obtain, at its expense, all permits and licenses required to perform the Services.

35. **Notices.** Each party shall designate a representative for the receipt of notices, which may be changed from time to time. All notices required to be given under the Agreement shall be in writing and delivered by fax, personal delivery, email or U.S. mail. Notices shall be effective upon receipt, or such later date specified in the notice.
36. **Governing Law.** This Agreement shall be governed by the laws of the state where the on-site Services were or will be performed, excluding its conflict of law principles. The United Nations Convention on the International Sale of Goods is expressly excluded and shall not apply.
37. **Arbitration.** Any claim or controversy arising out of or relating to this Agreement or the breach of this Agreement shall be resolved by binding arbitration by a panel of three (3) arbitrators under the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment may be entered on the award by any court of competent jurisdiction. Each party shall be entitled to a reasonable amount of pre-hearing discovery as allowed by the Arbitrator; **provided** that the discovery period shall not exceed one hundred and twenty (120) days. The arbitration panel shall sit in the state in which the on-site Services are to be or were performed.
38. **Remedies.** The remedies in this Agreement are cumulative and in addition to all rights and remedies at law and in equity. No delay in exercising or failure to exercise a right of remedy shall impair that or any other right or remedy or be construed as a waiver of any default.
39. **Survival.** All sections of this Agreement providing for indemnification or limitation of or protection against liability shall survive the termination, cancellation, or expiration of this Agreement.
40. **Miscellaneous.** Contractor shall be an independent contractor in the performance of the Agreement. No waiver by either party of any default shall be deemed a waiver of any subsequent default. The Agreement, including all exhibits and applicable Purchase Orders, constitutes the entire agreement of the Parties. 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 shall not become part of the Agreement. If any provisions of this Agreement are held to be invalid, such invalidity shall not affect the remaining provisions of the Agreement. Amendments to the Agreement must be in writing and signed by both parties. Headings are provided for the convenience of the parties, and shall not affect the interpretation of any provision.
41. **Nuclear Station Services.** If any of the Services will be performed by Contractor at or for a Duke Energy nuclear station, the terms and conditions of Duke Energy Nuclear Supplement NS0001 shall apply to this Agreement, and such terms are hereby incorporated by reference as if set forth herein in full.