

DTE

Terms and Conditions for Consulting Services

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TERMS AND CONDITIONS FOR CONSULTING SERVICES

1. DEFINITIONS

The following terms have the following meanings:

A. "Agreement" means these Terms and Conditions, the document(s) called the Purchase Order and/or Contract, and all of the documents listed in the Purchase Order and/or the authorized Contract that are specifically incorporated into the Agreement.

B. "Change Order" means the document issued by Company Representative that modifies the Agreement and, when required by Company, is executed by Company and Contractor.

C. "Company" means the DTE Energy Company entity stated on the first page of the Purchase Order and/or Contract.

D. "Company Representative" means the Company representative(s) identified in a Purchase Order and/or Contract.

E. "Contractor" means the person or legal entity with whom Company has entered into the Agreement.

F. "Services" means the specific service(s) performed by Contractor as set forth in the Agreement.

G. "Third Party Work" means any original works of authorship or inventions or designs created or owned by a third party and used in performing any Services under this Agreement, as identified in writing in sufficient detail in the Agreement so as to distinguish such Work from Work Product developed or created under the Agreement.

H. "Work Documents" mean all manuals, design, specifications, technical descriptions, drawings, plans, reports, calculations, summaries and other items identified as deliverables from Contractor to Company pursuant to the Agreement and other documentation necessary for Company to realize the benefits of the Services.

I. "Work Product" means all materials, notes, reports, documentation, computer programs in object code and fully-commented source code, literary works, graphical works, performances or displays and any derivatives, inventions, formulae, designs, processes, machines, manufactures, composition of matter devices, or any portions thereof and any improvements on any of them prepared or developed by Contractor for Company in the performance of this Agreement.

2. SCOPE OF WORK

Contractor agrees to provide the Services as specified in the Agreement. Except as otherwise provided herein, Contractor may not perform extra services except pursuant to a Change Order.

3. INDEPENDENT CONTRACTOR

A. Contractor and all its employees, subcontractors and suppliers are, with respect to Company, independent contractors. Except as otherwise expressly provided in the Agreement, Contractor shall furnish all labor and supervision and provide all equipment, materials, tools and supplies as are necessary or incidental to the complete performance of its obligations as required and described in the Agreement. Contractor shall be solely responsible for the performance, general direction, supervision and efficient administration of the Services of its employees, subcontractors, suppliers and those under its control. Any rights to inspect, reject, approve or otherwise oversee the Services, or other similar provisions regarding the conduct of the Services, including safety rules and practices, are for Company's benefit only (and not for any other person or entity) and do not relieve Contractor of its responsibilities.

B. Contractor shall be responsible for any and all wages, taxes, or benefits that are due and owing to its employees, including personnel or compensation records, computation of compensation, unemployment compensation, overtime and fringe benefits or performance of such other duties and obligations as are required to comply with any and all applicable federal state and local laws, ordinances, rules and regulations.

4. HIRING AND SUBCONTRACTING

A. Contractor shall not hire aliens who are unauthorized or ineligible for U.S. employment at Contractor, pursuant to the Immigration and Nationality Act as amended (INA). Contractor shall comply with the INA verification and retention requirements for its employees hired after November 6, 1986, and with such other applicable requirements of employers as have been or will be issued, pursuant to the INA, or pursuant to the authority of the Department of Homeland Security and U. S. Citizenship and Immigration Services (USCIS) or their successors.

B. Contractor will not assign, delegate or subcontract any of its obligations or rights under the Agreement without the prior written consent of Company Representative. Any such assignment, delegation or subcontracting will be void if made without such written consent. All consent shall be obtained prior to Contractor or subcontractor performing any work. Any assignment, delegation or subcontract shall not relieve Contractor of (i) its responsibility to complete the Services in accordance with the terms of this Agreement, (ii) its liability for any Services performed by its subcontractors, employees or agents or (iii) any other obligations owed by Contractor to Company.

C. Contractor shall incorporate the obligations of this Agreement into its respective subcontracts, agreements and purchase orders (a copy of which is to be submitted to Company upon request). Company is the intended third party beneficiary of all contracts for design, engineering or consulting services, all trade contracts, subcontracts, purchase orders and other agreements between Contractor and third parties. Contractor shall fully defend, indemnify and hold Company harmless from all acts or omissions of its subcontractors.

5. ON-SITE SERVICES

If the Agreement requires Contractor to be physically present on any Company site, Contractor shall also comply with the provisions set forth in the attached On-Site Services Schedule.

6. WORK DOCUMENTS

Contractor shall deliver all Work Documents (or any portion thereof) to Company upon request or termination of this Agreement. All Work Documents or Work Product furnished by Contractor in connection with this Agreement are the property of Company and, notwithstanding any markings or notices to contrary included on such Work Documents or Work Product, there shall be no restrictions upon Company's use thereof.

7. ELECTRONIC SUBMISSIONS

A. Contractor warrants that any software and related documentation provided to Company in electronic form shall not contain any computer code that would (1) disable the software or impair its use or operation in any way based on the elapsing of a period of time, the exceeding of an authorized number of copies, users, or other relevant metric, or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices), (2) permit Contractor or any third party to remotely, and without Company's knowledge or approval, access the software through a device such as those referred to as a "trap," "access code," or "trap door" or (3) permit Contractor or any third party to track, monitor, or otherwise report on the use or operation of such software.

B. If such virus or other contaminant is brought into Company's computer environment, by or through Contractor, Contractor shall reimburse Company for all labor and materials costs incurred by Company to identify, contain and correct the effects of such virus. The hourly rate paid by Contractor for the identification, containment and correction of the effects of such virus shall be at the prevailing hourly rate incurred by Company.

8. CHANGES

A. During performance of the Services, changes to the Services may be made requiring a substitution for, an addition to, or deletion of any Service or a change in the method or manner of the Service, schedule or other requirement. Company may issue a Change Order without invalidating the Agreement.

B. Company may request a change to the Agreement by notifying Contractor in writing and Contractor shall submit a written proposal for accomplishing the change within ten (10) days of such notice, unless otherwise specified. Contractor may request a change to the Services or to the Agreement by submitting a proposal of such change to Company within ten (10) days of the occurrence of events giving rise to such change. Sufficient detail shall be given in the proposal to permit thorough analysis by Company. No amendment, alteration or modification of the Agreement or the Services shall be binding unless made pursuant to a written Change Order and, when required by Company, accepted in writing by Contractor. All Change Orders shall be supplementary to and incorporated as a part of the Agreement.

C. Any such changes made without written authority from Company shall be the responsibility and sole risk of Contractor. No action, conduct, omission, prior failure or course of dealing by Company shall act to waive, modify, change or alter the requirement that a Change Order must be in writing executed by Company Representative.

D. If Company determines that an emergency has occurred or immediate action is required to avoid stopping or disruption of the Work in progress, the Company Representative may give Contractor an oral order, direction or instruction to proceed with a change. Contractor shall, within five (5) days after commencement of the change, unless specified otherwise in the Agreement, provide Company with a written proposal on the effect of the change. The proposal shall be administered as provided in clause B of this Section. If no such Change Order is received by Contractor within thirty (30) days of the event, Contractor shall have the right to suspend the services associated with the change or proceed at Contractor's own risk.

9. DISPUTE RESOLUTION

A. Contractor has the duty to promptly seek clarification and resolution of any error, omission, issue, discrepancy, misunderstanding, conflict or dispute arising from questions concerning contract interpretations or acceptable fulfillment of this Agreement on the part of Contractor and Company. Any request by Contractor for additional compensation, schedule adjustment, or other dispute resolution must be filed by Contractor and submitted to Company Representative no later than ten (10) days after discovery of the discrepancy or no later than ten (10) days after the occurrence of the event causing the dispute. Contractor's failure to provide such notice shall constitute a waiver by Contractor of any claim arising out of events occurring more than ten (10) days prior to the date notice is provided to Company Representative.

B. Once Company receives notice of Contractor's formal request for dispute resolution, Company shall make every reasonable effort to arrive at a timely determination. This determination shall be provided to Contractor's authorized representative in writing. All determinations, instructions and clarifications of Company shall be final. Contractor shall proceed with the Services in accordance with the determinations, instructions and clarifications of Company, unless Contractor protests the Company's resolutions within ten (10) days of receipt thereof. Contractor's failure to timely protest Company's resolutions shall be considered a failure of a condition precedent to any other course of action and shall be deemed an express waiver by Contractor of all its rights to further protest, whether through arbitration, litigation or otherwise.

10. PAYMENT

A. Invoices, statement of charges or service receipts (as applicable) for Services performed shall be submitted on a timely basis, in the manner, frequency and form, and with such supporting documentation, including acknowledgment of receipt of work by Company, as required by the Agreement or as reasonably requested by Company. Company shall pay approved invoices in accordance with the payment terms specified in the Agreement or shall notify Contractor of its reasons for disapproval of such invoices. Company shall not be required to pay any portion of an invoice which is disputed in good faith until such dispute is resolved.

B. Contractor shall promptly pay its subcontractors and suppliers upon receipt of each payment, the respective amounts allowed Contractor on account of the Services performed to the extent of each such subcontractor's and/or supplier's interest therein.

C. Contractor shall defend, indemnify and hold harmless Company from any and all claims, demands, causes of action and/or costs, including reasonable attorney fees, attributable to Contractor's failure to make any payments required by this Section. Nothing in this Agreement shall imply or infer an obligation of Company to make payment to any party other than Contractor.

11. GENERAL REPRESENTATIONS

Contractor represents and warrants that:

A. Contractor is qualified to perform Services in the State of Michigan or in any other state where any Services is to be performed. Execution, delivery and performance by Contractor of this Agreement have been authorized by all necessary action on behalf of Contractor.

B. The execution, delivery and performance by Contractor under this Agreement does not conflict or result in the breach of any applicable laws, any judgment or decree of any court, or any agreement to which Contractor is a party.

12. CONTRACTOR COVENANTS

Contractor will comply with all applicable federal, state and local laws, ordinances, industry standards, codes, regulations and executive orders or decrees (collectively, "Laws"), including but not limited to (i) the applicable Laws set forth on the attached Schedules to these Terms and Conditions and attachments to this Agreement, (ii) all applicable environmental and pollution control Laws, (iii) Laws of bodies or tribunals having any jurisdiction or authority over the Services, (iv) OSHA and MIOSHA and (v) any rules or regulations of Company relating to health, safety or performance of the Services. If any discrepancy or inconsistency should be discovered between the Agreement and any such Laws, Contractor shall immediately report the same in writing to Company Representative.

13. FEDERAL CONTRACTING REQUIREMENTS AND FOREIGN CORRUPT PRACTICES ACT

Contractor agrees to comply with the Federal Acquisition Regulation, Code of Federal Regulations, and Foreign Corrupt Practices Act as set forth on the attached Federal Requirements Schedule. Contractor agrees that Company may modify the Federal Requirements Schedule at any time to conform to any change in law, without notice to Contractor.

14. BACKGROUND INVESTIGATION REQUIREMENTS

Contractor shall comply with the requirements set forth on the attached Background Investigations Requirements Schedule, which may be modified by Company from time to time to conform with any change in law.

15. CONFIDENTIALITY

A. Contractor recognizes and acknowledges that all information Company discloses to Contractor or which Contractor may have access during Contractor's performance of the Agreement is considered proprietary and confidential by Company, unless otherwise designated. Such information shall be used by Contractor only in connection with performing the Services and shall remain the property of Company. Contractor shall disclose such information to its employees, subcontractors and suppliers only to the extent necessary to perform the Services or other obligations under the Agreement. Contractor shall advise such persons of the existence of this Agreement, of the confidential nature of the information and of Contractor's obligations regarding same under this Agreement. Except as otherwise provided herein, Contractor, its employees, subcontractors and suppliers shall not, without permission of Company, disclose such proprietary or confidential information to any third party for any reason or purpose whatsoever. In the event of a breach or threatened breach of this Section by Contractor, its employees, subcontractors or suppliers, Company shall be entitled to an injunction restraining such conduct.

Nothing herein shall be construed as prohibiting Company from pursuing any other remedies available to Company for such breach or threatened breach. Contractor shall be responsible for any breach of these confidentiality obligations by its employees, subcontractors or suppliers.

B. Contractor and its employees shall not be required to protect or hold in confidence any such information which (1) becomes known to the public through no act or omission of Contractor or its employees; (2) is ordered to be disclosed by a court or administrative agency; or (3) is thereafter developed independently by Contractor. In the event that Contractor is requested or required under compulsion of legal process to disclose such information, Contractor shall not, unless required by law, disclose the information until Company has first (i) received prompt written notice of such request or requirements to disclose and (ii) had an adequate opportunity to obtain a protective order or other reliable assurance that confidential treatment shall be accorded to the Confidential Information. Contractor shall not oppose actions by Company to assure such confidential treatment.

C. No publications or advisements concerning the subject matter of the Agreement, Company's name and/or logo or photographs of the Services or Company property or portions thereof shall at any time be made by or on behalf of Contractor, its subcontractors, or suppliers, unless prior written authorization therefore is obtained from Company Representative.

16. TAXES

A. Contractor accepts exclusive liability for all payroll taxes now or hereafter imposed by the United States or any state or local government, and any penalties and interest on such payroll taxes, resulting from amounts paid to Contractor Personnel. Such persons shall in no event be the employees of Company. Contractor agrees to indemnify Company for any such payroll taxes, penalties and interest levied against Company or which Company may be required to pay.

B. Contractor agrees to indemnify Company from any and all taxes under Section 4980B of the Internal Revenue Code of 1986, as amended, and any penalties and interest thereon, resulting from the failure of Contractor to satisfy the continuation coverage requirements provided in such section with respect to persons used by Contractor in performing under this Agreement. Contractor shall pay all income, property, sales and use, excise and any other taxes now or hereafter imposed by the United States or any state or local government, and any penalties and interest on such taxes, arising out of Contractor's performance of the Work, and shall indemnify Company for all such taxes, penalties and interest levied against Company or which Company may be required to pay.

C. Unless otherwise provided in the Agreement, Contractor shall pay all Michigan sales and use taxes on all materials used in performing the Work. If Contractor is purchasing materials pursuant to the Agreement, Contractor will provide an executed Sales and Use Tax Affidavit in the form attached hereto as Exhibit 1, confirming that the Company's payments under the Agreement includes all applicable sales and use tax and that such taxes have been remitted to the proper taxing authority. Certain materials purchased pursuant to the Agreement may be exempt from sales tax by reason of industrial processing. If Contractor (or its subcontractors) acquire materials that will be incorporated into the Work or that are for Company's use, then only for the purpose of the tax exemptions listed in this section, Contractor (or its subcontractors) are acting as Company's agent in acquiring such materials. Electrical generation materials and equipment qualify for a 100% industrial processing exemption from Michigan sales and use tax. Contractor (and its subcontractors) doing industrial processing work on behalf of Company can apply for this exemption when purchasing certain materials under this Contract. If Contractor or its subcontractors purchase any of the materials listed below, then such items will be exempt from Michigan sales and use tax only up to the corresponding exemption percentage:

Category	Exemption Percentage	Tax Rate
Transformers and Components	90	0.6%
Stations and Substations	90	0.6%
Poles and Pole Top Equipment	25	4.5%
Distribution Tools and Supplies	50	3.0%
Primary Wires and Cabling	25	4.5%
Secondary Wires and Cabling	0	6.0%
Personal Safety and Equipment	50	3.0%
Customer Meters	25	4.5%

17. INSURANCE

A. Prior to the start of the Services, Contractor shall provide Company with Certificate(s) of Insurance evidencing that insurance coverage of the types, amounts, and conditions specified in the Appendix to the Agreement entitled "Insurance to be provided by the Contractor/Supplier" are in effect. Contractor affirms to Company that such insurance coverage shall remain in effect during the life of the Agreement.

B. Contractor shall require its subcontractors to carry insurance in the amount, type and form of insurance required by the Agreement. If its subcontractors do not obtain such coverage, Contractor shall insure the activities of its subcontractors.

18. INTELLECTUAL PROPERTY

A. Contractor represents and warrants that it has authority to grant, and hereby grants to Company, a permanent, assignable, nonexclusive, royalty-free license to use, maintain and modify (except for software) any Third Party Work that is required while performing Services.

B. All Work Product shall become the sole and exclusive property of Company, whether delivered to Company or not, and shall be delivered to Company in hard copy(s) in electronic native-file format as well as Adobe Portable Document Format (PDF) upon request and upon expiration, termination or completion of this Agreement.

C. Company and Contractor agree that all Work Product is a Work-Made-For-Hire under the copyright laws of the United States. In addition, if any Work Product is not Work-Made-For-Hire, Contractor agrees to assign and does hereby expressly assign to Company for all time, all right, title and interest to all Work Product, including any and all intellectual property rights it may have in any whole or part of the Work Product. Contractor agrees to obtain any assignments of rights from other parties, including its employees, it requires to comply with this Section.

D. During and after the expiration or termination of this Agreement, Contractor agrees to assist Company in every reasonable way, at Company's cost, to secure, maintain and defend for Company's benefit all intellectual property rights it may have in any whole or part of the Work Product.

E. Notwithstanding the foregoing, Contractor shall retain ownership of all its pre-existing know-how embodied in the Work, provided that the Company shall have a transferable license to use such pre-existing know-how to the fullest extent necessary to realize the benefits of the Services.

F. Contractor warrants that all materials, equipment and processes used or supplied, Work Product and the Services performed are free from infringement of any patent, trademark or other intellectual property right. Contractor shall pay all royalties and license fees necessary for the proper performance of the Services.

G. Contractor shall indemnify and defend any action brought against Company based on a claim or allegation that any process or method used, equipment or material supplied or service performed pursuant to the Agreement constitutes an infringement or violation of any patent, trademark or other proprietary right. Company shall at Contractor's expense give such information and assistance as it may deem appropriate for the defense of same, and Contractor shall pay all of Company's actual costs and expenses of such action, including any damages awarded. If an infringement or violation is determined or held to exist and the use of such process, method, equipment, material or service is enjoined, Contractor shall at its own expense and at Company's option either (1) procure for Company the right to continue using said process, equipment, material or service or (2) replace it with non-infringing process, equipment, materials or service acceptable to Company or (3) modify it in a manner acceptable to Company so that it becomes non-infringing.

19. WARRANTY

Contractor represents and warrants that all engineering, drafting or other technical services provided as part of the Services shall be performed by qualified and competent personnel in accordance with industry practice and the high standards of care, skill, diligence and practice appropriate to the nature of the Services rendered and shall conform in all respects to any specifications. Contractor acknowledges and agrees that Company will be relying on the accuracy, competence and completeness of the Services to be performed and will use the results of such Services as input data for Company construction projects and other work. If at any time during the one (1) year period after that the product of Contractor's Services are incorporated into a Company project, it appears that the Services provided do not conform to the foregoing warranties, Company shall notify Contractor of such breach of warranty within a reasonable time after discovery and Contractor shall promptly provide redesign and testing services as necessary to correct any nonconforming Services. The warranty for redesigned Services shall be of equal duration and scope as the original warranty and commence upon Company's acceptance of such corrected Services.

20. TERMINATION FOR CONVENIENCE

Company may at any time, upon ten (10) days written notice to Contractor, terminate this Agreement in whole or in part. Upon receipt of such notice, Contractor shall discontinue providing Services on the date and to the extent specified in the notice and shall thereafter do only such work as may be necessary to preserve and protect the Services already in progress. Upon such termination, Contractor waives

all claims for damages as a result of such termination including, but not limited to, loss of anticipated profits, and any claims of subcontractors or suppliers as a result of such termination, and shall accept the value of all Services completed through the date of termination as sole and complete compensation. No termination fee(s) shall be payable by Company.

21. TERMINATION FOR CAUSE

A. Contractor shall be in default if at any time (1) Contractor refuses, neglects or fails in any respect to perform the Services hereunder or any portion thereof with promptness, diligence or in accordance with any of the provisions set forth herein, (2) Contractor refuses, neglects or fails to perform any other obligations under this Agreement or provide adequate assurances of performance, (3) Contractor makes an assignment for the benefit of creditors or bankruptcy or insolvency proceedings are instituted by or against Contractor or (4) in Company's sole judgment, Contractor's financial or other condition or progress on the Agreement shall be such as to endanger timely performance.

B. If Contractor fails to remedy such default within forty-eight (48) hours after receipt by it of such written notice, Company may, in writing, and without notice to Contractor's sureties, if any, terminate this Agreement and/or pursue any other remedies available under this Agreement, by law, or in equity.

C. Upon receipt of notice of termination, Contractor shall return any Company property, deliver all Work Product in progress, and provide Company with all intellectual property rights in any Work Product.

D. Termination is not Company's exclusive remedy and is in addition to any other rights and remedies it may have under this Agreement or by law. Failure of Company to exercise any of its rights under this Section shall not excuse Contractor from compliance with the provisions of this Agreement nor prejudice rights of Company to recover damages for such default.

22. INDEMNIFICATION

A. Contractor covenants and agrees that it shall defend, indemnify and hold Company and all of its officers, agents and employees (collectively, "Company Indemnitees") harmless for any claim, loss, damage, cost, charge, expense, lien, settlement or judgment, including interest thereon, whether to any person, including employees of Contractor, its subcontractors and suppliers, or property or both, arising directly or indirectly out of or in connection with Contractor's or any of its subcontractor's or supplier's performance of the Agreement or in connection with the performance of the Services, to which any Company Indemnitee may be subject or put by reason of any act, action, neglect or omission on the part of Contractor, any of its subcontractors or suppliers or Company, or any of their respective officers, agents and employees. Without limiting the foregoing, said obligation includes claims involving Contractor's, supplier's or subcontractor's employees injured while going to and from any Company location where Services are to be performed. If the Agreement is one subject to the provisions MCL 691.991, then Contractor shall not be liable under this Section for damage to persons or property directly caused or resulting from the sole negligence of Company, or any of its officers, agents or employees.

B. In the event any suit or other proceedings for any claim, loss, damage, cost, charge or expense covered by Contractor's foregoing indemnity should be brought against any Company Indemnitee, Contractor hereby covenants and agrees to assume the defense thereof and defend the same at Contractor's own expense and to pay any and all costs, charges, attorney's fees, and other expenses, and any and all judgments that may be incurred by or obtained against any Company Indemnitee in such suits or other proceedings. In the event of any judgment or other lien being placed upon the property of Company in such suits or other proceedings, Contractor shall at once cause the same to be dissolved and discharged by giving bond or otherwise.

23. LIMITATION OF LIABILITY

Except as may be expressly stated elsewhere in this Agreement, neither party shall be liable to the other party for incidental, indirect, or consequential damages, including, but not limited to, loss of profits or revenue.

24. SET OFF

Company shall be entitled at any time to set off any sums owing by Contractor or any of Contractor's affiliated companies, to Company or to any of Company's affiliated companies, against sums payable by Company.

25. RECORDS AND AUDITS

Company or its authorized representative shall have access to Contractor's records to review, audit, and verify any information connected with this Agreement for a period of three (3) years after the calendar year in which the work is completed. Contractor shall keep all records in an electronic format and be able to transmit them to Company in an electronic native-file format as well as Adobe Portable Document Format (PDF). All documents and records shall be provided to Company at no additional cost. Company has the right to use general audit software and other reporting tools to analyze the data.

26. ASSIGNMENT

No assignment of this Agreement or any of its rights or obligations hereunder shall be made by Contractor without first obtaining the written consent of Company. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

27. FORCE MAJEURE

A. Except as otherwise provided herein, Contractor shall not be liable for a reasonable delay or default in performing Services hereunder and Company shall not be liable for failure to perform any of its obligations hereunder, to the extent due to fire, flood, storm, other natural disaster, national emergency or war, and not due to labor problems, inability to obtain financing, negligence or other similar condition of such party, provided that either party has given the other prompt notice of such occurrence.

B. Within seven (7) days of the commencement of any excusable delay described in clause A above, Contractor must notify Company Representative in writing of the nature, cause, date of commencement and expected impact of the event. Contractor must exercise due diligence in proceeding to meet its performance, obligations hereunder notwithstanding the delay. Upon Contractor satisfying these conditions, Company may extend the schedule for the period of time equal to the time actually lost by reason of the delay.

28. NON-WAIVER

None of the provisions of the Agreement shall be considered waived by either party unless such waiver is given in writing by the other party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the Agreement unless expressly set forth in such waiver.

29. NOTICES

Notices and other written communications shall be sent to Company Representative and Contractor's representative identified in the Agreement. Such notices and other written communications must reference the Purchase Order and/or Contract Number appearing in the Agreement.

30. SAVING CLAUSE- INDEPENDENT TERMS

Each term and condition of this Agreement is deemed to have an independent effect and the invalidity of any partial or whole paragraph or section shall not invalidate the remaining paragraphs or sections. The obligation to perform all of the terms and conditions shall remain in effect regardless of the performance of any invalid term by the other party.

31. SURVIVAL

All of the terms of this Agreement which by their nature extend beyond (a) the termination or cancellation of this Agreement or (b) the completion of the work shall survive and remain in full force and effect and apply to respective successors and assigns.

32. NON-EXCLUSIVITY

It is agreed that this Agreement is not exclusive, and that nothing herein shall be deemed to prevent Company from engaging others to perform any of the Services or to prevent Company from performing any of the Services through its own employees or agents.

33. CONSTRUCTION OF TERMS

The terms of this Agreement have been arrived at after mutual negotiation and the parties agree that its terms shall not be construed against any party by reason of the fact that this Agreement was prepared by one of the parties. References to laws refer to such laws as they may be amended from time to time. The words "shall" and "will" have equal force and effect. The words "include", "including" or "includes" shall be read to be followed by the words "without limitation". The section headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation hereof.

34. GOVERNING LAW AND JURISDICTION

The Agreement, and the rights, obligations and liabilities of the parties hereto shall be construed in accordance with the law of the State of Michigan or the location of the Company Site where Services are performed, as applicable, without regard to its conflict of law principals. The parties agree that any action with respect to this Agreement shall be brought in a court of competent subject matter jurisdiction located in the State of Michigan and the parties hereby submit themselves to the exclusive jurisdiction and venue of such court for the purpose of such action.

35. ENTIRE AGREEMENT

A. The Agreement represents the entire agreement between the Company and Contractor respecting the Services and no modification of the Agreement shall be effective unless by a Change Order. Any agreements, negotiations or understandings of the parties prior or contemporaneous to the date of the Agreement, whether written or oral, are superseded by this Agreement.

B. Any document submitted by Contractor (including any Contractor document referenced in the Agreement) is used solely for the purpose of describing the Services and, to the extent containing any terms in addition to or inconsistent with the terms of the Agreement, or a rejection of any terms of the Agreement, shall be deemed to be a counteroffer to Company and shall not be binding upon Company unless specifically accepted in writing by Buyer. In the absence of written acceptance of such counteroffer by Company, commencement of performance by Contractor shall be deemed to be an agreement by Contractor to perform in accordance with the terms of the Agreement and an acceptance hereof, notwithstanding any prior dealings or usage of trade.

ON-SITE SERVICES SCHEDULE

CONTRACTOR'S EMPLOYEES, AGENTS, SUBCONTRACTORS

A. Contractor's agents, employees and subcontractors who are working on Company premises shall comply with all federal, state and local laws, ordinances, codes and regulations, and Company policies prohibiting unlawful discrimination and harassment.

B. At Company's request, Contractor shall remove any employee, agent or Subcontractor that Company deems incompetent, disorderly, insubordinate, careless or otherwise objectionable, at any time.

SAFETY AND SECURITY

A. Contractor shall take all necessary precautions for the protection of the health and safety of its employees, its subcontractors and suppliers, Company, the public and other third parties and shall at all times comply with Company's health, safety and security rules and procedures applicable to the site (which are subject to change from time-to-time) and appropriate for the Materials.

B. Company may furnish security personnel at the site to control access, patrol yards and buildings, maintain order, and enforce regulations. The presence or absence of such security personnel shall not modify the responsibility of Contractor for loss and/or damages to persons or property.

REPORTING OF ACCIDENTS

Contractor shall notify Company Representative and shall comply with the following telephone reporting procedure in the event that its employee(s) or its subcontractor's or supplier's employee(s) sustain a serious personal injury (any injury which requires admittance to a hospital) or a fatality occurs arising out of the Services performed under the Agreement.

1. Between the hours of 8:00 a.m. and 5:00 p.m. eastern time, Monday through Friday, the Legal Investigations Division of Company's Legal Department (313-235-7705) shall be notified immediately.

2. Between the hours of 5:00 p.m. and 8:00 a.m. eastern-time, Monday through Friday, weekends and holidays, the Company switchboard (313-235-8000) shall be notified. It shall in turn relay the report to the Legal Department representatives on call. In addition to this telephone reporting procedure, Contractor shall also submit to the Legal Investigations Division of Company's Legal Department a written follow-up accident report form (available from the Company Representative) within 24 hours after the occurrence, as well as a written accident report in all other cases requiring more than first aid treatment. Contractor shall also furnish Company with a copy of all claims submitted to its insurance companies.

FEDERAL REQUIREMENTS SCHEDULE

A. Company, as a federal contractor, requires that Contractor agree to be bound by and comply with the following clauses which are incorporated by reference herein and have the same force and effect as if set forth in full text.

(1) The following Federal Acquisition Regulation ("FAR") and Code of Federal Regulations ("CFR") clauses, as amended, are incorporated by reference in these terms and conditions unless Contractor is exempt thereunder: Equal Opportunity, FAR 52.222-26 (applies to all orders); Prohibition on Segregated Facilities, FAR 52.222-21 (applies to all orders); Anti-Kickback Procedures, FAR 52.203-7 (applies to all orders over \$100,000); Restrictions on Subcontractor Sales to the Government, FAR 52.203-6 (applies to all orders); Anti-kickback Procedures FAR 52.203-7 (applies to orders of \$150,000 or more); Combat Trafficking in Persons, FAR 52.222-50 (applies to orders of \$500,000 or more), Equal Opportunity for Veterans, FAR 52.222-35 (applies to orders of \$150,000 or more); Equal Opportunities for Workers with Disabilities, FAR 52.222-36 (applies to orders of \$15,000 or more) and Privacy Training, FAR 52-224-3 (applies if Contractor's (or subcontractor's) employee(s) will have access to personally identifiable information (PII) or a system of records on individuals. . To the extent not exempt, Contractor shall abide by the requirements of 41 CFR 60-300.5(a) (applies to orders of \$100,000 or more) and 60-741.5(a) (applies to orders of \$10,000 or more). 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. The terms "Contractor," "Government" and "Contracting Officer" as used in the FAR clauses shall be deemed to refer to "Contractor," "Company" and "Company Representative", respectively.

(2) Except to the extent that this Agreement is exempt from any of these requirements, Contractor agrees to be bound by and comply with the clauses set forth at 48 CFR 52.219-8 (Utilization of Small Business Concerns) and 48 CFR 52.219-9 (Small Business Subcontracting Plan) (only if this Agreement exceeds \$700,000 and if Company requests submission of a Small Business Subcontracting Plan).

B. Contractor does hereby represent, warrant and covenant that:

(1) Contractor shall not cause Company or its affiliates to be in violation of the Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.) as amended (the "FCPA") or any other applicable law.

(2) With respect to its performance under the Agreement, Contractor and its owners, directors, officers, employees, and agents will not, directly or indirectly through third parties, pay, promise or offer to pay, or authorize the payment of, any money or give any promise or offer to give, or authorize the giving of anything of value to any individual, entity, or government for purposes of corruptly obtaining or retaining business for or with, or directing business to, any person, including, without limitation, Company or its affiliates.

(3) Contractor shall ensure that no part of any payment, compensation, reimbursement or fee paid by Company to Contractor will be used directly or indirectly as a corrupt payment, gratuity, emolument, bribe, kickback or other improper benefit.

(4) Contractor shall provide to Company and/or its representatives and advisors all supporting documents requested by Company pertaining to any expenses incurred, products provided, and/or services performed by Contractor and its agents pursuant to the Agreement to ensure compliance with the FCPA. Contractor understands and acknowledges that, notwithstanding any other provision contained in the Agreement, none of Company or any of its affiliates shall be obligated to reimburse any expense incurred or pay for any Work, in Company's reasonable opinion, (1) Contractor has failed to provide adequate documentation or information to confirm that an expense or charge did not violate the FCPA, or (2) an expense reimbursement or product/service payment would cause Company or any of its affiliates to be in violation of the FCPA.

BACKGROUND INVESTIGATION REQUIREMENTS SCHEDULE

- A. Contractor must conduct a background check (as set forth herein) on all of its workers assigned to provide services to Company, prior to that respective worker starting work on Company's project.
- B. In performing the background checks, Contractor agrees to comply with all applicable local, state and federal laws, including the Fair Credit Reporting Act and agrees that such background check will be performed by a National Association of Professional Background Screeners Accredited Company.
- C. Background checks will include, but not limited to:
- Social Security Number (SSN) Trace;
 - Criminal history check in all federal, state, and county jurisdictions as revealed by address history on social security trace. Criminal search shall also include any name variations and/or aliases located on the social security trace. County records must be searched at the court level to maintain maximum possible accuracy. Automated county searches, commonly referred to as Bots, may not be used unless guaranteed to be equivalent by county court clerk.
 - US Patriot Act Watch Lists.
 - National Criminal Index Search to include State Sex Offender Registries; Office of Foreign Asset Control (OFAC).
 - Verification of Immigration Status, including valid I-9 Form where applicable. Note the Company expressly prohibits any contractor from employing any person on Company premises who does not have valid authorization to work in the United States.
 - U.S. law requires companies to employ only individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization. Contractor must validate eligibility through E-Verify.
 - Driving History (where permitted by law and if contractor is required to operate a Company motor vehicle).
- D. Unless restricted by applicable law, all convictions for misdemeanors or felonies shall be reviewed by Contractor to determine whether the criminal conviction disqualifies the worker from working on Company's project.
- E. Examples of convictions that shall be carefully reviewed by Contractor for possible disqualification include, but are not limited to,: crimes of dishonesty (i.e. theft, embezzlement, fraud, forgery, etc.) and violence (i.e. murder, rape, kidnapping, assault, robbery, stalking, harassment, etc.).
- F. In evaluating the results of background checks, Contractor shall consider factors such as the nature and severity of the crime, the length of time that has passed since the offense occurred, how the crime relates to the worker's proposed job responsibilities, truthfulness and completeness of the worker's disclosure of convictions, and evidence of rehabilitation and subsequent job history.
- G. Contractor provides Company an ongoing representation and warranty that it has conducted background checks consistent with the requirements set forth in this Schedule. Further, if Contractor breaches this warranty, it agrees that it will make Company whole for any cost, claim, fine, or penalty that Company may incur as a result, directly or indirectly, from a breach of this warranty.
- H. Contractor covenants and agrees that it shall defend, indemnify and hold Company, its parent, and all of their officers, agents and employees (each a, "Company Indemnitee") harmless for any claim, loss, damage, cost, charge, expense, lien, settlement or judgment, including interest thereon, including employees of Contractor, its subcontractors and suppliers, or property or both, arising directly or indirectly out of or in connection with Contractor's or any of its subcontractor's or supplier's breach of the warranty and representation set forth in this Schedule. In the event any suit or other proceedings for any claim, loss, damage, cost, charge or expense covered by Contractor's foregoing indemnity shall be brought against any Company Indemnitee, Contractor hereby covenants and agrees to assume the defense thereof and defend the same at Contractor's own expense and to pay any and all costs, charges, attorney's fees, and other expenses, and any and all judgments that may be incurred by or obtained against any Company Indemnitee's in such suits or other proceedings.
- I. Federal and state laws and/or regulations may require Contractor to conduct periodic background checks for Temporary Personnel assigned to certain positions (e.g., positions requiring Nuclear, NERC or TWIC access). Company may also require Contractor or Contractor employees be subject to additional background investigative activities completed by the Company or other 3rd party vendors, to satisfy the federal regulations for access to a nuclear facility or other NERC / TWIC regulated assets. Company will notify Contractor of any assignments requiring periodic updates or re-completion of background check activities. If any worker moves from one assignment to another, Contractor shall verify with Company whether a re-analysis is required.