

**1. Definitions.** As used herein, the following terms shall have the following meanings. "Agreement" shall mean these Service Order Terms and Conditions and any project-specific or additional terms and conditions set forth on the purchase order issued in connection with the Agreement or the Scope of Work attached as an exhibit to the Agreement, superseding all prior agreements and understandings, oral or written, not expressly incorporated herein. "Company" shall mean the entity set forth on the purchase order that receives Services. "Supplier" shall mean the entity set forth on the purchase order that provides Services. "Services" shall mean the services provided to Company by Supplier as set forth on the purchase order issued in connection with the Agreement or the Scope of Work attached as an exhibit to the Agreement. "Scope of Work" shall mean the Services described in the Scope of Work attached as Exhibit A to the Agreement, if any.

**2. Acceptance and Modification.** Commencement of the Services or delivery of goods called for by the Agreement in the absence of Supplier's written acknowledgment shall be deemed acceptance of the Agreement. By acceptance of the Agreement, Supplier agrees to be bound by and to comply with all these Service Order Terms and Conditions, and all specifications and other documents referred to in the Agreement. No additions to or variations from the terms herein shall be binding unless agreed to, in writing, by Company. If Supplier's quotation is incorporated in the Agreement, it is made a part of the Agreement only to the extent of specifying the nature and description of the Services to be performed, and then only to the extent such terms are consistent with the other terms herein. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS WHICH MAY APPEAR IN ANY QUOTATION, PROPOSAL OR COMMUNICATION FROM SUPPLIER OR IN SUPPLIER'S ACKNOWLEDGEMENT OR SIGNED RETURN OF THE AGREEMENT ARE HEREBY EXPRESSLY OBJECTED TO, SHALL NOT BECOME PART OF THE AGREEMENT DESPITE COMPANY'S ACCEPTANCE OF SUPPLIER'S PERFORMANCE OF SERVICES OR GOODS AND SHALL NOT BE EFFECTIVE OR BINDING UNLESS SPECIFICALLY RECOGNIZED, ASSENTED TO AND AGREED TO IN WRITING BY COMPANY.

**3. Prices.** All prices shall be firm unless otherwise stated in the purchase order issued in connection with the Agreement. No payment in excess of any monetary limitation appearing in the purchase order shall be permitted without the prior written approval of the Company. Pricing shall not be adjusted except with prior written approval of the Company.

**4. Extra Charges.** No charges of any kind, including, but not limited to charges for boxing, packing, loading, bracing or cartage shall be allowed unless specifically stated in the purchase order issued in connection with the Agreement.

**5. Transportation.** Transportation requirements, if applicable, shall be as set forth in the purchase order issued in connection with the Agreement. Notwithstanding the stated F.O.B. point, Supplier shall be responsible for any loss or damage occurring to goods during transit when such loss or damage is attributable either to an act or omission of Supplier or its contractors, or to a failure of either Supplier or its contractors to adhere to the express shipping instructions of Company.

**6. Warranties.** Supplier warrants that (a) all goods and/or Services sold pursuant hereto shall be free of any claim by any third person and that Supplier shall convey clear title to Company; (b) all Services furnished hereunder shall be performed by technically competent and qualified personnel in a safe and workmanlike manner, shall conform to the requirements of the Agreement including any Scope of Work attached as an exhibit to the Agreement, shall be performed in accordance with generally accepted professional standards associated with the particular industry, trade, and/or discipline involved and shall be fit for the purpose for which intended; (c) all goods sold pursuant hereto shall be of new (unless expressly specified otherwise) merchantable quality, free from all defects in design, workmanship and materials, fit for the particular purpose(s) for which purchased and provided in strict accordance with the specifications, samples, drawings, designs and other requirements (including performance specifications) of the Agreement; (d) all Services shall be performed in strict accordance with all applicable laws, regulations, codes, and standards of any governmental agency or entity having jurisdiction; and (e) Supplier has all required permits and licenses necessary to perform the Services and that the Services shall conform with all applicable permits and licenses. Copies of such permits or licenses shall be provided to Company upon request. Supplier shall promptly notify Company in writing in the event any permit or license related to this Supplier or to Supplier's authorization or capacity to perform Services hereunder is revoked or has expired. For goods, if at any time prior to one (1) year from the date that the goods are first used for the purposes intended by Company or two years from the date of final acceptance by Company, whichever occurs first, it appears that the goods or any part thereof do not conform to these warranties and Company so notifies Supplier within a reasonable time after such discovery, Supplier, at its sole expense and after obtaining Company's concurrence, shall promptly correct such nonconformity or replace the nonconforming goods. The warranty period for such corrected or replaced goods shall be of an equal duration as the original warranty period and shall commence upon acceptance of such corrected or replaced goods. For Services, if at any time prior to one (1) year from the date that the Services are completed, it appears that the Services do not conform to these warranties and Company so notifies Supplier within a reasonable time after such discovery, Supplier, at its sole expense and after obtaining Company's concurrence, shall promptly correct such nonconformity. The warranty period for such corrected Services shall be of an equal duration as the original warranty period and shall commence upon acceptance of such corrected Services. If Supplier fails to fulfill its obligations under this paragraph, Company may proceed to make corrections or accomplish the Services by the most expeditious means available, and the cost of cover or correction performed by Company shall be for Supplier's account. Company shall not be billed for any task(s) performed unsatisfactorily or defective parts, materials and equipment and shall be reimbursed within thirty (30) days by Supplier upon demand of Company if an invoice has been previously paid for such improper or defective Services or goods. Any and

all expenses (including, but not limited to shipping, manufacturing and labor expenses) incurred by Company in the exercise of its right hereunder, at law and/or in equity, shall be reimbursed by Supplier.

**7. Time is of the Essence; Delivery.** Timely performance of the Services is of the essence. If any Services are not performed within the time specified in the purchase order issued in connection with the Agreement or within a reasonable time if no time is so specified, Company may refuse to have Seller perform such Services and cancel the Agreement and shall be relieved of all liability for such Services and related goods. Any additional transportation charges incurred to comply with the time specified in the purchase order issued in connection with the Agreement in excess of those which would apply for the usual means of transportation shall be for the account of Supplier.

**8. Company's Property.** Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Supplier by Company or specifically paid for by Company and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the property of the Company. Such property (i) shall be clearly marked and identified as property of the Company and shall be safely stored separate and apart from Supplier's property; (ii) shall not be used except in the performance of the Services hereunder and Supplier shall not substitute any property for Company's property; (iii) shall be held at Supplier's risk, and kept insured by Supplier at Supplier's expense in an amount equal to the replacement cost with loss payable to Company; and (iv) shall be delivered to Company promptly upon its written request, in which event Supplier shall prepare such property for shipment and shall deliver to Company in the same condition as originally received by Supplier, reasonable wear and tear excepted, all at Supplier's expense.

**9. Changes.** Company may, at any time, and from time to time, by written change order direct or order any changes, additions or deletions in the Services and related goods to be supplied hereunder. If such changes, additions or deletions affect the Supplier's time for performance or price, Supplier shall promptly notify Company and, if appropriate, an adjustment in the time for performance and or price shall be negotiated. Failure to notify Company in writing within fifteen (15) days of receipt of the change order requesting such change, addition or deletion shall result in a waiver by Supplier of such adjustment.

**10. Suspension.** Company may suspend all or any part of the Services by written notice to Supplier. Supplier agrees to resume any suspended Services as soon as practicable after receipt of written instructions to do so from Company. Upon suspension of Services, Supplier agrees to waive all claims for damages, including claims associated with the loss of use of or underutilization of Supplier's labor and facilities and the associated overheads thereon. If Supplier's costs for completing the Services are increased over the costs Supplier would have incurred had the Services not been suspended, Supplier agrees to accept as its sole remedy for the suspension of the Services the amount of such increase.

**11. Termination.** Company may terminate all or any part of the Services by ten (10) days written notice to Supplier. Upon such termination, Supplier agrees to waive all claims for damages, including claims for loss of anticipated profits and claims for the loss of use or underutilization of Supplier's labor, facilities and equipment and the associated overheads thereon, and to accept as its sole remedy for termination the cost of all Services performed and payment for goods delivered and accepted by Company prior to the date of termination and reasonable costs incurred by Supplier in terminating the Services. Termination shall not relieve Supplier of any of its obligations for Services already performed or for goods delivered hereunder, including but not limited to complying with all applicable warranties associated with such goods or Services.

**12. Non-Assignment; Subcontracting.** Any assignment by Supplier of its rights (other than an assignment of the right to receive payment hereunder) under the Agreement in any manner, in whole or in part, by operation of law or otherwise, without the prior written consent of Company shall be void. Supplier shall not subcontract or delegate performance of all or any part of the Services without the prior written consent of Company.

**13. Set-Off.** Company shall be entitled to set-off any amount owed at any time by Supplier, or its affiliate(s) to Company or its affiliate(s) against any amount owed by Company or its affiliate(s) to Supplier.

**14. Applicable Law.** The Agreement shall be governed by and construed in accordance with the applicable laws of the State of Michigan, except for those laws governing conflict and choice of law.

**15. Indemnification.** Supplier assumes full responsibility for and agrees to save, indemnify, defend and hold harmless Company and its affiliates from any and all claims, losses, liabilities, damages to property, injuries (including, but not limited to, death) to persons (including, but not limited to, employees of Supplier and Company), fines, penalties, fees (including, but not limited to, reasonable legal fees), and all other costs and expenses of whatsoever kind or nature to the extent caused by the acts or omissions or misconduct or failure of Supplier, its directors, officers, employees, agents, subcontractors and/or subvendors at any tier.

**16. Intellectual Property.** Supplier shall indemnify, defend and hold harmless Company against any and all liabilities, damages, losses, claims, suits, and proceedings brought against Company arising out of, based upon or resulting from any claim alleging, whether rightful or otherwise, that any design, goods or Services furnished or delivered under the Agreement by Supplier or at the direction of Supplier infringes upon any United States patent, copyright or other intellectual property right (“Indemnified Claim”). Supplier shall pay all damages, expenses, fees and costs, including legal fees, awarded against Company in connection with any such Indemnified Claim. In case any design, product or Services are held to constitute an intellectual property infringement and the use of such design, product or Services is enjoined, Supplier shall, at its sole expense, after obtaining the written concurrence of Company, (a) procure for Company the right to continue using the effected design, goods or Services, (b) replace the effected design, goods or Services with substantially equal but non-infringing design, goods or Services, or (c) modify the design or Services so they become non-infringing. If none of these alternatives is available on commercially reasonable terms, Company shall have the option to terminate the Agreement applicable to the Indemnified Claim upon providing written notice to Supplier.

**17. Insurance.** Supplier shall obtain and maintain for the duration of any Services insurance in forms and amounts satisfactory to Company which may include, but not necessarily be limited to: Commercial General Liability (CGL) (including Contractual Liability coverage insuring the liabilities assumed herein) with minimum limits of liability of not less than \$1,000,000 each per occurrence for bodily injury (including death) and property damage Automobile Liability and Employers' Liability insurance with minimum limits of liability of not less than \$1,000,000 per occurrence on a single limit basis; statutorily required Worker's Compensation and Employers' Liability (\$100,000) insurance; Excess Liability insurance endorsed to apply on at least as “broad as primary basis” covering loss in excess of the limits of other insurance policies required herein with minimum limits of liability of \$5,000,000. At Company's sole option and cost, Supplier shall procure Contractor Pollution Coverage insurance covering loss or damage associated with environmental hazards arising out of or in connection with the Services with minimum limits of liability of \$1,000,000. Supplier shall furnish to Company a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverages are in effect and naming Company and its affiliates as additional insureds for liability coverages including, with respect to CGL coverage, endorsements at least as broad as Insurance Services Office (ISO) endorsements CG 2010 10 01 (ongoing operations) and CG 2037 10 01 (completed operations) In addition, such certificate shall indicate that the insurer shall not cancel or materially change the coverage until ten (10) days after prior written notice has been delivered to the Company. Coverage required herein shall be endorsed to be primary to and not seek contribution from Company or its affiliates and provide that Supplier's insurer shall have no rights of recovery, by subrogation or otherwise, against Company or its affiliates. Nothing in this paragraph shall be taken as limiting Supplier's liability to Company or any other party.

**18. Compliance with Laws.** Supplier shall ascertain and comply with all applicable Federal, State, and local laws, regulations, and ordinances, including, but not limited to, the Foreign Corrupt Practices Act of 1977, as amended, especially as it relates to payments or gifts to officials, employees, or representatives of foreign governments and Supplier agrees that it and all who act on their behalf shall fully and faithfully comply with that Act, and with all applicable trade or industry codes, regulations and standards. Where applicable the following provisions are hereby incorporated by reference in this Purchase Order: (a) Executive Order 11246, and 41 CFR Part 60, as well as 41 CFR Subpart 1-12.8, relating to Equal Employment Opportunity (b) Executive Order 11701, and 41 CFR Part 50-250, 41 CFR Part 60-250, relating to Disabled Veterans and Veterans of the Vietnam Era; (c) the Rehabilitation Act of 1973, and 41 CFR Part 60-741, relating to Employment of the Handicapped.

**19. Safety.** Supplier shall perform its Services in a safe manner so as to prevent damage, injury or loss to any individuals. Supplier assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Services. In the performance of the Services, Supplier shall comply, and cause its subcontractors to comply, with all statutes, regulations and ordinances relating to safety, as well as any specific safety policies and requirements required by Company.

**20. Proprietary Information – Confidentiality.** Supplier shall keep confidential any technical, process or economic information derived from drawings, specifications and prototype articles, and other data furnished by Company or Supplier learns during the performance of the Services and shall not divulge, export, or use, directly or indirectly, such information for the benefit of any other party without obtaining Company's prior written consent. Except as required for the efficient performance of the Services, Supplier shall not use such information or make copies or permit copies to be made of such drawings specifications, or other data without the prior written consent of Company. Upon request of Company, Supplier shall promptly return to Company all materials and any copies thereof; such request may be made at any time during or after completion of the Services. The obligations under this paragraph shall survive the cancellation, termination or completion of the Agreement. Supplier shall not advertise or publish the fact that Company has contracted for services from Supplier without prior written permission from Company. Any inventions, processes or other patentable or marketable idea or product developed as a result of Supplier's performance of the Services hereunder shall become the exclusive property of Company, and Supplier shall deliver all data, drawings and other documents associated with such development to Company upon completion of the Services.

**21. Disclosure of Knowledge or Information.** Any knowledge or information which Supplier shall have disclosed or may hereafter disclose to Company in connection with a request for a quotation or the purchase of goods or Services covered by the Agreement, shall

not, unless otherwise specifically agreed upon in writing by Company, be deemed to be confidential or proprietary information, and shall be acquired free from any restrictions other than a claim for patent infringement as part of the consideration for the Agreement.

**22. Drawings.** Unless otherwise specifically agreed in writing by Company any check or approval of drawings by Company shall be for Supplier's convenience and shall not relieve Supplier of its responsibility to meet all requirements of the Agreement.

**23. Consequential Damages.** Neither Company nor Supplier shall be liable to the other for consequential damages of any kind, including, but not limited to, loss of anticipated profits or loss of use of or underutilization of labor, facilities or equipment resulting from performance or nonperformance of its obligations under the Agreement or in the event of Suspension or Termination of the Services pursuant to paragraphs 11 and 12 respectively.

**24. Technical Data.** All materials and documents prepared or developed by Supplier in connection with the performance of this Order, including all manuals, data, designs, drawings, plans, specifications, reports, calculations and summaries, shall become the property of Company when prepared, whether delivered to Company or not, and shall, together with any materials and documents furnished to Supplier by Company, be delivered to Company upon request and, in any event, upon termination or completion of this Order.

**25. Force Majeure.** Neither party shall be liable to the other for default, failure or delay in providing or accepting goods or Services hereunder if such failure is caused by an extraordinary event or occurrence beyond that party's control such as fire, accident, strike, civil disturbance, war, act of terrorism, act of God, embargo, governmental order or regulation, flood, windstorm, explosion, riots, natural disaster, sabotage or any other similar or different contingency beyond the reasonable control of the Company or Supplier, as applicable. Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Supplier, Company may purchase goods or procure Services from other sources and proportionally reduce its obligations to Supplier for such goods and/or Services. If requested by Company, Supplier shall, within five (5) days of such request, provide adequate assurance that the delay shall not exceed such period of time as Company deems appropriate. If the delay lasts more than the time period specified by Company, or Supplier does not provide adequate assurance that the delay shall cease within such time period, Company may, among its other remedies, immediately terminate the Agreement without liability.

**26. Non-Waiver.** Failure or delay of either Company or Supplier to insist upon strict performance of any of the terms and conditions hereof, or to exercise any rights or remedies provided herein or by law, or to properly notify the other party in the event of breach, or Company acceptance of or payment for any goods or Services or approval of any design, shall not release the other party from any of the warranties or obligations of the Agreement and shall not be deemed a waiver of any right of a party to insist upon strict performance hereof, or of any rights or remedies of a party as to any such services or goods (including the right to reject nonconforming goods or to revoke acceptance of such goods) regardless of when performed, shipped, received or accepted, or of any right or remedy of a party as to any prior or subsequent default hereunder.

**27. Payment Terms.** Company shall pay Supplier in accordance terms set forth in the purchase order issued in connection with the Agreement, or if payment terms are not specified, Company shall pay Supplier within thirty (30) days after satisfactory performance of the Services and on receipt of a complete correct and conforming invoice therefor.

**28. Records.** Unless the Services are totally priced on a firm fixed price basis, Supplier shall maintain time records, supplier invoices, expense receipts/costs and supporting data and other evidence related to the Services in accordance with generally accepted accounting procedures and practices. All materials shall be preserved until the expiration of two years from the completion of the Services. Company shall have the right at any time during normal business hours to examine such records which may involve the Services, or which shall permit adequate evaluation of the costs and fee data related thereto. Adjustments in favor of Company arising from any audit performed by Company shall be recognized as an adjustment of any future payment due Supplier or, if no future payment is due Supplier, Supplier shall pay the amount of any such adjustment to Company within thirty (30) days after completion of the audit.

**29. Independent Contractor.** Supplier is and shall remain for all purposes an independent contractor, and it shall have no power, nor shall it represent that it has any power, to bind Company or to assume or create any obligation, expressed or implied, on behalf of Company.

**30. Notices.** Unless notified otherwise, in writing, by Company, all notices required under the Agreement shall be sent to the address set forth in the purchase order issued in connection with the Agreement. Email notices shall be sent to DTEER\_CONTRACT\_NOTICES@dteenergy.com.

**31. Survival of Terms.** Those provisions of the Agreement which by their very nature are incapable of being performed or enforced prior to expiration or termination of the Agreement or which suggest at least partial performance or enforcement following such expiration or termination shall survive any such expiration or termination of the Agreement.

**32. Company's Remedies.** All rights and remedies provided for herein are not exclusive and all rights and remedies of Company hereunder, at law or in equity, shall be cumulative and may be exercised singly or concurrently.