

**CONTRACT FOR TECHNICAL AND CONSULTING SERVICES**

This Contract for Technical and Consulting Services ("Contract") is made as of \_\_\_\_\_, 2021 ("Effective Date"), by and between CONSUMERS ENERGY COMPANY, a Michigan corporation, One Energy Plaza, Jackson, Michigan 49201 ("Owner") and \_\_\_\_\_, a \_\_\_\_\_(state of organization), \_\_\_\_\_[corporation][limited liability company][limited partnership][sole proprietorship], \_\_\_\_\_(address)\_\_\_\_\_ ("Consultant").

In consideration of the mutual promises herein, the Owner and the Consultant agree as follows:

**1. SCOPE OF SERVICES**

The Consultant shall perform the services described in Exhibit A attached to and made a part of this Contract.

Unless otherwise provided in this Contract, the Consultant shall furnish everything necessary to perform the services including, but not limited to, all supervision, personnel, supplies, services and transportation. The Consultant shall perform all of the services in a careful and competent manner with properly skilled and trained personnel. If the Consultant is not qualified to perform professional engineering in the State of Michigan, all of the services required to be performed by engineers qualified and registered to practice professional engineering in the State of Michigan shall be subcontracted to persons or firms so qualified and registered.

This Contract is not exclusive. The Owner reserves the right to have similar or like services performed by others or through its own employees to any extent the Owner deems desirable.

**2. TIME FOR PERFORMANCE**

The services to be performed under this Contract shall commence on or about \_\_\_\_\_ and shall be completed on or before \_\_\_\_\_.

**3. CONTRACT PRICE**

The Owner shall pay the Consultant and the Consultant shall accept as full compensation, satisfaction and payment for the services and any and all direct or indirect costs or expenses incurred by the Consultant in connection with the services including, but not limited to, the cost of supervision, labor, tools, materials, supplies, services, facilities, equipment, transportation, insurance, taxes, overhead and profit, at the price set forth below:

*Check whichever box is applicable:*

- a lump sum price of \$ \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)("Lump Sum")
- a lump sum price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)("Lump Sum") and in addition to the Lump Sum, an additional amount of up to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for extra work, if any, which is authorized in advance by Owner pursuant to Section 6 herein and which shall be billed at the rates and charges set forth in Exhibit B, attached to and made a part of this Contract ("Additional Amount"), the total of the Lump Sum and the Additional Amount shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)
- at the rates and charges set forth in Exhibit B, attached to and made a part of this Contract. The total charges shall not exceed \$ \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

**4. PAYMENTS**

The Consultant shall submit an invoice to the Owner at the end of each calendar month for the portion of the services completed during such month, together with the amount due. Invoices shall be itemized to the Owner's satisfaction and, if subject to rates and charges set forth in Exhibit B, invoices shall be submitted in accordance with the template attached hereto and made a part of this Contract. After receipt of a satisfactory partial invoice and approval thereof by the Owner, payment of such partial invoice shall be made to the Consultant in accordance with the payment terms selected below. Payment of such partial invoice by the Owner shall not constitute acceptance of the services and shall be subject to correction in the payment of any subsequent invoice.

Upon completion of all the services covered by this Contract to the satisfaction of the Owner, as evidenced by a written acceptance signed by the Owner's Contract Administrator or other duly authorized representative, Consultant shall present its final invoice, submitted in accordance with the template attached hereto to and made a part of this Contract itemized to the Owner's satisfaction. Following receipt of such final invoice and supporting data and approval thereof by the Owner, payment of such final invoice, including any amounts withheld under partial invoices, shall be made to the Consultant as complete payment thereof in accordance with the payment terms selected below, subject to Section 5, "Withholding Payment."

*Check whichever box is applicable:*

- All payments under this Contract shall be made by the Owner to the Consultant within sixty (60) days.
- All payments under this Contract shall be made by the Owner to the Consultant within forty-five (45) days. A two percent (2%) discount shall be applied to invoices paid within twenty (20) days.
- All payments under this Contract shall be made by the Owner to the Consultant within twenty (20) days via the Single Use Account ("SUA") payment method.

With each invoice where the Consultant's compensation is based on cost or time worked, the Consultant shall submit copies of receipts for all materials and expenses with a cost greater than \$25, and if requested by Owner, certified copies of time reports.

#### **5. WITHHOLDING PAYMENT**

Notwithstanding any provisions in this Contract to the contrary, the Owner may withhold payment for services performed to the extent of protecting itself against loss on account of:

- (a) Defective services not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Consultant to make payments promptly to subcontractors or for materials or labor.
- (d) Damages to structures or properties.
- (e) Consultant's breach of any other of its obligations under this Contract.

#### **6. CHANGES TO THE CONTRACT**

The terms of this Contract shall not be changed, superseded or supplemented except in writing by the Owner and the Consultant ("Change Order").

#### **7. INDEPENDENT CONTRACTOR**

The Consultant is an independent contractor. The Consultant has the sole authority to control and direct the performance of services hereunder, the Owner being interested only in the results of the services.

#### **8. PERMITS AND LAWS**

Unless otherwise provided in this Contract, the Consultant shall secure all licenses or permits required by law and shall comply with all applicable ordinances, laws, orders, rules and regulations pertaining to the services hereunder made by any governmental authority or public regulatory body. The Consultant shall not practice or offer to practice professional engineering in the performance of services hereunder unless and except as authorized by the laws of the State of Michigan.

**The parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color,**

**religion, sex, sexual orientation, gender identity, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**

## **9. INDEMNITY**

To the fullest extent permitted by law, the Consultant shall assume all responsibility for and shall indemnify and save the Owner, its officers, agents and employees harmless from and against all losses, liabilities, claims, demands, payments, actions, legal proceedings, recoveries, costs, expenses, fines, attorney fees, settlements, judgments, orders and decrees of every nature and description brought or recovered against, or incurred by, the Consultant, the Owner, the Owner's officers, agents or employees, or any or all of them, by reason of any: (a) injury to persons, including death or damages, sustained or claimed by the Consultant's employees, the employees of the Owner, or by any other person, and for any theft or loss of or damage to property (including environmental harm), including property of the Consultant, the Owner, or any other person, which may occur or allegedly occur because of or result from, or in any manner are connected with or arise from, (i) any action or operation under this Contract, (ii) the services which are the subject of this Contract, or (iii) any breach of any obligation of the Consultant under this Contract; (b) infringement or alleged infringement of any patent, copyright, trademark or other proprietary right by any material, machinery, device, equipment, process or design furnished or used by the Consultant in the performance of this Contract; and (c) breach of any other duty or obligation of the Consultant under Section 8 (Permits and Laws), Section 13 (Personnel Risk Assessment and Cyber Security Access), Section 16 (Ownership of Work Product) or Section 21 (Confidentiality) of this Contract. Without limiting the foregoing, the Consultant shall at the request of the Owner defend at the Consultant's expense any suit or proceeding brought against the Owner for any of the above-named reasons.

## **10. CHANGES TO AGREEMENT - ASSIGNMENT AND SUBCONTRACTING**

This Contract shall not be assigned or any part thereof subcontracted by the Consultant without the Owner's prior written consent. Any attempted assignment without such written consent shall be void and the Owner may refuse to permit the performance of any unauthorized subcontract. In case any such subcontracting is approved, the subcontract shall be in writing; shall be fully executed prior to the commencement of the services involved; and shall specify that the provisions of the subcontract shall be subject to, and the subcontractor shall comply in every respect with the provisions of this Contract, except that the attached insurance requirements may be superseded by other insurance requirements as approved by the Owner and as stated in such approval. If required by the Owner to do so, the Consultant shall promptly furnish the Owner with copies of each executed subcontract. The Consultant shall assume as full responsibility to the Owner for the actions, omissions, operations and work of the Consultant's subcontractors of every tier as for the actions, omissions, operations and work of the Consultant.

## **11. AUDITING OF CONSULTANT'S ACCOUNTS AND REFUNDS**

In the event that Consultant's compensation under this Contract is based wholly or partially on costs, expenses, man-hours or equipment hours, the Consultant shall make and keep as the same accrue, complete records and books of account of its costs, expenses, man-hours and equipment hours relating to the work hereunder in accordance with generally accepted accounting practices whenever, by the terms of this Contract, the Consultant's compensation shall be based wholly or partially on such costs, expenses, man-hours or equipment hours. Said records and books of account, together with any or all other memoranda pertaining thereto that may be kept by the Consultant, shall be open to examination during regular business hours by the Owner or its agents for the purpose of inspection, auditing, verifying or copying the same or making extracts therefrom. The Owner's payment of invoices hereunder shall not constitute acceptance of the accuracy thereof. Amounts shall be subject to audit in accordance with this section for two (2) years after the making of the last payment under this Contract. If the Owner gives notice of intent to audit within said two (2) year period, it shall have a reasonable amount of time thereafter to complete the audit. Whenever an audit of the Consultant's records shows that the Owner is entitled to a refund, the Consultant shall promptly make said refund. The Consultant's costs of correcting any billing error shall not be charged to the Owner. Owner shall pay the audit costs hereunder except to the extent such costs are incurred because of incomplete, illegible or inaccurate records of the Consultant in which case such costs shall be paid by the Consultant.

## 12. OVERTIME

No overtime shall be performed on the services hereunder and no claim therefor shall be valid, unless authorized in writing by the Owner before the overtime is performed. Overtime which does not result in any extra charge to the Owner may be authorized orally. Unless otherwise provided in this Contract, overtime is all time in excess of eight (8) hours per person per day or in excess of forty (40) hours per person per week and any other time for which a rate higher than a straight time rate will be charged to the Owner pursuant to this Contract.

## 13. PERSONNEL RISK ASSESSMENT AND CYBER SECURITY ACCESS

- I. **UNESCORTED ACCESS.** For employees or subcontractors of Consultant requiring unescorted physical or unescorted electronic access to Owner's facility or system, or unescorted access to the Owner's customers and/or customer property, the following provisions apply.
  - (A) The Consultant shall, at its sole cost, cause to be performed a personnel risk assessment ("Risk Assessment") of every employee or subcontractor of Consultant who will have unescorted physical or electronic access to Owner's facility or system, or unescorted access to the Owner's customers and/or customer property. The Risk Assessment shall include, without limitation, identity verification, a seven (7) year criminal background check, and confirmation that the employee or subcontractor is not listed on any sanctions-related list of designated persons maintained by Office of Foreign Assets Control of the U.S. Department of Treasury ("OFAC") or the U.S. Department of State. To fulfill this requirement, Consultant shall select one of the following options and promptly notify Owner as to Consultant's selection:
    - i. Risk Assessment performed by First Advantage Enterprise Screening Corporation
    - ii. Risk Assessment performed by Credential Check Corporation
    - iii. Risk Assessment alternative: Consultant shall provide evidence of a current (unexpired) Transportation Worker Identification Credential ("TWIC") card of the employee or subcontractor of the Consultant.
  - (B) No employee or subcontractor of Consultant shall be allowed unescorted physical or unescorted electronic access to any of Owner's facilities and/or systems, or unescorted access to the Owner's customers and/or customer property, before the Risk Assessment of such employee or subcontractor has been completed (or evidence of a current (unexpired) Transportation Worker Identification Credential ("TWIC") card, in lieu of Risk Assessment) provided) and meets certain criteria identified by the Owner.
  - (C) Any employee or subcontractor of Consultant shall be allowed unescorted physical or unescorted electronic access to any of Owner's facilities and/or systems, or unescorted access to the Owner's customers and/or customer property only upon issuance of an Owner-issued identification card. Specific levels of unescorted access are determined by the Owner and must be approved in advance prior to access being granted.
  - (D) Consultant shall, at its sole cost, re-perform a Risk Assessment of any employee or subcontractor of Consultant with unescorted physical or unescorted electronic access or unescorted access to the Owner's customers and/or customer property every seven (7) years or for cause in either Consultant's or Owner's discretion.
  - (E) If Owner grants such access to any employee or subcontractor of Consultant, the Consultant shall notify Owner prior to or within eight (8) hours after an employee's or subcontractor's termination, or within twenty-four (24) hours after Consultant or Owner determines that an employee's or subcontractor's access is no longer required.
- II. **REGULATED UNESCORTED ACCESS.** The Owner may, at any time during the term of this Contract and by providing no less than thirty (30) calendar days' written notice to Consultant, designate any portion of Owner's facility in-scope pursuant to regulatory standards (which may include, but are not limited to, those required by the North American Electric Reliability Corporation Critical Infrastructure Protection ("NERC CIP"), Transportation Security Administration ("TSA"), Federal Energy Regulatory Commission ("FERC"), or the Nuclear Regulatory Commission ("NRC")). In the event that Owner provides such a notice, the following provisions shall apply:

- (A) Consultant shall cause to be performed a Risk Assessment for every employee or subcontractor whose work will require unescorted access to a regulated in-scope area and for whom a Risk Assessment has not been completed within the prior seven (7) years.
- (B) In addition, if any employee's or subcontractor's work will require access for which, under regulatory standards, regulatory-specific training is required, Consultant shall require each such employee and subcontractor to complete an Owner-furnished training program that meets regulatory requirements and related training requirements (which may be provided in person or through computer-based training). No employee or subcontractor of Consultant shall be granted unescorted physical or unescorted electronic access to regulated, in-scope areas without documentation of the completed regulatory-specific training.
- (C) Pursuant to regulatory standards and Owner's internal requirements, Risk Assessments must be re-performed at least once every seven (7) years, and the regulatory-specific training must be successfully re-performed at least once annually.
- (D) If Owner grants such access to any employee or subcontractor of Consultant, the Consultant shall notify Owner either prior to or within two (2) hours after such employee's or subcontractor's termination, or within eight (8) hours once Consultant or Owner determines such employee's or subcontractor's access is no longer required.
- (E) Consultant shall comply with any and all other applicable regulatory standards and requirements that are currently in effect or are hereafter adopted during the term of this Contract. Owner reserves the right to modify from time to time any of its procedures or requirements for Risk Assessments, regulatory-specific training or access to Owner facilities; provided, however, all such modifications shall be communicated to Consultant in writing.
- (F) Owner shall pay for any incremental costs of Consultant that are incurred as a result of future changes in regulatory standards and/or Owner requirements that are hereafter specified in writing by Owner under subsection (e) hereof. All such costs shall be itemized to Owner's reasonable satisfaction.

#### **14. TERMINATION AND SUSPENSION**

The Owner may, upon written notice to the Consultant for any reason whatsoever or no reason, terminate this Contract at any time before it is completed. Such written notice shall specify the effective date of the termination. Any such termination shall be without prejudice to any other rights or remedies of the Owner for any breach of this Contract by the Consultant. The Consultant shall, upon the effective date of such notice of termination, immediately remove its employees, representatives, tools, equipment and other property from the Owner's premises. If the Consultant fails to effect such removal by the effective date of the termination, the Owner may do so at the Consultant's expense. In the event of such termination, payment for all services properly performed hereunder shall be made in accordance with the prices stated elsewhere in this Contract or in the case of a lump sum price, the Owner will pay the Consultant such part of the lump sum price as bears the same relation to the total lump sum price as the services performed prior to the time the notice of termination is effective bear to the entire services, as determined by the Owner, subject in either case to proper deductions for defective services, damages or costs sustained by the Owner by reason of any default, breach or failure to perform by the Consultant. If the Consultant breached this Contract prior to termination, the Consultant shall not be entitled to any further payment until the services or as much of them as the Owner elects to complete are finished. Upon any termination pursuant to this Section, the Owner shall be released from all further obligations under this Contract except for payment as provided for in this Section.

The Owner may, upon written notice to the Consultant for any reason whatsoever or no reason, suspend the Consultant's performance of the services hereunder, in whole or in part, at any time and from time to time. In such event, the Consultant shall resume the performance of the services as requested in writing by the Owner. In the event of any such suspension, the Consultant shall be entitled to reimbursement for additional costs reasonably and necessarily incurred by the Consultant in effectuating such suspension and in resuming the performance of the services as requested by the Owner after the end of the suspension. It is recognized that a prolonged suspension of the services, either in whole or in part, may create a hardship upon either or both parties. Therefore, should any

suspension by the Owner exceed six (6) months in duration, the parties shall negotiate in good faith on appropriate revisions to this Contract.

## **15. DISPUTES**

Either party may give the other party written notice of any dispute not resolved in the normal course of business. The Owner and the Consultant shall thereupon attempt in good faith to resolve such dispute promptly by negotiations between executives who have the authority to settle the dispute. If the dispute has not been resolved within sixty (60) days after such written notice is given, either party may avail itself of any process or means legally available to it to resolve the dispute.

In the event of a dispute between the Consultant and the Owner, the Consultant shall proceed with the services pending resolution of such dispute, unless otherwise requested by the Owner in writing.

The provisions of this Section shall not limit Owner's rights under the above 'Termination and Suspension' Section, and Owner may exercise its Termination and Suspension rights regardless of a party's invocation of the dispute resolution process set forth in this Section.

## **16. OWNERSHIP OF WORK PRODUCT**

All graphics, notes, software programming (including all object code, source code, and related materials pertaining thereto), instructions, designs, technical data, processes, records, drawings, illustrations, reports, copyrightable works, other ideas or work product, and all intermediate and partial versions thereof that are developed, authored, conceived, originated, prepared, or otherwise created by Consultant or its employees, agents, or subcontractors for or on behalf of Owner in connection with performance of services under this Contract (collectively, "Work Product") and all intellectual property rights in and thereto and derivative works created therefrom, shall be the sole and exclusive property of Owner. Work Product shall be delivered to the Owner upon the request of the Owner or upon the completion, cancellation, suspension or termination of the Consultant's services under this Contract. All newly created copyright aspects of the Work Product shall be considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended (the "Act"). If and to the extent the Work Product, or any part thereof, is found by a court of competent jurisdiction not to be a "work-made-for-hire" within the meaning of the Act, Consultant agrees that all exclusive right, title, and interest in and to those newly created copyrightable aspects of the Work Product, and all copies thereof, are hereby expressly assigned automatically to Owner without further consideration. Consultant hereby waives any and all claims of any nature whatsoever which Consultant now or may hereafter have for infringement of any intellectual property right assigned to Owner herein. Notwithstanding the foregoing, all intellectual property rights in and to the Work Product shall be automatically assigned to Owner without further consideration.

The Consultant's resource materials, software programs, hardware, or copyrighted materials created and owned by Consultant as of the Effective Date of this Contract and not developed pursuant to this Contract shall remain the sole and separate property of the Consultant ("Consultant Material"). To the extent Consultant Material is embedded in the Work Product, the Owner, its subsidiaries and affiliated companies shall have a perpetual, nonexclusive, worldwide, paid-up license to use all such Consultant Materials.

## **17. NETWORK ACCESS (When applicable)**

Consultant agrees that its personnel will access Owner's computer network and use Owner's equipment/resources only upon proper authorization by Owner's information technology personnel. Consultant's use of any Owner computer equipment/resources shall be in accordance with Owner's policies and procedures, supplied to Consultant personnel in writing. All Consultant computers and electronic files must be cleared by Owner's information technology personnel prior to their use at Owner's facilities. Consultant's and Owner's contact persons shall be responsible for finalizing and ensuring compliance with the arrangements established with such personnel.

## **18. SSAE COMPLIANCE**

This section is only applicable in the event that Consultant is storing, possessing, controlling or hosting Owner's data at a location other than Owner's facilities.

Consultant shall undertake at least annually, and shall cause to be undertaken by Consultant's subcontractors at least annually, a Type II Statement on Standards for Attestation Engagements ("SSAE") 18 / Service Organization Control ("SOC") 1, an Attestation Standards 101 SOC 2, and/or an International Organization for Standardization

(ISO) / International Electrotechnical Commission (IEC) 27001 audit (individually or collectively referred to as an "Audit") that covers the common controls in operation at the Consultant's location for purposes of the Services provided under the Contract. Each Audit shall be conducted by an independent auditor each calendar year. The resulting audit report shall be provided to Owner within 30 days upon completion. In addition, during the first week of each quarter, Consultant shall provide to Owner a written certification from an officer of Consultant representing that: (a) there have been no material changes in the design and operation of the common controls in operation at the Consultant location storing Owner's data during the immediately preceding quarter (including changes in key personnel reports, contracts or service level agreements); and (b) no significant deficiency or material weaknesses (as such concepts are defined by the Public Company Accounting Oversight Board) have been identified during the immediately preceding quarter that could affect Consultant's common controls in operation at the Consultant's location.

To the extent requested by Owner, Consultant shall perform an Owner specific Audit with respect to the controls at the Consultant's location storing Owner data that are specific to Owner (each, an "Owner Specific Audit") and provide a Type II report on such audit (an "Owner Specific Report"). Consultant shall permit Owner to participate in the planning of each Owner Specific Audit, shall confer with Owner as to the scope, timing of and manner that each such Owner Specific Audit shall be conducted and audit findings documented, and shall accommodate Owner's requirements and concerns. Except to the extent otherwise expressly agreed to by Owner, Consultant shall arrange for the completion of each Owner Specific Audit such that the resulting Owner Specific Report is completed and provided to Owner at least within thirty (30) days after the end of the Owner Specific Report review period.

## **19. KEY PERSONNEL**

In the event that the parties agree that certain personnel of the Consultant are essential to the successful performance of the services under this Contract ("Key Personnel"), the Consultant shall assign such personnel to the performance of the services of this Contract and, except in the event of illness, leave of absence, termination of employment or association with Consultant, or grave personal circumstance, not reassign, remove or replace any such Key Personnel during the term of this Contract without the written approval of Owner. Such Key Personnel shall be named in Exhibit A.

If the Consultant wants to replace or reassign any of the Consultant Key Personnel, and Owner consents to such replacement or reassignment, (i) the proposed replacement personnel shall be a person of substantially equal or better abilities and qualifications, (ii) the replacement personnel shall work with the replaced personnel during a mutually agreed transition period of up to four (4) weeks, the duration of which shall be determined based on the duties and responsibilities of the person to be replaced, and all costs and expenses associated with educating and training the replacement personnel shall be borne by Consultant. In addition, the parties may agree that, provided the replaced Key Personnel remains employed by Consultant, such individual shall continue to be reasonably available by telephone or email to answer any project-related questions for a reasonable period of time after the replacement.

## **20. PERSONNEL REMOVAL**

If Owner believes, in its sole discretion, that any of Consultant's or its subcontractor's personnel assigned to perform the services are a threat to the health, safety or security of any of the Owner or a third party's personnel, data or property, or threatens to be, or is in breach of, the Contract or any of the Owner's policies, Consultant shall immediately remove that individual. In addition, Owner may, in its sole discretion and upon notice to Consultant, require removal of any of Consultant's or its subcontractor's personnel assigned to perform the services, with or without cause, and Consultant shall complete such removal within twenty-four (24) hours. Upon the removal of any personnel from Owner's account, Consultant shall fully cooperate with Owner to replace such individual as soon as practicable. Prior to giving such notice, Owner shall consult with Consultant to advise Consultant of its concerns relating to the subject individual and seek to determine the most effective way to resolve such concerns with Consultant. Consultant's or its subcontractor's personnel who have previously been excluded, removed or precluded from providing any of the services may be allowed to return only with the prior approval of Owner.

## **21. CONFIDENTIALITY**

Confidential Information means any confidential or proprietary information or materials relating to the disclosing party's marketing, employees, customers, business or technology which the disclosing party marks as "confidential" at the time of disclosure or confirms in writing is confidential within a reasonable time after disclosure.

Notwithstanding the foregoing, Confidential Information includes the Owner's employees' and/or Owner's customers' personally identifiable information or data ("Personal Data") and the Owner's information or materials that are reasonably understood as being confidential in nature. Confidential Information does not include, and nothing in this Contract shall prohibit or limit either party's use of, Confidential Information: (i) previously known to it as of the Effective Date of this Contract, unless disclosed under a previous contract between the parties (ii) independently developed by it, (iii) acquired by it from a third party which was not under an obligation to the disclosing party not to disclose such information, (iv) which is or becomes publicly available through no breach by the receiving party of this Contract, or (v) which is approved for disclosure by the disclosing party in writing.

Notwithstanding the foregoing, the provisions of this Section shall not restrict any disclosure required by a competent governmental authority (any federal, state, municipal, local, territorial or other governmental department, regulatory authority, judicial or administrative body with jurisdiction over the matter), provided that the receiving party shall (i) notify the disclosing party of any actual or threatened disclosure requests, of which it has knowledge, immediately upon becoming so obligated and prior to making such disclosure in order that the disclosing party may take action as it deems appropriate to protect the Confidential Information, and (ii) timely cooperate with the disclosing party's reasonable, lawful efforts to resist, limit or delay disclosure at the disclosing party's expense.

The receiving party will use the Confidential Information only as is necessary and will not disclose such Confidential Information, except to its employees, contractors, agents and consultants on a need-to-know basis, provided that any such contractors, agents and consultants have executed written agreements restricting use or disclosure of such Confidential Information with provisions that are at least as restrictive as the receiving party's obligations under this Contract. The receiving party shall use at least the same care and precaution in protecting Confidential Information as it uses to protect its own confidential and proprietary information, and in no event less than reasonable care. The concept of "reasonable care" shall include compliance by the receiving party of all laws applicable to the security (facility physical security and electronic access and data security), access, storage, disclosure, publication, dissemination and use of such Confidential Information in the receiving party's possession, all laws applicable to the security (facility physical security and electronic access and data security), access, storage, disclosure, publication, dissemination and use of such Confidential Information in the disclosing party's possession and, in the case of Personal Data, all privacy laws. The receiving party shall return or destroy all Confidential Information promptly upon the request of the disclosing party or upon termination of this Contract.

Notwithstanding the foregoing, Owner may disclose the terms of this Contract, including the subject matter and the prices charged by Consultant and other necessary Confidential Information, as part of proceedings before the Michigan Public Service Commission ("MPSC") or the Federal Energy Regulatory Commission ("FERC").

Termination or expiration of this Contract shall not affect either party's obligations with respect to Confidential Information and such obligations shall continue for a period of five (5) years from the date of such termination or expiration. Notwithstanding the foregoing, Consultant's obligations with respect to Personal Data shall survive termination or expiration of this Contract.

## **22. WARRANTY**

The Consultant warrants that all services performed hereunder shall be performed in a careful and competent manner and in accordance with generally accepted industry standards and practices. In addition, Consultant warrants that its deliverables will conform to their applicable specifications for a period of One Hundred Twenty (120) days from acceptance. Without limiting any other remedy available to the Owner, in the event that any services performed, or deliverables provided, by the Consultant hereunder fail to conform to this warranty, the Consultant shall reperform said services, or correct the nonconforming deliverable, at its sole expense and within such a period as the Owner directs in the purchase order, but if no such period is stated thirty (30) days. If the Consultant refuses, neglects or is otherwise unable to reperform services or correct non-conforming deliverables, within the aforementioned period, the Owner shall (without limiting any other rights or remedies it may hereunder or a law or equity) have the right to perform or to hire third parties to perform the corrective work, and the Consultant shall reimburse the Owner upon demand for all costs and expense of such work. This warranty shall also apply to any reperformance of services by the Consultant hereunder.

## **23. GOVERNING LAW AND INTERPRETATION**

This Contract shall be deemed to be a Michigan contract and shall be construed in accordance with and governed by the laws of the State of Michigan. The parties hereto and their successor and assigns consent to the exclusive jurisdiction of any courts located in the State of Michigan for the resolution of any disputes arising from or related

to this Contract. In the event of any conflict between this document and any documents attached hereto or incorporated herein, the provisions of this document shall control. The Section headings in this Contract are included for reference only. They are not part of this Contract and shall not affect the interpretation and construction of this Contract.

#### **24. THIRD PARTY BENEFICIARIES**

This Contract is intended for the benefit of the parties hereto and does not grant any rights to any third parties unless otherwise specifically stated herein.

#### **25. NOTICES**

- (a) Unless otherwise agreed to by the parties, any written notice expressly required under this Contract from the Owner to the Consultant shall be deemed to be properly given if: i) delivered in person to the Consultant; ii) three business days after sent by first class U.S. mail with proper postage; or iii) one business day after deposit with a nationally-recognized overnight courier service marked for overnight delivery on the next business day and with all fees prepaid, to the Consultant at its address shown in the first paragraph of this Contract.
- (b) Unless otherwise agreed to by the parties, any written notice expressly required under this Contract from the Consultant to the Owner shall be deemed to be properly given if: i) delivered in person; ii) three business days after sent by first class U.S. mail with proper postage; or iii) one business day after deposit with a nationally-recognized overnight courier service marked for overnight delivery on the next business day and with all fees prepaid, to the Owner at its address shown in the first paragraph of this Contract to the Attention of: General Counsel. This notice requirement shall not apply to Section 13 herein and Owner and Consultant shall separately agree as to whom and in what manner such notices shall be directed.

#### **26. ETHICS AND COMPLIANCE**

The Consultant shall comply with the provisions of the Addendum – CMS Energy Corporation 2021 Third Party Code of Conduct, which is attached to and made a part of this Contract. Alternatively, if the Consultant has an existing documented compliance program that includes compliance standards acceptable to the Owner, the Consultant may request approval of the Consultant's existing compliance program, and if approved, Consultant's compliance with its existing compliance program will meet the requirement of this section. The Consultant and all its employees and subcontractors shall abide by the provisions of the Addendum, or its internal compliance program (as applicable).

#### **27. SURVIVAL**

The Sections of this Contract which give the parties rights beyond termination of this Contract, shall survive termination of this Contract, as well as the final completion of the work hereunder, including without limitation, Sections 4 (Payment), 5 (Withholding Payment), 8 (Permits and Laws), 9 (Indemnity), 11 (Auditing of Consultant's Accounts and Refunds), 16 (Ownership of Work Product), 21 (Confidentiality) and 22 (Warranty) of this Contract, and all other provisions of this Contract providing for the limitation or protection against liability of either party.

#### **28. EXECUTION**

The parties agree that signatures on this Contract may be made by electronic means in lieu of an original handwritten signature and said electronic signatures shall be binding. This Contract may be delivered by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. The parties may deliver or execute this Contract in any number of counterparts, each of which will be deemed an original, and all counterparts, when taken together, will constitute one and the same agreement. Any document generated by the parties with respect to this Contract, including this Contract, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically. The provisions of this Section 28 shall also apply to any Change Order entered into pursuant to Section 6 of this Contract.

#### **29. SAFETY**

The Consultant agrees to comply with all federal, state and local laws and regulations to provide a safe and healthy workplace as promulgated by the Michigan Occupational Safety and Health Administration (MIOSHA) and

to correct any unsafe condition or safety and health hazard. The Consultant agrees to promptly investigate all hazards, unsafe conditions and accidents brought to its attention and to promptly remedy and report to the Owner all hazards and unsafe conditions its investigation reveals. The Consultant is exclusively responsible for protecting its workforce and shall indemnify the Owner against all actions, suits, claims, demands, losses, charges, costs and expenses which the Owner may suffer or incur as a result of or in connection with any breach of this sentence.

Consultant agrees to comply with Owner's applicable minimum safety requirements define in the Safety, Health, and Environmental Standards, the "Contractor Oversight SHE Standards" which is attached to and made a part of this Contract, and shall comply with any reasonable requests while performing Services at the Owner's facilities. Safety reports, information, inquiries and safety data sheets for any chemicals intended for use on premises shall be forwarded to [POBoxSafetyFirst@cmsenergy.com](mailto:POBoxSafetyFirst@cmsenergy.com).

The Consultant agrees to provide its workers with mutually-acceptable orientation and training to perform their jobs safely and will not ask or allow any employee to work or operate any equipment until the employee has received all relevant training including the Owner's applicable safety information, orientation and training.

Consultant agrees to ensuring all of its subcontractors also adhere to these requirements. Failure of any contractor, subcontractor, or worker to comply with rules or expectations may result in corrective action by the Owner up to requests for the removal of the worker, subcontractor or supervising contractor, and also may make the supervising contractor ineligible for future work with the Owner.

### **30. TIER II SPEND**

Owner is committed to the development of LGBT, minority, women, veteran and disabled-owned business enterprises ("Diverse Suppliers") and to returning spend dollars to vendors in the State of Michigan. Owner's expectation is that the Consultant will share in these goals and offer Diverse Suppliers and Michigan-based suppliers maximum practical opportunities to participate in any subcontracts awarded by the Consultant.

In addition, when Owner has an overall annual spend that exceeds \$3 million with Consultant, Owner requires Consultant to document and report its spend with Diverse Suppliers and Michigan-based suppliers ("Tier II Spend") associated with the execution of work. Owner will identify and advise Consultant on the format for reporting. Reporting may be for specific goods and services that directly support the fulfillment of Owner's work (direct spend) or as a ratio of the Consultant's total sales and/or revenue to that associated with Owner (indirect spend.) A Consultant whose overall annual spend is less than \$3 million may voluntarily report its Tier II spend.

### **31. ENTIRE AGREEMENT**

This Contract embodies and constitutes the entire agreement and understanding between the Owner and the Consultant relating to the subject matter hereof and supersedes all previous representations, understandings, negotiations and agreements either written or oral between the parties hereto or their respective representatives.

[Remainder of this page intentionally left blank]

**32. ATTACHMENTS**

In addition to other documents referenced in this Contract as being attached to and made a part of this Contract, the following documents are attached to and hereby made a part of this Contract:

Contract Insurance Supplement Class A Contract (CSS Form 928) or Class B Contract (CSS Form 934) or Class C Contract (CSS Form 935), whichever is attached.

Job Site Conditions For Technical and Consulting Services Rev 04/08/13

CONSUMERS ENERGY COMPANY

\_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT A**  
**Scope of Services**

## EXHIBIT B – Fees, Rates and/or Expenses

(Insert details here)

### Travel and Expense Reimbursement

#### **TRAVEL AND LIVING EXPENSES**

The Owner shall reimburse the actual and reasonable amounts paid by the Consultant, subject to the conditions listed below, to and for the benefit of its personnel for transportation (including any excise taxes thereon) and living expenses and other ordinary and necessary related expenses while such personnel are traveling on assigned business in the interest of and for the benefit of the services requested by the Owner hereunder.

- (a) Consultant's personnel shall use economy or coach class air travel, whichever is less, whenever available.
- (b) Mileage shall be paid at the then current IRS rate per mile if the Consultant's personnel use their personal vehicle(s). Local commuting mileage is not reimbursable.
- (c) The Consultant shall submit satisfactory itemized statements of the expenses to be reimbursed. Such statements shall be supported by airline receipts, motel receipts and receipts for any other related expenditure over Twenty-Five Dollars (\$25.00). All labor and expense requests will be submitted to the Owner within 90 days of the date the expenses were incurred.

Additional reimbursement parameters are as follows:

#### **AIR TRAVEL**

Air travel costs will be reimbursed subject to the following. All flights under 6 hours *flying time* will be in economy class and over 6 hours *flying time* may be booked in business class. Flights should ideally be booked as far in advance as possible to take advantage of discounts provided - ideally 21 days, but at least 5 days if project requirements permit.

#### **ACCOMMODATION**

Owner has negotiated discounted rates with specific hotels in most cities where Owner has offices. Hotel accommodations will be reimbursed for standard hotel rooms (e.g., no suites) at preferred Jackson hotels at the lowest available rate. When preferred Jackson hotels are not available, personnel are expected to book hotels that are reasonable in cost taking into consideration practicality, availability and proximity to office or project as appropriate. Personnel will move to a preferred Jackson Hotel as soon as rooms become available. Alternate hotel accommodations are acceptable as long as the total cost is equivalent or less than the lowest available Jackson hotel rate. Rates sheets will be provided on request.

#### **MEALS**

##### **Overnight Trips**

When a trip necessitates an overnight stay, actual meal costs will be reimbursed that do not exceed \$50 per day per person. Any purchase of alcoholic beverages will not be reimbursable and will be the sole responsibility of the Consultant.

#### **TRANSPORTATION**

##### **Taxis To and From Airport**

- When working away from home location taxis to and from the airport will be reimbursed. Premium transportation will be reimbursed but not to exceed the cost of cheapest transportation option for comparable trip.

##### **Rental Cars**

Costs for rental cars used in connection with out of town travel will be reimbursed. Personnel will rent an intermediate size car unless there is a business need for a larger size car. Insurance is to be undertaken through the car rental company. Rates sheets will be provided on request.

Mileage overages will not be reimbursed unless the overage was caused by business required travel.

**Car Mileage**

A reasonable mileage allowance reflecting the current rate allowed by the IRS will be reimbursed for the use of a privately owned for business travel to and from the assignment location if the mileage is in excess of the personnel's normal commute distance to their local office.

**Parking and Tolls**

When using an automobile while out of town, reasonable parking costs and tolls will be reimbursed. Parking or tolls associated with entertainment or any other non-reimbursable activity will not be reimbursed.

**COMMUNICATION****Telephone Calls**

The cost of business calls made from home phones, calling cards and cell phones, and reasonable personal calls to home while on an out-of-town assignment, are reimbursable. Costs must create a variance from normal cost of equipment otherwise covered by contractor as personal use.

**Internet Connection**

The actual cost of high speed Internet access for travelers from their hotel room or apartment are reimbursable.

Exception: No internet costs for in-flight travel.

**GRATUITIES**

Gratuities paid while out of town on business are reimbursed based on reasonable actual amounts expended. The following are reasonable gratuities by category:

- Meals 15%-20% within the \$50 per day maximum average meal expense
- Luggage assistance \$1 per bag
- Taxi rides 15%-20%

**Miscellaneous Charges**

The Owner shall reimburse the actual and reasonable costs and expenses paid by the Consultant for all items not listed above and not specifically excluded under this Contract but which are incidental to the services pursuant to this Contract, provided that any and all such costs and expenses are incurred with the prior written consent of the Owner.