

PROFESSIONAL SERVICES AGREEMENT GENERAL TERMS AND CONDITIONS

The following terms and conditions shall apply to the Professional Services Agreement ("Agreement").

1. **Definitions.** "Work" shall include all of Consultant's obligations under the Agreement. "Owner" means Ohio Valley Electric Corporation and/or Indiana-Kentucky Electric Corporation as may be specified in the Service Agreement.
2. **Priority.** The Agreement consists of the following documents, listed in their order of priority in the event of a conflict: any amendment to the Agreement; the Agreement Form; these Terms and Conditions; and any exhibit(s), schedule(s), or proposal(s) incorporated into the Agreement. Additional or different terms contained in Consultant's proposal or Consultant's acceptance shall not become a part of the Agreement unless expressly agreed to in writing and signed by Owner.
3. **Obligations of the Consultant.** Consultant shall devote Consultant's best efforts to the performance of the Work, using accepted standards of care and competence for Consultant's field of expertise. Consultant may take other similar work engagements, but Consultant shall not accept any employment or engage in any activity which would compete or conflict with Consultant's duties and obligations to the Owner under the Agreement. Consultant shall obtain at Consultant's expense all licenses and registrations necessary to perform Consultant's Work under the Agreement. If necessitated by the Work being performed, Consultant shall abide by and sign the Computer Facility Usage Policy for Temporary or Contractor Access.
4. **Obligations of the Owner.** The Owner agrees to provide Consultant access to all documents, materials, equipment and data reasonably necessary to the performance of Consultant's Work under the Agreement. If applicable, the Owner agrees to furnish space on the Owner's premises for use by Consultant while performing Work under the Agreement.
5. **Relationship of the Parties.** The parties agree that Consultant is a professional and that Consultant's relationship to the Owner is that of an independent Consultant, and nothing herein shall be construed or interpreted as creating any other relationship. The Owner will not provide fringe benefits, paid vacation, or any other employee benefit for Consultant. Consultant retains responsibility and discretion for the manner, methods, techniques and procedures utilized in the performance of Work provided hereunder, provided that Consultant shall observe the working rules and security regulations of the Owner and shall not perform his/her duties in a manner that unreasonably interferes with the Owner's business and operations.
6. **Confidentiality.** Consultant recognizes that during the term of the Agreement Consultant will have access to and become familiar with confidential, proprietary and/or trade secret information that is owned by the Owner and regularly used in its operation. Consultant understands and agrees that the Owner's confidential, proprietary and/or trade secret information derives independent economic value for the Owner, actual or potential, from not being generally known or readily ascertainable by other persons and entities who can obtain economic value from them, and that the Owner takes reasonable efforts to maintain the secrecy of this information. Consultant agrees that during the term of the Agreement and at any time thereafter, except as required to provide Work hereunder, Consultant shall not directly or indirectly, possess, use, convert, copy, duplicate or misappropriate confidential, proprietary and/or trade secret information, and shall not directly or indirectly disclose, communicate, transmit, or transfer, any confidential, proprietary and/or trade secret information to any person, firm, partnership, corporation, proprietorship, governmental body or agency, or business organization or entity of any kind or description. The obligation of confidentiality shall survive five years beyond the termination or end of the Agreement.

Consultant understands that for purposes of the Agreement, confidential, proprietary and/or trade secret information is defined to include, but is not limited to: (a) the whole or any part of paper copies

or computer data bases, programs or diskettes, containing scientific, technical or business information; (b) any type of data or documents that relate to the design, process, procedure, method, technique, formula, or improvement of any current or future products or services developed, manufactured, owned, produced, sold, distributed or provided by the Owner; (c) any type of data or documents that relate to marketing strategies or plans and any associated information such as customer names and/or contacts, addresses or telephone numbers, mailing lists, customer, vendor and supplier account data; (d) consulting reports; (e) site assessments; (f) business plans, financial information, billing information, sales figures, price lists, discounts, or financial information; (g) computer passwords or codes; and (h) information or data relating to the energy commodity market and related financial instruments, and/or statistical and analytical data, including analytical modes, used to forecast changes in the pricing of energy commodities or the value of related financial instruments.

Consultant understands and agrees that upon the termination of the Agreement all such confidential, proprietary and/or trade secret information, in addition to any other property belonging to the Owner, which is in Consultant's possession and/or control, shall be delivered to the Owner in good order.

7. **Intellectual Property.** Consultant warrants that its performance of the Work will not infringe upon or violate any trademarks, patents, copyrights, trade secrets or other third party property rights. If the performance of Work is held in any action to constitute infringement, or the use of the Work is enjoined, Consultant, at its expense, shall procure for Owner the right to continue use of the Work, or replace the Work with non-infringing materials or methods satisfactory to Owner, or modify the Work in a manner satisfactory to Owner so that the Work becomes non-infringing. Consultant agrees to indemnify and save Owner harmless from and against any liability or damages, including attorneys' fees, arising out of any alleged infringement or violation. Owner will own the Work and any intellectual property, including trademarks, patents, copyrights and trade secrets, resulting from the work.
8. **Work Product.** All "work product" prepared by Consultant during the course of performance of Work under the Agreement, shall be considered "work made for hire" and shall be the property of the Owner. Consultant will execute documents, including agreements with its employees and agents and assignment documents, necessary to effectuate Owner's ownership of such intellectual property. To the extent that the "work product" is not deemed a "work made for hire", Consultant agrees to assign and transfer Consultant's interest (including but not limited to any copyright or patent interest) in all such "work product" to the Owner. Consultant acknowledges that the Owner may use, sell, license, release, disclose, copy and reproduce any "work product" resulting from the Agreement in any manner it deems appropriate.

Consultant's means and methods shall not be "work product" and Consultant shall retain ownership of the means and methods Consultant brings to the engagement.

9. **Force Majeure.** Neither party shall be in breach of the Agreement to the extent that any delay or default in performance is due to causes beyond the reasonable control of the delayed or defaulting party, provided that the delayed or defaulting party immediately notifies the other party of the event, an estimate of the duration of the event, and the delaying or defaulting party's plan to mitigate the effects of the delay or default.
10. **Assignment and Subcontracting.** Consultant may not subcontract, assign, or otherwise dispose of the Agreement without the prior written consent of Owner.

11. **Compliance with Laws.** Consultant shall comply with all applicable laws, rules, regulations and orders of any governmental authority, and will obtain at its expense all permits and licenses pertaining to its

obligations under the Agreement. Consultant agrees to indemnify and save Owner harmless from and against any liability or damages including attorneys' fees, for non-compliance therewith by Consultant.

- 12. Indemnification.** To the fullest extent permitted by law, Consultant agrees to indemnify, protect, defend and hold harmless the Owner, its authorized representatives, affiliates, parent and/or subsidiary companies, organizations or entities, successors, assigns, and officers, directors, shareholder, employees and agents of the same as well as their successors or assigns, in both their personal and representative capacities, from and against all liabilities, claims, fines, penalties, costs, damages, losses, liens, causes of action, suits, judgments and expenses (including court costs, reasonable attorneys' fees and other costs of litigation) attributable to any action or conduct, directly or indirectly, relating to the performance of Work by Consultant.

With respect to claims against Owner by Consultant's employees, Consultant agrees to expressly waive its immunity as a complying employer under the workers' compensation law, but only to the extent that such immunity would bar or affect recovery under or enforcement of the indemnification obligation. With respect to the State of Ohio, this waiver applies to Section 35, Article II of the Ohio Constitution and Ohio Rev. Code Section 4123.74.

- 13. Limitation of Liability.** Except as expressly provided herein, neither party shall be liable to the other for any incidental, indirect, special, punitive or consequential damages. Consultant must bring any cause of action arising under the Agreement within one year from the time the cause of action accrues.
- 14. Insurance.** Consultant shall maintain for the term of the Agreement the following insurance: If a sole proprietor, Automobile Liability insurance with not less than \$300,000 combined single limit. If an entity other than a sole proprietor (e.g., corporation, partnership, or limited liability company), (a) automobile liability insurance with not less than \$1,000,000 combined single limit; (b) commercial general liability insurance with limits not less than \$1,000,000 per occurrence and in the aggregate; (c) professional liability insurance with not less than \$1,000,000 per occurrence; and (d) if required by Workers' Compensation statutes where the services are being performed, Workers' Compensation insurance and employers liability with limits of not less than \$100,000 per accident. Consultant shall provide a certificate of insurance, or other acceptable evidence, evidencing the required insurance under this Article 14.

For Work performed in Louisiana, Consultant hereby acknowledges and agrees that its employees, together with any of its subcontractors' employees shall be deemed to be the statutory employees of Owner only for the purpose of Workers' Compensation law and Consultant further agrees that it will amend its Workers' Compensation insurance to include an Alternate Employer Endorsement and have all its subcontractors execute agreements also acknowledging and recognizing the statutory employer status of Owner.

- 15. Termination.** Owner may immediately terminate, for its convenience or for cause, all or any part of the Agreement upon notice to Consultant. Upon termination for convenience, Consultant shall immediately stop Work on the terminated portion of the Agreement and shall submit to Owner an invoice with supporting information setting forth the price for the Work performed prior to the notice of termination, plus Consultant's actual, direct, unavoidable costs resulting from the termination, less salvage value, but in no event shall the invoice exceed the Agreement price.

Upon termination for convenience or cause, Owner shall not be liable to Consultant for Consultant's lost profits on the terminated portion of the Agreement. The Owner shall be entitled to terminate the Agreement without notice for cause under the following circumstances: (a) Consultant's refusal or failure to perform Consultant's responsibilities in a competent or satisfactory manner; (b) Consultant's engagement in activities or conduct injurious to the best interest or reputation of the Owner; (c) Consultant's violation of any of the material terms and

conditions of the Agreement; or (d) Consultant's unauthorized disclosure, dissemination, or misappropriation of confidential, proprietary, and/or trade secret information. Upon termination for cause, Owner may pursue all rights and remedies available under the law. The Agreement shall automatically terminate upon the death of Consultant or upon Consultant's physical or mental inability to perform Work to the Owner.

- 16. Affiliated Companies.** Any indemnification of Owner and any limitation of Owner's liability shall to the same extent apply to Owner's directors, officers, employees, agents and affiliated companies, and the directors, officers, employees and agents thereof.
- 17. Taxes.** Consultant shall be responsible for the reporting and payment of all federal, state and local income taxes that may be assessed on payments made by the Owner to Consultant. If applicable, the Consultant shall be responsible for self-employment taxes on the payments made to the Consultant. If Owner specifies that services or tangible personal property to be furnished by Consultant qualify for exemption from sales or use taxes or that Owner has a direct pay permit, Consultant shall, at the direction of Owner, not include sales or use taxes in its price. Owner shall provide Consultant with Owner's direct pay permit or exemption certificate where applicable. Consultant agrees to cooperate in obtaining exemption certificates necessary to claim such exemptions.
- 18. Payment.** Consultant shall invoice Owner, with proper documentation, for all Work performed during the prior month. Owner shall pay Consultant, upon submission of proper invoices, the price for Work performed within thirty days after receipt of the invoice. Owner may withhold all or part of payment if Owner disputes Consultant's compliance with the terms of the Agreement. Owner's payment does not constitute acceptance of the Work. The Agreement number must appear on all invoices and notices.
- 19. Warranty.** Consultant warrants that the Work shall be free of defects and in conformance with the Agreement and applicable industry standards. For a period of twelve months from completion and acceptance of the Work, Consultant shall, at its expense, promptly correct any non-conforming Work. Owner's acceptance of the Work shall not relieve Consultant of its warranty obligations. In the event of an emergency, or if Consultant fails to correct a defect within a reasonable period of time, Owner may repair or replace any defect in warranted Work at Consultant's expense.
- 20. Records.** Owner reserves the right to examine any records pertaining to the Work and as may be requested by federal or state governmental agencies, courts of law, or consultants hired by the Owner. Owner may audit records necessary to permit evaluation and verification of claims submitted, and Consultant's compliance in the performance of the Work, and with its dealings with Owner, with (a) the Agreement requirements; and (b) Owner's Principles of Business Conduct governing business ethics. Consultant shall retain and preserve all information relating to the Work for a period of three years following final payment for Work performed under the Agreement.
- 21. Safety.** Consultant shall perform the Work in a safe and careful manner and use such safety devices and methods as are necessary to protect its employees and agents, subcontractors, other consultants or contractors, Owner's employees and agents, and the public from harm and damage. In connection with the performance of the Work, Consultant shall ensure Consultant and all employees, subcontractors, and agents of Consultant are drug free.

If required by Owner, Consultant must meet certain security criteria set forth herein. Consultant is responsible for assuring that each of its employees meet these criteria. Consultant must perform a background check to assure that each of its employees: (a) has never been convicted of a felony; (b) has never been convicted of a crime involving drugs or firearms; (c) has never been convicted of a crime involving violence or assault; and (d) has no immigration violations and is eligible to work in the United States. For the purpose of performing the background check, and to otherwise screen the potential Consultant employee, Consultant

shall: (a) conduct a fingerprint background check through the repository of the individual's current state of residence and states of residence during the past five years; (b) contact two listed and two developed references; (c) verify education and any professional license to the extent claimed by the individual; (d) obtain employment history for seven-year period prior to employment with Consultant, including all periods of unemployment within that seven-year period; (e) perform a driver's license verification if the individual will operate vehicles on Owner's property (this includes motor vehicle records check in the state where the individual currently resides, as well as verification of a valid license); and (f) perform an individual Social Security number trace. Consultant shall submit to Owner a copy of its proprietary background investigation process for Owner's review and file. Owner reserves the right to conduct a background screen at Consultant's expense if agreed between Owner and Consultant. Owner may audit or review specific Consultant screening files to ensure compliance. Consultant shall not perform any screening activities that violate the federal Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964 or any other applicable law in any circumstances. Consultant shall ensure that the substance and manner of any and all background checks performed by Consultant conform fully to applicable law. Owner, in its sole discretion, shall have the option of barring from any Work site any person whom Owner determines does not meet the qualification requirements set forth above.

- 22. Miscellaneous.** The effective date of the Agreement shall be the earlier of the date on which Consultant begins performance hereunder or the date of the later signature on the Agreement. No waiver by either party of any default shall be deemed a waiver of any subsequent default. The Agreement constitutes the entire agreement of the parties. If any provision of the Agreement is held to be invalid, such invalidity shall not affect the remaining provisions of the Agreement. Amendments to the Agreement must be in writing and signed by both parties. Headings are provided for the convenience of the parties, and shall not affect the interpretation of any provision. The Agreement shall be governed by the laws of the State of Ohio. Consultant agrees that all actions and proceedings brought by Owner against Consultant may be litigated in courts located in the State of Ohio. Consultant agrees that such courts are convenient forums and irrevocably submits to the personal jurisdiction of such courts.

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