

MANAGEMENT SERVICES AGREEMENT

BETWEEN

DUKE ENERGY

AND

GUIDANT GROUP, INC.

8/20/2007

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*Management Services Agreement effective June 29, 2007***MANAGEMENT SERVICES AGREEMENT**

This Management Services Agreement including all Schedules hereto (the "Agreement"), effective as of the 29th day of June, 2007, is entered into by and between Guidant Group, Inc., a Delaware corporation, ("Guidant Group" or "Supplier") and Duke Energy Shared Services, Inc. for and on behalf of itself and its Affiliates ("Duke Energy" or "Customer"). Duke Energy and Guidant Group are hereafter collectively referred to as the "**Parties**" and individually as a "**Party**."

WHEREAS, Customer desires to receive from Guidant Group certain services related to Customer's temporary workforce;

WHEREAS, this Agreement supersedes and replaces the Agreement between Guidant Group, formerly Comensura, Inc., and Customer (fka Cinergy Services, Inc.) effective June 17, 2002; and.

WHEREAS, Guidant Group desires to provide certain services to Customer related to Customer's temporary workforce Program, which Program is to be described and clarified in each SOW (as defined herein).

NOW, THEREFORE, Customer and Guidant Group, in consideration of the mutual promises contained herein and other good and valuable consideration given and received, agree as follows:

1. SERVICES

- 1.1 During the term of this Agreement, Guidant Group agrees to provide certain services to Customer on an as-requested basis as set forth in a written Statement of Work ("SOW") agreed to and signed by the Parties in the form attached hereto as Schedule 1 – Statement of Work Template. SOWs may be amended from time to time by written agreement executed by both parties. All services to be provided by Guidant Group pursuant to this Agreement are referred to herein as the "Services." The Parties agree that this Agreement does not establish any commitment on the part of Customer to purchase any specific amount of Services.
- 1.2 **Customer Rules and Compliance.** In performing the Services and using Customer Facilities (as defined herein), Guidant Group shall, and shall cause the Staffing Companies to, observe and comply with all Customer policies, rules, and regulations (including those governing business practices, smoking, harassment, weapons, safety, security, drugs and alcohol) applicable to Customer Facilities or the provision of the Services, including the Duke Energy Supplier Code of Conduct, which have been communicated to Guidant Group or Guidant Group personnel in advance by such means as are generally used by Customer to disseminate such information to its employees or contractors, including those set forth on Attachments 3-A, 3-B and 3-D and those applicable to specific Customer sites (collectively, "Duke Energy Rules"). The Parties acknowledge and agree that, as of the Effective Date, Guidant Group is fully informed as to the Duke Energy Rules. Guidant Group shall be responsible for the promulgation and distribution of Duke Energy Rules to its personnel and Staffing Companies as and

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to the extent necessary and appropriate. In addition, Guidant Group and the Staffing Companies, shall be responsible for familiarizing themselves with the premises and operations at each Duke Energy site or Customer Facility at, to or from which Services are rendered and the Duke Energy Rules applicable to each such site or Facility. Additions or modifications to the Duke Energy Rules may be (i) communicated orally by Customer directly to Guidant Group and the Staffing Companies, if that is the means generally used by Customer to disseminate such information, (ii) disclosed to Guidant Group and the Staffing Companies, in writing, (iii) conspicuously posted at a Customer Facility, (iv) electronically posted, or (v) communicated to Guidant Group and the Staffing Companies, by means generally used by Customer to disseminate such information to its employees or contractors. Guidant Group and the Staffing Companies, shall observe and comply with such additional or modified Duke Energy Rules. At Customer's request, Guidant Group and the Staffing Companies, shall participate in Customer provided training programs regarding such policies, rules and regulations.

- 1.3 **Guidant Group's Responsibilities Regarding Duke Energy's Network.** To the extent any equipment used by Guidant Group and the Staffing Companies, is, with Customer's approval, to be connected to the network(s) of Customer, such equipment (and all software installed thereon) shall be (i) provided to Guidant Group and the Staffing Companies, by Customer at Customer's expense, (ii) shall be maintained and supported by or through Customer, at Customer's expense and (iii) shall be and remain in strict compliance with Customer's then-current security policies, architectures, standards, rules and procedures, unless and to the extent deviations are approved in advance by Customer. Customer shall load the software image on such equipment and Guidant Group shall not, and Guidant Group shall cause the Staffing Companies to not, install or permit the installation of any other software on such equipment without Customer's prior approval. Guidant Group shall, and shall cause the Staffing Companies to, promptly report any security breach of the network(s) of Customer and shall cooperate with and fully support Customer's investigation of each such security breach. In addition, Guidant Group shall, and shall cause the Staffing Companies to, promptly investigate any other security breach associated with Guidant Group, the Staffing Companies, or the performance of the Services. Guidant Group shall, and cause the Staffing Companies to, notify Customer and permit Customer to participate in the investigation of each such security breach. Guidant Group shall, and shall cause the Staffing Companies to, promptly (i) report the findings of any such investigation to Customer, (ii) provide Customer with a copy of any written report prepared in connection therewith, and (iii) to the extent in Guidant Group's or the Staffing Companies', areas of responsibility and control, prepare and (following Customer approval) implement a remediation plan to remediate the effects of the security breach and prevent its recurrence.
- 1.4 **Background Check/Drug Screening.** Guidant Group shall, and shall cause the Staffing Companies to, ensure that Guidant Group personnel, and the Staffing Company personnel, are authorized to work in any country in which they are assigned to perform services. In addition, Guidant Group shall, and shall cause the Staffing Companies to, comply with Duke Energy's "Non-Employee Screening" policy in Attachment 3-E of this Agreement, as such policy may be modified from time to time.

*Management Services Agreement effective June 29, 2007***2. DEFINITIONS**

- 2.1 Capitalized terms not otherwise defined herein shall have the meanings set forth on the attached listing of definitions (Attachment 1).

3. PRICING, INVOICING AND PAYMENT TERMS3.1 *Pricing for Services.*

- 3.1.1 *Temporary Labor Pricing:* Rates charged to the Customer for temporary labor procured through this program will be charged as set out in the SOW.

- 3.1.2 *Guidant Group Services.* The fee charged by Guidant Group for the Services provided to Customer described hereunder shall be set out in the SOW.

3.2 *Invoices.*

- 3.2.1 *Staffing Company and Temporary Worker Services.* Guidant Group will invoice Customer weekly for the services provided by the Staffing Companies, and that invoice will identify at a minimum (1) the number of hours of Approved Time worked by each Temporary Worker, (2) the type of each hour worked (*e.g.* Regular Time, Approved Overtime, etc.) by each Temporary Worker, (3) the Bill Rate on each hour worked, (4) all Worker Expenses and Staffing Company Expenses, and (5) a total amount due and owing under the invoice, and (6) Customer designated departments or units to which the amounts invoiced will be allocated on Customer books and records, and (7) this Agreement number, and (8) the SOW number, as well as, any other details specifically identified in the SOW. Additionally, Guidant Group shall invoice Customer directly for monthly service fees pursuant to applicable SOW (where are these fees described?), and will provide information related to such billing as specifically identified in the SOW.

- 3.2.2 *Submission.* Each invoice shall contain the content and be in the format set forth in the SOW and submitted in the method defined in the SOW.

- 3.3 *Payments.* Customer shall pay to Guidant Group the undisputed amount billed in each invoice (Services and Management Fees) within ten (10) days of the date of such invoice. Payments due hereunder may be made through electronic fund transfers.

Guidant Group shall pay Staffing Companies for all undisputed amounts in an Invoice within five (5) days of Guidant Group's receipt of payment from Customer for each Staffing Company's services reflected in such invoice. Notwithstanding the foregoing, Guidant Group shall have no obligation to pay Staffing Companies for any amounts set forth in an invoice unless and until Guidant Group has received payment from Customer for the services provided by Staffing Company reflected in such invoice.

- 3.4 *Late Payments.* Any undisputed amount not paid in full when due shall be subject to interest at the rate of one and one-half percent (.5%) per month (or 6% per annum), or the highest amount permitted by law, whichever is lower.

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- 3.5 *Disputed Invoices or Payments.* Any disputes between the parties related to invoices or payments shall be subject to the following terms;
- 3.5.1 Notwithstanding the arbitration provision set forth in Section 13.6 of this Agreement, in the event that any question or dispute arises regarding any item on any invoice or any payment, the disputing party shall, within thirty (30) days of receipt of the disputed invoice or payment and in accordance with Article 12 (regarding Notices) of this Agreement, provide the other party with written notice of such question or dispute. Such notice shall define the subject of the dispute as precisely and narrowly as possible. Upon such notice, the parties shall work together in good faith to resolve the dispute.
- 3.5.2 In the event Customer disputes an invoiced amount, Customer shall (i) pay the undisputed amount of the sum invoiced when due according to Article 3 of this Agreement, (ii) properly notify Guidant Group of such dispute in accordance with this paragraph, and (iii) work in good faith to resolve such dispute within thirty (30) days of such notice. If the parties agree that Customer was incorrectly invoiced by Guidant Group, the amount incorrectly invoiced and collected by Guidant Group may be deducted by Customer from any subsequent amount invoiced.
- 3.5.3 In the event Guidant Group disputes the sufficiency of a payment by Customer (including non-payment), Guidant Group shall notify Customer of such insufficient payment within thirty (30) days of receipt of such payment and will thereafter work in good faith to resolve such dispute. If the parties agree that Customer failed to pay any amounts due, Customer shall promptly pay Guidant Group such outstanding amounts.
- 3.6 *Responsibility for Tax Payment Withholdings.* Guidant Group shall require the Staffing Companies to report and pay the employer's share of applicable state and local taxes, federal taxes, workers' compensation, FICA, federal unemployment insurance, and other similar amounts with respect to all compensation received by the Temporary Workers assigned to Customer at the time and as otherwise required by law. Guidant Group shall require the Staffing Companies to withhold, report and forward to the appropriate authority all applicable withholdings required by law with respect to any compensation received by a Temporary Worker for any work performed for Customer.
- 3.7 *Tax Payments.* In the event that any federal, state or local sales, use, excise, value added, or other like tax payments are due under law on the rates charged for work performed by Temporary Workers or on the fees charged by the Staffing Companies, Guidant Group shall require the Staffing Companies to pay such taxes and will include such amounts in its Services Invoices to Customer without any Management Fee markup. Customer shall reimburse Staffing Companies (by making payment to Guidant Group, which payment Guidant Group shall forward to the applicable Staffing Company), for such tax payments in accordance with the terms and conditions set forth in the SOW. In the event Guidant Group's Management Fee is subject to any such taxes, Guidant Group shall pay such amounts and will invoice Customer for such taxes. Customer shall reimburse Guidant Group for all amounts invoiced. Nothing in this

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paragraph shall be deemed to refer to payroll, unemployment, or income taxes described in the preceding paragraph.

- 3.8 However, if Customer specifies additional services or tangible personal property to be furnished by Guidant Group or the Staffing Companies which qualify for exemption from sales or use taxes, Guidant Group and the Staffing Companies shall, at the direction of the Customer, not include sales or use taxes in its price. Customer shall provide Guidant Group with Duke Energy's direct pay permit or exemption certificate where applicable. Guidant Group agrees to cooperate in obtaining exemption certificates necessary to claim such exemptions.

4. CUSTOMER'S OBLIGATIONS. In addition to Customer's payment obligations set forth in Article 3 and in the SOW, Customer shall:

- 4.1 comply with all laws related to workplace health and safety concerns, and, except as required by Section 13.19, maintain in effect during the term of this Agreement all licenses and permits that may be required by such laws or regulations;
- 4.2 appoint a Program manager who shall serve as Guidant Group's contact with regard to executing any SOW to the Agreement (the "Customer Program Manager"). Customer shall notify Guidant Group of the identity of such Customer Program Manager within ten (10) business days of the date hereof and, in the event of a change in the Customer Program Manager, no later than three (3) days prior to such change.
- 4.3 designate the individuals with whom Guidant Group or the Temporary Workers should communicate (as necessary in each Order) with respect to Guidant Group's performance under this Agreement;
- 4.4 provide Guidant Group with access to Customer email system, and office space and facilities to accommodate the on-site account team including, desks, telephones, computers, printers, fax machines similar in size, quantity and quality to the facilities that Customer provides to its own employees performing similar services (the "Customer Facilities") solely as necessary for Guidant Group to perform its obligations under this Agreement. **THE DUKE ENERGY FACILITIES ARE PROVIDED BY CUSTOMER TO SUPPLIER ON AN AS-IS, WHERE-IS BASIS. DUKE ENERGY EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE DUKE ENERGY FACILITIES, OR THEIR CONDITION OR SUITABILITY FOR USE BY SUPPLIER.**
- 4.5 place all Orders for Temporary Workers with Guidant Group directly and shall not directly communicate Orders to any Staffing Company applicable to the Program as defined in a SOW;
- 4.6 inform all Customer personnel who may be Customer Representative, the Customer Program Manager or otherwise involved with or in use of the Services under the Program, of their obligations related to, and roles within, the Program as described in this Agreement. Customer shall reasonably ensure that such Customer personnel comply with their respective obligations related to the Program.

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- 4.7 supervise, direct or control a Temporary Worker, while such Temporary Worker is at Customer's facilities or otherwise performing work for the Customer; not solicit, cause or encourage any Guidant Group employee to terminate his or her employment with Guidant Group during the term of this Agreement and for a period of six (6) months after the termination of this Agreement, provided however, this provision shall not operate or be construed to prevent or limit any such employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any such employee's freedom of movement or association. Neither the publication of classified advertisements in newspapers, periodicals, Internet bulletin boards, or other publications of general availability or circulation nor the consideration and hiring of persons responding to such advertisements shall be deemed a breach of this provision;
- 4.8 not solicit, contract with or cause or encourage any entity to provide management services or other similar services related to Customer's temporary workforce until Customer has provided notice of termination of this Agreement to Guidant Group in accordance with Article 7
- 4.9 agree that Guidant Group shall have no liability for, and Customer hereby agrees to defend, indemnify and hold harmless Guidant Group from any liability of any kind arising from or related to the work performed by any Incumbent 1099 Independent Contractors. Upon completion of the Incumbent 1099 Independent Contractors' Assignments, there shall be no use of 1099 Independent Contractors under the Program.

5. WORK PRODUCT, CONFIDENTIALITY AND INTELLECTUAL PROPERTY.

- 5.1 *Work Product.* Guidant Group acknowledges and agrees that Customer shall own exclusively all work performed or prepared by any Temporary Worker for Customer pursuant to this Agreement (collectively, the "Work Product") including, without limitation, all programs, derivative works, source code, object code, discoveries, concepts, inventions, innovations, improvements, materials, documentation, techniques, methods, processes and ideas which are conceived, made, proposed or developed by any Temporary Worker, alone or with others, in connection with any work assignment hereunder, whether or not prepared on or off Customer's premises or during regular work hours, but excluding any Excluded Inventions (as defined herein).
- 5.1.1 *Assignment of Rights in the Work Product.* Prior to Temporary Worker's assignment to Customer, Guidant Group shall require all Staffing Companies to cause each Temporary Worker to grant, assign and transfer to Customer all worldwide rights, title and interest in and to all Work Product including, without limitation, all patent rights, copyrights, trade secret rights, and all present and future rights of any kind pertaining to all such Work Product whether or not such rights are now known, recognized or contemplated, together with any related goodwill. Such grant, assignment and transfer shall be set forth in an agreement in the form of the Temporary Worker Agreement attached hereto at Attachment 2. The final Temporary Worker Agreement applicable to each SOW will be mutually agreed to by Customer and Guidant Group During and after the term of this Agreement, Guidant Group shall require the Staffing Companies to provide Customer, at Customer's expense, with all assistance

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reasonably required to perfect such right, title and interest, including without limitation, the execution of all papers and documents and performance of all acts necessary or appropriate, in Customer's reasonable discretion, by the Staffing Companies to evidence or further document Customer's ownership of the Work Product.

- 5.1.2 *Excluded Inventions.* Except for any Excluded Inventions, no Temporary Worker assigned to Customer shall be required to assign to Customer any idea, invention, discovery, innovation or improvement that such Temporary Worker developed entirely on his or her own time and without the use of any Customer equipment, supplies, facility or Confidential Customer Information, and which (i) does not relate to Customer's business or to Customer's actual or anticipated research or development and (ii) does not result from any work performed by such Temporary Worker specifically for Customer, (the "Excluded Inventions"). In any dispute with respect to the Excluded Inventions, the burden of proof shall be on the Temporary Worker to show that the exclusion does not apply.
- 5.1.3 *Work Made for Hire.* Except for any Excluded Inventions, any and all Work Product prepared by a Temporary Worker under this Agreement that is eligible for copyright protection shall be a work made for hire on behalf of Customer as that term is used under the United States Copyright Act and ownership of all copyrights in such Work Product shall vest in Customer. If for any reason, any such Work Product shall not be deemed a work made for hire or ownership of such copyrights would not vest in Customer, then Guidant Group shall require the Staffing Company employing such Temporary Worker, at Customer's expense, to provide Customer with all assistance reasonably required to have transferred all right, title and interest in such work, including all copyrights therein, to Customer upon notice to Guidant Group of such Work Made for Hire. In those jurisdictions that deem any work performed on a "Work Made for Hire" basis as giving rise to an employee/employer relationship, the parties specifically agree that this provision shall not apply in such jurisdiction and that each Temporary Worker shall continue to be deemed an independent contractor of Customer.
- 5.2 *Non-Disclosure Agreements.* Prior to the assignment of any Temporary Worker to Customer, Guidant Group shall require the Staffing Companies to cause each Temporary Worker assigned to Customer to sign a Temporary Worker Agreement, in the form of the agreement attached hereto as Attachment 2, which agreement contains non-disclosure/confidentiality provisions.
- 5.3 *Confidential Customer Information.* During the term of this Agreement, Guidant Group may obtain certain confidential information of Customer. This confidential information includes, but is not limited to, information regarding Customer's past, present, and future business activities (including all proprietary information related to intellectual property, research, data, development, business plans, business operations, or internal systems), any data that is subject to any privacy laws, information treated or defined as confidential under the Duke Energy Privacy Policy in Attachment 3-E, all information that Guidant Group knows or reasonably should know is confidential or proprietary

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information, and may be contained on paper, computer disk or other electronic medium, communicated orally ("Confidential Customer Information"). All Confidential Customer Information is proprietary to the Customer, and Guidant Group shall, and shall cause the Staffing Companies to:

- 5.3.1 use Confidential Customer Information only in the performance of this Agreement;
 - 5.3.2 not make copies of any Confidential Customer Information without Customer's consent;
 - 5.3.3 not use or disclose any Confidential Customer Information to any third party (excluding any Staffing Companies or Temporary Workers who have a need to know or otherwise as provided for herein) without Customer's consent;
 - 5.3.4 limit dissemination of Confidential Customer Information to Staffing Companies, Temporary Workers, and personnel of Guidant Group as necessary for its performance under this Agreement;
 - 5.3.5 upon termination of this Agreement, deliver to Customer all papers, notes or other materials in its possession that may contain any Confidential Customer Information;
 - 5.3.6 hold any Personal Data that it receives in confidence and in compliance with (1) their respective obligations under this Agreement, any applicable SOW, and Attachment 3-F, and (2) subject to all laws regarding its use of and access to such Personal Data. Unless otherwise agreed, Guidant Group shall, and shall cause the Staffing Companies to, process and store all Personal Data in the United States, and shall not transfer, process, or maintain Personal Data in any other jurisdiction without the prior consent of Customer. Guidant Group shall, and cause its subcontractors and Staffing Companies to, maintain technical, organizational and security measures to protect the confidentiality of Personal Data consistent with the security measures contained in this section.
- 5.4 *Confidential Guidant Group Information.* During the term of this Agreement and following its termination, Customer shall not use or disclose to any third party any confidential business information of Guidant Group that Customer knows or reasonably should know is confidential or proprietary information (including but not limited to information related to Guidant Group's price lists, customers, potential customers, subcontractors, potential subcontractors, employees, potential employees, business methods, trade secrets, proprietary information or databases, business plans, etc.), which may be contained on paper, computer disk or other electronic medium, or communicated orally ("Confidential Guidant Group Information"). Customer further agrees:
- 5.4.1 not to use or disclose to any third party, at any time, any information pertaining to the terms of this Agreement, including, but not limited to, information regarding billing rates, mark-up rates, fees and allocation of percent of business, without first obtaining the consent of Guidant Group;

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- 5.4.2 not to make copies of any Confidential Guidant Group Information without Guidant Group's consent;
 - 5.4.3 not to use or disclose any Confidential Guidant Group Information to any third party without Guidant Group's consent;
 - 5.4.4 to limit dissemination of Confidential Guidant Group Information to Customer personnel as necessary for performance of this Agreement; and
 - 5.4.5 upon termination of this Agreement, to deliver to Guidant Group all papers, notes or other materials in its possession that may contain any Confidential Guidant Group Information.
- 5.5 *Exceptions to Confidentiality Requirements.* The confidentiality requirements in paragraph 5.3 and 5.4 of this Agreement shall not apply to confidential information which:
- 5.5.1 was in the public domain at the time the receiving party learned of such information;
 - 5.5.2 enters the public domain through no action of the receiving party;
 - 5.5.3 was in the receiving party's possession free of any confidentiality obligations at the time of disclosure by the protected party;
 - 5.5.4 was developed by the receiving party independently of the other party and without reference to any confidential information;
 - 5.5.5 was rightfully obtained from third parties who in turn were not in breach of any confidentiality agreements;
 - 5.5.6 was released for disclosure by the protected party;
 - 5.5.7 is identified by the protected party as no longer being proprietary to the protected party;
- 5.6 Either Party may disclose Confidential Information of the other Party to its employees, directors, attorneys, financial advisors, contractors and agents provided that (A) such person or entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such person's scope of responsibility, (B) such disclosure is made pursuant to an obligation of confidentiality upon such person or entity that is no less stringent than that set forth in this Agreement, and (C) such disclosure is not in violation of Law. The Party making such disclosure assumes full responsibility for the acts or omissions of any person or entity to whom it discloses Confidential Information of the other Party regarding their use of such Confidential Information and must take commercially reasonable measures to protect the Confidential Information from disclosure or use in contravention of this Agreement.

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- 5.7 Either Party may disclose Confidential Information of the other Party as required to satisfy any legal requirement of a competent government body (or quasi-governmental body such as the Ohio Consumers' Counsel), provided that, promptly upon receiving any such request, the disclosing Party, to the extent it may legally do so, gives notice to the other Party of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to the making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such *other* action as it deems appropriate to protect the Confidential Information. The disclosing Party shall use commercially reasonable efforts to cooperate with the other Party in its efforts to seek a protective order or other appropriate remedy or, in the event such protective order or other remedy is not obtained, to obtain assurance that confidential treatment will be accorded such Confidential Information.
- 5.8 *Use of Name, Trademarks, or Logo.* Guidant Group shall specify in all recruiting materials and related activities that all Temporary Workers will not be Customer's employee. Guidant Group shall not use the name of Duke Energy or any of its affiliates or the fact that the Guidant Group is performing Services for Duke Energy or any of its affiliates in any press releases, media statements or public communications, or otherwise publicize this Agreement or any applicable SOW, or document related to work performed under this Agreement without the express written permission of Duke Energy. Guidant Group shall not use Duke Energy's (including its affiliates) name, logos, trademarks, service marks, trade names or trade secrets in any way,
- 5.9 *No Licenses or Title to Confidential or Proprietary Information.* Except as expressly provided otherwise herein, no licenses under any patents, copyrights, trademarks, or other intellectual property are granted by either party to the other party under this Agreement. All right, title to and interest in any Confidential Guidant Group Information shall remain the sole property of Guidant Group. All right, title to and interest in any Customer information, including, but limited to, Confidential Customer Information, shall remain the sole property of Customer. Customer shall have no right, title to or interest in any software application used and provided by Guidant Group during Guidant Group's performance of this Agreement, unless otherwise specified in a license or sublicense agreement, as the case may be, between Customer and Guidant Group.
- 5.10 *Guidant Group Work Product.* All information, reports, analysis and other documentation that (i) contains, is based upon or derives from Confidential Customer Information or other information specific to Customer and (ii) is created by Guidant Group, or at Guidant Group's direction, in connection with Guidant Group's performance of its obligations under this Agreement ("Guidant Group Work Product"), and (iii) does not relate exclusively to the business or operations of a vendor management system, shall be considered the property of Customer. Customer hereby grants to Guidant Group an unlimited, non-transferable, royalty-free license to use the Guidant Group Work Product, in accordance with the terms of the Agreement, and strictly for the provision of Services hereunder..

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- 6.1 *Guidant Group Services.* Guidant Group warrants that for the duration of this Agreement it shall perform Services it is obligated to perform hereunder in a workmanlike manner according to generally accepted standards of the temporary workforce management industry and pursuant to any SOW and corresponding Service Level Agreements. If Guidant Group fails to perform the Services in conformity with such warranty, upon notice of such non-conformity, then Guidant Group shall promptly repair such services by providing such additional services as in Guidant Group's reasonable business judgment are necessary to remedy such non-conformity. Customer shall not be billed for the time necessary to repair any deficiency in work due to such unsatisfactory performance. Such repair shall be the exclusive remedy of Customer hereunder for any unsatisfactory work performed by Guidant Group. Notwithstanding the foregoing, if Customer does notify Guidant Group of any failure by Guidant Group to meet the foregoing warranty within the earlier to occur of (i) twenty (20) days of Customer's discovery of such nonconforming services or (ii) three (3) months from the performance of such nonconforming services, Customer shall be deemed to have waived any claim regarding, and Guidant Group shall have no liability for, such nonconforming services.
- 6.2 *Staffing Company Services.* Guidant Group shall require each Staffing Company to (i) satisfactorily perform, and (ii) cause each Temporary Worker assigned to Customer to satisfactorily perform the services requested by the Customer, or by Guidant Group on Customer's behalf, in a workmanlike manner according to generally accepted standards of temporary labor in Customer's industry. Upon Customer's notice to Guidant Group of unsatisfactory performance by a Temporary Worker, Guidant Group shall require the employer-Staffing Company to remove such Temporary Worker and to promptly provide a replacement Temporary Worker. In such event, Customer shall not be billed the Pay Rate, the Bill Rate or any other fee for the hours, or portions thereof, during which any unsatisfactory work was performed, and such remedy shall be Customer's exclusive remedy against Guidant Group with regard to any unsatisfactory performance by Temporary Workers. Customer shall have the right to a direct action against both the Staffing Company and the Temporary Worker for any claims related to this Section 6.2. Customer agrees that it will pursue all claims related to the performance of a Temporary Worker or the negligence of the Staffing Company providing such Temporary Worker, exclusively against such Temporary Worker and Staffing Company.
- 6.3 **DISCLAIMER. GUIDANT GROUP MAKES NO OTHER WARRANTIES THAN THOSE EXPRESSED HEREIN, EXPRESSED OR IMPLIED. ALL OTHER, WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.**

7. TERM AND TERMINATION.

- 7.1 *Term.* This Agreement shall continue indefinitely until terminated for cause or convenience by either party in accordance with this Article 7.

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- 7.2 *Termination for Cause.* Either party may terminate this Agreement or any SOW for material breach of its terms by the other party upon thirty (30) days prior written notice of such breach, unless (i) the breaching party cures such breach within such thirty (30) day notice period or, (ii) if such cure requires more than thirty (30) days, the breaching party undertakes and diligently pursues necessary actions to cure such breach within a reasonable time. In the event Customer terminates this Agreement for cause, Guidant Group shall: (a) require each Staffing Company to cause its Temporary Workers to continue their assignments through completion of the current Orders (unless otherwise directed by Customer), (b) maintain any software applications or other electronic databases Guidant Group is operating on Customer's behalf for ninety (90) days after the date of termination (unless otherwise directed by Customer), and (c) return all Customer Confidential Information in accordance with Section 7.5. In the event of termination of this Agreement for cause by Guidant Group, Customer shall: (a) promptly upon such termination, pay all rates, fees, costs and bonuses due and owing as of the date of such termination, and (b) return all materials in accordance with Section 7.4.
- 7.3 *Termination for Convenience.* Either Party may terminate this Agreement or any SOW for convenience with one hundred and eighty (180) days written notice. Other than the obligations which survive termination pursuant to Section 13.8 of this Agreement, including Customer's obligations to pay Guidant Group all monies due and owing and the non-solicitation provision set forth in Section 4.7, neither party shall owe the other party any obligations under this Agreement after such termination.
- 7.4 *Termination Costs.* In the event this Agreement is terminated by Customer pursuant to Section 7.3 or by Guidant Group pursuant to Section 7.2, Customer shall reimburse Guidant Group for its commercially reasonable, after having used its commercially reasonable efforts to reduce and mitigate such costs, administrative costs associated with such termination and related to the transition of data, information, property, incumbent staffing, etc. (the "Termination Costs"). Such Termination Costs shall include Guidant Group's costs and fees, if any, associated with Services provided by Guidant Group in connection with the transition of the Program to another vendor or back to Customer. Termination Costs shall not include cost associated with Guidant Group's internal cost of doing business, i.e. employee severance cost, employee relocation cost, asset reallocation cost. All Termination Costs shall be billed in accordance with Article 3.
- 7.5 *Return of Work and Materials.* Both parties shall, and shall cause their employees to, deliver to the other party all documents or materials, confidential or otherwise, obtained from the other party in the course of performance under this Agreement.

8. RELATIONSHIP OF PARTIES.

- 8.1 *Independent Status.* At all times during the term of this Agreement, Guidant Group and its employees shall remain independent of Customer. All Temporary Workers assigned to Customer by Guidant Group are and shall at all times be independent contractors of Customer. The Temporary Workers assigned to Customer under this Agreement shall be employees of the Staffing Companies and in no event shall any Temporary Worker

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be considered, by reason of their assignment to Customer, an employee of Customer or Guidant Group. There shall be no Companionship or joint venture created by this Agreement. Neither party shall have the power to bind or commit the other.

- 8.2 *No Benefits.* Regardless of the nature or duration of any assignment with Customer, neither Guidant Group's employees nor any of the Temporary Workers assigned to Customer shall be eligible for or entitled to participate in any of Customer's employee benefit plans, programs, policies or practices which may now or in the future be in effect, including, without limitation, any pension, retirement, or 401(k) plan; workers' compensation benefits, any profit sharing, stock option, bonus or incentive compensation plan; any life or health insurance plan; any vacation or holiday pay plan; or any separation payment plan.

9. INSURANCE.

- 9.1 *Required Insurance Coverage.* During the term of this Agreement, Guidant Group shall maintain adequate insurance of the types and in amounts no less than the minimum coverage listed in Schedule 2. Guidant Group shall require the Staffing Companies to maintain adequate insurance of the types and in the amounts no less than the minimum coverage listed in Schedule 2. Guidant Group shall provide Customer, upon Customer's reasonable written request, certificates evidencing such coverage. Guidant Group shall establish processes to monitor and verify the Staffing Companies' compliance with the foregoing requirement.
- 9.2 *Additional Named Insured and Alternate Employer Status.* Guidant Group shall name Customer as an additional insured on the required Commercial General Liability Insurance, Automobile Liability Insurance and umbrella liability coverage, but solely to the extent of the specific risks and liabilities assumed by Guidant Group hereunder. Guidant Group shall require each Staffing Company in the Program to name Customer as an additional insured on the required commercial general liability, automobile liability and umbrella liability coverage, and to include an Alternate Employer Endorsement naming Customer as an Alternate Employer on their worker's compensation policies. All such policies shall be endorsed to provide Customer with thirty (30) days notice of any cancellation, material modification, material reduction in coverage, or non-renewal.

10. INDEMNIFICATION.

- 10.1 *GUIDANT GROUP'S INDEMNIFICATION OF CUSTOMER.* TO THE FULLEST EXTENT PERMITTED BY LAW, AND IN ADDITION TO OTHER INDEMNIFICATION PROVIDED ELSEWHERE IN THIS AGREEMENT GUIDANT GROUP SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CUSTOMER FROM ANY AND ALL CLAIMS, DAMAGES, SUITS, JUDGMENTS, FINES, SETTLEMENTS, OR LIABILITIES OF ANY KIND ARISING OUT OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING INJURIES OR DEATH TO PERSONS, OR DAMAGE TO PROPERTY, CAUSED BY THE ACTIONS, ERRORS, OR OMISSIONS OF GUIDANT GROUP OR ITS EMPLOYEES, SERVANTS OR AGENTS EXCEPT THAT THIS INDEMNIFICATION EXPRESSLY EXCLUDES ANY AND ALL CLAIMS ARISING (1) OUT OF OR IN

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CONNECTION WITH THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CUSTOMER OR CUSTOMER'S EMPLOYEES, SERVANTS OR AGENTS, OR (2) SOLELY FROM THE NEGLIGENCE OF CUSTOMER.

- 10.2 *MUTUAL NEGLIGENCE.* IN THE EVENT CLAIMS ARISE OUT OF OR IN CONNECTION WITH THE NEGLIGENCE ON THE PART OF BOTH PARTIES, THE PARTIES AGREE TO INDEMNIFY EACH OTHER IN PROPORTION TO EACH PARTY'S RESPECTIVE NEGLIGENCE.
- 10.3 *CUSTOMER'S INDEMNIFICATION OF GUIDANT GROUP.* IN ADDITION TO OTHER INDEMNIFICATION PROVIDED ELSEWHERE IN THIS AGREEMENT, CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS GUIDANT GROUP FROM ANY AND ALL CLAIMS, DAMAGES, SUITS, JUDGMENTS, FINES, SETTLEMENTS, OR LIABILITIES OF ANY KIND ARISING OUT OF THE OR RELATED TO THE SERVICES PROVIDED UNDER THIS AGREEMENT AND: (A) THE ACTIONS, ERRORS OR OMISSIONS OF CUSTOMER, ITS EMPLOYEES, SERVANTS OR AGENTS, (B) INFRINGEMENT OF ANY INTELLECTUAL PROPERTY (INCLUDING THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS OR TRADE NAMES) WHICH CUSTOMER REQUESTED OR ORDERED GUIDANT GROUP, ITS EMPLOYEES OR A TEMPORARY WORKER TO USE, (C) ANY SERVICES, INVOICES, OR ACTIONS OF ANY INCUMBENT STAFFING VENDORS WHO ARE NOT MANAGED BY GUIDANT GROUP UNDER THE PROGRAM, (E) THE ASSIGNMENT OF TEMPORARY WORKERS TO JOB DUTIES SUBSTANTIALLY DIFFERENT FROM THOSE SPECIFIED IN ANY ORDER, (E) ANY SERVICES, INVOICES OR ACTIONS OF ANY INCUMBENT STAFFING COMPANY PRIOR TO THE PROGRAM START DATE, (F) PERSONAL INJURY OF PERSONS, INCLUDING TEMPORARY WORKERS AND GUIDANT GROUP EMPLOYEES, INCURRED ON CUSTOMER'S PREMISES, EXCEPT THAT THIS PERSONAL INJURY INDEMNIFICATION EXPRESSLY EXCLUDES ANY AND ALL CLAIMS ARISING (1) OUT OF OR IN CONNECTION WITH THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF GUIDANT GROUP, OR (2) SOLELY FROM GUIDANT GROUP'S NEGLIGENCE.
- 10.4 *Notification of Claim; Choice of Counsel.* The party being indemnified (the "Indemnified Party") shall reasonably notify the indemnifying party (the "Indemnifying Party") of the assertion of any claim related to the indemnification obligations set forth in this Article 10, so as to permit the Indemnifying Party reasonable time within which to notify its insurers of such claim and the tender of the defense thereof by the Indemnifying Party; provided however, the failure to so notify shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent of actual prejudice caused by such failure. The choice of any counsel appointed by the Indemnifying Party to defend the Indemnified Party shall be subject to prior approval by the Indemnified Party.
- 10.5 *Patent or Copyright Infringement Indemnification.* In the event that (1) any processes, materials, hardware or software used by Guidant Group in the performance of Services to Customer are found, in Customer's reasonable opinion are likely to be found, to

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infringe upon the patent, copyright, trademark, trade secrets, intellectual property or proprietary rights of any third party, or (2) the continued use of such processes, materials, hardware or software is enjoined, Guidant Group shall (a) defend, indemnify and hold harmless Customer, its respective officers, directors, employees, agents, representatives, successors and assigns from any and all losses and threatened losses, and (b) promptly, and at its own cost and expense and in a manner as to minimize the disturbance to Customer's business activities do one of the following: (w) obtain for Customer, the right to continue using such processes, materials, hardware or software, (x) modify such processes, materials, hardware or software in question so that it is no longer infringing, (y) replace such processes, materials, hardware or software with a non-infringing functional equivalent acceptable to Customer, or (z) despite Guidant Group using commercially reasonable efforts, the Parties determine that alternatives (w) – (y) are not feasible, Guidant Group may discontinue its use of such infringing or potentially infringing processes, materials, hardware or software.

- 10.6 *Staffing Companies' Indemnification of Customer.* Guidant Group shall require each of the Staffing Companies to defend, indemnify and hold harmless Customer (as a third party beneficiary to the indemnification provision in the agreements between Guidant Group and each Staffing Company) from any and all claims, damages, suits, judgments, fines, settlements, or liabilities of any kind arising from or related to breach by the Staffing Companies or the Temporary Workers of their respective obligations described herein, except that such indemnification shall expressly exclude any and all claims arising out of or in connection with (1) the gross negligence or intentional misconduct of Customer or Customer's employees, servants or agents, or (2) Customer's sole negligence with regard to the supervision, direction and control of Temporary Workers. Guidant Group shall reasonably cooperate with Customer, including making available to Customer all pertinent information under its control, in the event Customer exercises such indemnification rights against any Staffing Company.

11. AUDIT RIGHTS. During the term of this Agreement and for a period of three (3) years following the termination of this Agreement, or for such longer period as may be required by applicable law, the parties shall maintain accounting, operational, and business records necessary to verify: (i) the basis for all charges billed to Customer hereunder and (ii) each party's respective compliance with the terms of this Agreement. Each party shall have the right to audit such records during normal business hours upon reasonable notice to the party to be audited. In the event that such audit reveals that Guidant Group has billed Customer in excess of the correct amount to be billed, Guidant Group shall promptly pay to Customer the amounts over paid. In the event such audit reveals that Customer has failed to pay Guidant Group all bonuses or other monies required under this Agreement, Customer shall promptly pay Guidant Group all amounts owed.

12. NOTICES. Notices shall be effective upon receipt, or such later date as specified in the notice. Any notice required or permitted to be delivered by one party to another under or in connection with this Agreement shall be in writing and delivered by certified U.S. mail, return receipt requested, electronic mail, facsimile or nationally recognized overnight carrier to the attention of the individual(s) and at the address(es) indicated below:

If to Guidant Group, to:

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1775 St. James Place, Suite 236
Houston, TX 77056
Attn: Dennis Kanegaye, President
facsimile: 713-297-8261
electronic mail: dennis.kanegaye@Guidant Group.com

with a copy to:

Gohn, Hankey & Stichel, LLP.
201 North Charles Street, Suite 2101
Baltimore, Maryland 21201

Attn: David L. Hankey
Facsimile: 410-752-2519
Electronic mail: dlhankey@ghsllp.com

If to Customer, to:
Duke Energy Corporate Supply Chain
Attn: Director Corporate Supply Chain
400 S. Tryon St
Charlotte, NC 28285
Facsimile: 704-382-3285

13. MISCELLANEOUS.

- 13.1 *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, and their respective successors and assigns. This Agreement shall not be assigned in whole or in part by the parties without the other party's prior written consent, except that either party may assign this Agreement to an affiliate of such party. Any unauthorized assignment shall be void.
- 13.2 *Governing Law.* The laws of the State of North Carolina shall govern the Agreement. Guidant Group agrees that all actions and proceedings brought by Customer against Guidant Group may be litigated in courts located in the State of North Carolina or in the state where the work was performed. Guidant Group agrees that such courts are convenient forms and irrevocably submits to the personal jurisdiction of such courts.
- 13.3 *No Inducements.* Guidant Group warrants and represents to Customer that it has neither provided nor offered to provide any gifts, payments, or other inducements to any officer, employee or agent of Customer for any purpose. Guidant Group shall not, and shall require Staffing Companies to ensure that Temporary Workers assigned to Customer do not, provide or offer any gifts, payments, or other inducements to any officer, employee or agent of Customer for any purpose. Guidant Group shall, and shall cause the Staffing Companies to, comply with the Duke Energy Supplier Code of

Management Services Agreement effective June 29, 2007

Conduct as set forth in Attachment 3-B of this Agreement, as such Code of Conduct may be reasonably modified from time to time.

- 13.4 *Severability.* In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue to be in full force and effect. The parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a legal, valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.
- 13.5 *Waiver.* The delay or failure of either party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed to be a waiver of such provisions or of its right thereafter to enforce each and every provision as written.
- 13.6 *Dispute Resolution/Arbitration.* The parties agree that all disputes arising under this Agreement, except for breaches of the Agreement for which injunctive relief is an appropriate remedy, shall be subject to dispute resolution between the parties. Such dispute resolution shall be performed in the first instance by the Guidant Group account manager assigned to Customer and the Customer representative designated by Customer in accordance with Section 4.2. Any dispute not settled by such representatives within sixty (60) days from the date it was referred to them shall be referred to the parties' respective Vice Presidents (or other officer to whom such responsibility has been delegated in writing by such Vice President). If the parties' Vice Presidents (or delegated officers) do not settle such dispute, it shall be settled by arbitration, commenced by either party, in accordance with this Section 13.6. Such arbitration shall be conducted under the commercial arbitration rules of the American Arbitration Association. No arbitrator shall have any authority to award damages in excess of those specified in this Agreement. Notwithstanding the foregoing, the parties hereto agree that any claims for injunctive relief may be brought before any court of competent jurisdiction.
- 13.7 *Force Majeure.* Neither party shall be liable for its failure to perform hereunder due to circumstances beyond its reasonable control, including but not limited to strike, riot, war, fire, act of God, act of terrorism, accident, plant breakdown not caused by the fault or neglect of the party failing to perform, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any other governmental body.
- 13.8 *Survival.* Articles [3, 4.8, 5, 7.5, 10, 11 and 13], of this Agreement shall survive termination, cancellation or expiration of this Agreement.
- 13.9 *Entire Agreement; Modification.* The attachments, exhibits and schedules attached hereto, as amended from time to time in accordance with this provision, form an integral part of this Agreement and are expressly incorporated in this Agreement. This Agreement, together with all such attachments, exhibits and schedules, constitute the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersede all prior or contemporaneous understandings and agreements relating to such subject matter. Any waiver, modification or amendment of

Management Services Agreement effective June 29, 2007

any provision of this Agreement shall be effective only if in writing and signed by the parties hereto.

- 13.9 *Non-Exclusive Arrangement.* Customer acknowledges that Guidant Group may provide services to others similar to the Services it is providing Customer hereunder. Guidant Group shall be the exclusive provider of vendor management services for staffing companies that provide temporary workers for positions included in the Program for the Customer. The Customer shall have the right to use the services of staffing companies that provide temporary workers for positions outside of those included in the Program.
- 13.11 *Limitation of Liability.* Except liability for nonpayment by Customer in breach of Article 3 hereunder, either party's breach of Article 5, and each party's respective infringement indemnity obligations hereunder, each party's liability shall be limited to the greater of (a) an amount equal to the Management Fee paid by Customer to Guidant Group during the twelve (12) month period preceding the incident giving rise to such liability, or one million dollars (\$1,000,000). In no event shall either party be liable for any unforeseen, special, punitive, or consequential damages or lost revenue or lost profits.
- 13.12 *Headings.* Section heading are included for convenience only and are not to be used to construe or interpret this Agreement.
- 13.13 *Compliance with Laws.* In the performance of this Agreement, each party agrees to comply with all applicable federal, state and local laws, rules and regulations.
- 13.14 *Liens.* Guidant Group shall not, and shall cause the Staffing Companies to not, file or permit to be filed any lien with respect to the Services, and to the extent permitted by law, expressly waives any right to file or cause to be filed a lien. Guidant Group, in its subcontracts, shall require all subcontractors and Staffing Companies, to the extent permitted by law, to expressly waive the right to file any liens against Customer's property and, if requested, provide Customer with copies of such waivers. Guidant Group shall, or shall cause the applicable Staffing Company to, immediately bond off any lien against Customer and shall indemnify Customer for any costs or expenses resulting from a breach of this paragraph. In the event that rights to a mechanic's lien are claimed upon Customer's property by a subcontractor, Guidant Group or a Staffing Company, Guidant Group shall, or shall cause the applicable Staffing Company to, expeditiously obtain a bond or release of said mechanic's lien. Upon Guidant Group's, or the applicable Staffing Company's, failure to expeditiously obtain said bond or release, Customer may proceed to obtain the bond or release of the mechanic's lien and Guidant Group, or the applicable Staffing Company, shall be liable to Customer for any costs and expenses including attorneys' fees, which are incurred by Customer in obtaining said bond or release.
- 13.15 *Compliance with Regulatory Code of Conduct.* Guidant Group acknowledges, and shall cause the Staffing Companies to acknowledge that, from time to time, Guidant Group or the Staffing Company may be given access to or otherwise become aware of certain operational information of Customer, the disclosure of which to affiliates of Customer is prohibited by federal law. Such confidential information includes, but is not limited

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- to (a) planned outage schedules, (b) events of forced outages and generator derating, (c) construction schedules, and (d) operational practices at the Customer's generating stations. Guidant Group shall, and shall require the Staffing Companies to (i) maintain the strict confidentiality of such operational information, and (ii) not share such operational information with any third parties, including any affiliated entities of Customer.
- 13.16 *Fraud and Ethics.* Guidant Group shall, and shall require the Staffing Companies to, be familiar with and shall adhere to the principles of Duke Energy's Supplier Code of Conduct located at <http://www.duke-energy.com/about/suppliers>, and with Customer's Code of Business Ethics. Guidant Group shall, and shall require the Staffing Companies to, promptly report any fraud, illegal activity, fiscal waste or abuse, or other violations of Duke Energy's Code of Conduct or Code of Business Ethics by any party, including Guidant Group's suppliers and service providers. Such activity may be reported by contacting: (a) the applicable Duke Energy Contract Administrator, (b) Duke Energy's Chief Compliance Officer at 704-382-6510, (c) Duke Energy's Ethics Line at 800-525-3783, which may be called anonymously, or (d) Duke Energy's website at www.dukeenergy-ethicsline.com which is managed by a third party.
- 13.17 *Diverse Suppliers.* For any Agreement in which the total compensation to Guidant Group or a Staffing Company equals or exceeds \$550,000, Guidant Group shall, and shall require the Staffing Companies to, adopt and utilize a subcontracting plan that complies with 48 C.F.R. 52-219-9 for Small Diverse Suppliers ("SDS"). Guidant Group shall, and shall require the Staffing Companies to: (i) use all commercially reasonable efforts to utilize SDS (and Large Diverse Suppliers) as required by law; and (ii) provide Customer a quarterly status report in a format reasonably acceptable to Customer. Such report shall be entered on Duke Energy's website at www.duke-energy.com. Customer, its designated auditors and any applicable government agency shall have the right of access during normal business hours to inspect Guidant Group's or the applicable Staffing Company's records related to SDS and compliance with this section.
- 13.18 *Cyber Security.* Should Guidant Group or Staffing Company, or any of their employees, subcontractors, representatives, or any other similarly authorized third parties under the control of Guidant Group or a Staffing Company who will be providing Services hereunder on behalf of Guidant Group or such Staffing Company require or be permitted unescorted access to Duke Energy's electronic or physical assets, which are classified as "critical" under Duke Energy's Standard 6000 for Cyber Security or the regulatory requirements of the North American Electric Reliability Corporation (NERC), all such persons shall be required to meet certain pre-requisites prior to access to any such critical assets. Therefore, when any secured electronic or physical access is needed or permitted, all persons identified above in this provision shall: (a) successfully complete the Duke Energy-administered background screening requirement; (b) take the Duke Energy-administered Cyber Security training; and (c) be given a company identification number in the Duke Energy Human Resources Management System (HRMS) for tracking purposes.

Management Services Agreement effective June 29, 2007

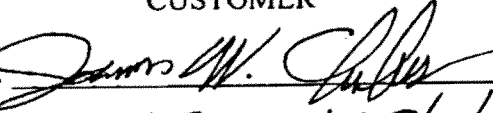
13.19 *Service Permits.* Guidant Group shall, and shall require the Staffing Companies to, obtain at their expense, all permits and licenses required to perform the Services.

IN WITNESS WHEREOF, the parties hereto have executed this Management Services Agreement on the dates set forth below, to be effective as of the date first set forth above.

GUIDANT GROUP, INC.:

CUSTOMER

By: 

By: 

Printed Name STEVE DERW

Printed Name James W. Chubey

Title REGIONAL DIRECTOR

Title General Manager, Supply Chain

Date 8/21/07

Date August 21, 2007

Management Services Agreement effective June 29, 2007

SCHEDULE 1
Statement of Work

This Statement of Work (the "SOW") effective _____ is issued pursuant to the Management Services Agreement effective as of the 30th day of April, 2007 between Duke Energy Shared Services, Inc. for and on behalf of itself and its Affiliates ("Customer") and Guidant Group, INC. ("Guidant Group"). The specific terms which will apply to this request are described below:

SERVICES:

1. Staffing Company Management under the Program.
2. The Program under this SOW shall be defined as:
3. The Program for this SOW will include but not be limited to ;
4. The Program Start Date is:
5. Services.
6. Incumbent Staffing Vendors.
7. 1099 Independent Contractors shall within _____ days of the Program Start Date (the "Transition Period") be properly classified by Guidant Group and managed by Guidant Group under the Program pursuant to Section 4.10 of the Agreement. .
8. Staffing Company Evaluations and Audits. .
9. Primary Point of Contact. Guidant Group shall be the primary point of contact for Customer (including Customer Representative, and the designated Customer Program manager), and for the Staffing Companies, as the case may be, for questions or disputes related to the Program, including (a) the placement and filling of Orders, (b) the processes for Screening and On-Boarding of Temporary Workers set forth in Schedule 2, and (c) the invoicing of, and payment by Customer for, the services of the Staffing Companies and/or Temporary Workers in accordance with Schedule 3.
10. Temporary Workers. In accordance with the terms of the Agreement, Guidant Group shall
11. Supply of Temporary Workers. Guidant Group shall manage the processes by which the Staffing Companies supply to Customer the Temporary Workers. Customer Representative shall place all Orders for Temporary Workers with Guidant Group directly and shall not directly communicate Orders to any Staffing Company. Any requisitions for temporary labor that any Customer personnel places directly with any Staffing Company or with any other third-party vendors shall be beyond the scope of this Agreement and Guidant Group shall have no liability or contractual responsibility related thereto.
12. Independent Contractors, Subcontractors and Former Employees.
13. 1099 Independent Contractors.
14. Subcontractors.
15. Former Employees.
16. Notwithstanding the foregoing, Guidant Group shall have no liability to Customer for, and Customer hereby agrees to defend, indemnify and hold harmless Guidant Group from, any liability of any kind arising out of, or related to Customer's use of 1099 Independent Contractors, employees of Subcontractors, and/or Former Employees.
17. Orders.
18. Authority.
19. Content.
20. Order Submission Process. Orders shall be placed electronically via the Electronic Application.
21. Selection of Temporary Workers Cancellation of Orders.
22. Cancellation by Customer.
23. Cancellation by Guidant Group.

Management Services Agreement effective June 29, 2007

24. No Termination.
25. Response Procedure.
26. For each Temporary Worker selected, prior to the applicable start date set forth in the Order, Guidant Group shall in conjunction with the Staffing Companies:
27. Customer's Administrative Obligations related to the Program.
28. Conversion Procedure.
29. Quarterly Performance Evaluation.
30. Probationary Period for Certain Temporary Workers.

Approvals

Inclusions – SOW Schedules/Attachments
Screening and On-Boarding
Pricing, Costs, Invoicing and Payment Reports,
Information and Additional Services Insurance Requirements
Temporary Worker Agreement between Staffing Company and Temporary Worker
End User License Agreement
Confidentiality Agreement between Guidant Group and Customer
Program Performance Criteria Staffing
Company Performance Metrics

Management Services Agreement effective June 29, 2007

SCHEDULE 2

I. During the term of this Agreement, Guidant Group shall maintain, and shall cause the Staffing Companies to maintain standard insurance policies as follows:

- A. Worker's Compensation in accordance with the statutory requirements of the state, and Employer's Liability Insurance of not less than \$1,000,000 each accident for bodily injury by accident, and \$1,000,000 each employee and policy limit for bodily injury by disease;..
- B. Commercial General Liability Insurance in a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage liability and \$2,000,000 in the aggregate, including Contractual Liability coverage, bodily injury to or death of persons, and/or loss of or damage to property of parties other than Owner;
- C. Automobile Insurance (owned, non-owned or hired) in a combined single limit of \$1,000,000 per accident for bodily injury and property damage liability.
- D. Errors & Omissions Insurance (for Staffing Partner services) in the amount of \$1,000,000.

II. Insurance policies pursuant to this Schedule 2. I.:

- A. will not be cancelled or allowed to lapse or any change made herein which changes, restricts or reduces the insurance provided or changes the name of the insured without first giving at least thirty (30) days notice in writing to Guidant Group, Inc. as provided under the Notices provisions of applicable Agreements;
- B. shall be procured with insurance providers having a Bests' Rating of A- VII or better;
- C. shall name Guidant Group, Customer and any additional Customer operating companies within scope of the Program as additional insured's on each applicable insurance policy for the above (except Workers' Compensation and Errors and Omissions). A signed copy of the endorsement adding Guidant Group and Customer as additional insured shall be attached to the certificate of insurance providing general liability coverage;
- D. shall waive all rights of subrogation against Customer; and
- E. shall be primary to any other insurance maintained by Customer, and any insurance or self-insurance maintained by Customer shall not be contributing.

III. Evidence of such specific endorsements pursuant to this Schedule 2 shall be provided with Guidant Group's or Staffing Company's certificate of insurance furnished to Customer immediately upon Customer's request and to by Staffing Company to Guidant Group prior to the start of Services and within thirty (30) days of each renewal. Guidant Group's and Staffing Company's compliance with these insurance provisions and the limits of insurance specified herein shall not constitute a limitation of Guidant Group's or Staffing Company's liability or otherwise affect Guidant Group's or Staffing Company's indemnification obligations pursuant to this Agreement. Any failure to comply with all of these provisions shall permit Customer to suspend all Services until compliance is achieved.

*Management Services Agreement effective June 29, 2007***Attachment 1
Definitions**

As used in the Agreement, the Statement of Work, and all attachments, the following terms shall have the meanings set forth below.

1. "Approved Overtime" means overtime worked by a Temporary Worker and approved in advance by a Customer Representative.
2. "Approved Time" means the time worked by a Temporary Worker on assignment to the Customer that has been approved by a Customer Representative.
3. "Assignment" means the engagement of Temporary Worker as a result of the fulfillment of an Order.
4. "Bill Rate" means the total hourly fee charged by the Staffing Company to the Customer for the services of a Temporary Worker, and is the sum of the Pay Rate plus the Mark-Up Rate.
5. "Guidant Group Expenses" means actual, out-of-pocket, reasonable expenses incurred by Guidant Group's on-site personnel in connection with the Program.
6. "Conversion Fee" means the fee charged by the Staffing Company when the Customer hires a Temporary Worker as a regular employee.
7. "Conversion Fee" means the fee charged by the Staffing Company when the Customer hires a Temporary Worker as a regular employee.
8. "Customer Facility" means the facility of the Customer identified in an Order.
9. "Customer Representative" Any Duke Energy employee who is authorized by Customer to be involved in the process of acquiring a temporary worker and who is responsible for engaging and managing temporary staff resources acquired through the Program. Such representative will be responsible for but not limited to the following; submitting an Order, approving an Order, approving time sheets and terminating an Order.
10. "Electronic Application" means the computer software and programs provided by Guidant Group in connection with Order placement and fulfillment, timesheet submission, and approval, and invoice submission.
11. "Electronic Application Fee" means the amount charged Customer by Guidant Group for firms engaged in primary vendor relationships outside of the Guidant Group Managed Services Program in exchange for the use of Guidant Group's web-based time and expense reporting and invoicing technologies.
12. "Implementation Fee" means the fee payable by the Customer to Guidant Group for the costs and expenses associated with Guidant Group's implementation of the program.
13. "Incumbent Assignment" means assignments of Incumbent Workers prior to the Program Start Date.
14. "Incumbent Staffing Vendor" means the Staffing Company providing services to the Customer prior to the Program Start Date.
15. "Incumbent Staffing Company" means an Incumbent Staffing Vendor that participates in the Program.
16. "Incumbent Worker" means the Temporary Worker employed by an Incumbent Staffing Company prior to the Program Start Date.
17. "Incumbent Assignment" means the assignment of an Incumbent Worker at the Customer prior to the Program Start Date.
18. "Independent Contractor" means: (1) persons who contract with a Staffing Company and to whom such Staffing Company makes payments, which payments are reported on Internal

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- Revenue Service series 1099 Forms, (2) any single-shareholder corporation whose only employee is the sole shareholder; and (3) any single-member limited liability company whose only employee is the sole member.
19. "Management Fee" means an amount equal to a percent, to be identified in the SOW, of the total invoices submitted through Guidant Group's e-procurement application "Spend Under Management",.
 20. "Management Invoice" means the invoice issued by Guidant Group to the Customer for the services provided by Guidant Group and for any Guidant Group Expenses.
 21. "Mark-Up Rate" means the hourly fee charged by the Staffing Company for the services performed by the Temporary Worker to the Customer in addition to the Pay Rate.
 22. "Midwest Operations" means Customer organizational or physical operations operating in Indiana, Ohio or Kentucky.
 23. "On-Boarding" means the performance by Staffing Companies of certain tasks to familiarize Temporary Workers with the program and the Customer's policies and procedures.
 24. "Off-Boarding" means the performance by Staffing Companies or Guidant Group of certain tasks related to the termination of a Temporary Worker's assignment.
 25. "Orders" means all requests or requisitions for Temporary Workers submitted by the Customer to Guidant Group. "Order Approver" shall mean the specific Customer Representative designated by Customer, either before an Order is placed or as otherwise set forth in an Order, as the personnel responsible for approving Orders placed by a Customer Representative.
 26. "Order Start Date" means the date the Temporary Worker is to begin providing services to the Customer.
 27. "Pay Rate" means the hourly wage paid to a Temporary Worker.
 28. "Program" means the management Services to be provided by Guidant Group to the Customer.
 29. "Program Performance Metrics" means the measurements of Guidant Group's performance, as set forth on Attachment 2.
 30. "Program Start Date" means the date set forth in the Management Services Agreement.
 31. "Quarterly Business Review" means the quarterly report issued by Guidant Group to the Customer setting forth Guidant Group's performance with respect to the Program Performance Metrics for the prior calendar quarter.
 32. "Services Fee" means a fixed monthly fee to be identified in a SOW "Services Fee" to be paid directly by Customer to Guidant Group.
 33. "Services Invoice" means the invoice issued by Guidant Group to the Customer for the services provided by the Staffing Companies.
 34. "Skill Set" means the skills set forth in the Order that the Temporary Worker must possess in order to perform the duties of the assignment.
 35. "Southeast Operations" means Customer business operations organizationally and physically residing in North and South Carolina.
 36. "Spend Under Management" means the the total amount billed to Customer in the Services Invoices for the hours worked by Temporary Workers provided through Staffing Companies .
 37. "Staffing Company" means the third-party vendors contracted by Guidant Group that employ Temporary Workers and assign them to provide services to the Customer under the Program.
 38. "Staffing Company Expenses" means actual, out-of-pocket, reasonable expenses incurred by a Staffing Company related to the recruitment of professional, information technology, or other specialty job classifications.
 39. "Staffing Company Performance Metrics" means the performance metrics for a Staffing Company attached as Attachment 1 to this Agreement. "Supervisor" means the individual representing Staffing Company as the employment manager of the Temporary Worker or the

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Customer as the Customer Representative responsible for directing the work of the Temporary Worker.

40. "Temporary Workers" means the individuals employed by Staffing Companies and assigned to provide services to the Customer. These individuals may also be referred to as Temporary Contract Staff Workers, Temporary Staff, Contractors, or Contingent Labor.
41. "Worker Expenses" means actual, out-of-pocket, reasonable expenses incurred by a Temporary Worker during the course of his or her assignment to the Customer.

*Management Services Agreement effective June 29, 2007***Attachment 2**

Temporary Worker Agreement Format for use with applicable Statement of Work

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| TEMPORARY WORKER AGREEMENT OVERVIEW |
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The purpose of this overview is to explain the main points of the Temporary Worker Agreement. If you have additional questions, please contact your Staffing Company or a Guidant Group representative.

Section 1 – Temporary Worker

In Section 1, the Temporary Worker understands and agrees that they may or may not be assigned to work at Sample client and that, if assigned, they will, to the best of their ability, perform quality work. In addition it clarifies that the “Temporary Worker Agreement” does not form a binding employment agreement between the Temporary Worker and SAMPLE CLIENT or Guidant Group, but is only between the Temporary Worker and his or her employer (Staffing Company).

Section I also clarifies the Employee/Employer relationship between the Temporary Worker and his or her Staffing Company in regards to all forms of payment including but not limited to payment of time, reimbursement of expenses, benefits and employment taxes.

Section 2 – Customer Work Policies and Rules

In Section 2, the Temporary Worker agrees to abide by the worksite policies and any codes of conduct presented to them and acknowledges responsibility for damage to Customer’s equipment, property or business operations. In addition, the Temporary Worker agrees to be responsible for his or her own safety while on assignment with Customer.

Section 3 - Confidentiality and Non-Disclosure

In general, this section defines what is considered confidential and what is not considered confidential. It also gains the temporary worker’s agreement to maintain confidentiality in regards to the customer’s materials and agreement not to disclose confidential information.

Section 4 - Injunctive Relief

If a situation arises, whereby Guidant Group learns of the disclosure or threatened disclosure of *confidential information*, this statement enables Guidant Group to request a court injunction requiring the temporary worker to stop disclosing confidential information.

Section 5 – Work Product

This section establishes that work produced or developed while on assignment will remain the customer’s property with the exception of excluded inventions.

Section 6 through Section 12 – Agreement Terms

Standard contractual terms are outlined in these sections.

*Management Services Agreement effective June 29, 2007*TEMPORARY WORKER AGREEMENT

This Temporary Worker Agreement (the "Agreement") is made this ____ day of _____, 200__ by and among _____, an individual ("Temporary Worker") and _____ a _____, Temporary Worker's employer ("Employer").

WHEREAS, Employer has contracted with Guidant Group, Inc., a Delaware corporation ("Guidant Group") for Employer to provide certain services, including work performed on a temporary basis by Temporary Worker for Guidant Group's Customer, Duke Energy Shared Services, Inc. and its corporate parents, affiliates, and subsidiaries (the "Customer"); and

WHEREAS, Guidant Group has contracted with the Customer for Guidant Group to provide certain services related to Customer's temporary workforce under a program managed by Guidant Group (the "Program"); and

WHEREAS, Temporary Worker may be assigned by Employer, at Guidant Group's direction, to work for Customer on a temporary basis,

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Temporary Worker

- 1.1. Temporary Worker may, in Guidant Group's sole discretion, be engaged to provide services to Customer through the Program as an employee of Employer and not as an employee of Customer. Temporary Worker shall perform all services or work under the Program to the satisfaction of Customer.
- 1.2. Temporary Worker acknowledges and agrees that no employment relationship between Temporary Worker and Customer or between Temporary Worker and Guidant Group is created by this Agreement, the agreement between Guidant Group and Customer, or by Employer's agreement with Guidant Group. Temporary Worker acknowledges and agrees that he or she is not a third party beneficiary of the agreement between Guidant Group and Customer and hereby waives any such rights which may arise under such agreement between Guidant Group and Customer.
- 1.3. Temporary Worker acknowledges and agrees that Employer shall be solely responsible for all payments to Temporary Worker including payment of compensation, premium payments for overtime, bonuses, and other incentive payments, if any, and payments for vacation, holiday, sick days or other personal days, if any. Temporary Worker acknowledges and agrees that Temporary Worker is not eligible to participate in or receive any benefits under the terms of either Guidant Group's or Customer's pension plans, savings plans, health plans, vision plans, disability plans, life insurance plans, stock option plans, or any other employee benefit plan sponsored by Guidant Group or by Customer.
- 1.4. Temporary Worker acknowledges and agrees that the cash payments and benefits which Temporary Worker receives from Employer shall represent the sole compensation to which Temporary Worker is entitled, and that Employer will be solely responsible for all matters relating to compliance with all employer tax obligations arising from the performance of

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services in connection with this Agreement. These tax obligations include the obligation to withhold employee taxes under local, state and federal income tax laws, unemployment compensation insurance tax laws, state disability insurance tax laws, social security and Medicare tax laws, and all other payroll tax or similar laws, and in no event shall either Guidant Group or Customer be liable for any such obligations.

1.5. Temporary Worker acknowledges and agrees that Customer and Guidant Group shall have no liability of any kind to the Temporary Worker related to payment for the time worked, if any, for Customer pursuant to this Agreement, the agreement between Employer and Guidant Group, or the agreement between Customer and Guidant Group. Temporary Worker hereby waives any claim he or she may have against Customer or Guidant Group related to such payment.

2. Customer Work Policies and Rules.

2.1. Temporary Worker acknowledges and agrees that during the performance of Temporary Worker's job duties for Customer, Temporary Worker will not violate any of Customer's work rules and policies, including those specified in any code of conduct of Customer or other Customer workplace, and the Customer's Privacy Policy and Personal Data Policy. Temporary Worker shall at all times comply with all rules, policies and procedures of Guidant Group and/or Customer as provided to Temporary Worker by Employer, Guidant Group and/or Customer. Temporary Worker agrees that Temporary Worker shall not harm Customer's equipment, property or inventory (other than ordinary wear and tear), and shall not interfere with Customer's business operations.

2.2. Temporary Worker agrees that he or she enters onto Customer's premises at his or her own risk and, to the fullest extent possible under applicable laws, waives any claims he or she may have now or in the future against Customer or Guidant Group for personal injury or property damage arising out of or connected in any way with Temporary Worker's presence on Customer's premises or his or her assignment to Customer.

3. Confidentiality and Non-Disclosure.

3.1. For purposes of this Section, "Confidential Information" shall include all business or technical information, including proprietary information about costs, customers, pricing, profits, markets, sales, lists of customers, employees, potential customers, potential employees, methods of doing business, plans for future development, information regarding matters of a technical nature, such as scientific, trade and engineering secrets, all "know-how", formulas, designs, secret processes, machines, inventions, computer programs (including documentation of such programs) and research projects, information obtained by examination of any product, design, production equipment or drawings thereof and any other information of a similar nature that is marked "Confidential" or that the Temporary Worker knows or has reason to know is the confidential or proprietary information of Customer or Guidant Group, as the case may be. Notwithstanding the forgoing, Confidential Information shall not include any information that:

3.1.1. is hereafter lawfully disclosed to the Temporary Worker under conditions which do not restrict further disclosure or by a third party which did not acquire the Confidential

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Information under an obligation of confidentiality to Customer or Guidant Group, as the case may be;

3.1.2. properly came into the Temporary Worker's possession from a third party which is not under any obligation to maintain the confidentiality of such Confidential Information; or

3.1.3. has become part of the public domain through no act or fault of the part of the Temporary Worker.

3.2. Confidentiality. The Temporary Worker agrees that he or she will:

3.2.1. Maintain in strict confidence all Confidential Information of Customer or Guidant Group, as the case may be;

3.2.2. Use or reproduce the Confidential Information solely as necessary for purposes of performing and providing services as an independent contractor to Customer;

3.2.3. Not make copies of any Confidential Customer Information without Customer's consent;

3.2.4. Not remove any copyright notices, trademark notices, or other proprietary legends or indications of confidentiality set forth on or contained in any of the Confidential Information;

3.2.5. Not use or disclose any Confidential Customer Information to any third party without Customer's consent;

3.2.6. Upon termination of this Agreement, deliver to Customer all papers, notes or other materials in Temporary Workers possession that may contain any Confidential Customer Information;

3.2.7. Immediately notify Guidant Group or Customer, as the case may be, in writing of any known unauthorized use or disclosure of the Confidential Information, providing a detailed description of the circumstances of the disclosure and the parties involved.

3.3. Cooperation in the Event of Legally Required Disclosures. The Temporary Worker may disclose Confidential Information as required to satisfy any legal requirement of a competent government body (or quasi-governmental body such as the Ohio Consumers' Counsel), provided that, promptly upon receiving any such request, the Temporary Worker, to the extent he or she may legally do so, gives notice to the Customer of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to the making such disclosure in order that the Customer may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such *other* action as it deems appropriate to protect the Confidential Information. The Temporary Worker shall use reasonable efforts to cooperate with the Customer in its efforts to seek a protective order or other appropriate remedy or, in the event such protective order or other remedy is not

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obtained, to obtain assurance that confidential treatment will be accorded such Confidential Information.

4. Injunctive Relief. Temporary Worker acknowledges that it is likely to be difficult to value the damages sustained by Guidant Group or Customer, as the case may be, due to any breach of Section 3 herein and that such damages are likely to be substantial or irreparable and the damaged party's remedy at law would be inadequate. Therefore, in the event of a breach or anticipated breach of Section 3 herein, in addition to any other relief, Guidant Group or Customer, as the case may be, shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages.
5. Work Product. Temporary Worker acknowledges and agrees that during and incident to Temporary Worker's work for Customer, Temporary Worker may create inventions, discoveries, improvements, computer or other apparatus programs, and related documentation and other works of authorship (collectively, the "Work Product"), whether or not patentable, copyrightable, or subject to other forms of legal protection. Temporary Worker agrees that Customer shall own exclusively all Work Product agrees to assign to and hereby does assign to Customer all of Temporary Worker's worldwide rights, title and interest in and to all Work Product (all programs, derivative works, source code, object code, discoveries, concepts, inventions, innovations, improvements, materials, documentation, techniques, methods, processes and ideas which are conceived, made, proposed or developed and all present and future rights of any kind pertaining to all such Work Product whether or not such rights are now known, recognized or contemplated, together with any related goodwill) the Temporary Worker makes, creates or develops, either solely or jointly with others, during Temporary Worker's assignment to Customer whether or not prepared on or off Customer's premises or during regular work hours, but excluding any Excluded Inventions (as defined herein). Temporary Worker agrees that the above assignment is binding upon Temporary Worker's estate, administrators, or other legal representatives or assigns.
 - 5.1. Excluded Inventions. Except for Excluded Inventions, Temporary Worker shall not be required to assign to Customer any idea, invention, discovery, innovation or improvement which Temporary Worker developed entirely on his or her own time and without the use of any of Customer's equipment, supplies, facility or Confidential Information (as defined above), and which (i) does not relate to Customer's business or to Customer's actual or anticipated research or development, and (ii) does not result from any work performed by Temporary Worker specifically for Customer (the "Excluded Inventions"). In any dispute with respect to these exclusions, the burden of proof shall be on Temporary Worker to show that the exclusion applies.
 - 5.2. Work Made for Hire Any and all Work Product prepared by Temporary Worker for Customer that is eligible for copyright protection shall be a work made for hire on behalf of Customer as that term is used under the United States Copyright Act and ownership of all copyrights in such work shall vest in Customer. If for any reason, any such work shall not be deemed a work made for hire or ownership of such copyrights would not vest in Customer, then Temporary Worker shall transfer all right, title and interest in such work, including all copyrights therein to Customer. In those jurisdictions that deem any work performed on a "Work Made for Hire" basis as giving rise to an employee/employer relationship, the parties specifically agree that this provision shall not apply in such jurisdiction and that Temporary Worker shall continue to be deemed an independent contractor of Customer.

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- 6. Term This Agreement shall be effective as of the date first written above, and shall remain in effect notwithstanding Temporary Worker's termination of employment with Employer or termination of Temporary Worker's assignment to Customer.
- 7. Severability In the event that any provision of this Agreement is held to be invalid or unenforceable, then such invalid or enforceable provisions shall be severed, and the remaining provisions shall remain in full force and effect to the fullest extent permitted by law.
- 8. Waiver This Agreement may be amended, or its requirements waived, only by a writing signed by the party against whom enforcement of the waiver or amendment is sought.
- 9. Governing Law; Jurisdiction This agreement shall be governed by the law of the State of Delaware. Any litigation under this Agreement shall be filed and pursued in a court of proper venue in the State of Delaware. All parties expressly consent to the jurisdiction of such courts.
- 10. Assignment Neither party's rights or obligations under this Agreement can be assigned without the express prior written consent of (i) the other party hereto, and (ii) Guidant Group. Any attempted or purported assignment of this Agreement without such consent shall be void.
- 11. No Inducements Temporary Worker warrants and represents that he or she has neither provided nor offered to provide any gifts, payments, or other inducements to any officer, employee or agent of Guidant Group or Customer for any purpose. Temporary Worker shall not provide or offer any gifts, payments, or other inducements to any officer, employee or agent of Guidant Group or Customer for any purpose.
- 12. Entire Agreement. This Agreement constitutes the entire Agreement and understanding between the parties with respect to the subject matter hereof, and this Agreement supersedes all prior and contemporaneous negotiations, discussions and understanding of the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Temporary Worker Agreement as of the date first written above.

Employer: _____

By: _____

Name: _____

Title: _____

Temporary Worker: _____

Name: _____