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**\*This document number has been assigned to a confidential document.  
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WITNESS: Jeffrey Swartz

PARTY: Duke

DESCRIPTION: August 13, 2018 Confidential settlement document

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MUTUAL RELEASE, COVENANT NOT TO SUE, AND SETTLEMENT  
AGREEMENT BETWEEN DUKE ENERGY FLORIDA LLC AND  
MITSUBISHI HITACHI POWER SYSTEMS, INC.

THIS MUTUAL RELEASE, COVENANT NOT TO SUE, AND SETTLEMENT AGREEMENT (hereinafter the "Settlement Agreement") is entered into on August 13, 2018 ("Effective Date"), by Duke Energy Florida Inc., now known as Duke Energy Florida LLC ("DEF") with its principal business office in St. Petersburg, Florida, and Mitsubishi Hitachi Power Systems Americas, Inc. ("MHPS") with a place of business in Orlando, Florida. DEF and MHPS collectively may be referred to as the "Parties" or individually as "Party" throughout this Settlement Agreement.

WHEREAS, DEF's Bartow Generating Station ("Bartow") is a 4x1 Combined Cycle ("CC") plant with a Steam Turbine ("ST") that was sold by MHPS's predecessor in interest to DEF's predecessor in interest under Contract No. 270810 (the "Contract") for use at Bartow; and

WHEREAS, Since commissioning of the ST in 2009, Bartow has suffered five events involving ST stage L-0 blade damage or failure affecting mid-span snubbers, shroud Z-locks, and airfoil tips; and

WHEREAS, after the ST was commissioned in June 2009, MHPS designed enhanced L-0 blades that would endeavor to allow Bartow station to increase its output from 420 MWs to 450 MWs; and

WHEREAS, the Parties entered into Purchase Order 718383 on February 10, 2014, whereby MHPS was to design and install such enhanced design L-0 blades at a \$6MM cost to DEF, which amount DEF has paid; and



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WHEREAS, the enhanced blades were installed subject to a three-year warranty and the ST ran with the enhanced blades until April 2016, when further damage to the L-0 blades was observed; and

WHEREAS, the Parties then entered into Purchase Order 21411103 on April 16, 2016, under which MHPS provided replacement blades for the enhanced blades, which replacement blades were made with stellite hard-facing to the snubbers; and

WHEREAS, DEF contends that the blades provided under P.O. 21411103 should be provided at no cost to DEF under the terms of the warranty issued with P.O. 718383 and MHPS contends that DEF owes payment for such blades in an amount of \$3.5MM; and

WHEREAS, operational step changes forced a shut-down of the Bartow ST in October 2016, at which time further damage to the stellite-hardened L-0 blades was observed; and

WHEREAS, the Parties entered into Purchase Order 2359098 on October 28, 2016, under which MHPS provided additional replacement blades with further stellite hard-facing to the Z-lock and to the snubbers; and

WHEREAS, DEF contends that the blades provided under P.O. 2359098 should be free to DEF under the warranties issued with P.O. 718383 and P.O. 21411103 and MHPS contends that DEF owes payment for such blades of \$3.5MM; and

WHEREAS, DEF experienced another shut-down on February 2017, when a loss of mass event occurred and a blade fragment traveled through the LP turbine; and

WHEREAS, the L-0 blades were removed and MHPS provided DEF with the option of replacing the blades again or substituting a pressure plate as a means to bring the ST back into service quickly; and



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WHEREAS, under Purchase Order 5042343, DEF directed MHPS to design and install a new pressure plate for which MHPS has invoiced DEF for \$2.1MM and has yet to invoice \$1.1MM, and which amounts have not been paid; and

WHEREAS, the Parties disagree as to the cause of each ST L-0 blade failure with MHPS contending that the failures are the result of Bartow operations and DEF contending that the failures are the result of L-0 blade under-design; and

WHEREAS, the Parties wish to resolve all outstanding disputes related to payments that MHPS claims are owed for two sets of replacement blades (pursuant to P.O. 21411103 and P.O. 2359098) and for the pressure plate, altogether totaling Ten Million Two Hundred Thousand Dollars (\$10,200,000); and

WHEREAS, DEF claims it is owed Six Million Dollars (\$6,000,000) by MHPS for the cost of the "improved" blades sold to it under P.O. 718383, which DEF contends were defective; and

WHEREAS, all disputes and claims related to (1) Contract Number 270810 for the purchase of the steam turbine L0 blades, including, but not limited to Purchase Orders 21411103, 2359098, 718383, 5042343 and (2) payment for the pressure plate under Purchase Order 5042343, (collectively referred to herein as the "Purchase Orders") and any and all claims that either party has against the other for any reason whatsoever arising from or related to the Contract or the Purchase Orders, including, but not limited to claims related to payment, warranty issues and/or the Purchase Orders are collectively referred to as the "Currently Disputed Claims;" and

WHEREAS, to avoid the time and expense associated with any adverse proceeding, litigation, suit or other action between and among them related to any or all of the Currently



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Disputed Claims, DEF and MHPS agree to resolve any and all matters related to or arising from the Currently Disputed Claims, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties mutually agree as follows:

1. RECITALS

The Recitals and Headings constitute a part of this Settlement Agreement and are incorporated by reference as fully set forth here.

2. DUKE ENERGY'S OBLIGATIONS

DEF shall pay MHPS Three Million Dollars (\$3,000,000) within 30 days after the Execution date of this Settlement Agreement in full release of any and all claims MHPS had or has related to or arising from the Currently Disputed Claims, all as set forth herein.

3. MHPS'S OBLIGATIONS

- a. Upon execution of this Settlement Agreement, MHPS shall provide DEF a Two Million Dollar (\$2,000,000) credit (the "Credit"), which DEF may take in whole and immediately against the next Steam Turbine major outage and the LP solution at Bartow that is currently being bid by DEF and on which MHPS has made a proposal (the "Future Projects"). As additional consideration for the Settlement of the Currently Disputed Claims and in the event MHPS is awarded the L-0 Solution at Bartow, MHPS shall warrant or guarantee the performance and reliability of such upgrade as mutually agreed upon by the Parties, but such warranty shall include a limited warranty for defects in design, material and workmanship for the equipment and services provided by it in connection with the Bartow L-0 blade upgrade. As part of any such warranty,



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MHPS shall agree to pay the costs of repair and or replacement of the L-0 blades that fail due to defects in the design, materials or workmanship for a period not to exceed ten (10) years from delivery of such L-0 blades. MHPS shall also agree to pay DEF for or to perform all open and close costs, in both cases, per the MHPS division of responsibility in the resultant purchase order. Such warranty shall be expressly conditioned on DEF operating the facility in accordance with MHPS instructions and all operations manuals.

- b. In the event MHPS is not awarded the Future Projects, DEF may take the Credit, in whole or in part, against any current or future work, repair, or upgrade by MHPS at any DEF station or facility, which in DEF's sole discretion, has been or may be awarded to MHPS. Only in the case of work other than the Future Projects is awarded to MHPS, shall such Credit shall be applied at the time of invoicing either against work completed by MHPS or against early payment agreements for any DEF projects as the Parties may agree, at a rate per invoice to DEF for such project, of no more than twenty percent (20%) of the contract value for such project. DEF shall not be entitled to any payment or credit for any unused portion of the Credit per the earlier of the first scheduled DEF Citrus County Combined Cycle Blocks 1 and 2 steam turbine major outages or in 10 years. MHPS shall coordinate its obligations under this subsection with Anthony Salvarezza (or his successor), as the responsible representative for DEF.
- c. It is expressly understood and agreed that the foregoing subparagraph (a) is not intended to be nor is a promise or obligation on the part of DEF to award or grant work to MHPS except as may occur in the normal course of business and under normal DEF contracting procedures.



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4. RELEASE BY MHPS

MHPS and its parent, subsidiaries, predecessors, successors, and assigns, all related or affiliated corporations or other entities, and all such entities' respective past, present and future shareholders, insurance carriers, directors, officers, members, managers, employees, attorneys, advisors, representatives and/or agents (each of them individually and in their official capacities) hereby release and forever discharge DEF and its parent, subsidiaries, predecessors, successors, and assigns, all related or affiliated corporations or other entities, and all such entities' respective past, present and future shareholders, insurance carriers, directors, officers, members, managers, employees, attorneys, advisors, representatives, contractors and/or agents (each of them individually and in their official capacities) from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation of any kind, whether known or unknown, and from all suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity from the beginning of time to the present, related to or arising from the Currently Disputed Claims.

5. RELEASE BY DEF

DEF and its parent, subsidiaries, predecessors, successors, and assigns, all related or affiliated corporations or other entities, and all such entities' respective past, present and future shareholders, insurance carriers, directors, officers, members, managers, employees, attorneys, advisors, representatives and/or agents (each of them individually and in their official capacities) hereby release and forever discharge MHPS and its parent, subsidiaries, predecessors, successors, and assigns, all related or affiliated corporations or other entities, and all such entities' respective past, present and future shareholders, insurance carriers, directors, officers,



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members, managers, employees, attorneys, advisors, representatives, contractors and/or agents (each of them individually and in their official capacities) from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation of any kind, whether known or unknown, and from all suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity from the beginning of time to the present, related to or arising from the Currently Disputed Claims.

6. MUTUAL COVENANT NOT TO SUE

Under no circumstances shall either Party sue or file any lawsuit or otherwise assert any claim against each other with respect to the claims released in this Settlement Agreement, except such claim or lawsuit as may be necessary to enforce the terms and conditions of this Settlement Agreement or as otherwise stated herein. It is expressly understood and agreed that the aforesaid is material inducement to the Parties to enter into this Settlement Agreement.

7. NO ADMISSION OF LIABILITY

The Parties acknowledge that this Settlement Agreement is a compromise of all Currently Disputed Claims and that the execution of this Settlement Agreement is not to be construed as an admission of liability on the part of any of the Parties hereto. The Parties expressly deny any liability with respect to the Currently Disputed Claims, and have resolved this dispute merely to avoid litigation with respect to such the Currently Disputed Claims.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Party represents and warrants to the other Party that:

- a. the execution, delivery and performance of this Settlement Agreement has been validly authorized by such Party, and no other corporate, limited partnership or



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limited liability company action, as applicable, of such Party is necessary to authorize the execution, delivery and performance of this Settlement Agreement;

- b. This Settlement Agreement has been duly and validly executed and delivered by such Party;
- c. This Settlement Agreement constitutes such Party's legal, valid and binding obligation, enforceable against it in accordance with its terms;
- d. Neither the execution and delivery by such Party of, nor its performance under, this Settlement Agreement will conflict with, result in a breach of any provision of, constitute a default (with or without notice or lapse of time or both) under, or require a consent or waiver under, any agreement, instrument or other contract, arrangement, understanding, or commitment, whether written or oral, to which such Party is a party or by which it or its assets are bound. (e) With respect to this agreement, each Party:
  - i. Has read this Settlement Agreement and has been advised by counsel of their choosing as to its legal effect;
  - ii. Has not assigned, transferred or granted or purported to assign or transfer or grant any of the claims, demands or cause of action released in this Settlement Agreement;
  - iii. That, to the extent any settlement negotiations or agreements have been made before the execution of this Settlement Agreement, these negotiations and agreements are merged into this Settlement Agreement which now represents in full the only Settlement Agreement between the Parties relating to this settlement and release;



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iv. No representation, promise or inducement whatsoever not contained herein has been made by any one party to another and this Settlement Agreement is executed without reliance upon any statement or representation by any other Party, including their counsel.

e. DEF represents that it is the sole owner of the Bartow facility and sole beneficiary of any of the Contract and Purchase Orders and that there are no other entities that may have an ownership interest in any claim against MHPS Americas under the Contract or the Purchase Orders.

9. GOVERNING LAW

This Settlement Agreement has been executed in the State of Florida and this Settlement Agreement shall be governed in all respects by the laws of the State of Florida. The Parties agree that any action to enforce the terms of this Settlement Agreement will be brought in a state or federal court in the State of Florida. The Parties hereby knowingly, voluntarily and willingly waive any right to trial by jury.

10. SEVERABILITY

The provisions of this Settlement Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of said provisions shall not affect the validity and enforceability of the other provisions contained herein.

11. WAIVER

No waiver of any provision of this Settlement Agreement shall be valid unless it is in writing and signed by the Party against whom the waiver is sought to be enforced. No valid waiver of any provision of this Settlement Agreement shall be deemed a waiver of any other provision contained herein.



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12. MODIFICATION

No change, addition or modification of this Settlement Agreement shall be binding unless it is in writing and signed by the Parties.

13. EXECUTION OF THIS AGREEMENT

This Settlement Agreement may be executed in one or more duplicate original counterparts and by facsimile, with the same force and effect as if all the signatures were set forth upon a single original instrument.

14. ATTORNEYS' FEES AND COSTS

If any legal action or other proceeding is brought to enforce or interpret this Settlement Agreement, each Party shall bear the cost of its own expenses and attorneys' fees related thereto.

15. CONFIDENTIALITY

- (a) Each Party will treat all terms of this Settlement Agreement (the "Confidential Information") confidentially and will not disclose such information to any other person, corporation or entity except as permitted in writing by the other Parties or as expressly permitted by the terms of this Settlement Agreement. Each Party will protect all Confidential Information with the same degree of care it applies to protect its own proprietary and confidential information.
- (b) Nothing in this Settlement Agreement shall be deemed to prohibit the Parties from disclosing Confidential Information to their parents, subsidiaries, affiliates, predecessors or successors in interests, and each of their shareholders, members, officers, directors, employees, lawyers, professional accountants or lenders, as necessary for the business needs (including, without limitation, any and all tax,



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and insurance requirements) of such Party, its parents, subsidiaries, affiliates, predecessors or successors in interests.

- (c) If any Party is requested or required by deposition on oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar legal process or by regulatory parties or authorities to disclose any information regarding the terms of the Settlement Agreement, that Party shall promptly provide notice to the other Party advising of such request(s) and shall take all actions legally available to protect the confidential nature of the terms of the Settlement Agreement when the information is produced, including but not limited to, seeking confidential classification of the information pursuant to section 366.093, Fla. Stat. The provisions of this Article 15 shall survive for a period of seven (7) years after the Effective Date.

IN WITNESS WHEREOF, the undersigned have made and entered into this Settlement Agreement as of the day and year stated below.

Duke Energy Florida LLC

By:



Name:

Anthony Salvarese

Title:

Gen. Manager / SUCS

Date:

August 13, 2018

MITSUBISHI HITACHI POWER SYSTEMS  
AMERICAS, INC.

By:



Name:

Mark Bissonnette

Title:

Senior Vice President

Date:

August 13, 2018