

**MASTER SERVICE AGREEMENT FOR  
CONSTRUCTION (MATERIALS, LABOR, AND PROFESSIONAL SERVICES)**

This Master Service Agreement for Construction (Materials, Labor and Professional Services) dated as of Contract Start Date, is made between FirstEnergy Service Company ("Agent") acting on behalf of the Purchaser identified in the Statement of Work or in the ship to address on each Purchase Order, with its principal address at 76 S Main St. Akron, OH 44308 and Supplier Display Name with its principal address at Supplier Primary Address Street1, Supplier Primary Address City, Supplier Primary Address State Supplier Primary Address Postal Code ("Supplier").

**WHEREAS**, the purpose of this Agreement is to establish Master Service Agreement terms and condition which will apply to Statements of Work, Purchase Orders and Change Orders issued by the Purchaser to procure construction services which will include materials, labor and professional services from Supplier.

**NOW THEREFORE**, in consideration of the promises and mutual covenants herein contained, the sufficiency of which are acknowledged and agreed to by the parties, and intending to be legally bound, Purchaser and Supplier mutually agree as follows:

**ARTICLE 1 – DEFINITIONS**

When used in the Agreement, the following terms shall have the meanings given below except when expressly indicated otherwise:

- A. "Agent" means FirstEnergy Service Company, its successors and assigns, as the authorized agent for the Purchaser, unless FirstEnergy Service Company is identified as being the Purchaser thereby rendering Article 18 "Authority of Agent" inapplicable.
- B. "Agreement" means the terms and conditions set forth in this document, together with a Statement of Work and/or the Purchaser Order, including all attachments, exhibits, revisions, addendums, and supplements thereto.
- C. "Data" means material that includes documentation, manuals, maps, plans, schedules, programs, Specifications, software, reports, drawings, designs and other relevant information.
- D. "Purchase Order" is the document describing commercial terms and additional terms unique to the transaction described therein.
- E. "Purchaser" means: the FirstEnergy company designated in the "Ship To" address of each Purchase Order for which the Work shall be performed. If more than one FirstEnergy company is identified as the Purchaser, the liability of each FirstEnergy company named shall be several and not joint and shall be limited to such FirstEnergy company's interest in the Agreement.
- F. "Purchaser's Representative" means Purchaser's authorized field representative assigned to a project so designated in writing by Purchaser.
- G. "Purchaser's Site" means locations owned or leased by Purchaser, that the Work is intended to benefit, to which the Work is to be delivered or where the Work is to be performed.
- H. "Specifications" mean the detailed description of the requirements associated with the materials, equipment and/or services to be provided by Supplier under the Agreement, including without limitation, drawings, dimensions, components, attachments, technical and non-technical requirements and characteristics, standards, performance requirements, and tolerances. Should any conflict occur between the Specifications and any other provision of the Agreement, the Specifications shall take precedence only when and to the extent that such application does not result in any way in the dilution or diminution of the rights or benefits of the Purchaser under the Agreement.
- I. "Statement of Work" (SOW) means the detailed description of the Work to be performed, the dates and times for completion and delivery of the Work, each party's obligations and other requirements necessary for completion of the Work, and any other terms that apply to that specific SOW.
- J. "Subcontractor" means any person or entity having a contract with Supplier for the supply of materials, or equipment, or the performance of any part of the Work.
- K. "Supplier" means the organization, individual or entity which is providing the Work under the Agreement.
- L. "Supplier's Superintendent" means Supplier's designated authorized field representative responsible for the supervision of the Work and in all matters relating to the Agreement
- M. "Work" means all goods, parts, materials, equipment, services, labor, engineering, design, fabrication, construction, Data, and other obligations covered by, contemplated, or intended for Supplier to supply or perform under the Agreement, as specified in the Agreement, together with miscellaneous expendable job supplies, installation-related equipment and/or tools, transportation, facilities, storage, inspection, testing, and/or other goods and services which are necessary for Supplier to complete its obligations under the Agreement.

**ARTICLE 2 – TERMS OF AGREEMENT**

- A. **Offer and Acceptance.** Supplier's acknowledgement, commencement of performance, or any conduct which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Supplier of the Agreement and all of its terms and conditions. Acceptance of the Agreement is expressly limited to Supplier's assent to all of the terms and conditions of the Agreement. Additional or different terms provided in Supplier's acceptance of Purchaser's offer which vary in any degree from any of the terms herein or expressly referenced on the face of the Agreement shall be deemed material and are hereby objected to and rejected. If the Agreement shall be deemed an acceptance by Purchaser in response to an offer by Supplier and if any terms herein are additional to or different from any terms of such offer, then the issuance of the Agreement by Purchaser shall constitute an acceptance expressly conditioned upon Supplier's assent to all of the terms and conditions of the Agreement. Additional or different terms in any acknowledgement, invoice, or communication submitted by Supplier, or any attempt by Supplier to vary in any degree any of the terms of the Agreement, unless expressly agreed to by Purchaser in writing, shall be deemed material and are hereby objected to and rejected. Any such terms proposed by Supplier, whether by offer or acceptance, shall be void unless expressly agreed to in writing by Purchaser.
- B. **Integration; Modification.** The parties intend the Agreement to constitute the complete, exclusive and fully integrated statement of their agreement concerning the subject matter hereof. As such, the Agreement is the sole repository of their agreement and the parties are not bound by any other agreements of whatsoever kind or nature pertaining to the subject matter hereof. The parties further intend the complete, exclusive and fully integrated statement of their agreement may not be supplemented or interpreted by any evidence of trade usage, course

of dealing, or course of performance. No amendment, modification, or rescission of the Agreement shall be enforceable unless the same is in writing and signed by the party against whom the terms of such amendment, modification, or rescission are sought to be enforced.

- C. Non-Exclusivity. The Agreement is not exclusive, and Purchaser may, at its sole discretion, contract with others to perform such Work as is herein contemplated or may perform such Work with its own forces.
- D. Time is of the Essence. THE OBLIGATION OF SUPPLIER TO MEET THE DELIVERY DATES, SPECIFICATIONS AND QUANTITIES SET FORTH HEREIN IS OF THE ESSENCE OF THE AGREEMENT. By executing the Agreement, Supplier acknowledges the time for completion set forth in the Agreement.
- E. Independent Contractor. Supplier shall be considered an independent contractor in its performance hereunder and responsible for all acts or omissions (negligent or otherwise) of its agents, employees, and Subcontractors. Supplier alone shall be liable and responsible for the manner and methods by which the Work is performed and for materials, work force and equipment supplied in connection therewith, irrespective of whether or not any changes are made as a result of comments received from Purchaser. Nothing in the Agreement or in the performance of the Work shall be construed to create a partnership, joint venture or other joint business arrangement between Purchaser and Supplier. Supplier shall be responsible for all contributions for unemployment compensation, workers' compensation, social security, and other employment benefits of its employees.

### **ARTICLE 3 – SCOPE AND PERFORMANCE OF WORK**

- A. Performance Criteria. Supplier shall perform the Work in accordance with good practices which are standard in the industry and all Work shall be of the highest quality and workmanship. Supplier shall cooperate, consult, and coordinate with Purchaser in the performance of the Work, and shall provide such Work in a timely manner, consistent with Purchaser's schedule and in strict compliance with the Agreement and all applicable laws, codes, and regulatory requirements of governmental authorities.
- B. Furnishing. Supplier shall furnish all permanent materials and equipment specified in the Agreement, labor, supervision, installation-related equipment and/or tools, miscellaneous expendable job supplies, facilities, services, and transportation necessary for the successful completion of the Work. All fixtures and equipment are to be new or as otherwise specified in the Agreement. Supplier will be responsible for performing all survey and layout work required for the Work, which shall be to exact lines and grades, and for any damages to or additional cost for the work of any other contractor caused by Supplier's or its Subcontractor's inaccuracy. Upon request, Purchaser's Representative will give Supplier the location of reference base lines and benchmarks.
- C. Work Force. Supplier agrees to supply an adequate administrative and supervisory force, a sufficient compliment of properly skilled workmen, adequate construction equipment, tools, and materials, and shall prosecute the Work expeditiously and efficiently in accordance with the agreed upon Work schedule. If Supplier fails to perform any or all of the aforementioned duties, then Purchaser may, without prejudice to any other of its rights or remedies as set forth in Article 13, and by written notice to Supplier, direct Supplier to increase or supplement its working force and equipment and/or perform the Work on an overtime or multiple shift basis without added cost to Purchaser and to such an extent as to give reasonable assurance of compliance with the schedule of completion and the required quality of Work.
- D. Access to Work. Purchaser shall be afforded unobstructed access to Supplier's or any of its Subcontractor's Work, facilities, procedures, and records for the purpose of observing and reviewing Work completion and quality, as well as contract cost and quality records. Any such observation or review, or the failure by Purchaser to perform such observation or review, shall in no manner reduce the responsibility and liability of Supplier or its Subcontractors or excuse them from performance. Access to a Subcontractor's facilities and records will be coordinated through Supplier.
- E. Work Schedule. Supplier shall, prior to the start of the Work and as specified in the Work, provide to Purchaser a schedule in a form and format acceptable to Purchaser and providing sufficient details to fully describe its plan of operation for the Work and all testing and deliverables of Supplier hereunder. If required by Purchaser, Supplier shall submit periodic reports to Purchaser, within seven (7) calendar days of such request and in such form as shall be specified by Purchaser, showing the progress made by Supplier toward completion of the Work up to the date of each report, the schedule status, cost data and other matters pertaining to the Work. Each periodic report shall include an updated project schedule, a list of Supplier's employees performing the Work, and a discussion of Supplier's planned activities for the following period. Supplier shall continuously monitor, control, report, and forecast the progress of the Work in accordance with the project schedule. Supplier shall provide increasing scheduling detail as the Work progresses. Supplier's reporting shall be sufficiently detailed to present to Purchaser an accurate status of the Work's project schedule, variances from the project schedule with reasons therefor, and any planned corrective action.
- F. Overtime. No regularly scheduled overtime work, or work on Saturdays, Sundays or legal holidays shall be performed without written approval of Purchaser's Representative, except that such work as may be necessary in case of emergencies or for the proper care, maintenance and protection of equipment or finished Work may be performed without Purchaser's approval, at Supplier's expense and without additional cost to Purchaser.
- G. Uncovering of Work. If any Work is covered by Supplier, contrary to Purchaser's request, it must (if required by Purchaser) be uncovered for Purchaser's observation and then replaced, at Supplier's expense. If any other Work has been covered which Purchaser has not specifically requested to observe prior to being covered, Purchaser may request to see such Work and it shall be uncovered by Supplier. If such Work is found to be in accordance with the Agreement, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to Purchaser. If such Work is found not to be in accordance with the Agreement, Supplier shall pay such costs.
- H. Coordination of Work. Purchaser reserves the right to perform concurrent work using other contractors or Purchaser's own forces, which may potentially interfere with Supplier's Work. Supplier shall conduct its Work so as to minimize interference with other work in progress. Supplier shall afford other contractors and Purchaser's own forces reasonable opportunity for the introduction and storage of their materials and for the execution of their work and shall properly coordinate the Work with theirs so that there will be no interference or delay in any manner with the Work or with the work of Purchaser or of other contractors. If any part of the Work affects or depends on the proper execution of the work of any other contractor or Purchaser's own forces, Supplier shall cooperate fully with such other contractors or Purchaser's own forces, obtain information from them, give information to them as they require, and shall inspect and promptly report in writing to Purchaser's Representative any defects in such other work that render it unsuitable for proper execution of the Work. Supplier's

failure to inspect and report such defects shall constitute an acceptance of the work of other contractors or Purchaser's own forces as fit and proper for the reception of the Work, except as to latent defects that may develop in the work of other contractor or Purchaser's own forces after the execution of the Work. Purchaser will establish priorities and, at the request of Supplier or other contractors, shall resolve interferences. In the event of differences of opinion or disputes between Supplier and other contractors or Purchaser's own forces, which cannot be readily resolved, the decision of Purchaser's Representative coordinating the work shall be final.

- I. Protection of Property. Supplier shall not damage, close, obstruct or encroach upon any utility installation, highway, road, or other property, including easements, until permits therefor have been obtained. If facilities are closed, obstructed, damaged, or rendered unsafe by Supplier's or its Subcontractor's operations, Supplier shall, at its own expense, make such repairs and provide such temporary flagmen, barricades, lights, and other signals as are necessary or required for safety and as are acceptable to Purchaser. Unless otherwise specifically provided in this Agreement, Supplier shall not do any Work that would disrupt or otherwise interfere with the operation of any visible or identified pipeline, telephone or electric transmission line, ditch, or other structure, nor enter upon lands in their natural state until approved by Purchaser. Before beginning such Work and after having taken all reasonable precautions to locate any such structures, Supplier shall give written notice to Purchaser of its intention to start such Work. Supplier shall preserve, protect and minimize loss or damage to all cultivated and planted areas, and vegetation such as trees, plants, shrubs and grass and walks, pavement, roadways, structures and utilities on or adjacent to the Purchaser's Site, except for its designated area and other areas as expressly approved by the Purchaser. Supplier shall be responsible for damage to any such areas and vegetation and for cutting of trees and vegetation, including, without limitation, damage arising from the performance of its Work through operation of equipment or stockpiling of materials. All costs incurred in connection with any repairs or restoration necessary or required by reason of any such damage or cutting shall be borne by Supplier.
- J. FirstEnergy Reliable Information. Supplier shall be entitled to rely upon the accuracy of only such items of information supplied by Purchaser as the parties have mutually specified in the project design basis document (the "**FirstEnergy Reliable Information**"). Supplier's Superintendent shall inform Purchaser if he/she learns of any inaccuracy, error, fault, or other defect in the FirstEnergy Reliable Information. Supplier shall be entitled to issuance of a Change Order as set forth in Article 15 in the event that the actual requirements or Work site conditions encountered are at variance with such information.

#### **ARTICLE 4 – SHIPMENT, DELIVERY, AND INSPECTION OF GOODS**

- A. Title and Risk of Loss. Title and risk of loss of products and materials incorporated into the Work passes to Purchaser upon notification to Supplier by Purchaser of acceptance of the Work. Supplier pays all freight and related charges and is responsible for filing loss and damage claims prior to acceptance of delivery by Purchaser. All products and materials brought to Purchaser's Site by Supplier or its Subcontractor must be removed by Supplier or Subcontractor immediately once they are no longer needed or, upon Supplier's departure whichever is sooner.
- B. Delivery. Unless otherwise noted elsewhere in the Agreement, Purchaser will not accept COD shipments. Supplier shall notify Purchaser immediately of any delay in delivery or performance of the Work. If Supplier fails to meet the delivery schedule, Purchaser, without limiting its other rights or remedies, may: (1) direct expedited routing and charge to Supplier all additional and incidental costs incurred thereby; or (2) cancel all or part of the Work. For any Work that is delivered in advance of its scheduled delivery date Purchaser, at its option, may: (a) return the delivered Work at Supplier's expense; or (b) withhold payment therefor until the date the Work is actually scheduled for delivery.
- C. Inspection; Rejection and Revocation. The Work shall be subject to Purchaser's inspection, tests, and count at any time or place at the discretion of Purchaser whether during or after manufacture, delivery, construction, or installation. Purchaser shall be afforded unobstructed access to Supplier's and its Subcontractors' Work, facilities, procedures, and records for the purposes of inspection and testing, or witnessing same. Nothing herein shall relieve Supplier or its Subcontractors of the obligation to make full and adequate testing and inspection of any Work. If any of the Work is defective in material or workmanship or otherwise not in conformity with the requirements of the Agreement, Purchaser, in addition to its other rights, may reject such Work and: (1) receive full credit from Supplier; or (2) require its correction in accordance with Article 9. Any Work rejected by Purchaser may be returned to Supplier at Supplier's risk and expense and shall not thereafter be tendered for acceptance without Purchaser's written consent.
- D. Suspect or Counterfeit Goods. Supplier is hereby notified that the delivery of suspect or counterfeit goods is of special concern to Purchaser. If any goods specified in the Purchase Order are described using a part or model number, a product description, and/or an industry standard, Supplier shall assure the goods supplied meet all requirements of the latest version of the applicable manufacturer data sheet, product description, and/or industry standard unless otherwise specified. If Supplier is not the manufacturer of the goods, Supplier shall assure that all goods supplied under the Purchase Order shall be: (a) made by the original manufacturer; and (b) meet the applicable manufacturer data sheet, product description or industry standard. Should Supplier desire to supply alternate goods that may not meet these requirements, Supplier shall notify Purchaser of any such exceptions and receive Purchaser's written approval prior to shipment of the alternate goods to Purchaser. If Supplier does not receive Purchaser's written approval to ship alternate goods and ships such goods to Purchaser, it will be considered a material breach of the Agreement and any limitations on damages or liability shall not apply to Supplier. In addition, if suspect or counterfeit goods are furnished under this Purchase Order or are found in any of the goods delivered hereunder, such goods will be dispositioned by Purchaser and/or the original manufacturer and may be returned to Supplier in accordance with the "Inspection; Rejection and Revocation" provision above. Supplier shall promptly replace such suspect or counterfeit goods with goods meeting the requirements of the Purchase Order. If Supplier knowingly supplied suspect or counterfeit goods, Supplier shall be liable for all reasonable costs incurred by Purchaser for the removal, replacement, and reinstallation of said goods.
- E. Supplier Records. Supplier shall maintain books, records, documents, and other information sufficient to determine the status of Supplier's performance, testing, and compliance with the requirements of the Agreement.
- F. Work Acceptance. Acceptance of the Work shall be when: (1) Supplier has completed the performance of the Work; and (2) all required testing has been successfully completed; and (3) the Work complies with applicable law and all of the requirements of this Agreement; and (4) Supplier has provided all tools and spare parts, all drawings and specifications, all supplier and/or manufacturer warranties, and all manuals and other documentation related to the Work that are required to be provided by Supplier; and (5) Supplier has removed all supplies,

waste, materials, rubbish, and temporary facilities from Purchaser's Site; and (6) Supplier has delivered to Purchaser lien and claim waivers as required by Article 12.

- G. Purchaser's Review and Approvals. Purchaser's review or approval of, or right to review, release and/or approve, any Work provided or performed by Supplier and its Subcontractors under this Agreement (including approval of drawings and Specifications, Subcontractors, safety and environmental protection guidelines, quality assurance, quality control, testing and inspection procedures) shall not in any way be deemed to limit or alter Supplier's responsibility to schedule, coordinate, perform, inspect, test, and complete the Work in strict accordance with the requirements of this Agreement, or Supplier's obligations under Article 9.

#### **ARTICLE 5 - CONTRACT PRICE AND PAYMENT**

- A. Net Pricing. Prices stated in the Agreement shall be the maximum Purchaser shall pay Supplier for the Work. Unless otherwise expressly set forth in the Agreement, Purchaser will not be responsible for additional charges, including boxing, packing, crating, or carting, insurance or shipping. Supplier has visited Purchaser's Site, examined the Specifications, drawings, and the Agreement, and is familiar with the conditions in the area which would affect the performance of the Work and the terms of employment, including transportation, access, disposal, handling and storage of equipment and materials, availability and quality of labor, water, and electric power, availability and condition of roads, topography and ground surface conditions, subsurface conditions and geology, the presence of and activities of Purchaser and other contractors on Purchaser's Site, the terms of permits, licenses, and other authorizations required for or affecting the Work, and all other matters that can in any way affect performance of the Work or the cost associated with such performance. Supplier's failure to acquaint itself with any applicable condition shall not relieve it from the responsibility for properly estimating the costs of performing the Work. The lump sum or unit prices for the Work are firm for all labor, professional services, expendable materials, fixtures and materials as specified in the Agreement, as well as for supervision (including Supplier's Superintendent and timekeeper), miscellaneous job supplies, installation related equipment and/or tools (both rented and non-rented), field and office overhead, transportation, facilities, services, Supplier's profit and any other of Supplier's costs. All amounts referenced herein are in United States dollars. Except to the extent otherwise provided in the Agreement, Supplier shall pay all taxes, duties, levies, and all other fees and charges imposed by any governmental entity with respect to the Work and the materials, equipment, and services provided under the Agreement. Price or prices quoted by Supplier shall include all contributions for unemployment compensation, workers' compensation, social security, and other employment benefits for its employees, and for the cost of any insurance required by the Agreement. Purchaser will not be responsible to pay for charges for any Work performed for any other contractor, Subcontractor, manufacturer, or material supplier, but shall be responsible only to make payment as provided by the Agreement to Supplier.
- B. Invoicing.
1. Unless otherwise instructed in a Statement of Work, invoices shall be submitted electronically in FirstEnergy Service Company's eProcurement system against the Purchase Order. The elements of all amounts invoiced shall be shown separately, by applicable line items, and shall be classified as Purchaser may require for accounting and payment purposes. Any taxes payable by Purchaser hereunder shall be shown separately on any bids and invoices sent to Purchaser. For Work to be performed on a time and materials basis, each invoice must: (1) detail by activity the man-hours worked by Supplier; (2) detail by activity the labor cost; (3) detail the direct reimbursable costs in connection with the Work; (4) indicate the cumulative cost to date for all activities; (5) indicate the total monthly cost of the Work; and (6) include other information reasonably required by Purchaser. Any disputed invoice or portion thereof need not be paid, but in such case, Purchaser shall promptly notify Supplier of any rejected invoice or portion thereof (with reasons for such rejection). Invoices shall be submitted upon final completion of the Work, or as otherwise mutually agreed on the face of the Agreement. Purchaser may deduct five percent (5%) as a processing fee from Supplier for any invoice issued more than one hundred eighty (180) days after Purchaser's acceptance of the Work. With the invoice, Supplier shall forward to Purchaser original and duplicate bills of lading or express receipts signed by the carrier, for materials and/or equipment shipped by carrier other than Purchaser's preferred carrier.
  2. Invoice Charges. Invoice charges shall be allocated to appropriate accounts, a list of which will be furnished by Purchaser. For time and material Work performed by Supplier under the Agreement, the charges will be listed by Purchaser's Change Order documentation number [e.g. Field Change Request (FCR) Numbers, Maintenance Work Order (MWO) Numbers, Extra Work Request (EWR) Numbers, Contracted Services Change Order (CSCO) Numbers, etc.] and listed by current month and shall be supported by daily time sheets, accurately describing the Work being performed, signed by Purchaser's Representative showing the craft, first and last names and social security number of each worker, and each piece of equipment employed on the Work. All material charges shall be supported by the original invoices or other evidence as required by Purchaser to substantiate the charges submitted.
  3. Evaluated Receipt Settlement. Notwithstanding the foregoing, when tangible goods are requested and specified on the Purchase Order as an Evaluated Receipt Settlement (ERS), Supplier invoice is not required. The payment will be scheduled and paid based on Purchase Order payment terms.
- C. Payment. Each invoice shall, after approval by Purchaser, be processed for payment in accordance with the terms of payment as set forth on the face of each Purchase Order issued pursuant to the Agreement. Purchaser reserves the right to retain ten percent (10%) of the payments made for Work as such payments are made hereunder. Where the Work involves the performance of services, Purchaser may retain ten percent (10%) of each payment due, which shall be paid to Supplier when Purchaser has fully accepted the Work and is satisfied that the interests of the Purchaser in the completed Work have been protected. Such payment shall not be unreasonably withheld. Following receipt of a correct invoice or acceptance of the Work, whichever is later, Purchaser shall make payments on the next scheduled payment system run. Purchaser's scheduled payment system runs shall not be longer than on a bi-weekly basis. Payments by Purchaser shall not be deemed evidence of acceptance by Purchaser of the Work. After completion of the Agreement and final acceptance of the Work, any retained monies, except those retained under Article 5(D) hereof, will be paid without interest to Supplier in accordance with the terms of payment designated in the Agreement.
- D. Withholding.
1. If Purchaser has a claim under the Agreement, regardless of when it is discovered, including a claim that: (1) Supplier's invoice is erroneous; or (2) the Work is deficient, defective or incomplete; or (3) Purchaser, another supplier, Subcontractor, subcontractor, or

other party suffers damage or injury which is attributable to Supplier; or (4) Supplier fails to make a payment as and when due to a Subcontractor or supplier for materials, labor or equipment; or (5) Supplier has failed to supply any affidavit, release or waiver of lien which Purchaser may require; then Purchaser may withhold payment of, or set-off the amount of its claim, costs or loss against any amount owed to Supplier. If any monies are so withheld, Purchaser shall only pay such amount when, without cost to Purchaser, the cause of such withholding has been eliminated to the Purchaser's satisfaction. If any monies are so withheld, Purchaser shall not be responsible for any interest payment to Supplier.

2. New Jersey Withholding. If applicable, in accordance with New Jersey law, Purchaser shall withhold a portion of payments owed to Supplier for services to construct, improve, alter, or repair a building, structure, or improvement to real property; unless Supplier provides written documentation that Supplier is a corporation or entity registered to do business within the State of New Jersey.
- E. Set-off. Purchaser shall be entitled at all times to set-off any amount owing from Supplier to Purchaser or any affiliate of Purchaser against any amount payable by Purchaser hereunder.
- F. Audit, Records and Reports. Purchaser shall (upon reasonable notice) have the right to audit books and records of Supplier for the purpose of confirming the amount due to Supplier or Supplier's performance of its obligations under the Agreement. Supplier, its Subcontractors and any other entity Supplier uses to perform its obligations under the Agreement shall preserve all such records for a period of three (3) years after final payment hereunder. Upon request, Supplier shall provide Purchaser with information related to prices of materials, equipment and services to enable Purchaser to comply with accounting regulations of any governmental or quasi-governmental organization. Supplier shall provide for such right to audit by Purchaser in all contracts with Subcontractors, and other entities relating to the Agreement.

#### **ARTICLE 6 – SERVICES AND SUPPLIER'S EMPLOYEES**

- A. Supplier Employees. Supplier will employ experienced, qualified, reliable, and trustworthy persons to perform the Work. At Purchaser's request, the credentials of any of Supplier's employees assigned to perform the Work shall be submitted to Purchaser in advance of such assignment. During the performance of the Work, Purchaser may object to any Supplier employee who, in Purchaser's opinion, does not meet these criteria or whose performance is unsatisfactory. In such case, Supplier shall, at its expense and risk, immediately replace or remove such employee from the Work. Notwithstanding the foregoing, Supplier shall be responsible for all acts or omissions (negligent or otherwise) of its agents, employees, and Subcontractors. All Supplier's employees and its Subcontractors performing the Work at Purchaser's Site will be trained in and comply with Supplier's policies, procedures, and directives applicable to activities at Purchaser's Site, including security, environmental protection, worker health and safety, sexual harassment, access, use of controlled substances, and similar activities; such policies, procedures, and directives to be no less rigorous than those of Purchaser.
- B. Supervision. Supplier and its Subcontractors shall be responsible for enforcing strict discipline and good order among their employees and shall assume full responsibility for their employees' acts and omissions (negligent or otherwise) in and around Purchaser's Site. Supplier shall enforce all environmental protection and worker health and safety and similar requirements applicable to Supplier's Work. Supplier represents and warrants that Supplier's Superintendent shall be thoroughly competent and experienced in the line of work to be performed and such individual shall represent Supplier on the job and all communications given to him/her by Purchaser shall bind Supplier.
- C. Background Checks. Supplier shall make best efforts to ensure each employee assigned to the Work does not have a criminal record and is not involved in criminal activity that could create a risk to Purchaser's Site, customers, and/or employees. Upon Supplier's actual knowledge of an employee having a criminal record or involvement in criminal activity, Supplier shall immediately remove such employee from the Work. Purchaser, at any time prior to the start of or during the Work, may request Supplier to verify that an employee or employees do not possess a criminal record.
- D. Substance Abuse. Supplier agrees to comply with all applicable state and federal laws regarding drug-free workplace, as well as Purchaser's rules and regulations concerning the same, available upon request. Supplier is responsible for ensuring all Supplier's employees and its Subcontractors, while working on Purchaser's Site, will not: (1) be under the influence of drugs or alcohol; or (2) purchase, transfer, use or possess illegal drugs or alcohol; or (3) abuse prescription drugs in any way.
- E. Approval of Personnel. Individuals employed by or representing Supplier on Purchaser's Site (or who have access to Purchaser's network of information and control systems) shall be subject to Purchaser's continuing approval. If Purchaser finds any individual whom Supplier provides to be unsatisfactory, at Purchaser's request, Supplier shall promptly remove and not re-employ such individual(s) to provide the Work.
- F. Access to Work. Supplier shall provide Purchaser with unobstructed access to Subcontractor's or any of its supplier's Work, facilities, and records, to perform surveillance and reviews of Work completion and quality, and contract cost and quality records. Any such surveillance or review, or any failure of Purchaser to do so, shall in no manner reduce the responsibility and liability of Supplier or its Subcontractors or excuse them from performance.

#### **ARTICLE 7 – CONSTRUCTION PLANT, FACILITIES AND OPERATIONS**

- A. On-Site Facilities. Supplier shall construct, maintain, and remove (in conformity with local and state regulations) all temporary buildings, structures, construction plant, change houses, portable lavatories, and temporary storage buildings required for the Work. If on Purchaser's Site, the location of such buildings, storage areas for materials, and employees' parking space will be designated by Purchaser and shall be removed at Supplier's expense upon completion of the Work. If the Agreement specifies that Purchaser will provide (at a location of its choice within reasonable distance of the Work area) the water and power source required for performance of the Work, or allows Supplier or its Subcontractors to use any facility, equipment, or apparatus owned or leased by Purchaser, Supplier shall accept the same services at its own risk. If Purchaser does not provide any such items, Supplier shall be responsible for providing the water and power sources necessary for the performance of the Work. When any use is to be made by Supplier or its Subcontractors or by their respective employees of any equipment, facilities, office space, or apparatus (including but not limited to scaffolds, ladders, cranes, derricks, platforms, runways, bridges, floor, tools, barricades, or other facilities) which are owned, rented, or leased by Purchaser or Purchaser's contractor(s), or contracted for from other contractors, Supplier shall, prior to and during such use, satisfy itself as to the safety of such facilities; and Supplier hereby assumes the entire responsibility and liability for all injuries, claims, damages, or losses whatsoever resulting from the use of such equipment,

facilities, office space, or apparatus. Supplier agrees to execute all necessary documents required by Purchaser or Purchaser's other contractors, to acknowledge inspection of such equipment, facilities, office space, or apparatus prior to use.

- B. Areas of Work. Supplier shall use only the designated construction site for its Work and shall not use any other area of Purchaser's Site for any purpose without the prior written approval of Purchaser. If any part of the Work is to be performed on an easement or right-of-way held by Purchaser, Supplier shall limit its activities to that area and not allow its employees or Subcontractors outside such area. The area(s) designated by Purchaser as the construction site shall be under the control of Supplier unless otherwise provided in the Agreement. Supplier shall secure the designated construction site and shall provide barriers and warning appropriate for the safety and protection of its employees, its Subcontractor's employees, Purchaser's employees and other persons present at the construction site. Supplier shall direct its employees or employees of its Subcontractors to enter and leave the premises only through access ways, and to park only in parking areas designated by Purchaser's Representative.
- C. Non-Interference. Supplier shall conduct the Work so as to minimize interference with other activities at Purchaser's Site. Where the Work requires connection to or modification of existing facilities, Purchaser will arrange for Supplier to perform such Work at Purchaser's convenience and Supplier shall at all times, except when required to install such facilities, keep its employees and cause its Subcontractors to keep their employees out of, off of, and out of contact with Purchaser's Site and facilities. Supplier shall not permit its employees or the Subcontractor's employees to operate the existing Purchaser's Site or any of its facilities or to perform maintenance work on the existing Purchaser's Site or any of its facilities, except such maintenance work as is necessary to perform the Work.
- D. Responsibility for Materials and Work Prior to Acceptance. Supplier shall receive, check in, unload, handle, inventory, store in a secure place, and deliver from storage to the work area all Supplier and Purchaser furnished materials and equipment required for performance of the Work. Supplier shall be responsible for demurrages and/or detention charges incurred as a result of Supplier's delay in unloading equipment or materials. Storage and laydown areas shall be subject to Purchaser's approval. The Supplier's, Subcontractor's, and subcontractor's personal property being used, furnished and/or erected, installed, or constructed under the Agreement shall be in the care, custody and control of such party until permanently placed, installed or constructed and accepted by Purchaser. Supplier shall satisfactorily dispose of all rubbish resulting from the operations under the Agreement on a day-to-day basis, and upon completion of the Work shall restore Purchaser's Site to at least as good order and condition as at the beginning of the Work under the Agreement.
- E. Hazardous Substances. Neither Supplier nor Supplier's Subcontractors or suppliers shall introduce hazardous substances to the Purchaser's Site without the prior, written approval of Purchaser and in compliance with FirstEnergy contractor environmental policy. Notwithstanding any approval so obtained from Purchaser, Supplier shall remain solely responsible for hazardous substances introduced to the Purchaser's Site by Supplier or its Subcontractors or suppliers.
- F. Pre-existing Hazardous Substances. Supplier shall not be responsible for handling or disposing of hazardous substances which are pre-existing at, under, above, on or adjacent to the Purchaser's Site. If in the course of performance of the Work, Supplier or any of its Subcontractors encounter on the Purchaser's Site any matter which it reasonably believes is a hazardous substance, Supplier or its Subcontractor shall immediately suspend the Work in the area affected and report the condition to Purchaser in writing. In any such event, the obligations and duties of the parties hereto shall be as follows:
1. If it is determined that such condition involves a pre-existing hazardous substance, then any required, necessary, or appropriate remedial actions shall be performed by Purchaser at its sole cost and expense. Should the pre-existing hazardous substance interfere with the progress of the Work, or cause Supplier delay in effectively prosecuting the Work, then Supplier shall be entitled to an equitable extension of the schedule upon reasonable demonstration of the impact to the project schedule. Supplier shall take all reasonable actions to mitigate the impact to the project schedule with respect to hazardous materials;
  2. If it is determined that such condition involves a hazardous substance introduced to the Purchaser's Site after the date of this Agreement by Supplier, its Subcontractors or any person for whom either may be liable, then any required necessary or appropriate remedial actions shall be performed by Supplier at its sole cost and expense; or
  3. If it is determined that the condition does not involve a hazardous substance, Supplier shall, promptly after receiving written notice from Purchaser authorizing the Supplier to recommence site activities in the subject area, resume the portion of the Work that had been suspended and bear all costs and expenses and impact related to investigating the condition.
- G. Safety and Health. Supplier is solely responsible for the safety and health of its employees, its Subcontractors, and all other persons engaged in the performance and execution of the Work. Supplier shall conduct the Work in a manner to avoid risk of bodily harm to persons or damage to property. Supplier shall take all necessary safety and health precautions and shall do everything necessary to prevent accidents or injury to persons on, about, or adjacent to the premises where Work is being performed, including using proper safety appliances and providing first aid treatment and ambulance service for emergency treatment of injuries. Supplier shall not require any employee or Subcontractor performing hereunder to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to safety or health. Supplier and its Subcontractors shall immediately report to Purchaser Representative all incidents requiring first aid, near misses, and doctor-attended injuries (whether or not an Occupational Safety and Health Act (OSHA) recordable). Supplier shall conduct the Work in conformance with all applicable safety and health laws, ordinances, rules, regulations, orders, and all other requirements (including, without limitation, standards under OSHA and Purchaser's safety requirements) when at Purchaser's Site. Supplier shall continuously inspect its work, materials, and equipment to identify any unsafe conditions, and shall promptly take action to correct any condition which presents such a risk. To the extent applicable, Supplier shall comply with all hazard communication standards promulgated by OSHA, 29 CFR 1910.1200, et. Seq., the Pennsylvania Right To Know Act and similar hazard communication laws of other states; this includes evaluating and labeling all hazardous chemicals as defined by said standards, and maintaining Material Safety Data Sheets on all such hazardous chemicals to ensure that hazard information with regard to chemical hazards produced, imported, or used within the workplace is transmitted to affected employees of Supplier, its Subcontractors and Purchaser. Without limiting the foregoing, Supplier and its Subcontractors shall comply with all safety and health rules, policies, programs, and regulations established by Purchaser for activities at Purchaser's Site, including all requirements contained in the latest revision of the FirstEnergy Contractor Safety Requirements document. This requirement shall be included in all subsequent orders or subcontracts issued by Supplier.

- H. Sanitation. Supplier shall provide temporary fire protection facilities to the extent required by Purchaser during the construction period. Upon commencing Work, Supplier shall establish and maintain sanitary facilities for its employees and those of its Subcontractors, to the extent such facilities are not provided by Purchaser. Supplier will remove these facilities upon completion of the Work and clean the site to Purchaser's satisfaction.
- I. Security. Purchaser will, at its discretion, provide a security guard at the entrance and exits to Purchaser's Site who shall have the right to inspect all individuals, property, and vehicles entering and leaving Purchaser's Site, and exercise such control of individuals, property, and vehicles as Purchaser deems necessary in its sole discretion.
- J. Sales Prohibited. The sale of anything (i.e. food, beverages, articles of clothing, etc.) on Purchaser's Site by Supplier's or Subcontractor's personnel is strictly prohibited.
- K. Arrival and Departure of Supplier's Tools and Materials
1. Mobilization: Supplier shall provide the necessary resources to receive and secure all tools, equipment, and materials needed to complete the Work that are shipped to Purchaser's Site by, or for the benefit of, Supplier or its Subcontractors. Supplier shall be responsible for providing Purchaser's Representative with the detailed packing lists of all such items needed to complete the Work, including tools, equipment, and materials, prior to the time of any shipment of such items to Purchaser's Site. Supplier's detailed packing lists supplied to Purchaser shall distinguish between tools, equipment, and/or materials that are to be used in firm price Work versus those that are to be used for cost reimbursable time and materials Work ("**T&M Work**"). For T&M Work designated tools, equipment, and/or materials, Supplier shall, where known, identify the specific T&M Work associated therewith and itemize such tools, equipment, and/or materials on separate forms. Supplier may use Purchaser's supplied form or Supplier's own form as long as the same minimum information contained on Purchaser's form is on Supplier's form(s).
  2. Demobilization: Supplier shall verify ownership of all tools, equipment, and materials being removed from Purchaser's Site by preparing and submitting to Purchaser an itemized list of the tools, equipment, and materials leaving Purchaser's Site for each individual shipment. The forms shall be signed by Supplier's Superintendent signifying that everything listed on the form(s) as being removed from Purchaser's Site is the property of Supplier. Supplier shall prepare sufficient copies of the form(s) to provide at minimum one (1) copy for Purchaser's Representative and one (1) copy to be left with the security guard when leaving Purchaser's Site. Supplier shall provide at least forty-eight (48) hours notification that tools, equipment, and materials are being readied for shipment off Purchaser's Site. Supplier shall, prior to beginning to pack and load tools, equipment, and materials for shipment off Purchaser's Site, contact Purchaser's Representative to determine if Purchaser desires to be present to monitor the packing and loading process. Should Supplier fail to notify Purchaser's Representative prior to packing and loading any shipment, thus resulting in Purchaser's inability to verify the tools, equipment, and materials being shipped, all costs to redo the entire loading process from the beginning will be at Supplier's expense. Purchaser retains the sole option to perform a total or partial ownership verification audit of all Suppliers' shipments leaving Purchaser's Site.

#### **ARTICLE 8 – INTELLECTUAL PROPERTY RIGHTS**

- A. Ownership. All items Supplier is to deliver to Purchaser associated with the Work (including drawings and Specifications, Data, calculations, manuals, reports, documentation, designs, programs, software, and training materials), whether or not patentable, registrable as a copyrightable work, or registrable as a trademark or service mark, shall become the property of Purchaser and Purchaser shall own any and all intellectual property rights therein (including the rights to any patent, trademark or service mark, trade secret, and copyright). Any works of authorship conceived or recorded by Supplier during the term of the Agreement pertaining in any material respect to the Work shall be done as "work made for hire" as defined and used in the Copyright Act of 1976, 17 USC §1 et seq. Purchaser, as the entity for which the work of authorship is prepared, shall own all right, title and interest in and to such materials, including the entire copyright therein. To the extent that any such material is not deemed to be a "work made for hire," Supplier hereby assigns to Purchaser ownership of all right, title, and interest in and to such materials, including copyright. Notwithstanding the foregoing, nothing herein shall be deemed to convey or grant any ownership of intellectual property rights: (1) owned by Supplier prior to the effective date of this Agreement; or (2) developed by Supplier outside the scope of work for the Work; provided that Purchaser shall receive with respect to any such rights a nonexclusive, irrevocable, fully paid-up and royalty free, transferable, sub-licensable license to use, copy, communicate and prepare modifications to such rights for the purpose of completing, operating, maintaining, repairing, modifying, adding to, improving, and demolishing the Work and related systems and any replacement thereof.
- B. Infringement. Supplier warrants the Work, and every part thereof: (1) is and will be original; and (2) does not and will not infringe upon or misappropriate any patent, copyright, trademark, or other intellectual property rights of any third party; and (3) has not previously been transferred to a third party or is otherwise encumbered. If the Work or any portion thereof is held to constitute an infringement or misappropriation of the intellectual property rights of a third party, then Article 10(B) shall apply.
- C. Data Furnished by Purchaser. All Data Purchaser furnishes in connection with the Work shall remain Purchaser's exclusive property. Supplier shall not use Purchaser-furnished Data for any purpose other than for the Work. Supplier shall, upon Purchaser's request: (1) sign and deliver a written itemized receipt for all Purchaser-furnished Data and shall be responsible for its safekeeping; and (2) return to Purchaser Purchaser-furnished Data and all copies thereof.

#### **ARTICLE 9 – WARRANTY**

- A. Warranty. Supplier warrants the Work: (1) will fully conform with the Specifications, the terms of the Agreement and all drawings, samples and other descriptions provided by Purchaser; and (2) will be of good design, material and workmanship, free from defects; and (3) will be fit for the ordinary purposes for which such Work is used or intended and for any particular purpose of Purchaser of which Supplier is aware; and (4) will be produced and supplied in compliance with applicable law. Supplier further warrants that all equipment used in connection with performance of the Work shall be in safe and proper working order. The foregoing warranties shall continue in effect for a period of two (2) years from the date Purchaser initially uses the Work as an integral part of Purchaser's Site, or in the case of non-operational materials or services, for a period of two (2) years from the date Purchaser accepts the Work, whichever is later.

- B. Replacement and Repair. When any Work is modified, adjusted, repaired, replaced, or re-performed, such Work shall be subject to the same warranties, the same conditions, and the same remedies provided for the original Work; provided the warranty period for such Work shall begin on the date the modification, adjustment, repair, replacement, or re-performance is complete. Any defective or non-conforming Work shall be removed from Purchaser's Site if necessary. Supplier shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.
- C. Remedies. If any Work does not comply with the foregoing warranties, Purchaser may, at its sole option, and in each case at Supplier's sole expense: (1) reject such Work; or (2) require Supplier to repair, correct, replace, or re-perform such Work as necessary to render the Work in conformance with the foregoing warranties and consistent with Purchaser's time schedule; or (3) return such Work and receive a full refund of any amount paid for such Work; or (4) arrange for Purchaser or a third party to make any corrections and replacement required to cause such Work to fully conform to the foregoing warranties. If Supplier damages Purchaser's or any third party's equipment, components, parts, or materials resulting from a defect in the Work covered by Supplier's warranties, then, at Supplier's expense, Supplier shall repair or replace or cause to be repaired or replaced any such equipment, components, parts, or materials. Supplier shall reimburse Purchaser for all expenses Purchaser incurs in connection with a breach of the foregoing warranties (including transportation, expediting, storage, administrative, and other incidental expenses of Purchaser). If Supplier does not remove defective or non-conforming Work within a reasonable time fixed by written notice from Purchaser, Purchaser may remove and store such Work at the Supplier's expense. If Supplier does not pay the cost of such removal and storage within ten (10) days thereafter, Purchaser may, upon ten (10) additional days' written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs. The remedies set forth in the Agreement are cumulative and shall not preclude any other remedy available to Purchaser at law or in equity.
- D. Subcontractor Warranties. At the request of Purchaser, Supplier shall assign to Purchaser the warranty rights provided by Supplier's equipment or material suppliers, in lieu of Supplier's obligations under this Article 9 with respect to the portion of the scope of Work performed or provided by each such Subcontractor or material supplier.
- E. Title. Supplier warrants title to the Work is free of defects, which shall continue without limitation as to time.
- F. Survival. All of Supplier's warranties shall survive performance and acceptance of and payment for the Work and shall inure to the benefit of Purchaser, and to all subsequent purchasers of the Work.

#### **ARTICLE 10 – INDEMNITY**

- A. Supplier's Indemnity. Supplier shall indemnify, defend, and hold harmless Purchaser, its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees (the "**Indemnified Parties**") from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, any mediation, arbitration, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Supplier's obligations under this Article (collectively, "**Losses**")), which any of the Indemnified Parties may suffer or incur, arising out of or related to the Work, and/or the actions or omissions of Supplier and/or its Subcontractors, including Losses relating to: (1) actual or alleged bodily or mental injury to or death of any person; or (2) damage to or loss of use of property of Purchaser, Supplier, any Subcontractor, or any third party; or (3) any contractual liability owed by Purchaser to a third party; or (4) any breach of or inaccuracy in the covenants, representations, and warranties made by Supplier under the Agreement; or (5) any violation by Supplier or any Subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority; or (6) any lien or encumbrance arising out of or in connection with performance of Supplier's obligations under the Agreement; **provided, however**, that Supplier's indemnity obligations under this Article 10(A) shall not apply to any Losses to the extent such Losses are found to have been caused by the negligence or willful misconduct of any of the Indemnified Parties.
- B. Intellectual Property Indemnity. Supplier shall indemnify, defend, and hold harmless the Indemnified Parties from and against any and all Losses which any of the Indemnified Parties may suffer or incur arising out of or related to any claim, suit, or proceeding alleging that the Work, the intended use thereof, or any materials and information designed, specified, or used by Supplier or any Subcontractor in performing the Work, violates, infringes, or misappropriates any patent rights, copyrights, trademarks, trade secrets, or other intellectual property rights of any third party. If the use of any Work is enjoined or restrained and Supplier fails to remove such injunction or restraining order within a reasonable time, Supplier shall promptly and at Supplier's expense: (1) secure for Purchaser the right to use the Work or any portion thereof which is said to be infringing by procuring for Purchaser a royalty-free license; or (2) replace the Work or such portion thereof with non-infringing Work that meets the requirements of the Agreement; or (3) remove such infringing Work or such portion thereof, as Purchaser may elect, and refund the sums paid therefor by Purchaser, together with any out-of-pocket costs incurred by Purchaser in connection with its purchase and use of the infringing Work, all without damage or injury to Purchaser's other property.
- C. Waiver of Immunities. If an employee of Supplier or its Subcontractor, or such employee's heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death to such employee, brings an action at law against any Indemnified Party, then Supplier, for itself, its successors, assigns, and Subcontractors, hereby expressly waives any provision of any workers' compensation act or other similar law whereby Supplier or its Subcontractor could preclude its joinder by such Indemnified Party as an additional defendant in such actions, or avoid liability for damages, contribution, defense, or indemnity in any action at law, or otherwise. Supplier's and its Subcontractor's obligation to Purchaser under this Article 10 shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Supplier or its Subcontractor under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Supplier, Subcontractor, or anyone employed directly or indirectly by Supplier or anyone for whose acts Supplier may be liable.

#### **ARTICLE 11 – INSURANCE**

- A. Supplier's Insurance. Supplier shall secure and maintain in force minimum policies of insurance of the types listed below and shall furnish to Purchaser, prior to providing any portion of the Work and throughout the duration of the Supplier's performance of the Work, certificates of insurance and copies of the policies evidencing current coverage listed below (collectively, the "**Policies**").



1. Commercial General Liability (CGL) insurance including products-completed operations, independent contractors, and contractual liability coverages with minimum limits of \$5,000,000 per occurrence, combined single limit for bodily injury (including disease or death), personal injury, and property damage (including loss of use) liability.
2. Automobile Liability insurance, including non-ownership and hired car endorsement, with minimum limits of \$1,000,000 per occurrence, combined single limit.
3. Worker's Compensation coverage in the statutory amounts under the worker's compensation act(s) of the location(s) in which the Work is to be performed, for the current period.
4. Employer's Liability with a minimum limit of \$1,000,000 for each accident or illness.
5. Professional or Errors and Omissions insurance with minimum limits of \$2,000,000 per occurrence.
6. If the Supplier will have access to the Purchaser's Network/Systems or any of Purchaser's customer data, Supplier is required to provide Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence.

Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

- B. Additional Insured. FirstEnergy Corp. and its subsidiaries and affiliates shall be included by Supplier as an additional insured to the Policies for the portion of any losses resulting from, or related to, the Supplier's sole or concurrent negligence. Said Policies shall provide primary and non-contributory coverage in relation to any insurance Purchaser carries for the same losses and include a separation of insured's provisions. The limits of liability specified for the required insurance coverage herein are the minimum limits of liability that must be carried by Supplier. The limits of insurance required herein will in no way be deemed to limit any liabilities or obligations assumed by Supplier hereunder or under applicable law, except as provided by statute. A copy of the endorsement adding FirstEnergy Corp. and its subsidiaries and its affiliates as an additional insured (blanket endorsement is acceptable) shall be attached to the certificate of insurance providing general liability coverage.
- C. Lapse of Coverage. The Policies shall not be canceled or allowed to lapse, and no change shall be made in this policy altering, restricting, or reducing the insurance provided or changing the name of the insured without giving immediate notice in writing to FirstEnergy Service Company, Insurance Risk Management, 76 South Main Street, Akron, Ohio 44308, with receipt of notice acknowledged. In the event of cancellation or lapse of or prohibited change in any Policy, Purchaser shall have the right to suspend the provision of the Work of Supplier until the Policy and certificates in evidence thereof are reinstated or arrangements acceptable to Purchaser are made pending issuance of new Policies and certificates. If any Policy shall be about to lapse or be canceled, Supplier shall obtain a new Policy with like coverage, and if Supplier fails to do so, Purchaser may terminate the Agreement.
- D. Waiver of Subrogation. Supplier hereby waives (and any of its Subcontractors shall waive) any rights of subrogation they or any of their insurers may have against Purchaser, and each non-affiliated company disclosed in the Agreement, their respective agents or employees.
- E. Owner Controlled Insurance Program (OCIP). Purchaser may elect to implement an Owner Controlled Insurance Program (OCIP) for all or a portion of the Work. In the event Purchaser implements an OCIP, Supplier and its Subcontractors shall enroll in the OCIP and will cooperate with Purchaser and the OCIP administrator in implementation of the OCIP, and shall reduce the amount of any labor and other fixed rates chargeable to Purchaser under this Agreement by the amount of any insurance, workers' compensation, and similar premiums and associated charges, including claim costs and safety and administrative fees, included in such rates associated with insurance provided by the OCIP. For Work performed under a target cost incentive program, the amount of the target cost shall be reduced by the cumulative amount of such reduction in Supplier's invoices.

## **ARTICLE 12 – PAYMENT OF ACCOUNTS; WAIVER OF LIEN RIGHTS**

- A. Supplier shall promptly pay all claims for labor, material, services, and other expenses incurred by it and its Subcontractors in connection with the Work.
- B. Waiver of Lien Rights. To the extent permitted by law, Supplier, for itself and anyone else acting or claiming through or under it, does hereby expressly waive and relinquish all right to file a mechanics' or materialmen's lien, or notice of intention to file any lien, and agrees that no mechanics', materialmen's, or similar lien shall be filed or maintained against any property where the Work is to be performed, or any interest of Purchaser in such property, by or in the name of Supplier or any Subcontractor, materialman or laborer acting or claiming through or under Supplier for Work performed or materials furnished in connection with this Agreement. It is intended by the parties that Supplier's agreement to waive and relinquish lien rights as above provided shall be effective only in those jurisdictions which permit such agreement to be made. The fact that some jurisdictions in which Work will be performed do not permit such waiver shall not affect the enforceability of this waiver in those jurisdictions that do permit such waivers. The above obligations of Supplier and/or its Subcontractors are supplementary to and not a substitute for rights of Purchaser, its subsidiaries, and affiliates under the provisions of the mechanics lien laws of the jurisdiction in which the Work is being performed.
- C. No-Lien Agreement. Supplier shall, prior to the commencement of any Work to be performed at any Purchaser's Site located in West Virginia (and, if requested by Purchaser, for Work to be performed at any Purchaser's Site located in Pennsylvania), furnish to Purchaser a duly executed waiver of any and all rights to file or claim a mechanics', materialmen's, or other such lien binding upon Supplier and any and all of Supplier's Subcontractors, suppliers, materialmen, sub-subcontractors, and all other persons or entities that furnish labor, materials, skill, or supervision of the Work, and any parties claiming by, through or under Supplier. Supplier understands and acknowledges that the waivers so furnished will be filed in the public records of the county in which the Work will be performed. Supplier's Work shall not commence at any such Purchaser's Site prior to the filing of the applicable waiver. For Work to be performed at any Purchaser's Site in Ohio, Supplier shall assist Purchaser as requested in the preparation and filing of a notice of commencement as provided for under Section 1311.04 of the Revised Code of Ohio. Supplier shall not commence any Work at any Purchaser's Site located in Ohio until Purchaser has advised Supplier in writing that this notice of commencement has been filed of record unless otherwise specifically instructed by Purchaser.
- D. Subcontracts. Every subcontract for any portion of the Work shall contain an obligation by the Subcontractor equal in effect to this Article.
- E. Subcontractor Liens. In the event any credible claim or threat of a claim is asserted by a Subcontractor of any tier under Supplier that would result in the filing of a lien against the Purchaser's Site, Purchaser shall have the right, upon three (3) business days' prior written notice to Supplier, to contact such Subcontractor directly. Purchaser may then provide Supplier an additional three (3) business days' written notice

that Purchaser has the option, in its sole discretion, to pay Subcontractor directly or by joint check unless Supplier responds in writing within the three (3) business day period identifying a specific dispute between Supplier and Subcontractor regarding Subcontractor's entitlement to the claim. Purchaser shall have no obligation to make any payments to Subcontractors and Supplier shall have the right to cure any payment default during this three (3) business day notice period. Supplier shall, within thirty (30) calendar days, cause to be discharged and terminate any mechanic's or materialmen's lien filed by any of its Subcontractors, sub-subcontractors, materialmen, laborers or suppliers, or shall bond against the same at its own cost and expense with a bond satisfactory to Purchaser.

#### **ARTICLE 13 – DELAY, DEFAULT, AND TERMINATION**

- A. Delay Not the Fault of Supplier. If Work of Supplier is interfered with, disrupted, hindered, delayed, or impacted by any act or failure to act by Purchaser, the time for completion under the Agreement may be extended for such reasonable time which Purchaser determines has been caused by the interference, disruption, hindrance, delay or impact in the Work. Supplier waives, to the extent permitted by law, any relief or remedy for delay not caused by Purchaser.
- B. Liquidated Damages. Upon failure to complete all Work by or before the date set forth in the Agreement, Purchaser shall be entitled to retain or recover from Supplier, as liquidated damages, and not as a penalty, the amount set forth as liquidated damages in the Agreement, if any, for each and every day thereafter until the completion of the Work, unless Supplier timely requests and Purchaser, within its sole discretion, grants an extension of time. The amount of liquidated damages is agreed upon by and between Supplier and Purchaser because of the impracticability and extreme difficulty of ascertaining the actual amount of damage Purchaser will sustain in the event of a delay.
- C. Events of Default; Termination for Cause If Supplier: (1) fails to comply with applicable laws and ordinances; or (2) assigns or subcontracts the Agreement or any part hereof without Purchaser's prior written consent; or (3) otherwise fails or refuses to perform its obligations under the Agreement in any respect; or (4) fails to provide Purchaser, upon request, with adequate assurance of future performance of the Agreement; or (5) becomes insolvent or makes a general assignment for the benefit of creditors or admits in writing its inability to pay debts as they mature or if a trustee or receiver of Supplier or of any substantial part of Supplier's assets is appointed by any court or proceedings instituted under any provisions of the Federal Bankruptcy Code or any state insolvency law by or against Supplier are acquiesced in or are not dismissed within thirty (30) days or result in an adjudication in bankruptcy or insolvency; or (6) unnecessarily delays the Work or any party thereof; or (7) engages in conduct that violates FirstEnergy's Supplier Code of Conduct (defined below), including but not limited to, Supplier's obligation to promptly notify Purchaser of any potential compliance or ethics concerns; then Purchaser may terminate the Agreement immediately or cancel any remaining portion of the Work (and Purchaser's corresponding obligations) and/or pursue any further remedies available at law or in equity. Notice of termination shall be in writing and shall be effective upon receipt thereof. Upon a final determination by a court of competent jurisdiction that a termination pursuant to Article 13(C) was improper, the termination shall be deemed a termination for convenience pursuant to Article 13(E).
- D. Remedies. In the event of termination by Purchaser for cause, Supplier shall, at Purchaser's option, deliver to Purchaser the raw materials and work-in-process required to perform the Work. Purchaser shall have the right, at its election and without prejudice to any other remedies to: (1) continue and complete the Work or any part thereof and deduct the cost of such completion from the amount due Supplier under the Agreement; or (2) pay Supplier the reasonable cost of such raw materials and work-in-process. In the event of such termination, Purchaser shall not be required to obtain the lowest figure for completing the Work but may pay amounts Purchaser, in its sole judgment, determines will best accomplish such completion. Supplier shall be responsible for all expenses, including additional management and administrative services Purchaser incurs to complete the Work, and remedy defective Work and damage done by Supplier, and any other costs and expenses Purchaser sustains due to Supplier's breach. Purchaser's rights and remedies set forth in this Article are cumulative and not exclusive, are in addition to any other rights and remedies provided at law, in equity, or under the Agreement, and they may be pursued separately or concurrently as Purchaser determines. Supplier shall, if Purchaser requests, immediately remove its employees, representatives, tools, equipment, and other property from Purchaser's Site. If Supplier should fail to complete the removal within a reasonable period, Purchaser may remove such items at Supplier's expense. In any event, Supplier shall be liable to Purchaser for any and all losses, damage and costs Purchaser incurs in completing the Work.
- E. Termination for Convenience. Purchaser may, at any time without cause and for its own convenience, terminate the Agreement or cancel any remaining portion of the Work (and Purchaser's corresponding obligations) by giving Supplier written notice. Purchaser shall pay Supplier its actual, necessary, reasonable, and verifiable expenses as a direct consequence of such termination. Supplier shall furnish all necessary documentation to substantiate such expenses to Purchaser's satisfaction. Purchaser shall be entitled to all the Work paid for by it or, at Purchaser's option, Supplier shall attempt to liquidate the same, and Purchaser shall be entitled to the benefits of any value received.' Supplier shall make every reasonable effort to mitigate costs. Purchaser shall not be liable for lost profit, anticipated profit, or unabsorbed indirect costs or overhead. Purchaser's liability for termination expenses shall not, in any event, exceed the unpaid balance of the contract price. The compensation described in this paragraph shall be Supplier's sole and exclusive compensation and remedy if the Agreement is terminated for convenience.
- F. Termination Obligations. Upon receiving a notice of termination or cancellation (except as otherwise expressly directed by Purchaser), Supplier shall: (1) stop all efforts under the Agreement related to the affected Work; and (2) place no further orders or subcontracts related to the affected Work, and (3) take all actions necessary (or as directed by Purchaser) to protect and preserve the Work (collectively, "**Cessation Actions**"). Purchaser shall pay Supplier its actual, necessary, reasonable, and verifiable expenses as a direct consequence of such termination or cancellation. Purchaser shall be entitled to the Work for which Purchaser has paid, or at Purchaser's option, Supplier shall attempt to liquidate the same, and Purchaser shall be entitled to the benefits of any value received. Supplier shall make every reasonable effort to mitigate costs. Purchaser shall not be liable for lost profit, anticipated profit, or unabsorbed indirect costs of overhead on the Work.
- G. Right to Stop Work for Cause. Without limiting its other rights hereunder, Purchaser may order Supplier to stop performance of any portion of the Work that Purchaser believes may cause or threatens to cause an immediate danger to life or material, or damage to property. In such event, Supplier shall not be entitled to a Change Order for the associated impact. Once the cause of the stop work order has been resolved by Supplier, Purchaser shall promptly direct Supplier to resume performance of the Work.

- H. Return of Pre-paid Funds. Upon termination of the Agreement under this Article 13 for cause or for convenience, Supplier shall return all pre-paid funds received from Purchaser to which Supplier is not entitled.

#### **ARTICLE 14 – SUSPENSION**

- A. Right to Suspend. Purchaser may suspend Supplier's performance of the Work, in whole or in part, at any time without cause and for its own convenience, by giving Supplier written notice. After receiving a notice of suspension and except as otherwise directed by Purchaser, Purchaser may require Supplier to comply with any of the Cessation Actions described in Article 13(F).
- B. Deferral of Deliveries. Purchaser may defer delivery of the Work, at any time for its own convenience, by giving Supplier written notice. Supplier will adjust its manufacturing schedules consistent with Purchaser's deferral request. Purchaser will pay all reasonable charges and direct expenses related to the storage of such items to the extent Supplier is not able to avoid them.
- C. Adjustment of Price and Schedule. Suspension hereunder shall not affect the contract price or the period of performance, unless Supplier experiences a cost increase or time delay as a result of such suspension and provides Purchaser written details of such effect(s) within thirty (30) days after such suspension.

#### **ARTICLE 15 – CHANGES TO SCOPE OF WORK**

- A. Purchaser may, at any time by written notice, make changes altering, adding to, or reducing the scope of the Work, Statement of Work, or changing the Specifications, packing and shipping instructions, time and/or place of delivery, quantities, sequencing, or accelerating Work under the Agreement ("Change Order"). Supplier's performance of additional Work as related to the changes shall in no way be a basis of claims involving loss of efficiency on any Work performed or to be performed under the Agreement. Performance of additional Work shall not be a basis for schedule extensions unless such extensions are agreed upon at the time of award of the additional Work. Such changes shall be initiated by written order of Purchaser and Supplier shall submit the proposed cost or credit to Purchaser for any changes in the Work within fifteen (15) business days after receipt of the written order for Purchaser's approval. No change to the cost or schedule of the Work shall be binding upon Purchaser without Purchaser's written approval. Supplier shall be paid for any additional Work by an amount to be determined, at Purchaser's option, by: (a) unit prices, or (b) lump sums, or (c) other methods of reimbursement, in each case as designated in the Agreement or as subsequently agreed upon in writing.
- B. Supplier shall have the right to request a Change Order in the event of any of the following occurrences, if such event affects Supplier's direct cost to perform the Work and/or delays the time of performance of such Work:
1. changes in applicable law occurring after the effective date of this Agreement;
  2. inaccuracy in FirstEnergy Reliable Information (defined in Article 3(J));
  3. discovery of hazardous substances as provided in Article 7;
  4. a Force Majeure Event, as provided in Article 22; or
  5. acts or omissions of Purchaser, as provided in Article 13(A).
- Supplier shall request a Change Order to Purchaser in writing that includes a reasonably detailed explanation of the proposed change, Supplier's reasons for proposing the change, and all documentation necessary to verify the effects of the change on the contract price or the Work schedule. If Supplier believes an event or condition described above, alone or in conjunction with others, necessitates or forms the basis for an increase in the contract price or time for performance, Supplier shall provide immediate verbal notice of the occurrence of the precipitating event to Purchaser's Representative followed by written notice delivered to Purchaser's Representative within forty-eight (48) hours of the occurrence of the event giving rise to the claim. Notice of the amount of the claim and the Work schedule adjustment with detailed supporting data shall be provided within seven (7) calendar days of such occurrence, and if earlier, two (2) hours minimum prior to the time Purchaser needs to make a Work/schedule adjustment, unless Purchaser's Representative allows an additional period of time to ascertain accurate cost or schedule data. Timely notice of any claim shall be a condition precedent to any of Supplier rights to recover thereon, and that any claims for which such timely notice is not provided shall be deemed waived. If Purchaser agrees that a Change Order is necessary, then Purchaser shall issue such Change Order, and such Change Order shall become part of the Agreement. If the parties cannot agree upon whether Supplier is entitled to a Change Order, then pending resolution of the dispute, Supplier shall continue to perform the Work required under the Agreement, and Purchaser shall continue to pay Supplier in accordance with the terms of this Agreement.
- C. Change Orders agreed to by the parties shall constitute a full and final settlement and accord and satisfaction of all effects of the change as described in the Change Order and shall be deemed to compensate Supplier fully for such change.
- D. Supplier shall not be entitled to make a claim for an increase in the contract price if the claim is for goods and services that are within the scope of the Work hereunder, or if the claim is for goods or services that are necessitated by the errors, acts, or omissions of Supplier.

#### **ARTICLE 16 – COMPLIANCE WITH LAWS, REGULATIONS, AND PERMITS**

- A. During the performance of the Agreement, Supplier shall strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the Work.
- B. Without limiting the foregoing, and unless exempted under the rules, regulations and relevant orders (41 CFR Chapter 60) of the U.S. Secretary of Labor, in connection with the Work, Supplier agrees as follows:
1. Supplier shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age or disability. Supplier shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, gender, national origin, age or disability. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Supplier shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the U.S. Department of Labor setting forth the provisions of this nondiscrimination clause.

2. Supplier shall state, in all solicitations or advertisements for employees placed by or on its behalf, that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin, age or disability.
  3. Supplier shall send to each labor union or representative of workers with which it has a collective bargaining agreement, contract or understanding, a notice to be provided by the U.S. Department of Labor, advising the labor union or workers' representative of Supplier's commitments under the following provisions, as amended from time to time:
    - a. Section 202 of Executive Order 11246 (Equal Opportunity);
    - b. Executive Order 11701 (Employment of Veterans);
    - c. Executive Order 11758 (Employment of the Handicapped);
    - d. Executive Order 11141 (Employment Discrimination Because of Age);
    - e. Executive Order 11625 and Public Law 95-507 (Utilization of Disadvantaged Business Enterprises); and
    - f. Executive Order 13496 (Employee Rights Under the National Labor Relations Act) and shall post copies thereof in conspicuous places available to employees and applicants for employment.
  4. Supplier and its Subcontractors shall abide by the requirements of 41 CFR 60-300.5(a) which regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.
  5. Supplier and its Subcontractors shall abide by the requirements of 41 CFR 60-741.5(a), which regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.
- C. If this Agreement is a subcontract under a government contract or a federally-funded project, Supplier shall comply with subcontractor flow-down requirements under the Federal Acquisition Regulations (48 CFR Chapter 1), as amended from time to time, which are specified in supplemental terms to this Agreement.
- D. If applicable, Supplier shall comply with the Department of Commerce Export Administration Regulations ("EAR") in 15 CFR Chapter VII, subchapter C, including 15 CFR Section 734.2 which prohibits the export or release of controlled technology and/or software to foreign nationals within the United States who are not lawfully admitted to the United States for permanent residence. Supplier shall confirm that these regulations either do not apply to Supplier's activities under the terms of the Agreement or that Supplier has procedures to ensure compliance. If Supplier is directly or indirectly employing a foreign national not currently lawfully admitted to the United States for permanent residence to perform Work under the Agreement, Supplier warrants to Purchaser that such employment does not violate the foregoing regulations.
- E. Foreign Corrupt Practices Act ("FCPA"). The following provisions shall apply to Supplier (unless it is a foreign concern) if it performs or obtains any of the Work in a foreign country:
1. All payments to Supplier shall be by check or bank transfer only. No payment shall be in cash or by bearer instrument and no payment shall be made to any corporation or person other than Supplier. All payments due hereunder shall be made to Supplier at its principal place of business in the United States, even if Supplier performs or obtains the Work in a foreign country.
  2. Supplier represents that it is familiar with the FCPA and its purposes; and that, in particular, it is familiar with the prohibition against paying or giving of anything of value, either directly or indirectly, by an American company to an official of a foreign government for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with that government, to assist a company in obtaining or retaining business for or with, or directing business to, any person.
  3. Supplier represents that none of its partners, purchasers, principals, and staff members are officials, officers, or representatives of any government or political party or candidates for political office. Supplier shall not use any part of its compensation for any purpose, and shall take no action that would constitute a violation of any law of the United States (including the FCPA) or of any jurisdiction where it performs services or manufactures or sells goods. Purchaser represents that it does not desire and will not knowingly request any Work by Supplier that would or might constitute any such violation.
  4. Purchaser may terminate the Agreement for default at any time, without any liability or obligation, if it believes, in good faith, that Supplier has violated this Article. Any action by Supplier which would or might constitute a violation of the FCPA, or a request for such action from Supplier's representative, shall result in immediate termination of the Agreement for default. Should Supplier ever receive, directly or indirectly, from any Purchaser representative a request that Supplier believes will or might violate the FCPA, Supplier shall immediately notify Purchaser's general counsel.
  5. Purchaser may disclose the existence and terms of the Agreement, including the compensation provisions, at any time, for any reason and to whomever Purchaser's general counsel determines has a legitimate need to know the same including, without limitation, the United States government, the government of any country where the Work is performed or obtained, and any regulatory agency with jurisdiction over Purchaser.
- F. Government Authorizations. Unless the Agreement otherwise provides, Supplier shall, at its own expense, obtain from appropriate governmental authorities all permits, inspections and licenses which are required for the Work and comply with all rules and regulations of insurance companies that have insured Supplier in any way related to the Work.
- G. Any costs, fines, penalties, awards, damages, or other liabilities associated with any violations of this Article shall be borne and paid by Supplier.
- H. Information Assets Access. If Supplier's and/or Subcontractor's employees are given access to Purchaser's information and control systems, Supplier and such employees shall agree to and comply with FirstEnergy's Information Assets Access Agreement (located at <https://www.firstenergycorp.com/supplychain.html>) governing Supplier's/Subcontractor's and such employees' use of such systems.
- I. Information Security. If applicable to its performance of the Work, Supplier shall be subject to the following:
1. Supplier Requirements: Without limiting Supplier's confidentiality obligations under the Agreement, Supplier shall be responsible for establishing and maintaining an information security program (including any relevant subcontractors) that is designed to: (i) ensure the security and confidentiality of Purchaser's Data; and (ii) protect against any threats or hazards to the security or integrity of Purchaser's Data; and (iii) protect against unauthorized access to or use of Purchaser's Data; and (iv) ensure the proper deletion of Purchaser's

Data; and (v) ensure that all Supplier's subcontractors, if any, comply with the foregoing. If Supplier's information security system is breached, Supplier must timely notify Purchaser of such breach via e-mail and phone call. The minimum information security requirements are incorporated into this Agreement as "FirstEnergy Security Requirements for External System & Service Providers" (located at: <https://www.firstenergycorp.com/supplychain.html>) and are a material obligation of Supplier in its performance of the Work.

2. **Right to Audit.** Supplier's information security program will be subject to periodic review, as requested by Purchaser. Supplier shall notify Purchaser of any modification to the information security program (including modifications made by subcontractors) for Purchaser's review and implement any safeguards required by Purchaser.
3. **Third-Party Audit.** No less than annually, Supplier shall conduct an independent third-party audit of its information security program and provide such audit results to Purchaser. Supplier shall implement any required safeguards as identified by such information security program audit.

J. **Codes of Conduct.** Supplier shall comply with all requirements of ***FirstEnergy's Supplier Code of Conduct: The Power of Collaboration*** (located at: <https://www.firstenergycorp.com/supplychain.html>) which is incorporated herein by reference, and any governmental regulatory codes of conduct applicable to the Work.

K. **NERC CIP Requirements.** The following obligations shall apply to each Supplier employee who is authorized as part of the Work to have either electronic, or unescorted physical access to Bulk Electric Systems ("BES") Cyber Systems (which Purchaser shall from time to time identify for Supplier) ("**CIP Employee**"). Upon request from Purchaser, at any time prior to the start of or during the Work, Supplier shall:

- (a) provide direct evidence (i.e. the actual search criteria and results) verifying that no CIP Employee possesses a criminal conviction, and
- (b) certify that each CIP Employee has completed the training necessary to achieve the North American Electric Reliability Corporation ("**NERC**") Critical Infrastructure Protection ("**CIP**") certification. (If required, Purchaser shall provide and pay for the training to achieve NERC CIP certification).

Pursuant to a NERC CIP compliant documented personnel risk assessment and training program, Supplier shall provide such evidence and certification confirming that each CIP Employee:

- (y) has either: (i) within the past seven (7) years, submitted to a background check consisting of at a minimum an identity verification (e.g. Social Security Number verification in the U.S.) and a seven (7) year criminal check that revealed no evidence of a criminal conviction; or (ii) has been subject to a similar seven-year cycle re-check; and
- (z) has received the Purchaser-sponsored Security Awareness training or will receive such training prior to accessing BES Cyber Systems.

Supplier shall inform Purchaser immediately, but no later than four (4) hours after actual knowledge, via email and phone call, if Supplier's employee having authorized electronic or authorized unescorted physical access to BES Cyber Systems is terminated, or when the access rights of a Supplier's employee to BES Cyber Systems needs to be changed or revoked. Supplier agrees to adhere to current and future NERC CIP compliance regulations applicable to the Work and as required by Purchaser.

L. **Gifts and Gratuities/Conflicts of Interest.** Purchaser's employees are subject to conflicts of interest and gifts and gratuities policies, which generally prohibit such employees and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel and entertainment, and discounts that would not be available to the general public) from existing or potential customers, suppliers, or contractors that: (1) have more than a nominal value; or (2) exceed the level of standard business courtesies; or (3) the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits Purchaser's employees and/or their family members from serving as an officer, director, employee, consultant, agent of, or owning any beneficial interest in, an organization having a business relationship with Purchaser as a supplier or contractor, if the employee is in a position to influence decisions concerning the relationship. The entire text of these policies may be found within FirstEnergy's Supply Chain Section at <https://www.firstenergycorp.com/supplychain.html>. Supplier, Subcontractor and prospective suppliers to Purchaser are expected to be aware of these policies in their dealings with Purchaser's employees and their family members. *Any suspected or actual violations of these policies should be reported; and, may be reported anonymously and confidentially by a customer, supplier, contractor, or employee by calling FirstEnergy's Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.*

M. **Conflict Minerals.** For purposes of this Agreement, "**Conflict Minerals**" means any cassiterite, columbite-tantalite, gold, wolframite, or the derivatives tantalum, tin, or tungsten and any other mineral or its derivatives determined by the U.S. Secretary of State pursuant to Section 13p of the Securities and Exchange Act of 1934 to be financing conflict in the Democratic Republic of Congo ("**DRC**") or any country that shares an internationally recognized border with the DRC (collectively, and together with the DRC, the "**Conflict Region**"). With respect to any Work Purchaser reasonably determines has been or will be "contracted to be manufactured" or incorporated into a product "manufactured" by Purchaser, in each case, as contemplated by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Act**"), and could contain Conflict Minerals:

1. Supplier shall disclose to Purchaser, in writing, whether such Work does contain Conflict Minerals and, if so, the type(s) of Conflict Mineral(s) the Work contains;
2. Supplier hereby represents to Purchaser that any such Conflict Minerals did not originate in the Conflict Region or, in the alternative, such Work is "DRC conflict free" as defined in the Act and the implementing regulations; and
3. Supplier shall comply with, and support Purchaser's efforts to comply with, the Act and its implementing regulations (including, without limitation, the Act's due diligence and reporting requirements), regardless of whether Supplier is a covered issuer under the Act, and comply with Purchaser's Conflict Minerals Policy.

Purchaser may terminate this Agreement for default at any time, without any liability or obligation, if it believes, in good faith, that Supplier has violated this Article 16(M).

N. **Identity Theft.** Supplier agrees to perform all duties contemplated herein consistent with reasonable policies, procedures and related controls that are designed to detect, prevent, and mitigate the risk of identity theft, and to take appropriate steps to prevent or mitigate the same if any such events occur. The need for this contractual provision is based on the Identity Theft Red Flags Rule promulgated under the Fair and Accurate Credit Transactions Act of 2003, which provides in pertinent part at 16 CFR 681 Attachment A VI (C): A financial institution or

creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures to detect, prevent and mitigate the risk of identity theft.

- O. Prevailing Wage. Supplier shall be responsible for determining whether any federal, state, county or municipal prevailing wage law applies to this Agreement, and if one does apply, then Supplier shall comply with the law, as amended, and shall be responsible for all computations related thereto. Further, Supplier will indemnify Purchaser for any claims arising from Supplier's failure to comply with this obligation.

#### **ARTICLE 17 – LIMITATION OF LIABILITY/DAMAGES**

Except as otherwise expressly provided under this Agreement, under no circumstance shall Purchaser, its parent, subsidiaries, and affiliates, be liable for any incidental, indirect, special, punitive or consequential damages (including anticipated profits or revenues).

#### **ARTICLE 18 – AUTHORITY OF AGENT**

- A. Authority of Agent. Agent is wholly authorized to perform any action, as agent and representative of Purchaser, included in, related to, or necessary to carry out the provisions of this Agreement, including any Purchaser Order, Statement of Work, or Change Order issued hereunder.
- B. Liability of Agent. Notwithstanding the Agent's authority described herein, the Agent is not, nor shall it be construed to be, a party to the Agreement or to any Purchase Order, Statement of Work, or Change Order governed thereby. Under no circumstances shall Agent be liable for any obligations of Purchaser hereunder or for any incidental, indirect, special, punitive, or consequential damages (including anticipated profits or revenues) for any controversy or dispute arising out of, related to, or touching in any way this Agreement or any agreement related hereto.

#### **ARTICLE 19 – PROHIBITION OF PUBLICITY**

Supplier shall not refer to the Agreement or reference Purchaser, its parent, subsidiaries, and affiliates, directly or indirectly, in its advertising or promotional materials or in any form of so called "social media" without Purchaser's prior express written consent.

#### **ARTICLE 20 – CONFIDENTIALITY**

- A. Supplier acknowledges that in the course of performing under the Agreement it may have access to and/or be in possession of Purchaser's Confidential Information. "**Confidential Information**" shall include scientific and technical information, formulas, devices, concepts, inventions, designs, drawings, methods, techniques, computer software, screens, user interfaces, system designs and documentation, marketing and commercial strategies, information concerning Purchaser's or any of its affiliates' employees, customers, or suppliers, processes, data concepts, and know-how, and unique combinations of separate items that individually may or may not be confidential, which information is not generally known to the public and either derives economic value, (actual or potential) from not being generally known or has a character such that Purchaser or any of its affiliates has an interest in maintaining its secrecy. Supplier shall hold in confidence, in the same manner as it holds its own Confidential Information, all Purchaser's Confidential Information to which it may have access pursuant to the Agreement. Supplier shall not use Purchaser's Confidential Information for any purpose other than performance of the Work. Access to Purchaser's Confidential Information shall be restricted to Supplier's employees with a need to know such information in connection with the Work and as set forth in the Information Assets Access Agreement. Supplier shall return Data and Confidential Information to Purchaser upon completion of performance of the Agreement.
- B. Supplier shall not use or disclose Confidential Information for any reason or purpose without the prior written consent of the Purchaser. Supplier may use Confidential Information for the sole purpose of the performance of the Agreement for the benefit of the Purchaser. Supplier will take all precautions and actions to prevent sale, transfer, sublicense, use or disclosure of Confidential Information to any third party.
- C. The restrictions set forth in this Article shall not apply to information that: (1) is or has become generally known to, or readily ascertainable by, the public without the fault or omission of the Supplier or its employees, Subcontractors, or agents; or (2) was already known to Supplier prior to the first disclosure of such information to Supplier by Purchaser; or (3) was received by Supplier without restrictions as to its use from a third party who is lawfully in possession and not restricted as to the use thereof; or (4) is required to be disclosed by law or by order of a court of competent jurisdiction; or (5) was independently developed by Supplier through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by Purchaser.
- D. If Supplier is requested or required (by interrogatories, governmental request for information, request for production of documents, subpoena, Civil Investigative Demand or similar process, or otherwise required by applicable law) to disclose any Confidential Information of Purchaser, Supplier shall provide Purchaser with prompt notice of such request(s) so that Purchaser may seek an appropriate protective order and Supplier shall use appropriate efforts to limit the disclosure and maintain confidentiality to the maximum extent possible.
- E. If Supplier breaches or threatens to breach this Article, the parties acknowledge that there may exist no adequate remedy at law, and hereby agree that Purchaser shall have the right to seek temporary and permanent injunctive relief to restrain a violation of this Article, without the necessity of posting a bond. Purchaser's right to injunctive relief shall be cumulative and in addition to its right to seek and obtain other remedies, including monetary damages.
- F. Supplier shall incorporate the above provisions in all agreements with its Subcontractors, agents, and assigns.

#### **ARTICLE 21 – PERSONALLY IDENTIFIABLE INFORMATION (PII)**

- A. "Personally Identifiable Information" (PII) means any information that identifies, relates to, describes, is reasonably capable of being associated with a particular individual or household, that is processed by Supplier pursuant to this Agreement, and that is deemed "personal data," "personal information," or the like under the Data Protection Laws.
- B. "Data Protection Laws" means all applicable international, federal, state, provincial, and local laws, rules, regulations, directives, requirements, codes and industry standards and guidelines, relating to the privacy, confidentiality, integrity, protection, or security of PII.

- C. Any PII disclosed to Supplier or with which Supplier otherwise comes in contact while, as applicable, providing the Work will be deemed to be Confidential Information, regardless of whether it is labeled or designated as such. Supplier shall not: (i) use PII for any purpose other than as reasonably necessary to fulfill the terms of the Agreement; or (ii) make PII available to any employees, agents, Subcontractors, or other party representatives except those with a need to know.
- D. Supplier shall implement appropriate measures to ensure the security and confidentiality of all PII in its and its Subcontractors' possession, including protecting against any threats or hazards to the security or integrity of the PII that Supplier should reasonably be able to anticipate, and against unauthorized access to or use of the PII.
- E. Notwithstanding any other provisions hereof, Supplier shall notify Purchaser within one (1) business day of becoming aware of any Breach of Security. "Breach of Security" shall mean unauthorized access to, acquisition of, or disclosure of, PII or any individual's information which was held in the custody or control of Supplier or its Subcontractors of any tier, agents or other representatives, or a reasonable belief by either party or its subcontractor of any tier, agent or representative that such unauthorized access, acquisition or disclosure has occurred. Supplier's notice shall include the following: (i) date and time that Supplier discovered the Breach of Security and the date and time when the breach actually occurred, if discoverable; (ii) a detailed description of the Breach of Security; (iii) a list of the systems and data at risk, including a list of affected individuals; and (iv) a description of actions taken after the Breach of Security was discovered. Thereafter, Supplier shall provide Purchaser with periodic updates describing the investigation into the Breach of Security and all corrective or remedial actions taken or to be taken by Supplier (or any applicable subcontractor).
- F. To the extent that Supplier has PII in their possession, Supplier shall implement a comprehensive written information security program containing organizational, administrative, physical and technical security measures that satisfies all relevant state and federal laws and regulations. Supplier shall allow Purchaser to review Supplier's comprehensive written information security program as well as any audit reports, summaries of test results, or other documents related to security measures taken by Supplier, and, as deemed necessary by Purchaser, inspect the implementation of associated administrative, physical and technical security measures, as the case may be, to assess whether Supplier's written information security program complies with information security requirements set forth by regulations. Such inspections will not include: (i) access by Purchaser to Confidential Information of Supplier's other customers; or (ii) direct access to any Supplier systems.
- G. Purchaser may, in its sole discretion, take any and all actions necessary or reasonable to respond to a Breach of Security involving PII, including but not limited to conducting an investigation into the cause of the Breach of Security involving PII and notifying affected persons or government agencies accordingly. Supplier shall provide the Purchaser with all information reasonably necessary to: (i) aid Purchaser's compliance with all federal and state data breach notification laws and any other laws or regulations that may be applicable to a Breach of Security involving PII; and (ii) facilitate Purchaser's determination of whether the breach was effectively mitigated. Supplier shall bear all costs and expenses incurred by Purchaser related to the Breach of Security of PII and compliance with law. Alternatively, Supplier may take action to remedy the Breach of Security involving PII at Supplier's sole expense. This may include, for example, sending notice to all individuals affected by the Breach of Security of PII. For the sake of clarity, Purchaser shall make the final decision how and whether to notify third parties of any such Breach of Security, including individuals, law enforcement or governmental authorities, and/or the general public of such Breach of Security. Unless required to do so by applicable law, Supplier agrees that it will not inform any third party of any Breach of Security incident to the extent that it may be associated with or linked to Purchaser without first obtaining Purchaser's prior written consent, other than to inform a complainant that the matter has been forwarded to Purchaser's legal counsel.
- H. Supplier agrees to defend, indemnify and save the Indemnified Parties harmless from and against any and all Losses incurred as a result of any claim or action brought by any third party related to a Breach of Security to the extent directly and proximately caused by the negligence or willful misconduct of Supplier while engaged in the performance of Work under this Agreement; provided, however, that if there also is fault on the part of an Indemnified Party hereunder or any entity or individual acting on an Indemnified Party's behalf, the foregoing indemnification shall be on a comparative fault basis.

## **ARTICLE 22 - FORCE MAJEURE**

Neither party shall be liable to the other for failure to perform or delay in performance due to unforeseen causes beyond its reasonable control, and such causes are without the failure or negligence of the affected party. Such unforeseen causes include, but are not limited to, acts of God, fire, flood, epidemic, pandemic, strike, work stoppage or other labor difficulty, acts of governmental authority, federal, state or local laws, orders or regulations, embargo, war, terrorist act, riot, civil commotion, and/or insurrection, or by any other event or circumstance of whatsoever kind or nature not within the control of the affected party which, by the exercise of reasonable diligence such party is unable to prevent, whether or not similar or dissimilar to any of the foregoing class of events or circumstances ("**Force Majeure Event**"). For the avoidance of doubt, economic hardship of an affected party shall not be considered a Force Majeure Event.

In the event of a Force Majeure Event, the time for performance by the affected party shall be extended by a period of time equal to the time lost by reason thereof. The affected party will: (a) promptly notify the non-affected party in writing of any causes or circumstances claimed to constitute a Force Majeure Event, the obligations which will be affected by such Force Majeure Event, the measures taken or to be taken to minimize the impact thereof, and the schedule upon which such measures will be implemented, the anticipated duration of the failure to perform or delay, and documented evidence supporting the claim; and (b) use reasonable commercial efforts to mitigate the effect of such failure to perform or delay and to remedy the impact on the Work. The non-affected party will review the claim and advise the affected party in writing of the decision regarding the claim for extension of time for performance of the Agreement.

## **ARTICLE 23 – MISCELLANEOUS**

- A. Assignment and Subcontractors.

1. Supplier may not assign any rights or claims, or delegate any duties under the Agreement, in whole or in part, without Purchaser's prior written consent, which shall not be unreasonably withheld. In the event of any assignment, subcontracting or delegation permitted hereunder, Supplier shall continue to be liable for the performance of its obligations hereunder.
  2. If Supplier proposes to subcontract any portion of the Work, it shall submit to Purchaser the name of each proposed Subcontractor(s) prior to engaging such Subcontractor, with the proposed portion of the Work and such information about the Subcontractor(s) as Purchaser may request. Purchaser may reject any and all Subcontractors at its absolute discretion. Supplier shall not be relieved of any responsibility or obligations under the Agreement by subcontracting any portion of the Work, whether or not such proposed subcontract is approved by Purchaser.
  3. All subcontracts and materials purchase orders shall contain provisions that flow-down to each Subcontractor or supplier the Supplier's obligations and undertakings to Purchaser under this Agreement, including without limitation obligations and undertakings related to the waiver of mechanics' lien rights, termination for cause and for convenience, insurance, force majeure, and confidentiality. In addition, each such subcontract or materials purchase order shall contain a provision binding the Subcontractor or materials supplier to join in any litigation or dispute involving their Work.
  4. This Agreement is binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.
- B. Non-Waiver. The delay or failure of either party to assert or enforce the strict performance of any of the terms of the Agreement or to exercise any rights hereunder, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights at any later time or on any future occasion.
- C. Severability. If any portion of the Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of the Agreement, and the parties further agree to substitute for the invalid provision, a valid provision that most closely approximates the economic effect and intent of the invalid provision.
- D. Cumulative Rights. Purchaser's rights and remedies set forth in the Agreement are cumulative and not exclusive, are in addition to any other rights and remedies provided at law, in equity, or under the Agreement, and may be pursued separately or concurrently as Purchaser determines.
- E. Governing Law, Jurisdiction and Venue. All matters of dispute between the parties, whether regarding, arising from or relating to the Agreement, or arising from alleged extra-contractual facts prior to, during, or subsequent to formation of the Agreement, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or violation of contract shall be governed, construed, and enforced in accordance with the laws of the State of Ohio for both substantive and procedural matters (without giving effect to conflict of laws principles) regardless of the theory upon which such matter is asserted. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods. Any legal suit, action, or proceeding regarding, arising from or relating to the Agreement, may be (and, if against Purchaser, must exclusively be) instituted in a state or federal court in Summit County, Ohio. Supplier waives any objection it may have now or hereafter regarding the jurisdiction or venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.
- F. Interpretation. The following principles of interpretation shall apply to the Agreement: (1) paragraph headings and captions are inserted for convenience only and shall not constitute a part of the Agreement and shall not be considered in construing intent, meaning, content or construction; (2) neither Purchaser nor Supplier shall be considered to be the party responsible for drafting any particular provision of the Agreement; (3) the words "hereof," "herein," "hereunder," and words of similar import shall refer to the Agreement as a whole and not to any particular provision hereof; (4) the word "including" means "including, but not limited to" and shall be interpreted as broadly as possible; (5) words in the singular include the plural and vice versa; (6) all references to "days" shall be calendar days (and not merely business days, unless the Agreement so states); (7) any provision hereof that is prohibited or unenforceable shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction and the prohibited or unenforceable provision shall be reformed or modified to reflect the parties' intent to the maximum extent permitted by applicable legal requirements; and (8) if any conflict arises between a term defined in this document and a term (defined or otherwise) contained in another document comprising a part of the Agreement, the conflict shall be resolved in favor of the more specific defined term unless the context clearly indicates otherwise.
- G. Execution and Counterparts. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement. Delivery of a copy of this Agreement by facsimile transmission, by electronic mail in "portable document format" ("pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall have the same effect as physical delivery of the paper document bearing the original signature.

**IN WITNESS WHEREOF**, the Purchaser and Supplier hereto have executed this Agreement, by their duly authorized agents.

AGENT FOR PURCHASER  
FirstEnergy Service Company

SUPPLIER  
Supplier Display Name

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

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

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

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