

**FIRSTENERGY SERVICE COMPANY – GENERAL TERMS AND CONDITIONS  
FOR PURCHASE OF CONSULTING SERVICES**

**ARTICLE I - DEFINITIONS**

The following terms, when used in this Agreement with initial capitalization, shall have the meanings given below unless in any particular instance the context clearly indicates otherwise:

- A. "Consultant," the party to be engaged in performing consulting services under the terms of this Agreement, is in the business of providing such consulting services, products, deliverables, outcomes and results.
- B. "Data" - Material that includes documentation, manuals, maps, plans, schedules, programs, specifications, software, reports, drawings, designs and other relevant information;
- C. "Purchaser" means FirstEnergy Service Company for itself and/or as an authorized agent of the affiliate company or companies set forth on the face of the Request for Proposal and/or Purchase Order attached hereto for which the services as specified elsewhere herein shall be performed hereunder. If more than one company is identified as the Purchaser, the liability of each company named shall be several and not joint and shall be limited to such company's interest in this Agreement, as identified on the Request for Proposal and/or Purchase Order.
- D. "Purchaser's Site" includes generating stations, steam plants, substations, transmission and distribution lines, towers, poles, buildings, or other locations owned or leased by Purchaser, for which the Work is intended, to which the Work is to be delivered or where the Work is to be carried out (if it is not to be performed at the facility of Consultant or others).
- E. "Specifications" means the portion of this Agreement that describes the products and services to be delivered by Consultant under this Agreement, including dimensions, components, attachments, technical and non-technical requirements and characteristics, standards, performance requirements, and tolerances. Should any conflict occur between portions of the Specifications and these terms and conditions, the Specifications shall take precedence only when and to the extent that such does not result in any way in the dilution or diminution of the rights or benefits of the Purchaser under these terms and conditions.
- F. "Work" means all services, labor, materials, equipment, Data, and other obligations covered by or intended for Consultant to perform or supply under this Agreement, as specified in the Purchase Order, together with miscellaneous expendable job supplies, installation related equipment and/or tools, transportation, facilities and/or services for the complete execution of the Agreement.

**ARTICLE II – TERMS OF AGREEMENT**

- A. Agreement. The terms and conditions set forth in this document, together with the Request for Proposal and/or Purchase Order and all attachments, exhibits, revisions, and supplements thereof, shall constitute the agreement between Purchaser and Consultant (the "Agreement"). In case of any error, inconsistency or omission in the various documents of the Agreement, the matter will be submitted immediately to Purchaser, without whose decision said discrepancy shall not be adjusted by Consultant.
- B. Offer and Acceptance. Consultant's acknowledgement, commencement of performance to furnish the materials, equipment, or services which are the subject of this Agreement, or any conduct by Consultant which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Consultant of this Agreement and all of its terms and conditions. Acceptance of this Agreement is expressly limited to Consultant's assent to all of the terms and conditions of this Agreement. Additional or different terms provided in Consultant'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 Request for Proposal and/or Purchase Order herewith shall be deemed material and are hereby objected to and rejected. If this Agreement shall be deemed an acceptance by Purchaser in response to an offer by Consultant and if any terms herein are additional to or different from any terms of such offer, then the issuance of this Agreement by Purchaser shall constitute an acceptance expressly conditioned upon Consultant's assent to all of the terms and conditions of this Agreement. Additional or different terms in any acknowledgement, invoice, or communication submitted by Consultant, or any attempt by Consultant to vary in any degree any of the terms of this Agreement, unless expressly agreed to by Purchaser, shall be deemed material and are hereby objected to and rejected. Any such terms proposed by Consultant, whether by offer or acceptance, shall be void unless expressly agreed to in writing by Purchaser.
- C. Integration; Modification. This Agreement sets forth the entire agreement of Purchaser and Consultant concerning the subject matter hereof. No other agreements or understandings, whether written or oral, whether express or implied, shall be binding on Purchaser and Consultant. No amendment, modification, or rescission of this 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.
- D. Non-Exclusivity. This 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.
- E. Audit. Purchaser shall have the right to audit books and records of Supplier upon reasonable notice for the purpose of confirming the amount due Supplier under this Agreement.

**ARTICLE III - CONSULTANT'S PERSONNEL**

- A. Relationship of Parties. In performing the Work, Consultant shall operate as and have the status of an independent Consultant and shall not act as or be an agent or employee of Purchaser. Nothing in this 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 Consultant.
- B. Employees. Consultant shall employ for the Work only persons known to it to be experienced, qualified, reliable and trustworthy. At Purchaser's request, the credentials of any of Consultant'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 Consultant employee who, in Purchaser's opinion, does not meet these criteria. In such case, Consultant shall, at its expense and risk, immediately replace or remove such employee.
- C. Background Checks. Consultant shall make best efforts to ensure that Consultant's employees assigned to Purchaser do not have criminal records and are not involved in criminal activity which could create a risk to Purchaser's Site, customers, and/or employees. Upon actual knowledge of a criminal record or involvement in criminal activity, Consultant shall immediately remove said employee or employees from the Work. Purchaser, at any time, may request Consultant to verify that an employee or employees does not possess a criminal record. Consultant shall provide certification for each of Consultant's employees, who are authorized as part of the Work to have electronic or unescorted physical access to Critical Cyber Assets (as the same are identified by Purchaser from time to time), that such employee: (i) has been submitted to a Background Check within the past seven years whereby no evidence of a criminal record or criminal activity was discovered; (ii) is subject to a seven-year cycle re-check of the Background Check; and (iii) has received the Purchaser-sponsored Security Awareness training or will receive such training prior to accessing Critical Cyber Assets. These requirements are subject to audit and certification by Consultant upon request by Purchaser.
- D. Substance Abuse. Consultant agrees to comply with all applicable state and federal laws regarding drug-free workplace. Consultant shall make a good faith effort to ensure that all Consultant's employees, while working on Purchaser's property, will not be under the influence, purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- E. Gifts and Gratuities/Conflicts of Interest. Purchaser ("FirstEnergy") enforces policies governing the conduct of its employees in carrying out its business activities, including contact with third-party business partners. The conflicts of interest & gifts and gratuities policies generally prohibit FirstEnergy employees and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel or entertainment) from existing or potential customers, suppliers, or contractors that are more than a nominal value, or that exceed the level of standard business courtesies, and the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits FirstEnergy employees and/or their family members from serving as an officer, director, employee, consultant, agent, or Buyer of a beneficial interest in an organization which has a business relationship with FirstEnergy as a supplier or contractor, if the FirstEnergy employee is in a position to influence

decisions concerning the relationship. The entire text of these policies may be found within the Supply Chain Section at [www.firstenergycorp.com](http://www.firstenergycorp.com). Suppliers and prospective suppliers to FirstEnergy are expected to be aware of and comply with these policies in their dealings with FirstEnergy 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 the Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.*

#### **ARTICLE IV – SCOPE OF WORK**

Consultant agrees to provide Purchaser with professional consulting services (the "Work") as defined in the Request for Proposal/Purchase Order. The Work shall include providing all data, technical information, reports, deliverables, products, outcomes, results, information, new discoveries, inventions, improvements, technical consulting or other technical services (including but not limited to design services, analytical services, quality assurance, and the like), direction of any work or performance of any labor, and all other facilities and services which are necessary for the performance of this Agreement by the Consultant.

#### **ARTICLE V – COMPENSATION AND TERMS OF PAYMENT**

- A. Compensation for the Work performed, as well as the terms of payment thereof, shall be as described on the face of the Request for Proposal/Purchase Order.
- B. For Work specified by Purchaser to be performed on a time and materials basis, each invoice must: (a) detail by activity the man-hours worked by Consultant; (b) detail by activity the labor cost; (c) detail the direct reimbursable costs in connection with the Work; (d) indicate the cumulative cost to date for all activities; (e) indicate the total monthly cost of the Work; and (f) include other information reasonably required by Purchaser.
- C. Each invoice shall, after approval by the Purchaser, be processed for payment in accordance with the terms of payment as set forth on the face of the Request for Proposal/Purchase Order, for the amount of each approved invoice less any monies retained per the terms of payment or under Section D below.
1. Unless otherwise set forth herein, payment terms are 2%10 Net 45 Days. Payment dates shall be calculated from the date of receipt of invoice or acceptance of the Work by Purchaser, whichever is later. Payments by Purchaser shall not be deemed evidence of acceptance by Purchaser of the services or goods called for hereunder.
  2. Electronic Invoices. If it is reasonably able, Supplier shall utilize the Purchaser's then current Electronic Invoice Presentation and Payment Program to submit invoices and receive payment electronically from Purchaser.
- D. Withholding.
1. If Purchaser has a claim under this Agreement, regardless of when it is discovered, including a claim that: (a) Consultant's invoice is erroneous; (b) the Work is deficient, defective or incomplete; (c) a third party claim has been asserted or there is reasonable evidence indicating the possibility of a claim; (d) Consultant fails to make a payment as and when due to a subcontractor or supplier for materials, labor or equipment; (e) Purchaser, another Consultant, subcontractor, or other party suffers damage or injury which is attributable to Consultant; or (f) Consultant has failed to supply any affidavit, release or waiver of lien which Purchaser may require pursuant to law; then Purchaser may withhold payment of, or set off the amount of its claim, costs, and/or losses against, any amount invoiced to it. If any monies are so withheld, they shall be paid only when, without cost to the Purchaser, the cause of such withholding has been eliminated. Moreover, if any monies are so withheld, Purchaser shall not be responsible for any interest payment to Consultant.
  2. New Jersey Withholding. If applicable, in accordance with New Jersey law, we shall withhold a portion of payments made to you (Supplier, Contractor, Consultant, or similar party) for services to construct, improve, alter, or repair a building, structure, or improvement to real property unless you provide written documentation that you are a corporation or registered with the State of New Jersey.
- E. Consultant is deemed to be self-employed; and accordingly, no sums are contemplated to be withheld from Consultant's compensation to cover the payment of income taxes, FICA (social security), FUTA (unemployment compensation) or other taxes. Consultant agrees to file all required federal, state and local income tax and other tax returns (including, without limitation, all required declarations of estimated tax) covering Consultant's compensation hereunder. Consultant agrees to pay all such taxes and contributions when due; and Consultant hereby indemnifies Purchaser and holds it harmless from and against any and all loss, cost and liability whatsoever incurred by or claimed against Purchaser for any failure of Consultant to comply herewith.

#### **ARTICLE VI - STANDARD OF PERFORMANCE**

- A. Consultant warrants that it shall perform and supply the Work with the care, skill, and diligence set forth by the applicable professional standards, if any, currently recognized by such profession. Consultant warrants that it shall be responsible for the quality, technical accuracy, completeness, delivery, and implementation of the Work. Consultant warrants that the Work shall be free from defects and shall conform to the requirements of this Agreement.
1. In the event that there are no such standards, the Work shall be performed with due diligence and with the best efforts of the Consultant.
  2. Purchaser's review and approval of Consultant's or its Subcontractor's specifications, drawings, plans and other such documents shall in no way relieve or lessen Consultant's responsibilities set forth in this Agreement.
- B. Consultant shall cure any breach of the foregoing warranties at no cost to Purchaser and shall reimburse Purchaser for any damages that may be incurred by Purchaser as a result of reliance by Purchaser, its employees, agents, other Consultants or subcontractors on such Work or anticipated performance by Consultant. If Consultant should fail to cure such breach or if Purchaser determines that Consultant will be unable to cure such breach before the scheduled time of completion, Purchaser may correct such breach itself or through a third party and charge Consultant for the costs incurred therefor. The rights and remedies of the Purchaser set forth in this Section are in addition to any other rights and remedies provided by law.

#### **ARTICLE VII - INTELLECTUAL PROPERTY RIGHTS**

- A. Ownership of Work and Data. The Work and all Data associated with the Work, 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 all intellectual property rights therein (including the rights to any patent, trademark or service mark, trade secret, and copyright therein). Consultant hereby agrees that any materials and works of authorship conceived or written by Consultant during the term of this Agreement that pertain 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., and that Purchaser, as the entity for which the work 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 materials are not deemed to be a "work made for hire," Consultant will assign to Purchaser ownership of all right, title, and interest in and to such materials, including ownership of the entire copyright therein.
- B. Infringement. Consultant warrants that the goods and services provided by Consultant hereunder are and will be original, do not and will not infringe on or misappropriate any United States or foreign patent, copyright, trademark, or other intellectual property rights of any third party, and have not been and will not be previously assigned, licensed or 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, Consultant shall, at its expense and within a reasonable time, either (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 license or otherwise, or (2) replace the Work or such portion thereof with non-infringing Work that meets the requirements of this 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. Data Furnished by Purchaser. All Data furnished by Purchaser in connection with the Work shall remain Purchaser's exclusive property. Consultant shall not use Purchaser-furnished Data for any purpose other than for the Work. Consultant shall: (1) sign and deliver a written itemized receipt for all Purchaser-furnished Data and shall be responsible for its safekeeping, and (2) return such Purchaser-furnished Data and all copies thereof to Purchaser upon completing the Work.

#### **ARTICLE VIII - INDEMNITY**

- A. Consultant's Indemnity. Consultant shall indemnify, defend, and hold harmless Purchaser, its subsidiaries and affiliates, and 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, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Consultant's obligations under this Article VIII) (collectively, "Losses"), which any of the Indemnified Parties may suffer or incur in whole or in part arising out of or in any way related to the Work performed or to be performed, the presence of Consultant and/or its Subcontractors at Purchaser's Site, and/or the actions or omissions of Consultant and/or its Subcontractors, including, without limitation, Losses relating to: (1) bodily or mental injury to or death of any person, including, without limitation, any person employed by Purchaser, by Consultant, or by any Subcontractor; (2) damage to or loss of use of property of Purchaser, Consultant, any Subcontractor, or any third party; (3) any contractual liability owed by Purchaser to a third party; (4) any breach of or inaccuracy in the covenants, representations, and warranties made by Consultant under this Agreement; and/or (5) any violation by Consultant or any Subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority; subject, however, to the limitations provided in Section VIII(B) (for Work performed in Pennsylvania), or Section VIII(C) (for Work performed in states other than Pennsylvania). Purchaser shall be entitled to control the defense of any action indemnified hereunder, with legal counsel of its own choosing.
- B. WITH RESPECT TO WORK PERFORMED OR TO BE PERFORMED WITHIN THE COMMONWEALTH OF PENNSYLVANIA, Consultant's indemnity obligations under Section VIII(A) shall apply in each case whether or not caused or contributed to by the fault or negligence of any or all of the Indemnified Parties, and Consultant expressly agrees that Consultant will indemnify, defend, and hold harmless the Indemnified Parties in connection with Section VIII(A) even if any such Losses are caused in whole or in part by the sole or concurrent negligence of one or more of the Indemnified Parties. Consultant agrees to waive and release any rights of contribution, indemnity, or subrogation it may have against any of the Indemnified Parties as a result of an indemnity claim asserted by another Indemnified Party under Section VIII(A). Section VIII(A) is intended to be an express written contract to indemnify as contemplated under Section 303(b) of the Pennsylvania Workers' Compensation Act (or any successor to such provision).
- C. WITH RESPECT TO WORK PERFORMED OR TO BE PERFORMED AT ANY LOCATION WHICH IS NOT WITHIN THE COMMONWEALTH OF PENNSYLVANIA, Consultant's indemnity obligations under Section VIII(A) shall not apply to any Losses to the extent such Losses are found to have been initiated or proximately caused by or resulting from the negligence or willful misconduct of any of the Indemnified Parties.
- D. Waiver of Immunities. If an employee of Consultant 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 Consultant, for itself, its successors, assigns, and Subcontractors, hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby Consultant could preclude its joinder by such Indemnified Party as an additional defendant, or avoid liability for damages, contribution, defense, or indemnity in any action at law, or otherwise. Consultant's obligation to Purchaser herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Consultant under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Consultant or anyone employed directly or indirectly by Consultant or anyone for whose acts Consultant may be liable.
- E. No Impairments. Consultant's obligations under this Article VIII shall not be limited to the extent of any insurance available to or provided by Consultant.

#### **ARTICLE IX - INSURANCE**

- A. Consultant's Insurance. Consultant agrees to secure and maintain in force minimum policies of insurance of the types listed below and shall furnish to Purchaser, prior to starting Work and throughout the duration of the Work, certificates of insurance evidencing current coverage listed below. These certificates shall be endorsed with substantially the following language:
- "This policy will not be canceled or allowed to lapse, and no change shall be made in this policy which alters, restricts or reduces the insurance provided or changes the name of the insured without first giving at least thirty (30) days' notice in writing to FirstEnergy Service Company, Insurance Risk Management, 76 South Main Street, Akron, Ohio 44308, with receipt of notice acknowledged."
1. Commercial General Liability (CGL) insurance including products-completed operations, independent contractors, and contractual liability coverages. Coverage under this policy shall have limits of liability of not less than \$2,000,000 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.
- 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 as an additional insured for CGL and Automobile Liability policies, it being understood that said policies shall be primary and non-contributory with insurance carried by Purchaser and shall contain a cross-liability clause providing severability of interests so that coverage will respond as if separate policies were in force for each insured. A signed copy of the endorsement adding FirstEnergy Corp. and its subsidiaries and its affiliates as an additional insured shall be attached to the certificate of insurance providing general liability coverage.
- C. Lapse of Coverage. In the event of cancellation or lapse of or prohibited change in any policy for which a certificate is required to be furnished under this Agreement, Purchaser shall have the right to suspend the work of Consultant 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 such insurance shall be about to lapse or be canceled, Consultant shall, at least thirty (30) days before coverage thereunder ceases, obtain a new policy with like coverage, and if Consultant fails to do so, Purchaser may obtain insurance protecting it from the hazards covered by such lapsed or cancelled policy, and all premiums and expenses of such insurance shall be charged against Consultant and shall be a legitimate deduction from any sum due it from Purchaser.
- D. Waiver of Subrogation. Consultant and any of its Subcontractors shall waive and hereby waives any rights of subrogation which they or any of their insurers may have against Purchaser, its affiliates, and each non-affiliated company disclosed in this Agreement, their respective agents or employees.

#### **ARTICLE X - TERM & TERMINATION**

- A. Purchaser may terminate this Agreement at any time, including with respect to any Work in process, if (a) Consultant fails to obtain, or maintain as valid, any license, permit or approval required to allow lawful performance of the Work; (b) Purchaser determines, in its sole discretion, that Consultant is not complying with any law; (c) Consultant has failed to perform the Work in accordance with the acceptable practices and

customary diligence of the profession or industry of which Consultant is a member or in a timely way; (d) Consultant breaches any material term or condition of this Agreement; or (e) Purchaser determines, in its sole discretion, that Consultant is not financially stable or responsible. Notice of termination pursuant to this Paragraph X(A) shall be in writing and shall be effective upon receipt thereof.

- B. Purchaser may terminate this Agreement for any reason at any time upon ten (10) days prior written notice. In the event of termination under this Section X, Consultant shall be entitled to and shall receive payment in full for all services provided and all reimbursable expenses incurred up to and including the effective date of termination.

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

- A. During the performance of this Agreement, Consultant 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 Secretary of Labor, in connection with the Work, Consultant agrees as follows:
1. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. 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. Consultant 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. Consultant 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, sex or national origin.
  3. Consultant 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 Consultant'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); and
    - e. Executive Order 11625 and Public Law 95-507 (Utilization of Disadvantaged Business Enterprises), and shall post copies thereof in conspicuous places available to employees and applicants for employment.
- C. Because Purchaser (or if applicable, one or more affiliates or non-affiliated companies) is a supplier of electricity and/or services to the U.S. government, it must include, and Consultant shall comply with, the below listed clauses from the Federal Acquisition Regulation ("FAR"), 48 Code of Federal Regulations Chapter 1, as amended from time to time, if the applicable criteria specified in the FAR (those currently applicable are summarized parenthetically) are met. If Consultant's subcontracts meet such criteria, Consultant shall include the terms or substance of the applicable clause in its subcontracts. If the provisions of this paragraph C conflict with the balance of the Agreement, this paragraph C shall prevail.
1. 52.203-6 Restrictions on Subcontractor Sales to the Government (required in all subcontracts under this Agreement which exceed \$100,000);
  2. 52.203-7 Anti-Kickback Procedures (required in all subcontracts under this Agreement which exceed \$100,000, other than those for commercial items);
  3. 52.204-2 Security Requirements (required in all subcontracts under this Agreement which involve access to classified information);
  4. 52.219-8 Utilization of Small Business Concerns (required in all non-personal subcontracts with a value greater than \$100,000);
  5. 52.219-9 Utilization of Small Business Concerns will be included in all subcontracts that offer further subcontracting opportunities, and that Purchaser will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction) to adopt a subcontracting plan that complies with the requirements of this clause;
  6. 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation (required in all subcontracts exceeding \$100,000, unless otherwise exempted);
  7. 52.222-26 Equal Opportunity (required in all contracts/subcontracts; however, if the cumulative value of nonexempt Federal contracts/subcontracts is \$10,000 or less in any 12 month period, including the 12 months preceding the award, the contractor/subcontractor is exempt from the clause requirements);
  8. 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (required in all contracts/subcontracts with a value of \$10,000 or more);
  9. 52.222-36 Affirmative Action for Workers with Disabilities (required in all contracts/subcontracts with a value of \$10,000 or more);
  10. 52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (required in all contracts/subcontracts with a value of \$10,000 or more);
  11. 52.223-14 Toxic Chemical Release Reporting (Except for acquisitions of commercial items, and unless otherwise exempt, this clause is required for competitive subcontracts expected to exceed \$100,000, including all options, and in any resultant subcontract exceeding \$100,000, including all options);
  12. 52.225-13 Restrictions on Certain Foreign Purchases (required in all subcontracts for contracts with a value exceeding \$2,500, unless otherwise exempted);
  13. 52.222-11 Subcontracts (Labor Standards) (required in all service contracts in excess of \$2,000 for construction within the United States) This provision requires that the following clauses be inserted into contracts meeting the criteria: Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination—Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility.
  14. 52.222-41 Service Contract Act of 1965, as Amended (required in all service contracts subject to the Act (i) which exceed \$2,500; or (ii) which are for an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less).
- D. Consultant 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. Consultant shall confirm that these regulations either do not apply to Consultant's activities under the terms of this Agreement or that Consultant has procedures to ensure compliance. If Consultant is directly or indirectly employing a foreign national not currently lawfully admitted to the United States for permanent residence to perform work under this Agreement, Consultant warrants to Purchaser that such employment does not violate the foregoing regulations.
- E. FOREIGN CORRUPT PRACTICES ACT PROVISIONS The following provisions shall apply to Consultant (unless it is a foreign concern) if it performs or obtains any of the Work in a foreign country:
1. All payments to Consultant 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 Consultant. All payments due hereunder shall be made to Consultant at its principal place of business in the United States, even if Consultant performs or obtains the Work in a foreign country.

2. Consultant represents that it is familiar with the Foreign Corrupt Practices Act (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. Consultant 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. Consultant 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 request any Work by Consultant that would or might constitute any such violation.
  4. Purchaser may terminate the Contract for default at any time, without any liability or obligation, if it believes, in good faith, that Consultant has violated this Article. Any action by Consultant which would or might constitute a violation of the FCPA, or a request for such action from Consultant's representative, shall result in immediate termination of the Contract for default. Should Consultant ever receive, directly or indirectly, from any Purchaser representative a request that Consultant believes will or might violate the FCPA, Consultant shall immediately notify Purchaser's general counsel.
  5. Purchaser may disclose the existence and terms of the Contract, 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. Consultant shall comply with the Occupational Safety and Health Act of 1970 and all rules, regulations, standards, requirements, and revisions thereof or adopted pursuant thereto.
- G. Unless this Agreement otherwise provides, Consultant 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 which have insured any of the Work.
- H. Any costs, fines, penalties, awards, damages or other liabilities associated with any violations of this Article shall be borne and paid by Consultant.
- I. If applicable, Consultant agrees to comply with all Hazard Communication Standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et seq., as amended, to insure that chemical hazards produced, imported, or used with the workplace are evaluated, and that hazard information is transmitted to affected employees of Consultant, of any subcontractor or of Purchaser.
- J. Consultant acknowledges and agrees that its employees, if given access to FirstEnergy's (FirstEnergy Corp., its subsidiaries and affiliates) Information and Control Systems, may be required to sign an agreement governing Consultant's and such employees' use of such systems.
- K. Consultant shall comply with all requirements of any governmental regulatory codes of conduct applicable to the work performed under this Agreement, including the FERC Standards of Conduct (Order No. 2004); New Jersey BPU Affiliate Relations, Fair Competition, and Accounting Standards (N.J.A.C. 14:4-5.1 et seq.); Ohio Corporation Separation Rules (O.A.C. 4901:1-20-16); and Pennsylvania PUC Competitive Safeguard regulations (52 Pa. Code §§ 54.121 and 54.122); or any successor to those provisions.
- L. Consultant shall comply with all requirements of Executive Order 13201 (E.O. 13201) mandating Government contractors and subcontractors to post to inform their employees that under Federal law they have certain rights related to union membership and the use of union dues and fees.

**ARTICLE XII- SET-OFF**

Purchaser shall be entitled at all times to set-off any amount owing from Consultant to Purchaser or any affiliate of Purchaser against any amount payable by Purchaser hereunder, and in no event shall Purchaser be liable for interest.

**ARTICLE XIII – LIMITATION OF LIABILITY**

Under no circumstances shall Purchaser, its subsidiaries and affiliates, be liable for any anticipated profits or for incidental or consequential damages.

**ARTICLE XIV – ASSIGNMENT AND SUBCONTRACTS**

- A. Consultant may not assign any rights or claims, or delegate any duties under this Agreement, in whole or in part, without the prior written consent of Purchaser, which may be withheld at Purchaser's sole discretion. In the event of any assignment or delegation permitted hereunder, Consultant shall continue to be liable for the performance of its obligations hereunder. For purposes of this Agreement, the term "assignment" shall include a transfer of Consultant's rights hereunder, and/or a succession to its obligations hereunder (i) by operation of law, including a merger, consolidation, corporate reorganization, reclassification or liquidation of Consultant or a sale of all or substantially all of Consultant's assets, or (ii) by a change in the control of Consultant. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of Consultant's management and policies, whether through ownership of or the right to vote a majority of the voting stock in the case of a corporation, or the comparable interest in the case of any other entity, or by contract, or otherwise.
- B. If Consultant proposes to subcontract any of the Work hereunder, it shall submit to Purchaser the name of each proposed Subcontractor(s) prior to engaging such Subcontractor, with the proposed scope of the Work to be undertaken and such information about the Subcontractor(s) as Purchaser may reasonably request. Purchaser may reject any and all Subcontractors at its absolute discretion.

**ARTICLE XV - NON-WAIVER**

The delay or failure of either party to assert or enforce in any instance strict performance of any of the terms of this Agreement or to exercise any rights hereunder conferred, 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.

**ARTICLE XVI-- PROHIBITION OF PUBLICITY**

Consultant shall not refer to this Agreement or reference the Purchaser, its subsidiaries and affiliates, directly or indirectly, in its advertising or promotional materials without express written consent of Purchaser.

**ARTICLE XVII CONFIDENTIALITY**

- A. Consultant agrees that the Work, Data, drawings, plans, specifications, calculations, reports and other documents and information associated with the Work, regardless of form, and any information that Consultant receives from Purchaser, or observes in connection with its business dealings with Purchaser, shall be deemed and treated by the parties as the confidential information of the Purchaser (referred to herein as "Confidential Information"). Consultant shall return Data and Confidential Information to Purchaser upon completion of performance of this Agreement.
- B. Consultant shall not use or disclose Confidential Information for any reason or purpose without the prior written consent of the Purchaser. Consultant may use Confidential Information for the sole purpose of the performance of this Agreement for the benefit of the Purchaser. Consultant will take all precautions and actions to prevent sale, transfer, sublicense, use or disclosure of Confidential Information to any third party.
- C. Notwithstanding, the restrictions set forth in this Article XVII shall not apply to Confidential Information: (a) which is in the public domain at the time it was disclosed by Purchaser to Consultant; or (b) which can be demonstrated by written records was already known to Consultant prior to the time it was disclosed to Consultant by Purchaser; or (c) which is independently developed by employees of Consultant who did not receive Confidential Information and who developed without the use or benefit of Confidential Information; or (d) which is disclosed to Consultant from a source other than Purchaser without breach of this or any other agreement by the person disclosing to the Consultant and without breach of this Agreement or any other duty of the Consultant.

**ARTICLE XVIII-- SEVERABILITY**

If any portion of this Agreement is held invalid, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and the Parties further agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

#### **ARTICLE XIX - FORCE MAJEURE**

Neither party shall be liable to the other for any expenses, loss or damage resulting from delays or prevention of performance arising from causes beyond its reasonable control caused by fire, flood, accident, strikes, civil commotion, governmental or military authority, insurrection, riots, embargo, unavoidable delays in transportation, acts of God, or public enemy. In the event of any delay arising by reason of any of the foregoing events, the time for performance shall be extended by a period of time equal to the time lost by reason of such delay or as otherwise agreed to in writing by the parties. The Consultant will notify the Purchaser as soon as reasonably practical and in writing within forty-eight (48) hours of the Consultant's becoming aware of a force majeure occurrence as defined herein which will or has caused a delay. Within seven (7) working days of such occurrence, the Consultant will further define the precise cause or causes of the delay, the measures taken or to be taken to minimize the delay, the time table by which the measures will be implemented, the duration of the delay, the extension of time for performance of the Agreement the Consultant is claiming and documented evidence that support the claim. The Purchaser will review the Consultant's claim and advise the Consultant in writing of Purchaser's decision regarding the Consultant's claim for extension of time for performance of the Agreement.

#### **ARTICLE XX - SALES TAX**

Taxes, if any, shall be shown separately on any bids or invoices sent to Purchaser. Direct Payment Permit Numbers authorizing purchase of tangible personal property without payment of the tax at the time of purchase, have been issued to Purchaser. The Permit Numbers are 98001123 for Ohio Edison Co., 128 for Pennsylvania Power Co., 98002722 for FirstEnergy Nuclear Operating Co., 98000312 for The Cleveland Electric Illuminating Co., 98001495 for The Toledo Edison Co., DP-210-485-010 for Jersey Central Power and Light Co., 127 for Pennsylvania Electric Company Co., 135 for Metropolitan Edison Co. and 98-002723 for FirstEnergy Generation Corp. In Michigan, a Michigan Sales and Use Tax Certificate of Exemption shall be made available upon request. Purchaser agrees to maintain adequate records of all purchases and pay tax on the taxable items directly to the Treasurer of each respective State. In Ohio, Direct Payment Permits do not apply to construction contracts under which the contractor is considered to be the consumer and liable for the tax on materials incorporated into a structure or improvement as provided in Section 5739.01 (B) Ohio Revised Code. Pennsylvania Direct Payment Permits do not apply to construction contracts under which a contractor is considered to be the consumer and liable for the tax on materials incorporated into the property of Pennsylvania companies. Pennsylvania Sales and Use Tax Regulations Sections 31.11 through 31.16 provide for tax-exempt purchase of materials by a contractor for those materials that will be incorporated into and become a part of the property of Pennsylvania companies. In order to qualify, the property must be directly used in the rendition of the Public Utility Service. Contract bids should be submitted accordingly. The successful bidder will be issued a properly executed "Certification" form upon request to permit tax-exempt purchase of qualifying materials.

*Questions concerning Pennsylvania or New Jersey sales taxes should be directed to the FirstEnergy Service Company, at (973) 401-8383. Questions about Ohio sales taxes (and states other than Pennsylvania or New Jersey), should be directed to the FirstEnergy Service Company, at (330) 384-5334.*

#### **ARTICLE XXI - GOVERNING LAW**

Unless otherwise stated on the face of the Purchase Order, this Agreement is to be governed by and interpreted in accordance with the law of the State of Ohio. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. Any legal suit, action, or proceeding to collect payment due hereunder from Purchaser, or otherwise arising out of or relating to this Agreement, may be (and, if against Purchaser, must exclusively be) instituted in a State or Federal Court in the County of Summit, State of Ohio, and Consultant waives any objection which it may have now or hereafter to the laying of the 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.

#### **ARTICLE XXII - INTERPRETATION**

The following principles of interpretation shall apply to this Agreement: (i) paragraph headings and captions are inserted for convenience only and shall not be considered in construing intent; (ii) neither Purchaser nor Consultant shall be considered to be the party responsible for the drafting of any particular provision of this Agreement; (iii) the words "hereof," "herein," "hereunder," and words of similar import shall refer to this Agreement as a whole and not to any particular provision hereof; (iv) the word "including" means "including, but not limited to" and shall be interpreted as broadly as possible; (v) words in the singular include the plural and vice versa, (vi) All references to "days" shall be calendar days (and not merely business days, unless the Agreement so states), and (vii) any provision hereof that is prohibited or unenforceable in any jurisdiction 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 provision that is prohibited or unenforceable shall be reformed or modified to reflect the parties' intent to the maximum extent permitted by applicable legal requirements.

#### **ARTICLE XXIII - EXECUTION AND COUNTERPARTS**

This Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.