

**FIRSTENERGY SERVICE COMPANY – GENERAL TERMS AND CONDITIONS  
FOR PURCHASE OF CONSTRUCTION (MATERIALS, LABOR, AND PROFESSIONAL) 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. "Contractor" means the person or entity which entered into this Agreement with Purchaser and is furnishing the permanent materials and equipment, labor, professional services, supervision, installation related equipment and/or tools, miscellaneous job supplies, transportation, facilities and/or services as specified in the Work scope.
- B. "Data" means material that includes documentation, manuals, maps, plans, schedules, programs, specifications, software, reports, drawings, designs and other relevant information.
- C. "Material Supplier" means any person or entity having a contract with anyone other than Purchaser for furnishing materials, equipment, tools, or supplies in connection with the Work.
- D. "Purchaser" means FirstEnergy Service Company for itself and/or as an authorized agent of the affiliated company or companies set forth on the face of the Purchase Order attached hereto for which the services specified herein shall be performed. If more than one company is identified as 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 Purchase Order.
- E. "Purchaser's Site" means Purchaser's generating station, substation, transmission and distribution lines, towers, building, or other location, as designated 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 Contractor or others), as the case may be.
- F. "Purchaser's Superintendent" means Purchaser's representative as designated in writing by Purchaser. Purchaser's Superintendent is responsible for the acceptance or rejection of Work.
- G. "Subcontractor" means any person or entity having a contract with anyone other than Purchaser for the performance of any part of the Work.
- H. "Work" means all services, labor, materials, equipment, Data, and other obligations covered by or intended for Contractor to perform or supply under this Agreement, as specified in the Work scope, together with miscellaneous expendable job supplies, installation related equipment and/or tools, transportation, facilities and/or services for the complete execution of the Agreement to Purchaser's satisfaction.

**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 Contractor (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 Contractor.
- B. **Offer and Acceptance.** Contractor's acknowledgement, commencement of performance to furnish the materials, equipment, or services which are the subject of this Agreement, or any conduct by Contractor which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Contractor of this Agreement and all of its terms and conditions. Acceptance of this Agreement is expressly limited to Contractor's assent to all of the terms and conditions of this Agreement. Additional or different terms provided in Contractor'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 Contractor 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 Contractor's assent to all of the terms and conditions of this Agreement. Additional or different terms in any acknowledgement, invoice, or communication submitted by Contractor, or any attempt by Contractor 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 Contractor, 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 Contractor concerning the subject matter hereof. No other agreements or understandings, whether written or oral, whether express or implied, shall be binding on Purchaser and Contractor. 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.

**ARTICLE III – CONTRACTOR'S PERSONNEL**

- A. **Relationship of the Parties.** In performing the Work, Contractor shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Purchaser. As an independent contractor, Contractor shall determine the means and methods for performing the Work satisfactorily, and shall have full responsibility for complying with the Agreement. Purchaser's involvement and coordination of project activities is solely to assure Purchaser that the Work is being properly performed in a timely and efficient manner and shall not relieve Contractor of any responsibility for the Work. 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 Contractor.
- B. **Employees.** Contractor 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 Contractor's employees assigned to perform the Work shall be submitted to Purchaser in advance of such assignment. Contractor shall require all persons performing the Work at Purchaser's Site to be trained in and to comply with Contractor'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. During the performance of the Work, Purchaser may object to any Contractor employee who, in Purchaser's opinion, does not meet these criteria. In such case, Contractor shall, at its expense and risk, immediately replace or remove such employee.
- C. **Supervision.** Contractor 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 in and around Purchaser's Site. Contractor's Superintendent shall enforce all environmental protection and worker health and safety and similar requirements applicable to Contractor's Work. Contractor's Superintendent shall be thoroughly competent and experienced in the line of work to be performed. He shall represent Contractor on the job and all communications given him by Purchaser shall bind Contractor.
- D. **Background Checks.** Contractor shall make best efforts to ensure that Contractor'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, Contractor shall immediately remove said employee or employees from the Work. Purchaser, at any time, may request Contractor to verify that an employee or employees does not possess a criminal record. Contractor shall provide certification for each of Contractor'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 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 Contractor upon request by Purchaser.

- E. Substance Abuse. Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace. Contractor shall make a good faith effort to ensure that all Contractor'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.
- F. 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 AND PERFORMANCE OF WORK**

- A. Performance Criteria. Contractor shall perform the Work in accordance with good practices and quality workmanship and shall provide such Work in a timely manner compatible with Purchaser's schedule requirements and in compliance with this Agreement and all applicable laws, codes, and all regulatory requirements of governmental authorities.
- B. Access to Work. Purchaser shall be afforded free access to Contractor's or any of its Subcontractor's Work, facilities and records to perform observation and review of Work completion and quality, and contract cost and quality records; any such observation or review performed by Purchaser or any failure by Purchaser to so perform shall in no manner reduce the responsibility and liability of Contractor or its Subcontractors or excuse them from performance. Access to a Subcontractor's facilities and records will be coordinated through Contractor.
- C. Audit and Records. Contractor shall keep accurate and complete records and books of account showing: (1) all charges, disbursements or expenses made or incurred by it in performing the Work; and (2) compliance with laws regulating employee benefits, quality assurance, environmental and safety activities. Contractor shall retain the records in electronic format. Contractor shall preserve all such records and books of account for three years after completion of the Work, or longer if required by law or if required to resolve a dispute. All such books of account and records shall be open at all reasonable times (before and after the Work is completed) for inspection and audit by Purchaser or its authorized representative without additional cost to Purchaser, and Purchaser shall have the right, upon reasonable prior notice, to audit at any time up to three years after the completion of the work, the costs, expenses and disbursements made or incurred in connection with the Work. Contractor shall promptly reimburse to Purchaser any improper charges identified in any such audit. Should the audit reveal a material failure to keep complete and accurate records or material inaccuracies, the Purchaser may, in addition to the forgoing remedies, charge the Contractor for the Purchaser's full costs of performing the audit.
- D. Overtime. No regularly scheduled overtime Work, or Work on Saturdays, Sundays or legal holidays shall be performed without written approval of Purchaser's Superintendent, 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 Contractor's expense and without additional cost to Purchaser.
- E. Time of Essence. Time is of the essence to this Agreement and all obligations thereunder. By executing this Agreement, Contractor acknowledges that the time for completion set forth on the Purchaser Order is reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of Purchaser's Site.

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

- A. Title and risk of loss of goods that are incorporated into the Work passes to Purchaser upon notification of Contractor by Purchaser of acceptance of the Work. Contractor pays all freight and related charges and is responsible for filing loss and damage claims prior to acceptance by Purchaser. All products and materials brought to Purchaser's Site by Contractor or its Subcontractor must be removed by that Contractor or Subcontractor immediately once they are no longer needed and, in all events, upon Contractor's departure.
- B. Contractor shall notify Purchaser immediately of any delay in delivery or shipment that may affect the completion date of the Work. If Contractor's deliveries fail to meet schedule, Purchaser, without limiting its other rights or remedies, may either direct expedited routing and charge excess cost incurred thereby to Contractor or cancel all or part of the order.
- C. Purchaser will not accept COD shipments. Parcel post shipments shall be made at the risk of Contractor. Contractor shall pay transportation charges both ways on rejected goods.
- D. The Work shall be subject to inspection, tests, and count by Purchaser at any time or place at the discretion of Purchaser whether during or after construction, manufacture or delivery, as applicable. If any of the Work shall be defective in material or workmanship or otherwise not in conformity with the requirements of this Agreement, Purchaser, in addition to its other rights, may reject the same for full credit or may correct the defect or nonconformity or replace same at Contractor's expense, or require prompt correction or replacement thereof by Contractor at Contractor's expense, including transportation charges. Nothing herein shall relieve Contractor of the obligation to make full and adequate testing and inspection of the Work. Any Work rejected by Purchaser may be returned to Contractor at Contractor's risk and expense and shall not thereafter be tendered for acceptance without Purchaser's written consent.

#### **ARTICLE VI – CONTRACT PRICE AND PAYMENTS**

- A. Net Pricing. Contractor has visited Purchaser's Site, examined the available Data, and this Agreement, and is familiar with the conditions in the area which would affect the performance of the Work. The lump sum prices or unit prices for the Work are firm for all labor, services, equipment and materials as specified in the Work scope, as well as for Contractor's profit and any other of Contractor's costs, including all overhead. Unless otherwise set forth herein, no charge will be allowed for boxing, packing, crating, or carting, or any other additional charges in excess of the prices stated hereunder. All amounts referenced herein are in United States dollars. Except to the extent otherwise provided herein, Contractor shall pay all taxes, duties, levies, and all other fees and charges imposed by any governmental entity with respect to this Agreement and the Work provided hereunder. 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 this Agreement to Contractor.
- B. Invoicing. Invoices shall be submitted to the address specified in the Purchase Order. The elements of all amounts invoiced shall be shown separately, by applicable line items, and shall be classified or further broken down or assigned to accounts as Purchaser may require for accounting and payment purposes. Any disputed invoice or portion thereof need not be paid, but in such case, Purchaser shall promptly notify Contractor of any rejected invoice or portion thereof with reasons for such rejection.

- C. Payment. Unless otherwise set forth herein, payment terms are 2%10 Net 45 Days. Payment of undisputed amounts shall be made in accordance with these payment terms. Payment dates shall be calculated from the date of receipt of approved 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 Work.
- D. Withholding. If Purchaser has a claim under this Agreement, regardless of when it is discovered, then Purchaser may withhold payment of, or set off the amount of its claim against, any amount invoiced to it. If any monies are so withheld, they shall be paid only when, without cost to 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 Contractor.
- E. New Jersey Withholding. If applicable, in accordance with New Jersey law, we shall withhold a portion of payments made to you (Supplier, Contractor, 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.
- F. Electronic Invoices. If it is reasonably able, Contractor shall utilize Purchaser's then-current Electronic Invoice Presentation and Payment Program to submit invoices and receive payment electronically from Purchaser.

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

- A. On-Site Facilities. Upon commencing Work, Contractor shall establish and maintain sanitary facilities for its employees and those of its Subcontractors in conformity with local and state regulations, to the extent such facilities are not provided by Purchaser. Contractor shall, unless otherwise specified, construct and remove all temporary buildings, structures, construction plant, change houses, and portable sanitary facilities required for its own use or that of its Subcontractors, if any. The location of such buildings and other facilities, storage areas for materials and employees' parking space, if on Purchaser's Site, will be designated by Purchaser's Superintendent and shall be removed at Contractor's expense upon completion of the Work.  
If Purchaser provides (at a location of its choice within reasonable distance of the Work area) the water or power source required for performance of this Agreement, or allows Contractor or its Subcontractors to use any facility, equipment or apparatus owned or leased by Purchaser, Contractor shall accept these services at its own risk. If Purchaser does not provide any such items, Contractor shall be responsible for providing all equipment and services necessary for the performance of the Work under this Agreement and shall satisfy itself of the safety and sufficiency of all equipment and services used or brought to Purchaser's Site by Contractor and its Subcontractors and Material Suppliers.
- B. Areas of Work and Non-Interference with Other Activities on Site. Contractor shall use only the area on Purchaser's Site designated by Purchaser's Superintendent, and other parts of Purchaser's Site shall not be used by Contractor or its Subcontractors or Material Suppliers for any purpose without the prior approval of Purchaser's Superintendent. If any part of the Work is to be performed on an easement or right-of-way held by Purchaser, Contractor shall limit its activities to that area and not allow its employees or Subcontractors outside such area. The portion of the areas designated by Purchaser's Superintendent to constitute the construction site shall be under the control of Contractor unless otherwise agreed by Contractor and Purchaser's Superintendent.  
Contractor shall so conduct the Work so as to avoid any necessity to curtail the operations of Purchaser's Site. Where the Work requires connection to or modification of existing facilities, Purchaser's Superintendent will arrange for Contractor to perform such Work at Purchaser's convenience and Contractor 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.
- C. Cleanup and Restoration. Contractor shall satisfactorily dispose of all rubbish resulting from the Work under this 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.
- D. Security and Safety. Contractor shall take the necessary precautions to render the Work secure in order to decrease the probability of accident from any cause and to avoid delay in completion of the Work and to comply with all applicable laws related to safety. Contractor shall provide temporary fire protection facilities to the extent required by Purchaser during the construction period. Contractor shall maintain close cooperation and flexible working arrangements with Purchaser in consideration of adjacent structures and operations.  
Contractor 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 Superintendent. Purchaser will at its discretion provide a security guard at the entrance and exits to Purchaser's Site who shall have the right to check all persons entering and leaving the site, check all automobiles, cars and trucks and carry out such control of persons and vehicles as deemed necessary.

#### **ARTICLE VIII – INTELLECTUAL PROPERTY RIGHTS**

- A. Ownership of Work and Data. The Work and all Data associated with the Work shall become the property of Purchaser and Purchaser shall own any and all intellectual property rights therein, and Contractor will, if and as necessary, assign to Purchaser ownership of all right, title, and interest in and to such materials, including ownership of the entire copyright therein. All originals and copies of Data furnished by Purchaser shall be returned to Purchaser upon completion of the Work.
- B. Infringement. Contractor warrants that the Work provided by Contractor hereunder is and will be original, does 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. Purchaser shall have the right to demand that Contractor, at its own expense and within a reasonable time, remove or replace any infringing matter, or secure for Purchaser the right to use such infringing matter, and Contractor shall reimburse Purchaser for any costs Purchaser incurs as a result of the infringement.
- C. Data Furnished by Purchaser. All Data furnished by Purchaser in connection with the Work shall remain Purchaser's exclusive property. Contractor shall not use Purchaser-furnished Data for any purpose other than for the Work. Contractor 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 IX – WARRANTY**

- A. Warranty. Contractor warrants that all equipment, materials and services furnished by Contractor hereunder will fully conform with the Specifications and the terms of this Agreement, and with all drawings, samples, and other descriptions of Purchaser, will be of good title, design, material, and workmanship. Contractor shall not disclaim any warranties contained in the Uniform Commercial Code. Without limiting any of Purchaser's other rights, Purchaser shall have the right to an injunction to require Contractor to correct, at Contractor's own cost and expense, any Work that fails to satisfy the foregoing warranties for a period of two (2) years from the date of final acceptance of the Work by Purchaser. This correction period shall also apply to any Work that is modified, adjusted, repaired, replaced, or reperfomed. This correction period shall not limit any of Purchaser's other remedies.
- B. Remedies. In the event that Contractor breaches any such warranties or other provisions of this Agreement, Contractor shall be liable to Purchaser for any and all losses, damage and excess cost in completing the Work caused by Contractor's breach. If any Work provided hereunder does not comply with the foregoing warranties, Purchaser may, at its sole option, and in each case at Contractor's sole expense: (1) reject such Work; (2) require Contractor to repair or correct such Work as necessary to render the Work in conformance with the foregoing warranties, and consistent with Purchaser's schedule requirements; (3) return such Work and receive a full refund of the contract price; or (4) make any corrections required to cause such Work to fully fulfill the foregoing warranties and charge Contractor for the costs incurred by Purchaser thereby. Contractor shall reimburse Purchaser for all expenses reasonably incurred by Purchaser in connection with a breach of the foregoing warranties.

## **ARTICLE X – INDEMNITY**

- A. **Contractor's Indemnity.** Contractor shall indemnify, defend, and hold harmless Purchaser, its subsidiaries and affiliates, and their respective agents, representatives, employees, successors, assigns, and indemnities (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 Contractor's obligations under this Article X) (collectively, "Losses"), which any of the Indemnified Parties may suffer or incur arising out of the Work, the presence of Contractor and/or its Subcontractors at Purchaser's Site, or the actions or omissions of Contractor and/or its Subcontractors, including, without limitation, Losses relating to: (1) actual or alleged bodily or mental injury to or death of any person, including, without limitation, any person employed by Purchaser, by Contractor, or by any Subcontractor; (2) damage to or loss of use of property of Purchaser, Contractor, 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 Contractor under this Agreement; (5) any violation by Contractor or any Subcontractor of any ordinance, regulation, rule or law of the United States or any political subdivision or duly constituted public authority; and/or (6) any assertion of a mechanic's, materialmen's or other lien; provided, however, that Contractor's indemnity obligations under this Section X(A) shall not apply to any Losses to the extent initiated or proximately caused by or resulting from the sole or concurrent negligence or willful misconduct of any of the Indemnified Parties.
- B. **Pennsylvania Amendment.** For Work performed within the Commonwealth of Pennsylvania, the underlined portions of Article X(A) above are deleted and replaced with the following: in each case whether or not caused or contributed to in whole or in part by the fault or negligence of any or all of the Indemnified Parties. For the avoidance of doubt, Contractor expressly agrees that Contractor will indemnify, defend, and hold harmless the Indemnified Parties in connection with this Article X(A) even if any or all of the Losses incurred by any or all of the Indemnified Parties are caused in whole or in part by the sole or concurrent negligence of one or more of the Indemnified Parties. Contractor 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 this Article X(A). This Article X(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. **Waiver of Immunities.** Contractor, for itself, its successors, assigns, and Subcontractors, hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby Contractor could preclude its joinder by Purchaser as an additional defendant, or avoid liability for damages, contribution, or indemnity in any action at law, or otherwise where Contractor's or its Subcontractor's employee or employees, heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death brings an action at law against any Indemnified Party. Contractor'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 Contractor under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Contractor or anyone employed directly or indirectly by Contractor or anyone for whose acts Contractor may be liable.
- D. **No Impairments.** Contractor's obligations hereunder shall not be limited to the extent of any insurance available to or provided by Contractor. Contractor's obligations to defend Purchaser shall survive any judicial determination invalidating, in whole or in part, the indemnity provision of this Agreement. Furthermore, the indemnification, defense and hold harmless of Purchaser by Contractor and any other right of Purchaser against Contractor shall not be impaired or affected in any way by the failure of Purchaser to provide Contractor with a copy of a notice to owner, notice of lien, mechanics lien, or other information.

## **ARTICLE XI – INSURANCE**

- A. **Contractor's Insurance.** Contractor agrees to secure and maintain in force 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, and upon request by Purchaser policies of insurance including endorsements, evidencing current coverage listed below:
1. Comprehensive General Liability insurance including Contractual Liability, and if any work is to be performed by Subcontractor, Contractors Protective Liability with minimum limits of \$2,000,000 per occurrence, combined single limit, for bodily injury and property damage.
  2. Comprehensive Automobile Liability insurance including non-ownership and hired car endorsement with minimum limits of \$1,000,000 per occurrence, combined single limit, for bodily injury and property damage.
  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 per occurrence.
  5. Builder's Risk insurance on a special cause of loss form in an amount not less than the total amount to be paid to Contractor under this Agreement.
- B. **Additional Insured.** FirstEnergy Corp. and its subsidiaries and affiliates shall be included as an additional insured, it being understood that said policies shall provide primary insurance to FirstEnergy Corp. and its subsidiaries and affiliates, with no special restrictions or reservations that are inconsistent with this Agreement. A signed copy of the endorsement adding FirstEnergy Corp. and its subsidiaries and its affiliates as an additional insured or loss payee, as applicable, shall be attached to the certificate of insurance providing general liability coverage. It is expressly agreed and understood that the contractual obligations under this Article are for insurance and not indemnity.
- 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 Contractor 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, Contractor shall, at least thirty (30) days before coverage thereunder ceases, obtain a new policy with like coverage, and if Contractor 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 Contractor and shall be a legitimate deduction from any sum due it from Purchaser.
- D. **Waiver of Subrogation.** To the extent that it is consistent with applicable terms or policies of insurance, Contractor and any of its Subcontractors shall waive and hereby waive 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.
- E. **Performance Bond.** Purchaser may, at any time, require Contractor to secure a performance bond with such conditions and limits as may be prescribed by Purchaser. Purchaser shall reimburse Contractor for the cost of such bond.

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

- A. **Notice of Commencement.** Purchaser shall prepare a Notice of Commencement, post and maintain posted a copy of same in a conspicuous place at the site of the Work until it is complete, shall serve a copy of same upon Contractor by a method which includes a written evidence of receipt, and file the Notice of Commencement with the appropriate County Recorder.
- B. **Payment of Claims.** Contractor shall promptly pay all claims for labor, material, services, and other expenses incurred by it and its Subcontractors and Material Suppliers in connection with the Work. Purchaser may, if Contractor fails to pay any such claims, pay such claims directly and withhold the amount of such payment from Contractor.
- C. **Waiver of Lien Rights.** To the extent permitted by law, Contractor, 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.

- D. Subcontracts. Every subcontract and purchase order extended by Contractor for any portion of the Work shall contain an undertaking by the applicable Subcontractor or Material Supplier similar in effect to Article XIII(C).

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

- A. Delay Not the Fault of Contractor. If Contractor is interfered with, disrupted, hindered, delayed, or impacted at any time in the progress of the Work by any act or failure to act by Purchaser, the time for completion under this 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. Contractor waives, to the extent permitted by law and to the extent that Article XVII does not apply, any relief or remedy for delay not proximately caused by Purchaser.
- B. Liquidated Damages. Upon failure to complete all Work by or before the date set forth on the Purchase Order, Purchaser shall be entitled to retain or recover from Contractor, as Liquidated Damages, and not as a penalty, the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for each and every day thereafter until the completion of the Work, unless Contractor timely requests and Purchaser, within its sole discretion, grants an extension of time. The amount of Liquidated Damages is agreed upon by and between Contractor 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. Contractor agrees that if Contractor fails to prosecute the Work expeditiously and efficiently in accordance with Purchaser's schedule requirements, or otherwise fails to perform any of Contractor's obligations in accordance with the terms and conditions of this Agreement, then Purchaser may require Contractor to increase or supplement the 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 Purchaser's schedule requirements and the required quality of work, or terminate this Agreement and Contractor's rights hereunder and assume control of Contractor's Work. Upon written notice by Purchaser, Contractor shall immediately remove its employees, representatives, tools, equipment, and other property from Purchaser's Site. If Contractor should fail to effect such removal within a reasonable period, they may be removed by Purchaser at Contractor's expense.
- D. Termination for Convenience. Purchaser may terminate this Agreement, in whole or in part, at any time without cause and for its own convenience, by giving Contractor written notice. After receiving a notice of termination and except as otherwise directed by Purchaser, Contractor shall: (1) stop the Work; (2) place no further orders or subcontracts; and (3) take such action as may be necessary or as directed by Purchaser to protect and preserve all property related to the Work. Purchaser shall pay Contractor its actual, necessary, reasonable and verifiable expenses as a direct consequence of such termination; however, Purchaser shall be entitled to all the Work paid for by it or, at Purchaser's option, Contractor shall attempt to liquidate the same, and Purchaser shall be entitled to the benefits of any value received. Contractor shall furnish all necessary documentation to substantiate its expenses to Purchaser's satisfaction. Contractor 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.
- E. Remedies. In the event of termination by Purchaser for cause, Contractor shall, at the option of Purchaser, deliver to Purchaser the raw materials and work-in-process required in order to perform under this Agreement. Purchaser shall have the right, at its election and without prejudice to any other remedies, to continue and complete the Work or any part thereof, by contract or otherwise, deducting the cost of such completion from the contract price, or in the alternative paying to Contractor the reasonable costs of such raw materials and work-in-process. 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 this Agreement, and they may be pursued separately or concurrently as Purchaser determines. Upon a final determination by a court of competent jurisdiction that the termination pursuant to Article XIII(C) was improper, the termination shall be deemed a termination for convenience pursuant to this Article XIII(D). Under no circumstances shall Purchaser, its subsidiaries and affiliates, be liable for any anticipated profits or for incidental or consequential damages or for punitive damages.

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

Purchaser may at any time, by written notice, make changes including, but not limited to, drawings, designs, processes, specifications, mode of shipment, packing, time and/or place of delivery, quantity, acceleration, sequencing, or the general scope of work for the Work specified in this Agreement. Contractor's performance of additional or extra Work as related to the changes shall in no way be either a basis of claims involving loss of efficiency on any Work or a basis for schedule extensions unless such extensions are agreed upon at the time of award of the additional or extra Work. Such changes shall be initiated by written order of Purchaser and Contractor shall submit the proposed cost or credit to Purchaser for any changes in the Work within ten working days after receipt of the written order for Purchaser's approval. Such changes to the Work shall not proceed and shall not be binding upon Purchaser without Purchaser's written approval. Contractor shall be paid for any additional or extra Work by an amount to be determined, at Purchaser's option, by (a) unit prices, (b) lump sums, or (c) other methods of reimbursement, in each case as designated in the Change Order and/or the attachments thereto, or as subsequently agreed upon. Purchaser may also authorize minor changes in the Work not involving an adjustment in the contract price or time for performance, which are consistent with the overall intent of the Agreement.

#### **ARTICLE XV - CANCELLATION AND SUSPENSION**

- A. Right to Terminate or Suspend. Purchaser may terminate this Agreement, or suspend Contractor's performance of the Work, in whole or in part, at any time without cause and for its own convenience, by giving Contractor written notice. After receiving a notice of suspension or termination and except as otherwise directed by Purchaser, Contractor shall: (1) stop the Work on the date and to the extent specified therein; (2) place no further orders or subcontracts except as may be necessary for completing such portions of the Work as have not been terminated or suspended; (3) terminate all orders and subcontracts to the extent that they relate to the portions of the Work terminated (or suspend all orders and subcontracts to the extent that they relate to the portions of the Work suspended); and (4) take such action as may be necessary or as directed by Purchaser to protect and preserve all property related to the Work which is in Contractor's possession and any other items in which Purchaser has or may acquire an interest.
- B. Deferral of Deliveries. Purchaser may defer delivery of materials, equipment, and any other portion of the Work, at any time for its own convenience, by giving Contractor written notice. Contractor will adjust its manufacturing schedules consistent with Purchaser's deferral request. Materials and equipment on which delivery is deferred by Purchaser may be placed in storage by Contractor for Purchaser's account, and reasonable charges and direct expenses in connection therewith will be paid by Purchaser.
- C. Compensation. If this Agreement is terminated for convenience of Purchaser, Purchaser shall pay Contractor its actual, necessary, reasonable and verifiable expenses as a direct consequence of such termination; however, Purchaser shall be entitled to all the Work paid for by it or, at Purchaser's option, Contractor shall attempt to liquidate the same, and Purchaser shall be entitled to the benefits of any value received. Contractor shall furnish all necessary documentation to substantiate its expenses to Purchaser's satisfaction. Contractor shall make every reasonable effort to mitigate costs. Purchaser shall not be liable for lost profit, anticipated profit or unabsorbed indirect costs or overheads. Purchaser's liability for termination expenses shall not exceed in any event, the unpaid balance of the contract price. The compensation described in this paragraph shall be Contractor's sole and exclusive compensation and remedy if this Agreement is terminated for convenience. In no event will indirect expenses, overhead expenses, or anticipated profit be reimbursed by Purchaser. Any payments made by Purchaser as a result of postponement of performance shall be credited to payment of the contract price.
- D. Adjustment of Price and Schedule. Suspension hereunder shall not affect the contract price or the period of performance, unless Contractor experiences a cost increase or time delay as a result of such suspension and notifies Purchaser in writing detailing such effect(s). Such

notification shall be filed with Purchaser within thirty (30) days after such suspension is terminated or extended, and shall be accompanied by sufficient documentation to prove a cost increase or time delay, as the case may be.

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

- A. During the performance of this Agreement, Contractor shall strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the Work, including, but not limited to, those governing labor and employment standards, safety, environmental protection, federal government contracting and foreign commerce. It shall be the sole responsibility of Contractor to determine whether or not a particular law, rule, regulation or executive order applies to the Work. Any costs, fines, penalties, awards, damages or other liabilities associated with any violations of this Article shall be borne and paid by Contractor.
- B. Contractor 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. Contractor shall post all notices required by law to be posted at Purchaser's Site or at any other place in which Contractor performs services related to the Work.
- C. Contractor, prior to starting excavation or trenching, shall give notice at least ten business days in advance to the owners of any underground utilities registered with the Ohio Underground Utility Protection Services (OUPS) at <http://www.oups.org>, or by phone at 800.362.2764, and to the owners of underground utilities shown in the Data who are not registered members of OUPS. The owner of an underground utility is required within ten days of notice to notify Purchaser of the location and description of its utilities at the site of the Work. If any underground utility owner fails to perform in a timely manner, Contractor shall immediately notify Purchaser and contact the owner of the underground utility.
- D. Contractor acknowledges and agrees that its employees, Subcontractors, or Material Suppliers, if given access to FirstEnergy's (FirstEnergy Corp., its subsidiaries and affiliates) Information and Control Systems, may be required to sign an agreement governing Contractor's and such employees' use of such systems.
- E. 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, Contractor agrees as follows:
1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor 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. Contractor 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. Contractor 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. Contractor 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 Contractor'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.
- F. 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 Contractor 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 Contractor's subcontracts meet such criteria, Contractor 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).

- G. Contractor 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. Contractor shall confirm that these regulations either do not apply to Contractor's activities under the terms of this Agreement or that Contractor has procedures to ensure compliance. If Contractor 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, Contractor warrants to Purchaser that such employment does not violate the foregoing regulations.
- H. **FOREIGN CORRUPT PRACTICES ACT PROVISIONS** The following provisions shall apply to Contractor (unless it is a foreign concern) if it performs or obtains any of the Work in a foreign country:
1. All payments to Contractor 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 Contractor. All payments due hereunder shall be made to Contractor at its principal place of business in the United States, even if Contractor performs or obtains the Work in a foreign country.
  2. Contractor 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. Contractor 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. Contractor 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 Contractor 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 Contractor has violated this Article. Any action by Contractor which would or might constitute a violation of the FCPA, or a request for such action from Contractor's representative, shall result in immediate termination of the Contract for default. Should Contractor ever receive, directly or indirectly, from any Purchaser representative a request that Contractor believes will or might violate the FCPA, Contractor 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.
- I. Contractor shall comply with the Occupational Safety and Health Act of 1970 and all rules, regulations, standards, requirements, and revisions thereof or adopted pursuant thereto.
- J. Unless this Agreement otherwise provides, Contractor 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.
- K. Any costs, fines, penalties, awards, damages or other liabilities associated with any violations of this Article shall be borne and paid by Contractor.
- L. If applicable, Contractor 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 Contractor, of any subcontractor or of Purchaser.
- M. Contractor 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.
- N. Contractor 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 XVII - SET-OFF**

Purchaser shall be entitled at all times to set-off any amount owing from Contractor 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 XVIII – 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 XIX– ASSIGNMENT AND SUBCONTRACTS**

- A. Contractor may not assign any rights or claims, or delegate any duties under this Agreement, in whole or in part, to any other person or entity 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, Contractor shall continue to be liable for the performance of its obligations hereunder.
- B. If Contractor 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 XX – 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 XXI – PROHIBITION OF PUBLICITY**

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

#### **ARTICLE XXII – CONFIDENTIALITY**

- A. Contractor acknowledges that in the course of this engagement it may have access to and/or be in possession of Confidential Information of Purchaser. "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 which 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. Contractor shall hold in confidence, in the same manner as it holds its own Confidential Information of like kind, all Confidential Information to which it may have access hereunder, and shall not use Confidential Information for any purpose other than performance of the Work. Access to Confidential Information shall be restricted to Contractor's employees with a need to know such information in connection with the Work.

- B. The restrictions set forth in this Article shall not apply to Confidential Information which Contractor can establish by documentary evidence: (1) is generally known to or readily ascertainable by the public other than through an act or omission of the Contractor or its employees or agents; or (2) was already known to Contractor prior to the time it was disclosed to Contractor by Purchaser; or (3) was disclosed to Contractor by a source other than Purchaser without breach of this or any other agreement by the person disclosing to Contractor and without breach of this Agreement or any other duty of Contractor.
- C. Contractor shall incorporate the above provisions in all agreements with its Subcontractors, agents and assigns.

#### **ARTICLE XXIII – 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 XXIV– FORCE MAJEURE**

Neither party shall be liable to the other for any expenses, loss or damages resulting from delays, disruption, interferences, hindrances, impacts, or prevention of performance arising from causes beyond its reasonable control, including by fire, flood, accident, strikes, civil commotion, governmental or military authority, insurrection, riots, embargoes or acts of God or public enemy. In the event of any delay, disruption, interference, hindrance, or impact 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 thereof. Contractor will notify Purchaser as soon as reasonably practical, and in writing within five days, of Contractor's becoming aware of a force majeure occurrence as defined herein which will cause or has caused a delay, disruption, interference, hindrance, or impact. Within seven working days of such occurrence, Contractor will further define the precise cause or causes, the measures taken or to be taken to minimize, the time table by which the measures will be implemented, the duration of the delay, disruption, interference, hindrance, or impact, the extension of time for performance of the Agreement Contractor is claiming and documented evidence that supports the claim. Purchaser will review Contractor's claim and advise Contractor in writing of Purchaser's decision regarding Contractor's claim for extension of time for performance of the Agreement.

#### **ARTICLE XXV – 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 XXVI– 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 jurisdiction of Purchaser's Site, without regard to conflict of laws principles. 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 Contractor 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. If Purchaser's Site is outside the State of Ohio, then any legal suit, action, or proceeding shall take place in a court with jurisdiction over the county in which Purchaser's Site is located.

#### **ARTICLE XXVII – 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 Contractor 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 XXVIII - 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.