

**FIRSTENERGY SERVICE COMPANY – GENERAL TERMS AND CONDITIONS
FOR PURCHASE OF LABOR 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 organization which is bidding and/or, if awarded the order, the organization furnishing and/or performing the Work.
- B. "Contractor's Superintendent" means Contractor's designated authorized field representative actively engaged in the supervision of the Work and in all matters relating to this Agreement.
- C. "Data" - Material that includes documentation, manuals, maps, plans, schedules, programs, specifications, software, reports, drawings, designs and other relevant information;
- D. "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.
- E. "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 Contractor or others).
- F. "Purchaser's Superintendent" means Purchaser's authorized field representative assigned to this project so designated in writing by Purchaser. Purchaser's Superintendent is responsible for the acceptance or rejection of Work.
- G. "Specifications" means the portion of this Agreement that describes the products and services to be delivered by Contractor 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.
- H. "Subcontractor" means any person or entity having a contract with Contractor or its subcontractors for the performance of any part of the Work.
- I. "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 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 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 do 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. 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. Contractor shall perform the Work in accordance with good practices and quality workmanship. Contractor shall cooperate, consult and coordinate with Purchaser in the performance of the Work, and shall provide such Work in a timely manner compatible with Purchaser's schedule and in compliance with applicable laws, codes, and all regulatory requirements of governmental authorities and as otherwise set out in this Agreement or required.
- B. Furnishing. Contractor shall furnish all permanent materials and equipment as specified in the Work scope, labor, supervision, installation related equipment and/or tools, miscellaneous expendable job supplies, facilities, services and transportation necessary for the successful completion of the Work (as described in the attached Specification or on the Request for Proposal or Purchase Order document as appropriate). Contractor will be responsible to perform all survey and layout work required for its Work which shall be to exact lines and grades and for any damages to or additional cost for the work of any other contractor caused by its inaccuracy. If necessary, Purchaser's Superintendent will give Contractor the location of reference base lines and bench marks.
- C. Access to Work. Purchaser shall be afforded free access to Contractor's or any of its Subcontractor's Work, facilities and records, to perform surveillance and reviews of Work completion and quality, and contract cost and quality records; any such surveillance or review 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.
- D. Work Schedule. Contractor shall, prior to the start of the Work and as specified in the Work scope, provide to Purchaser a schedule providing sufficient details to fully describe its plan of operation for the Work and all testing and deliverables of Contractor hereunder.
- E. Reporting. Purchaser may request written reports from Contractor at any time during the performance of the Work without cost to Purchaser. Contractor shall furnish such reports within seven (7) days after such requests in the manner directed, describing progress, schedule status, cost data and other matters pertaining to the Work.
- F. 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.
- G. Testing and Inspections. Work shall not be deemed complete until all tests and inspections required, if any, have been satisfactorily performed and completed and accepted in writing by Purchaser.
- H. Hazard Communication. If applicable, Contractor specifically agrees to comply with all hazard communication standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et. seq., the Pennsylvania Right To Know Act and similar hazard communication laws of other states, as amended from time to time, including, but not limited to, evaluating and labeling all hazardous chemicals as defined by said standards, and maintaining Material Safety Data Sheets on all such hazardous chemicals to insure that hazard information with regard to chemical hazards produced,

imported, or used within the workplace is transmitted to affected employees of Contractor, its Subcontractor(s) and Purchaser. All products and materials brought on site by Contractor must be removed by Contractor upon its departure.

- I. 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.
- J. Uncovering Of Work. If any Work should be covered contrary to the request of Purchaser, it must, if required by Purchaser, be uncovered for its observation and replaced, at Contractor's expense. If any other Work has been covered which Purchaser has not specifically requested to observe prior to being covered, Purchaser may request to see such Work and it shall be uncovered by Contractor. If such Work is found to be in accordance with the Agreement, the cost of uncovering and replacement shall, by appropriate change order, be charged to Purchaser. If such Work is found not to be in accordance with the Agreement, Contractor shall pay such costs.

ARTICLE V - CONTRACT PRICE AND PAYMENT

- A. Net Pricing. Contractor has visited the site of the Work, examined the available Specifications, drawings, and the Agreement terms, and is familiar with the conditions in the area which would affect the performance of the Work and the terms of employment. The lump sum or unit prices for the Work are firm for all labor, professional services, expendable materials, permanent equipment and materials as specified in the Work scope, supervision (including Contractor's Superintendent and timekeeper), miscellaneous job supplies, installation related equipment and/or tools (both rented and non-rented), field and office overhead, transportation, facilities, services, Contractor's profit and any other of Contractor's costs. 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 materials, equipment, and services provided hereunder. Price or prices quoted by Contractor shall include all contributions for unemployment compensation, workers' compensation, social security, and other employee benefits, and for the cost of any insurance required by this Agreement.
- B. Invoicing.
 - 1. Invoices shall be submitted to the address specified in the Purchase Order, except that invoices submitted electronically will have additional requirements. The elements of all amounts invoiced shall be shown separately, by applicable line items, and shall be classified or further broken down as Purchaser may require for accounting and payment purposes. Any taxes which are payable by Purchaser hereunder shall be shown separately on any bids and invoices sent to Purchaser. 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. Any invoice shall be submitted upon completion of the Work, not later than the 10th day of each month, or as otherwise mutually agreed (the payment option to be identified in the Terms of Payment on the Purchase Order and/or attached hereto). Contractor shall forward to Purchaser, with the invoice, original and duplicate bills of lading or express receipts, signed by the carrier, for materials and/or equipment shipped by Carrier other than Purchaser's preferred carrier.
 - 2. Invoice Charges. Invoice charges shall be allocated to appropriate accounts, a list of which will be furnished by Purchaser. For time and material Work performed by Contractor under Article XIII of this Agreement, the charges will be listed by Purchaser's Change Order documentation number (Field Change Request (FCR) Numbers, Maintenance Work Order (MWO) Numbers, Extra Work Request (EWR) Numbers, Contracted Services Change Order (CSCO) Numbers, etc.) and listed by current month and shall be supported by daily time sheets, accurately describing the Work being performed, signed by Purchaser's Superintendent showing the craft, first and last names and social security number of each worker and each piece of equipment employed on the Work. All material charges shall be supported by the original invoices or other evidence as required by Purchaser to substantiate the charges submitted.
 - 3. Electronic Invoices. If it is reasonably able, Contractor shall utilize the Purchaser's then-current Electronic Invoice Presentment and Payment program to submit invoices and receive payment electronically from Purchaser.
- C. Payment. Each invoice shall, after approval by Purchaser, be processed for payment in accordance with the Terms of Payment as set forth in the Purchase Order and/or as attached hereto for the amount of each approved invoice less any monies retained per the Terms of Payment or under Article V (E) below. 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 material 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. In any event, the costs which are to be directly reimbursed for Work performed as directed by Purchaser shall be specified in writing and agreed upon by the parties prior to the commencement of such Work. After completion of the Agreement and final acceptance of the Work, any retained monies without interest, except those retained under Article V(E) hereof, will be paid to Contractor in accordance with the Terms of Payment designated in the Purchase Order and/or as attached hereto.
- D. Increases. If Contractor wishes to make a claim for an increase in the contract price or time for performance, Contractor must proceed as provided below. Any claim for an increase in the contract price or time for performance shall be based on immediate verbal notice of the occurrence of the precipitating event to Purchaser's Superintendent followed by written notice delivered to Purchaser's Superintendent within forty-eight (48) hours of the occurrence of the event giving rise to the claim. Notice of the amount of the claim and the work schedule adjustment with detailed supporting data shall be provided within seven (7) working days of such occurrence, and if earlier, two (2) hours minimum prior to the time Purchaser needs to make a Work/schedule adjustment, unless Purchaser's Superintendent allows an additional period of time to ascertain accurate cost or schedule data. Payment for such claims for increase shall be mutually agreed upon between Purchaser and Contractor and approved by Purchaser's Superintendent. Contractor shall not be entitled to make an increase in the contract price if Purchaser determines that the claim is for goods and services that are within the scope of the Work hereunder, or that the claim is for goods or services that are necessitated by the errors, acts, or omissions of Contractor.
- E. Withholding.
 - 1. If Purchaser has a claim under this Agreement, regardless of when it is discovered, including a claim that: (1) Contractor's invoice is erroneous; (2) the Work is deficient, defective or incomplete; (3) a third party claim has been asserted or there is reasonable evidence indicating the possibility of a claim; (4) Contractor fails to make a payment as and when due to a Subcontractor or supplier for materials, labor or equipment; (5) Purchaser, another contractor, subcontractor, or other party suffers damage or injury which is attributable to Contractor; or (6) Contractor 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 or loss 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.

2. 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.

ARTICLE VI - CONSTRUCTION PLANT, FACILITIES AND OPERATIONS

- A. On-Site Facilities. Contractor will, unless otherwise specified, construct and remove all temporary buildings, structures, construction plant, change houses, portable lavatories and temporary storage buildings required for its own use or that of its Subcontractors, if any. The location of such buildings, storage areas for materials and employees' parking space, if on Purchaser's Site, will be designated by Purchaser's Superintendent.
If the Work specification indicates that Purchaser will provide the water and power source required for performance of the Agreement, Contractor shall accept these services at its own risk. Otherwise, Contractor shall be responsible for providing the water and power sources necessary for the performance of the Agreement.
When any use is to be made by Contractor or by any of its Subcontractors or by any of its or their employees for its or their convenience of any equipment, facilities, office space or apparatus (including but not limited to scaffolds, ladders, cranes, derricks, platforms, runways, bridges, floor, tools, barricades, or other facilities) which are owned, rented or leased by Purchaser or Purchaser's other contractor(s), or contracted for from other contractors, Contractor shall prior to and during such use satisfy itself as to the safety of such facilities; and Contractor hereby assumes the entire responsibility and liability for all injuries, claims, damages, or losses whatsoever resulting from the use of such equipment, facilities, or apparatus. Contractor agrees to execute all necessary documents required by Purchaser or Purchaser's other contractors, to acknowledge inspection of such equipment or apparatus prior to use.
- B. Areas of Work and Non-Interference with Other Activities on Site. The area(s) designated by Purchaser's Superintendent as the construction site shall be under the control of Contractor unless otherwise agreed by Contractor and Purchaser's Superintendent. Contractor shall secure the designated construction site and shall provide barriers and warning appropriate for the safety and protection of its workers and other persons present at the construction site. Contractor shall use only the designated construction site for its Work, and shall not use other parts of Purchaser's Site 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. 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.
Contractor shall so conduct its 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.
Contractor shall conduct its Work so as to minimize interference with other work in progress. In case of dispute between Contractor and other contractors engaged by Purchaser, the decision of Purchaser's Superintendent coordinating the Work shall be final.
Contractor shall not permit its employees or the employees of any of its Subcontractors to operate the existing Purchaser's Site or any of its facilities or to perform maintenance work on the existing Purchaser's Site or any of its facilities, except such maintenance work as is necessary for construction purposes.
- C. Responsibility for Materials and Work Prior to Acceptance. Contractor shall receive, check in, unload, store, handle and protect all materials to be used, furnished or erected by Contractor or its Subcontractors. The property being used, furnished and/or erected, installed or constructed under the Agreement shall be considered to be in the care, custody and control of Contractor and Contractor shall be responsible for all materials and Work until permanently placed, installed or constructed and accepted by Purchaser.
Contractor shall satisfactorily dispose of all rubbish resulting from the operations under this Agreement on a day-to-day basis and upon completion of the Work shall perform all work necessary to restore territory embraced within Purchaser's Site of its operations 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. Contractor shall use proper safety appliances and provide first aid treatment and ambulance service for emergency treatment of injuries and shall comply with all rules, laws, and regulations of the United States of America, the State of Ohio, or any political subdivision or duly constituted governmental authority with regard to the safe performance of the Work.
Contractor shall provide temporary fire protection facilities to the extent required by Purchaser during the construction period. Contractor may be working adjacent to or concurrent with Purchaser's operations or other construction activities. Contractor shall maintain close cooperation and flexible working arrangements with Purchaser in consideration of adjacent structures and work. Contractor shall maintain close cooperation with other contractors working at the site.
Upon commencing Work, Contractor shall establish and maintain sanitary facilities for its employees and those of its Subcontractors, to the extent such facilities are not provided by Purchaser and in conformity with local and state regulations. Contractor will remove these facilities upon completion of the Agreement and clean the site to Purchaser's satisfaction.
Purchaser will at its discretion provide a security guard at the entrance and exits to the 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.
- E. Sales Prohibited. Contractor is advised that the sale of anything (i.e. food, beverages, articles of clothing, etc.) on Purchaser's Site by Contractor's or Subcontractor's personnel is strictly prohibited.
- F. Arrival and Departure of Contractor's Tools and Materials
 1. Mobilization:
Contractor shall provide the necessary resources to receive all material or equipment Contractor or its Subcontractors have shipped to Purchaser's Site.
Contractor shall be responsible for providing Purchaser's Superintendent with the detailed packing lists of all tools, equipment, and materials Contractor is bringing onto the jobsite. The list(s) shall have been provided to Purchaser's Superintendent prior to the time the shipment of such tools, equipment, and materials arrive at the site.
Contractor's detailed packing lists supplied to Purchaser shall distinguish between tools, equipment, and/or materials that are to be used in firm price Work versus those that are to be used for Cost Reimbursable Work (T&M Work). For Cost Reimbursable designated tools, equipment, and/or materials Contractor shall, where known, identify the specific Cost Reimbursable Work associated therewith and itemize such tools, equipment, and/or materials on separate forms.
NOTE: Contractor may use Purchaser's supplied form or Contractor's own form as long as the same minimum information contained on Purchaser's form is on Contractor's form(s).

2. Demobilization

Contractor shall provide to Purchaser proper verification of ownership of all tools, equipment, and materials being removed from the jobsite at anytime.

Contractor shall prepare and submit an itemized list of the tools, equipment, and materials leaving the jobsite for each individual shipment. The forms shall be signed by Contractor's Superintendent signifying that everything listed on the form(s) as being removed from the jobsite is the property of Contractor.

Contractor shall prepare sufficient copies of the forms to provide at minimum one copy for Purchaser's Superintendent and one copy to be left with the security guard when leaving the jobsite.

Contractor shall be responsible for providing at least a minimum 48 hour notification of the tools, equipment, and materials that are being readied for shipment off the jobsite.

Contractor shall, prior to beginning to pack and load tools, equipment, and materials for shipment off the jobsite, contact Purchaser's Superintendent to determine if Purchaser desires to be present to monitor the packing and loading process. Should Contractor fail to notify Purchaser's Superintendent prior to packing and loading any shipment, thus resulting in Purchaser's inability to verify the tools, equipment, and materials being shipped, all costs to redo the entire loading process from the beginning will be to Contractor's account.

Purchaser retains the sole option to perform a total or partial ownership verification audit of all Contractors' shipments leaving the jobsite.

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). Contractor hereby agrees that any materials and works of authorship conceived or written by Contractor 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," Contractor 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. Contractor warrants that the goods and services provided by Contractor 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, Contractor 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. 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 VIII – 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 design, material, and workmanship, free from defects, and fit for the ordinary purposes for which such materials, equipment, and services are used or intended and for any particular purpose of Purchaser of which Contractor is aware, and produced or supplied in compliance with applicable law. Unless otherwise specified and agreed to in writing by Purchaser, the foregoing warranties shall continue in effect for a period of two (2) years from the date of initial operation of the equipment or, in the case of non-operational materials or services, from the date of performance of the Work and final acceptance of same by Purchaser. "Date of initial operation of the equipment" means the day on which the equipment is first operated as an integral part of Purchaser's Site.
- B. Replacement and Repair. When materials or equipment are modified, adjusted, repaired or replaced, or a service is reperfomed, the modified, adjusted, repaired or replaced materials and equipment and the reperfomed service will be subject to the same warranties, the same conditions and the same remedies provided for the original materials, equipment, or services, provided that the warranty period for the modified, adjusted, repaired or replaced materials and equipment, and reperfomed services, shall extend from the date of modification, adjustment, repair, replacement or reperformance of services. All such defective or non-conforming work shall be removed from Purchaser's Site if necessary. Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.
- C. Remedies. If any materials, equipment, and services provided hereunder do not comply with the foregoing warranties, Purchaser may, at its sole option, and in each case at Contractor's sole expense: (1) reject such materials, equipment, and services; (2) require Contractor to repair or correct such materials, equipment, and services as necessary to render them in conformance with the foregoing warranties, and consistent with Purchaser's time schedule; (3) return such materials, equipment, and services and receive a full refund of the contract price; or (4) make any corrections required to cause such materials, equipment, and services 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 (including transportation, storage, administrative, and other incidental expenses of Purchaser). If Contractor does not remove defective or non-conforming materials and equipment within a reasonable time fixed by written notice from Purchaser, Purchaser may remove and store such materials or equipment at the expense of Contractor. If Contractor does not pay the cost of such removal and storage within ten days thereafter, Purchaser may, upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs. The remedies set forth in this Agreement are cumulative, and shall not preclude any other remedy available to Purchaser at law or in equity.
- D. Title. Contractor also warrants that the material and/or equipment is free of defects of title. Such warranty of title shall continue without limitation as to time.
- E. Survival. Contractor agrees that all of its warranties shall survive performance and acceptance of and payment for the goods and services provided hereunder and shall inure to the benefit of Purchaser, and to all subsequent purchasers of the goods and services provided hereunder.

- F. Acceptance Tests. Purchaser shall be notified of and may witness any acceptance tests or inspections that are or may be agreed upon. Contractor shall not be relieved of its responsibility for performance in accordance with this Agreement by reason of Purchaser's or Contractor's conducting or witnessing tests or inspections.

ARTICLE IX - INDEMNITY

- A. Contractor's Indemnity. Contractor 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 Contractor's obligations under this Article IX) (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 Contractor and/or its Subcontractors at Purchaser's Site, and/or the actions or omissions of Contractor 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 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; and/or (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; subject, however, to the limitations provided in Section IX(B) (for Work performed in Pennsylvania), or Section IX(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, Contractor's indemnity obligations under Section IX(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 Contractor expressly agrees that Contractor will indemnify, defend, and hold harmless the Indemnified Parties in connection with Section IX (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. 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 Section IX(A). Section IX(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, Contractor's indemnity obligations under Section IX(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 Contractor 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 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 such Indemnified Party as an additional defendant, or avoid liability for damages, contribution, defense, or indemnity in any action at law, or otherwise. 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.
- E. No Impairments. Contractor's obligations under this Article IX shall not be limited to the extent of any insurance available to or provided by Contractor.

ARTICLE X - INSURANCE

- A. Contractor's Insurance. Contractor 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 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. Contractor 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.
- 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 XI – PAYMENT OF ACCOUNTS; WAIVER OF LIEN RIGHTS

- A. Contractor shall promptly pay all claims for labor, material, services, and other expenses incurred by it and its Subcontractors in connection with the Work.
- B. Waiver of Lien Rights. To the extent permitted by law, 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, by or in the name of Contractor or any Subcontractor, materialman or laborer acting or claiming through or under Contractor for Work performed or materials furnished in connection with this Agreement. Contractor further agrees that it will defend, indemnify and hold Purchaser harmless from and against any and all loss, cost, expense (including attorneys' fees and costs of defense), liability, claim or demand arising from any mechanics', materialmen's or similar lien of Contractor or any Subcontractor, sub-subcontractor, materialman, supplier or laborer acting or claiming through or under Contractor for Work performed or materials furnished in connection with this Agreement.
- C. No-Lien Agreement. If requested by Purchaser, Contractor shall execute a Waiver of Liens Agreement consistent with the foregoing provisions of this Article, and acceptable in form and substance to Purchaser, in recordable form, which Purchaser may file in the jurisdiction(s) in which the Work will be performed.
- D. Right to Withhold. Purchaser may require evidence satisfactory to it from Contractor that all Work in progress, Work done or delivered, or service performed, for which Purchaser has made a payment, are free and clear of mechanic's', materialmen's, and other liens, attachments, claims, demands, charges or other encumbrances. If such evidence is not promptly submitted to Purchaser, it may withhold payments due Contractor in amount sufficient to cover any potential claim or it may terminate this Agreement for default. Prior to invoicing final payment, Contractor and its Subcontractors shall sign, upon Purchaser's request, a release of liens in a form prepared by Purchaser and furnished to Contractor. Contractor shall, within thirty (30) days, cause to be discharged and terminate any mechanics' or materialmen's lien filed by any of its Subcontractors, sub-subcontractors, materialmen, laborers or suppliers, or shall bond against the same at its own cost and expense with a bond satisfactory to Purchaser.
- E. Subcontracts. Every subcontract for any portion of the Work shall contain an undertaking by the Subcontractor similar in effect to this Article. It is intended by the parties that Contractor's agreement to waive and relinquish lien rights as above provided shall be effective only in those jurisdictions which permit such agreement to be made. The fact that some jurisdictions in which Work will be performed do not permit such waiver shall not affect the enforceability of this waiver in those jurisdictions that do permit such waivers. The above obligations of Contractor and/or its Subcontractors are supplementary to and not a substitute for rights of Purchaser, its subsidiaries and affiliates, under the provisions of the Mechanics Lien Laws of the jurisdiction in which the Work is being performed.

ARTICLE XII – DEFAULT

- A. Events of Default; Termination. Contractor agrees that if: (1) Contractor fails to comply with applicable laws and ordinances; or (2) Contractor assigns or subcontracts this Agreement or any part hereof without the consent of Purchaser; or (3) Contractor otherwise fails or refuses to perform its obligations under this Agreement in any respect; or (4) Contractor fails to provide Purchaser upon request with adequate assurance of future performance of this Agreement (including Contractor's failure to comply with Purchaser's instructions under paragraph (C) of this Article XII); or (5) Contractor becomes insolvent or makes a general assignment for the benefit of creditors or admits in writing its inability to pay debts as they mature or if a trustee or receiver of Contractor or of any substantial part of Contractor's assets is appointed by any court or proceedings instituted under any provisions of the Federal Bankruptcy Code or any state insolvency law by or against Contractor are acquiesced in or are not dismissed within thirty (30) days or result in an adjudication in bankruptcy or insolvency; or (6) the materials, equipment, and/or services to be sold by Supplier hereunder or any part thereof shall in the reasonable opinion of Purchaser be unnecessarily delayed by Supplier, then Purchaser may cancel, without liability to Supplier, all or any part of this Agreement and/or pursue any further remedies available at law or in equity.
- B. 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. In the event of such termination, Purchaser shall not be required to obtain the lowest figure for completing the Work but may make such expenditures as in its sole judgment shall best accomplish such completion. The expense, including additional management and administrative services incurred by Purchaser for completing the Work, for remedying defective Work and damage done by Contractor and any other expenses sustained by Purchaser by reason of Contractor's default and/or failure to perform shall be charged to Contractor. 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. Contractor shall, if requested to do so in such written notice of termination or a written notice thereafter given, 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. In any such event, Supplier shall be liable to Purchaser for any and all losses, damage and excess cost in completing said work caused by its failure to carry out this Agreement. All of Purchaser's rights and remedies under this Agreement shall be cumulative and not exclusive.
- C. If Contractor fails or refuses to supply an adequate administrative and supervisory force, a sufficient compliment of properly skilled workmen, or adequate construction equipment, tools or materials, or fails to prosecute the Work expeditiously and efficiently in accordance with the agreed upon Work schedule, then Purchaser may, without prejudice to any other of its rights or remedies, and by written notice to Contractor, direct Contractor to increase or supplement its working force and equipment and/or perform the Work on an overtime or multiple shift basis without added cost to Purchaser and to such an extent as to give reasonable assurance of compliance with the schedule of completion and the required quality of work.

ARTICLE XIII – CHANGES TO SCOPE OF WORK

Purchaser may at any time, by written notice, make changes altering, adding to, or reducing the scope of the Work, or changing the specifications, packing and shipping instructions, time and/or place of delivery, quantities, sequencing, or accelerating work under this Agreement. Contractor's performance of additional Work as related to the changes shall in no way be a basis of claims

involving loss of efficiency on any Work performed or to be performed under this Agreement. Performance of extra Work shall not be a basis for schedule extensions unless such extensions are agreed upon at the time of award of the additional Work. Such changes shall be initiated by written order of Purchaser and Contractor shall submit the proposed cost or credit to Purchaser for any changes in the Work within fifteen (15) working days after receipt of the written order for Purchaser's approval. No change to the cost or schedule of the Work shall be binding upon Purchaser without Purchaser's written approval. Contractor shall be paid for any additional 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 Purchase Order and/or the attachments thereto or as subsequently agreed upon. Purchaser may 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 XIV - 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 n 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 XV – 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.
- 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, 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.
- 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 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).
- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H. Any costs, fines, penalties, awards, damages or other liabilities associated with any violations of this Article shall be borne and paid by Contractor.
- I. 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.
- J. Contractor 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 Contractor’s and such employees’ use of such systems.
- K. 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.

- L. 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 XVI - 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 XVII – 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 XVIII – ASSIGNMENT AND SUBCONTRACTS

- A. Contractor 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, Contractor 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 Contractor'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 Contractor or a sale of all or substantially all of Contractor's assets, or (ii) by a change in the control of Contractor. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of Contractor'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 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 XIX - 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 XX – 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 XXI – 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 XXII – 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 XXIII - FORCE MAJEURE

Neither party shall be liable to the other for any expenses, loss or damages 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, embargoes or 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 for such delay.

The Contractor will notify the Purchaser as soon as reasonably practical and in writing within forty-eight (48) hours of the Contractor'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 Contractor 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 Contractor is claiming and documented evidence that support the claim. The Purchaser will review the Contractor's claim and advise the Contractor in writing of Purchaser's decision regarding the Contractor's claim for extension of time for performance of the Agreement.

ARTICLE XXIV – 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 XXV - 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 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.

ARTICLE XXVI - 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 XXVII - 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.