

**GENERAL TERMS AND CONDITIONS  
FOR PURCHASE OF LABOR SERVICES**

**ARTICLE 1 – DEFINITIONS**

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

- A. "Agent" means FirstEnergy Service Company, its successors and assigns, as the authorized agent for the Purchaser.
- B. "Agreement" means the terms and conditions set forth in this document, together with the Purchase Order and all attachments, exhibits, revisions and supplements thereto.
- C. "Contractor" means the person, organization or entity furnishing and/or performing the Work.
- D. "Contractor's Superintendent" means Contractor's designated authorized field representative responsible for the supervision of the Work and in all matters relating to the Agreement.
- E. "Data" means material that includes documentation, manuals, maps, plans, schedules, programs, Specifications, software, reports, drawings, designs and other relevant information.
- F. "Purchase Order" is the description of commercial terms connected to these Terms and Conditions and may contain additional terms and other messages unique to the transaction described therein.
- G. "Purchaser" means: (1) for Agreements with a single purchaser, the affiliate company designated on the Purchase Order for which the Work shall be performed; and (2) for Agreements with multiple purchasers, the affiliate company designated on the Purchase Order or on the Release Order pertaining to each product or service included under the Work. 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 the Agreement.
- H. "Purchaser's Site" means locations owned or leased by Purchaser, that the Work is intended to benefit, to which the Work is to be delivered or where the Work is to be performed.
- I. "Purchaser's Superintendent" means Purchaser's authorized field representative assigned to this project so designated in writing by Purchaser.
- J. "Release Order" means any individual release order issued pursuant to the terms of a Purchase Order and may describe specific products or services to be provided and other terms pertaining to that release.
- K. "Specifications" means the portion of the Agreement describing the materials, equipment and/or services to be delivered by Contractor under the Agreement, including without limitations, dimensions, components, attachments, technical and non-technical requirements and characteristics, standards, performance requirements, and tolerances. Should any conflict occur between the Specifications and any other provision of the Agreement, the Specifications shall take precedence only when and to the extent that such application does not result in any way in the dilution or diminution of the rights or benefits of the Purchaser under the Agreement.
- L. "Subcontractor" means any person or entity having a contract with Contractor or its subcontractors for the performance of any part of the Work.
- M. "Work" means all goods, parts, materials, equipment, services, labor, Data, and other obligations covered by, contemplated or intended for Contractor to supply or perform under the Agreement, as specified in the Agreement, together with miscellaneous expendable job supplies, installation-related equipment and/or tools, transportation, facilities and/or services necessary for Contractor to complete its obligations under the Agreement.

**ARTICLE 2 – TERMS OF AGREEMENT**

- A. Offer and Acceptance. Contractor's acknowledgement, commencement of performance, or any conduct which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Contractor of the Agreement and all of its terms and conditions. Acceptance of the Agreement is expressly limited to Contractor's assent to all of the terms and conditions of the 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 Agreement shall be deemed material and are hereby objected to and rejected. If the Agreement shall be deemed an acceptance by Purchaser in response to an offer by Contractor and if any terms herein are additional to or different from any terms of such offer, then the issuance of the Agreement by Purchaser shall constitute an acceptance expressly conditioned upon Contractor's assent to all of the terms and conditions of the 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 the Agreement, unless expressly agreed to by Purchaser in writing, shall be deemed material and are hereby objected to and rejected. Any such terms proposed by Contractor, whether by offer or acceptance, shall be void unless expressly agreed to in writing by Purchaser.
- B. Integration; Modification. The parties intend the Agreement to constitute the complete, exclusive and fully integrated statement of their agreement concerning the subject matter hereof. As such, the Agreement is the sole repository of their agreement and the parties are not bound by any other agreements of whatsoever kind or nature pertaining to the subject matter hereof. The parties further intend the complete, exclusive and fully integrated statement of their agreement may not be supplemented or interpreted by any evidence of trade usage, course of dealing, or course of performance. No amendment, modification, or rescission of the Agreement shall be enforceable unless the same is in writing and signed by the party against whom the terms of such amendment, modification, or rescission are sought to be enforced.
- C. Non-Exclusivity. The Agreement is not exclusive, and Purchaser may, at its sole discretion, contract with others to perform such Work as is herein contemplated, or may perform such Work with its own forces.
- D. Modifications to Work. If Purchaser requires modifications and/or changes to the Work after it has been performed, which modifications and/or changes are through no fault of Contractor, or if Purchaser desires additional Work not covered by the Agreement, Contractor shall

only perform such Work as ordered by Purchaser in writing, and shall be paid for such Work as may be agreed to in writing between the parties.

- E. Time Is of the Essence. THE OBLIGATION OF CONTRACTOR TO MEET THE DELIVERY DATES, SPECIFICATIONS AND QUANTITIES SET FORTH HEREIN IS OF THE ESSENCE OF THE AGREEMENT. By executing this Agreement, Contractor acknowledges the time for completion set forth in this Agreement.
- F. Independent Contractor. Contractor shall be considered an independent contractor in its performance hereunder and responsible for all acts and omissions (negligent or otherwise) of its agents, employees and subcontractors. Contractor alone shall be liable and responsible for the manner and methods by which the Work is performed and for materials, work force and equipment supplied in connection therewith, irrespective of whether or not any changes are made as a result of any comments received from Purchase. Nothing in the Agreement or in the performance of the Work shall be construed to create a partnership, joint venture or other joint business arrangement between Purchaser and Contractor. Contractor shall be responsible for all contributions for unemployment compensation, workers' compensation, social security, and other employment benefits of its employees.

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

- A. Performance Criteria. Contractor shall perform the Work in accordance with good practices which are standard in the industry and all Work shall be of the highest quality and workmanship. Contractor shall cooperate, consult and coordinate with Purchaser in the performance of the Work, and shall provide such Work in a timely manner, consistent with Purchaser's schedule and in strict compliance with the Agreement and all applicable laws, codes, and regulatory requirements of governmental authorities.
- B. Furnishing. Contractor shall furnish all permanent materials and equipment specified in the Agreement, labor, supervision, installation-related equipment and/or tools, miscellaneous expendable job supplies, facilities, services and transportation necessary for the successful completion of the Work. Contractor will be responsible for performing all survey and layout work required for the Work, which shall be to exact lines and grades, and for any damages to or additional cost for the work of any other contractor caused by Contractor's or its Subcontractor's inaccuracy. Upon request, Purchaser's Superintendent will give Contractor the location of reference base lines and bench marks.
- C. Work Force. Contractor agrees to supply an adequate administrative and supervisory force, a sufficient complement of properly skilled workmen, adequate construction equipment, tools and materials, and shall prosecute the Work expeditiously and efficiently in accordance with the agreed upon Work schedule. If Contractor fails to perform any or all of the aforementioned duties, then Purchaser may, without prejudice to any other of its rights or remedies as set forth in Article 13 and by written notice to 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.
- D. Access to Work. Purchaser shall be afforded unobstructed access to Contractor's or any of its Subcontractors' Work, facilities, procedures and records for the purpose of observing and reviewing Work completion and quality, as well as contract cost and quality records. Any such observation or review, or the failure by Purchaser to so perform such observation or review, 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.
- E. Work Schedule. Contractor shall, prior to the start of the Work and as specified in the Work, provide to Purchaser a schedule in a form and format acceptable to Purchaser and providing sufficient details to fully describe its plan of operation for the Work and all testing and deliverables of Contractor hereunder.
- F. 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.
- G. 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.
- H. Uncovering of Work. If any Work is covered by Contractor, contrary to Purchaser's request, it must (if required by Purchaser) be uncovered for Purchaser's observation and then 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 4 – INSPECTION PRIOR TO ACCEPTANCE; DEFECTIVE OR NONCONFORMING WORK**

- A. Inspection. The Work shall be subject to Purchaser's inspection, tests, and count at any time or place at the discretion of Purchaser whether during or after manufacture, delivery or installation. Nothing herein shall relieve Contractor of the obligation to make full and adequate testing and inspection of any Work.
- B. Rejection and Revocation. If any Work is defective in material or workmanship or otherwise not in conformity with the requirements of the Agreement, Purchaser, in addition to its other rights, may reject the same and: (1) receive full credit from Contractor; or (2) replace same at Contractor's expense. Any Work Purchaser rejects shall not thereafter be tendered for acceptance without Purchaser's written consent.
- C. Suspect or Counterfeit Goods. Contractor is hereby notified that the delivery of suspect or counterfeit goods is of special concern to Purchaser. If any goods specified in the Purchase Order are described using a part or model number, a product description, and/or an industry standard, Contractor shall assure the goods supplied meet all requirements of the latest version of the applicable manufacturer

data sheet, product description, and/or industry standard unless otherwise specified. If Contractor is not the manufacturer of the goods, Contractor shall assure that all goods supplied under the Purchase Order shall be: (a) made by the original manufacturer; and (b) meet the applicable manufacturer data sheet, product description or industry standard. Should Contractor desire to supply alternate goods that may not meet these requirements, Contractor shall notify Purchaser of any such exceptions and receive Purchaser's written approval prior to shipment of the alternate goods to Purchaser. If Contractor does not receive Purchaser's written approval to ship alternate goods and ships such goods to Purchaser, it will be considered a material breach of the Agreement and any limitations on damages or liability shall not apply to Contractor. In addition, if suspect or counterfeit goods are furnished under this Purchase Order or are found in any of the goods delivered hereunder, such goods will be dispositioned by Purchaser and/or the original manufacturer, and may be returned to Contractor in accordance with the "Rejection and Revocation" provision above. Contractor shall promptly replace such suspect or counterfeit goods with goods meeting the requirements of the Purchase Order. If Contractor knowingly supplied suspect or counterfeit goods, Contractor shall be liable for all reasonable costs incurred by the Purchaser for the removal, replacement and reinstallation of said goods.

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

- A. **Net Pricing.** Prices stated in the Agreement shall be the maximum Purchaser shall pay Contractor for the Work. Unless otherwise expressly set forth in the Agreement, Purchaser will not be responsible for additional charges, including boxing, packing, crating, or carting, insurance or shipping. All amounts referenced herein are in United States dollars. Except to the extent otherwise provided in the Agreement, Contractor shall pay all taxes, duties, levies, and all other fees and charges imposed by any governmental entity with respect to the Agreement. Purchaser will not be responsible to pay for charges for any Work performed by any other contractor, Subcontractor, manufacturer, or material supplier, but shall be responsible only to make payment as provided by the Agreement to Contractor.
- B. **Invoicing.**
1. Invoices shall be submitted in the manner described in the Purchase Order. The elements of all amounts invoiced shall be shown separately, by applicable line items, and shall be classified as Purchaser may require for accounting and payment purposes. Any taxes payable by Purchaser hereunder shall be shown separately on any bids and invoices sent to Purchaser. 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). Invoice shall be submitted upon completion of the Work, or as otherwise mutually agreed on the face of the Agreement. Purchaser may deduct five percent (5%) as a processing fee from Contractor for any invoice issued more than one hundred eighty (180) days after Purchaser's acceptance of the Work. With the invoice, Contractor shall forward to Purchaser original and duplicate bills of lading or express receipts, signed by the carrier, for materials and/or equipment shipped by carrier other than Purchaser's preferred carrier.
  2. **Invoice Charges.** Invoice charges shall be allocated to appropriate accounts, a list of which will be furnished by Purchaser. For time and material Work performed by Contractor under the Agreement, the charges will be listed by Purchaser's Change Order documentation number [e.g. Field Change Request (FCR) Numbers, Maintenance Work Order (MWO) Numbers, Extra Work Request (EWR) Numbers, Contracted Services Change Order (CSCO) Numbers, etc.] and listed by current month and shall be supported by daily time sheets, accurately describing the Work being performed, signed by Purchaser's 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.** Unless otherwise expressly noted in the Agreement, Contractor shall enroll in and utilize 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 Agreement. Unless otherwise set forth in the Agreement, payment terms are 2% 25 Net 60 days. Purchaser may retain ten percent (10%) of each payment due, which shall be paid to Contractor when Purchaser has fully accepted the Work and is satisfied that the interests of the Purchaser in the completed Work have been protected. Such payment shall not be unreasonably withheld. Following receipt of a correct invoice or acceptance of the Work, whichever is later, Purchaser shall make payments on the next scheduled payment system run. Purchaser's scheduled payment system runs shall not be longer than on a bi-weekly basis. Payments by Purchaser shall not be deemed evidence of acceptance by Purchaser of the Work. After completion of the Agreement and final acceptance of the Work, any retained monies, except those retained under Article 5(E) hereof, will be paid without interest to Contractor in accordance with the terms of payment designated in the Agreement.
- D. **Increases.** Any claim by Contractor 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) calendar days of such occurrence, and if earlier, two (2) hours minimum prior to the time Purchaser needs to make a Work/schedule adjustment, unless Purchaser's 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 a claim for 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 the Agreement, regardless of when it is discovered, including a claim that: (1) Contractor's invoice is erroneous; or (2) the Work is deficient, defective or incomplete; or (3) Purchaser, another supplier, Subcontractor, subcontractor or other party suffers damage or injury which is attributable to Contractor; or (4) Contractor fails to make a payment as and when due to a Subcontractor or supplier for materials, labor or equipment; or (5) Contractor has failed to supply any affidavit, release or waiver of

lien which Purchaser may require; then Purchaser may withhold payment of, or set-off the amount of its claim, costs or loss against, any amount owed to Contractor. If any monies are so withheld, Purchaser shall only pay such amount when, without cost to Purchaser, the cause of such withholding has been eliminated to Purchaser's satisfaction. 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, Purchaser shall withhold a portion of payments owed to Contractor for services to construct, improve, alter, or repair a building, structure, or improvement to real property unless Contractor provides written documentation that Contractor is an entity registered to do business within the State of New Jersey.
- F. 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.
- G. Audit, Records and Reports. Purchaser shall (upon reasonable notice) have the right to audit books and records of Contractor for the purpose of confirming the amount due to Contractor or Contractor's performance of its obligations under the Agreement. Contractor, its Subcontractors and subcontractors and any such entity Contractor uses to perform its obligations under the Agreement shall preserve all such records for a period of three (3) years after final payment hereunder. Upon request, Contractor shall provide Purchaser with information related to prices of materials, equipment and services to enable Purchaser to comply with accounting regulations of any governmental or quasi-governmental organization. Contractor shall provide for such right to audit by Purchaser in all contracts with Subcontractors, subcontractors and other entities relating to the Agreement.

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

- A. Employees. Contractor will employ experienced, qualified, reliable and trustworthy persons to perform the Work. 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. All Contractor's employees and its Subcontractors performing the Work at Purchaser's Site will be trained in and 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. Individuals employed by or representing Contractor on Purchaser's Site (or who have access to Purchaser's network) shall be subject to Purchaser's continuing approval. During the performance of the Work, Purchaser may object to any Contractor employee who, in Purchaser's opinion, does not meet these criteria or whose performance is unsatisfactory. In such case, Contractor shall, at its expense and risk, immediately replace or remove such individual from the Work.
- B. 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 (negligent or otherwise) in and around Purchaser's Site. Contractor shall enforce all environmental protection and worker health and safety and similar requirements applicable to Contractor's Work. Contractor represents and warrants that Contractor's Superintendent shall be thoroughly competent and experienced in the line of work to be performed and such individual shall represent Contractor on the job and all communications given him by Purchaser shall bind Contractor.
- C. Background Checks. Contractor shall make best efforts to ensure each employee assigned to the Work does not have a criminal record and is not involved in criminal activity that could create a risk to Purchaser's Site, customers, and/or employees. Upon Contractor's actual knowledge of an employee having a criminal record or involvement in criminal activity, Contractor shall immediately remove such employee from the Work. Purchaser, at any time prior to the start of or during the Work, may request Contractor to verify that an employee or employees do not possess a criminal record.
- D. Substance Abuse. Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace, as well as Purchaser's rules and regulations concerning the same, available upon request. Contractor is responsible for ensuring all Contractor's employees and its Subcontractors, while working on Purchaser's Site, will not: (1) be under the influence of drugs or alcohol; or (2) purchase, transfer, use or possess illegal drugs or alcohol; or (3) abuse prescription drugs in any way.

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

- A. On-Site Facilities. Contractor shall construct, maintain and remove (in conformity with local and state regulations) all temporary buildings, structures, construction plant, change houses, portable lavatories and temporary storage buildings required for the Work. If on Purchaser's Site, the location of such buildings, storage areas for materials and employees' parking space, will be designated by Purchaser and shall be removed at Contractor's expense upon completion of the Work. If the Agreement specifies that Purchaser will provide (at a location of its choice within reasonable distance of the Work area) the water and power source required for performance of the Work, or allows Contractor or its Subcontractors to use any facility, equipment or apparatus owned or leased by Purchaser, Contractor shall accept the same services at its own risk. If Purchaser does not provide any such items, Contractor shall be responsible for providing the water and power sources necessary for the performance of the Work. When any use is to be made by Contractor or its Subcontractors or by their respective employees of any equipment, facilities, office space or apparatus (including but not limited to scaffolds, ladders, cranes, derricks, platforms, runways, bridges, floor, tools, barricades, or other facilities) which are owned, rented or leased by Purchaser or Purchaser's contractor(s), or contracted for from other contractors, 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. Contractor shall use only the designated construction site for its Work, and shall not use any other area of Purchaser's Site for any purpose without the prior written approval of Purchaser. If any part of the Work is to be performed on an easement or right-of-way held by Purchaser, Contractor shall limit its activities to that area and not allow its

employees or its Subcontractors outside such area. The area(s) designated by Purchaser as the construction site shall be under the control of Contractor unless otherwise provided in the Agreement. 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 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.

- C. Non-Interference. Contractor shall conduct the Work so as to minimize interference with other activities at Purchaser's Site. Contractor shall cooperate fully with Purchaser and other contractors, and shall plan and perform the Work in such a manner so as not to interfere with the activities or operations of Purchaser or other contractors. Purchaser will establish priorities and, at the request of Contractor or other contractors, shall resolve interferences. In the event of differences of opinion or disputes between Contractor and other contractors, which cannot be readily resolved, the decision of Purchaser's Superintendent coordinating the work shall be final. Where the Work requires connection to or modification of existing facilities, Purchaser 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 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 to perform the Work.
- D. Responsibility for Materials and Work Prior to Acceptance. Contractor shall receive, check in, unload, store, handle and protect all Work to be used, furnished or erected by Contractor or its Subcontractors. The Contractor's, Subcontractor's and subcontractor's 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 such party until permanently placed, installed or constructed and accepted by Purchaser. Contractor shall satisfactorily dispose of all rubbish resulting from the operations under the Agreement on a day-to-day basis, and upon completion of the Work, shall restore Purchaser's Site to at least as good order and condition as at the beginning of the Work under the Agreement.
- E. Safety and Health. Contractor is solely responsible for the safety and health of its employees, its Subcontractors, and all other persons engaged in the performance and execution of the Work. Contractor shall conduct the Work in a manner to avoid risk of bodily harm to persons or damage to property. Contractor shall take all necessary safety and health precautions, and shall do everything necessary to prevent accidents or injury to persons on, about, or adjacent to the premises where Work is being performed, including using proper safety appliances and providing first aid treatment and ambulance service for emergency treatment of injuries. Contractor shall not require any employee or Subcontractor performing hereunder to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to safety or health. Contractor and its Subcontractors shall immediately report to Purchaser all incidents requiring first aid, near misses, and doctor-attended injuries (whether or not an Occupational Safety and Health Act (OSHA) recordable). Contractor shall conduct the Work in conformance with all applicable safety and health laws, ordinances, rules, regulations, orders and all other requirements (including, without limitation, standards under OSHA and Purchaser's safety requirements) when at Purchaser's Site. Contractor shall continuously inspect its work, materials and equipment to identify any unsafe conditions, and shall promptly take action to correct any condition which presents such a risk. To the extent applicable, Contractor shall comply with all hazard communication standards promulgated by OSHA, 29 CFR 1910.1200, et. seq., the Pennsylvania Right To Know Act and similar hazard communication laws of other states; this includes evaluating and labeling all hazardous chemicals as defined by said standards and maintaining Material Safety Data Sheets on all such hazardous chemicals to ensure that hazard information with regard to chemical hazards produced, imported, or used within the workplace is transmitted to affected employees of Contractor, its Subcontractors and Purchaser. Without limiting the foregoing, Contractor and its Subcontractors shall comply with all safety and health rules, policies, programs, and regulations established by Purchaser for activities at Purchaser's Site, including all requirements contained in the latest revision of the FirstEnergy Contractor Safety Requirements document. This requirement shall be included in all subsequent orders or subcontracts issued by Contractor.
- F. Sanitation. Contractor shall provide temporary fire protection facilities to the extent required by Purchaser during the construction period. 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. Contractor will remove these facilities upon completion of the Work and clean the site to Purchaser's satisfaction.
- G. Security. Purchaser will, at its discretion, provide a security guard at the entrance and exits to Purchaser's Site who shall have the right to inspect all individuals, property, and vehicles entering and leaving Purchaser's Site, and exercise such control of individuals, property, and vehicles as Purchaser deems necessary in its sole discretion.
- H. Sales Prohibited. 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.
- I. Arrival and Departure of Contractor's Tools and Materials.
1. Mobilization. Contractor shall provide the necessary resources to receive and secure all tools, equipment and materials needed to complete the Work that are shipped to Purchaser's Site by, or for the benefit of, Contractor or its Subcontractors. Contractor shall be responsible for providing Purchaser's Superintendent with the detailed packing lists of all such items needed to complete the Work, including tools, equipment, and materials, prior to the time of any shipment of such items to Purchaser's Site. 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 T&M Work designated tools, equipment, and/or materials Contractor shall, where known, identify the specific T&M Work associated therewith and itemize such tools, equipment, and/or materials on separate forms. 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 verify ownership of all tools, equipment, and materials being removed from Purchaser's Site by preparing and submitting to Purchaser an itemized list of the tools, equipment, and materials leaving Purchaser's Site for each

individual shipment. The forms shall be signed by Contractor's Superintendent signifying that everything listed on the form(s) as being removed from Purchaser's Site is the property of Contractor. Contractor shall prepare sufficient copies of the form(s) to provide at minimum one (1) copy for Purchaser's Superintendent and one (1) copy to be left with the security guard when leaving Purchaser's Site. Contractor shall provide at least forty-eight (48) hours notification that tools, equipment, and materials are being readied for shipment off Purchaser's Site. Contractor shall, prior to beginning to pack and load tools, equipment, and materials for shipment off Purchaser's Site, 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 at Contractor's expense. Purchaser retains the sole option to perform a total or partial ownership verification audit of all Contractors' shipments leaving Purchaser's Site.

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

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

#### **ARTICLE 9 – WARRANTY**

- A. Warranty. Contractor warrants the Work: (1) will fully conform with the Specifications, the terms of the Agreement and all drawings, samples, and other descriptions provided by Purchaser; and (2) will be of good design, material and workmanship, free from defects; and (3) will be fit for the ordinary purposes for which such Work is used or intended and for any particular purpose of Purchaser of which Contractor is aware; and (4) will be produced and supplied in compliance with applicable law. The foregoing warranties shall continue in effect for a period of two (2) years from the date Purchaser initially uses the Work as an integral part of Purchaser's Site, or in the case of non-operational materials or services, for a period of two (2) years from the date Purchaser accepts the Work, whichever is later.
- B. Remedies. If any Work 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; or (2) require Contractor to repair, correct, replace, or re-perform such Work as necessary to render the Work in conformance with the foregoing warranties and consistent with Purchaser's time schedule; or (3) arrange for Purchaser or a third party to make any corrections and replacement required to cause such Work to fully conform to the foregoing warranties. If Contractor damages Purchaser's or any third party's equipment, components, parts or materials resulting from a defect in the Work covered by Contractor's warranties, then, at Contractor's expense, Contractor shall repair or replace or cause to be repaired or replaced any such equipment, components, parts or materials. Contractor shall reimburse Purchaser for all expenses Purchaser incurs in connection with a breach of the foregoing warranties (including transportation, expediting, storage, administrative, and other incidental expenses of Purchaser). The remedies set forth in the Agreement are cumulative, and shall not preclude any other remedy available to Purchaser at law or in equity.
- C. Title. Contractor warrants title to the Work is free from defects, which shall continue without limitation as to time.
- D. Survival. All of Contractor's warranties shall survive performance and acceptance of and payment for the Work and shall inure to the benefit of Purchaser, and to all subsequent purchasers of the Work.

#### **ARTICLE 10 - INDEMNITY**

- A. Contractor's Indemnity. Contractor shall indemnify, defend, and hold harmless Purchaser, its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees (the "**Indemnified Parties**") from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, any mediation, arbitration, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Contractor's obligations under this Article

(collectively, "**Losses**")), which any of the Indemnified Parties may suffer or incur, arising out of or related to the Work, and/or the actions or omissions of Contractor and/or its Subcontractors, including Losses relating to: (1) actual or alleged bodily or mental injury to or death of any person; or (2) damage to or loss of use of property of Purchaser, Contractor, any Subcontractor, or any third party; or (3) any contractual liability owed by Purchaser to a third party; or (4) any breach of or inaccuracy in the covenants, representations, and warranties made by Contractor under the Agreement; 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; or (6) any lien or encumbrance arising out of or in connection with performance of Contractor's obligations under the Agreement; **provided, however**, that Contractor's indemnity obligations under this Article 10(A) shall not apply to any Losses to the extent such Losses are found to have been caused by the negligence or willful misconduct of any of the Indemnified Parties.

- B. Intellectual Property Indemnity. Contractor shall indemnify, defend, and hold harmless the Indemnified Parties from and against any and all Losses which any of the Indemnified Parties may suffer or incur arising out of or related to any claim, suit, or proceeding alleging that the Work, the intended use thereof, or any materials and information designed, specified, or used by Contractor or any Subcontractor in performing the Work violates, infringes, or misappropriates any patent rights, copyrights, trade secrets, or other intellectual property rights of any third party. If the use of any Work is enjoined or restrained and Contractor fails to remove such injunction or restraining order within a reasonable time, Contractor shall promptly and at Contractor's expense: (1) secure for Purchaser the right to use the Work or any portion thereof which is said to be infringing by procuring for Purchaser a royalty-free license; or (2) replace the Work or such portion thereof with non-infringing Work that meets the requirements of the Agreement; or (3) remove such infringing Work or such portion thereof, as Purchaser may elect, and refund the sums paid therefor by Purchaser, together with any out-of-pocket costs incurred by Purchaser in connection with its purchase and use of the infringing Work, all without damage or injury to Purchaser's other property.
- C. Waiver of Immunities. If an employee of 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 waives any provision of any workers' compensation act or other similar law whereby Contractor or its Subcontractor could preclude its joinder by such Indemnified Party as an additional defendant in such actions, or avoid liability for damages, contribution, defense, or indemnity in any action at law, or otherwise. Contractor's and its Subcontractor's obligation to Purchaser under this Article 10 shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Contractor or its Subcontractor under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Contractor, Subcontractor, or anyone employed directly or indirectly by Contractor or anyone for whose acts Contractor may be liable.

#### **ARTICLE 11 - INSURANCE**

- A. Contractor's Insurance. Contractor shall secure and maintain in force minimum policies of insurance of the types listed below and shall furnish to Purchaser, prior to providing any portion of the Work and throughout the duration of the Contractor's performance of the Work, certificates of insurance evidencing current coverage listed below (collectively, the "**Policies**").
1. Commercial General Liability (CGL) insurance including products-completed operations, independent contractors, and contractual liability coverages with minimum limits of \$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.
  5. If the Contractor will have access to the Purchaser's Network/Systems or any of Purchaser's customer data, Contractor is required to provide Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence.
- Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.
- B. Additional Insured. FirstEnergy Corp. and its subsidiaries and affiliates shall be included by Contractor as an additional insured to the Policies for the portion of any losses resulting from, or related to, the Contractor's sole or concurrent negligence. The Policies shall provide primary and non-contributory coverage in relation to any insurance Purchaser carries for the same losses, and include a separation of insured's provisions. The limits of liability specified for the required insurance coverage herein are the minimum limits of liability that must be carried by Contractor. The limits of insurance required herein will in no way be deemed to limit any liabilities or obligations assumed by Contractor hereunder or under applicable law, except as provided by statute. A copy of the endorsement adding FirstEnergy Corp. and its subsidiaries and its affiliates as an additional insured (blanket endorsement is acceptable) shall be attached to the certificate of insurance providing general liability coverage.
- C. Lapse of Coverage. The Policies shall not be canceled or allowed to lapse, and no change shall be made in this policy altering, restricting or reducing the insurance provided or changing the name of the insured without 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. In the event of cancellation or lapse of or prohibited change in any Policy, Purchaser shall have the right to suspend provision of the Work by 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 Policy shall be about to lapse or be canceled, Contractor shall obtain a new Policy with like coverage, and if Contractor fails to do so, Purchaser may terminate the Agreement.
- D. Waiver of Subrogation. Contractor hereby waives (and any of its Subcontractors shall waive) any rights of subrogation they or any of their insurers may have against Purchaser and each non-affiliated company disclosed in the Agreement, their respective agents or employees.

## **ARTICLE 12 – 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 the Agreement. 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.
- C. 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.
- D. Subcontracts. Every subcontract for any portion of the Work shall contain an obligation by the Subcontractor equal in effect to this Article.

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

- A. Events of Default; Termination for Cause. If Contractor: (1) fails to comply with applicable laws and ordinances; or (2) assigns or subcontracts the Agreement or any part hereof without Purchaser's consent; or (3) otherwise fails or refuses to perform its obligations under the Agreement in any respect; or (4) fails to provide Purchaser, upon request, with adequate assurance of future performance of the Agreement; or (5) becomes insolvent or makes a general assignment for the benefit of creditors or admits in writing its inability to pay debts as they mature or if a trustee or receiver of 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) unnecessarily delays the Work or any part thereof; then Purchaser may terminate the Agreement immediately or cancel any remaining portion of the Work (and Purchaser's corresponding obligations) and/or pursue any further remedies available at law or in equity. Notice of termination shall be in writing and shall be effective upon receipt thereof.
- B. Remedies. In the event of termination by Purchaser for cause, Contractor shall, at Purchaser's option, deliver to Purchaser the raw materials and work-in-process required in order to perform the Work. Purchaser shall have the right, at its election and without prejudice to any other remedies, to: (1) continue and complete the Work or any part thereof, and deduct the cost of such completion from the amount due Contractor under the Agreement; or (2) pay Contractor the reasonable cost of such raw materials and work-in-process. In the event of such termination, Purchaser shall not be required to obtain the lowest figure for completing the Work but may pay amounts Purchaser, in its sole judgment, determines will best accomplish such completion. Contractor shall be responsible for all expenses, including additional management and administrative services Purchaser incurs to complete the Work, and remedy defective Work and damage done by Contractor, and any other costs and expenses Purchaser sustains due to Contractor's breach. Purchaser's rights and remedies set forth in this Article are cumulative and not exclusive, are in addition to any other rights and remedies provided at law, in equity, or under the Agreement, and they may be pursued separately or concurrently as Purchaser determines. Contractor shall, if Purchaser requests immediately remove its employees, representatives, tools, equipment, and other property from Purchaser's Site. If Contractor should fail to complete the removal within a reasonable period, Purchaser may remove such items at Contractor's expense. In any event, Contractor shall be liable to Purchaser for any and all losses, damage and costs Purchaser incurs in completing the Work. All of Purchaser's rights and remedies under the Agreement shall be cumulative and not exclusive. Upon a final determination by a court of competent jurisdiction that a termination pursuant to Article 13(A) was improper, the termination shall be deemed a termination for convenience pursuant to Article 13(C).
- C. Termination for Convenience. Purchaser may, at any time without cause and for its own convenience, terminate the Agreement or cancel any remaining portion of the Work (and Purchaser's corresponding obligations) by giving Contractor written notice. Upon receiving a notice of termination or cancellation (except as otherwise directed by Purchaser), Contractor shall: (1) stop all efforts under the Agreement related to the affected Work; and (2) place no further orders or subcontracts related to the affected Work; and (3) take all such actions necessary (or as directed by Purchaser) to protect and preserve the Work (collectively, "**Cessation Actions**"). Purchaser shall pay Contractor its actual, necessary, reasonable and verifiable expenses as a direct consequence of such termination or cancellation. Purchaser shall be entitled to the Work for which Purchaser has paid or, at Purchaser's option, Contractor shall attempt to liquidate the same and Purchaser shall be entitled to the benefits of any value received. 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 on the terminated or cancelled Work. Purchaser's liability for termination expenses shall not exceed, in any event, the unpaid balance of the contract price. The compensation described in this Article 13(C) shall be Contractor's sole and exclusive compensation and remedy if the Agreement is terminated for convenience.
- D. Return of Pre-paid Funds. Upon termination of the Agreement under this Article 13 for cause or for convenience, Contractor shall return all pre-paid funds received from Purchaser to which Contractor is not entitled.

## **ARTICLE 14 - SUSPENSION**

- A. **Right to Suspend**. Purchaser may 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 and except as otherwise directed by Purchaser, Purchaser may require Contractor to comply with any of the Cessation Actions described in Article 13(C).
- B. **Suspension of Deliveries**. Purchaser may defer delivery 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. Purchaser will pay all reasonable charges and direct expenses related to the storage of such items to the extent Contractor is not able to avoid them.
- C. **Adjustment of Price and Schedule**. Suspension hereunder shall not affect the contract price or the period of performance, unless Contractor experiences a cost increase or time delay as a result of such suspension and provides Purchaser written details of such effect(s) within thirty (30) days after such suspension.

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

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 the Work under the Agreement ("Change Order"). 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 the Agreement. Performance of additional Work shall not be a basis for schedule extensions unless such extensions are agreed upon at the time of award of the additional Work. Such changes shall be initiated by written order of Purchaser and 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, or (b) lump sums, or (c) other methods of reimbursement, in each case as designated in the Agreement or as subsequently agreed upon in writing.

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

- A. During the performance of the 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 U.S. 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, gender, national origin, age or disability. 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, gender, national origin, age or disability. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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, gender, national origin, age or disability.
  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);
    - e. Executive Order 11625 and Public Law 95-507 (Utilization of Disadvantaged Business Enterprises); and
    - f. Executive Order 13496 (Employee Rights Under the National Labor Relations Act), and shall post copies thereof in conspicuous places available to employees and applicants for employment.
  4. Contractor and its Subcontractors shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.
  5. Contractor and its Subcontractors shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.
- C. If this Agreement is a subcontract under a government contract or a federally-funded project, Contractor shall comply with subcontractor flow-down requirements under the Federal Acquisition Regulations (48 CFR Chapter 1), as amended from time to time, which are specified in supplemental terms to this Agreement.
- D. 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 the 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 the Agreement, Contractor warrants to Purchaser that such employment does not violate the foregoing regulations.

- E. Foreign Corrupt Practices Act ("FCPA"). 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 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 knowingly request any Work by Contractor that would or might constitute any such violation.
  4. Purchaser may terminate the Agreement for default at any time, without any liability or obligation, if it believes, in good faith, that 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 Agreement 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 Agreement, including the compensation provisions, at any time, for any reason and to whomever Purchaser's general counsel determines has a legitimate need to know the same including, without limitation, the United States government, the government of any country where the Work is performed or obtained, and any regulatory agency with jurisdiction over Purchaser.
- F. Government Authorizations. Unless the Agreement otherwise provides, 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 that have insured Contractor in any way related to the Work.
- G. Any costs, fines, penalties, awards, damages or other liabilities associated with any violations of this Article shall be borne and paid by Contractor.
- H. Network Access. If Contractor's and/or Subcontractor's employees are given access to Purchaser's information and control systems, Contractor, Subcontractor and such employees shall be subject to a Network/System Access Agreement governing Contractor's, Subcontractor's and such employees' use of such systems. The Network/System Access Agreement requires that each person given access has passed a background check, is either a U.S. Citizen or holds a valid green card and shall comply with the FE IT Cyber Security Policy.
- I. Information Security. If applicable to its performance of the Work, Contractor shall be subject to the following:
1. Contractor Requirements: Without limiting Contractor's confidentiality obligations under the Agreement, Contractor shall be responsible for establishing and maintaining an information security program (including any relevant subcontractors) that is designed to: (i) ensure the security and confidentiality of Purchaser's data; and (ii) protect against any threats or hazards to the security or integrity of Purchaser's data; and (iii) protect against unauthorized access to or use of Purchaser's data; and (iv) ensure the proper deletion of Purchaser's data; and (v) ensure that all Contractor's subcontractors, if any, comply with the foregoing. If Contractor's information security system is breached, Contractor must timely notify Purchaser of such breach via e-mail and phone call. The minimum information security requirements will be incorporated into this Agreement as "FirstEnergy Security Requirements for Application Service Providers" and will be a material obligation of Contractor in its performance of the Work.
  2. Right to Audit. Contractor's information security program will be subject to periodic review, as requested by Purchaser. Contractor shall notify Purchaser of any modification to the information security program (including modifications made by subcontractors) for Purchaser's review and implement any safeguards required by Purchaser.
  3. Third-Party Audit. No less than annually, Contractor shall conduct an independent third-party audit of its information security program and provide such audit results to Purchaser. Contractor shall implement any required safeguards as identified by such information security program audit.
- J. Codes of Conduct. Contractor shall comply with all requirements of *FirstEnergy's Code of Conduct (located at [www.firstenergycorp.com](http://www.firstenergycorp.com))* and any governmental regulatory codes of conduct applicable to the Work.
- K. NERC CIP Requirements. The following obligations shall apply to each Contractor employee who is authorized as part of the Work to have either electronic, or unescorted physical access to Bulk Electric Systems ("**BES**") Cyber Systems (which Purchaser shall from time to time identify for Contractor) ("**CIP Employee**"). Upon request from Purchaser, at any time prior to the start of or during the Work, Contractor shall:
- (a) provide direct evidence (i.e. the actual search criteria and results) verifying that no CIP Employee possesses a criminal conviction, and
  - (b) certify that each CIP Employee has completed the training necessary to achieve the North American Electric Reliability ("**NERC**") Critical Infrastructure Protection ("**CIP**") certification. (If required, Purchaser shall provide and pay for the training to achieve NERC CIP certification).

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

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

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

- L. Gifts and Gratuities/Conflicts of Interest. Purchaser's employees are subject to conflicts of interest and gifts and gratuities policies, which generally prohibit such employees and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel and entertainment, and discounts that would not be available to the general public) from existing or potential customers, suppliers, or contractors that: (1) have more than a nominal value; or (2) exceed the level of standard business courtesies; or (3) the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits Purchaser's employees and/or their family members from serving as an officer, director, employee, consultant, agent, of, or owning any beneficial interest in, an organization having a business relationship with Purchaser as a supplier or contractor, if the employee is in a position to influence decisions concerning the relationship. The entire text of these policies may be found within the Supply Chain Section at [www.firstenergycorp.com](http://www.firstenergycorp.com). Contractor, Subcontractor and prospective suppliers to Purchaser are expected to be aware of and comply with these policies in their dealings with Purchaser's employees and their family members. *Any suspected or actual violations of these policies should be reported; and, may be reported anonymously and confidentially by a customer, supplier, contractor, or employee by calling the Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.*
- M. Conflict Minerals. For purposes of this Agreement, "**Conflict Minerals**" means any cassiterite, columbite-tantalite, gold, wolframite, or the derivatives tantalum, tin, or tungsten and any other mineral or its derivatives determined by the U.S. Secretary of State pursuant to Section 13p of the Securities and Exchange Act of 1934 to be financing conflict in the Democratic Republic of Congo ("**DRC**") or any country that shares an internationally recognized border with the DRC (collectively, and together with the DRC, the "**Conflict Region**"). With respect to any Work Purchaser reasonably determines has been or will be "contracted to be manufactured" or incorporated into a product "manufactured" by Purchaser, in each case, as contemplated by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Act**"), and could contain Conflict Minerals:
  - 1. Contractor shall disclose to Purchaser, in writing, whether such Work does contain Conflict Minerals and, if so, the type(s) of Conflict Mineral(s) the Work contains;
  - 2. Contractor hereby represents to Purchaser that any such Conflict Minerals did not originate in the Conflict Region or, in the alternative, such Work is "DRC conflict free" as defined in the Act and the implementing regulations; and
  - 3. Contractor shall comply with, and support Purchaser's efforts to comply with, the Act and its implementing regulations (including, without limitation, the Act's due diligence and reporting requirements), regardless of whether Contractor is a covered issuer under the Act, and comply with Purchaser's Conflict Minerals Policy.Purchaser may terminate this Agreement for default at any time, without any liability or obligation, if it believes, in good faith, that Contractor has violated this Article 16(M).
- N. Identity Theft. Contractor agrees to perform all duties contemplated herein consistent with reasonable policies, procedures and related controls that are designed to detect, prevent and mitigate the risk of identity theft, and to take appropriate steps to prevent or mitigate the same if any such events occur. The need for this contractual provision is based on the Identity Theft Red Flags Rule promulgated under the Fair and Accurate Credit Transactions Act of 2003, which provides in pertinent part at 16 CFR 681 Attachment A VI (C): A financial institution or creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft.
- O. Prevailing Wage. Contractor shall be responsible for determining whether any federal, state, county or municipal prevailing wage law applies to this Agreement, and if one does apply, then Contractor shall comply with the law, as amended, and shall be responsible for all computations related thereto. Further, Contractor will indemnify Purchaser for any claims arising from Contractor's failure to comply with this obligation.

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

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

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

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

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

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

## **ARTICLE 20 – CONFIDENTIALITY**

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

## **ARTICLE 21 - FORCE MAJEURE**

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

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

## **ARTICLE 22 – MISCELLANEOUS**

### **A. Assignment and Subcontractors.**

1. Contractor may not assign any rights or claims, or delegate any duties under the Agreement, in whole or in part, without Purchaser’s prior written consent, which shall not be unreasonably withheld. In the event of any assignment, subcontracting or delegation permitted hereunder, Contractor shall continue to be liable for the performance of its obligations hereunder.
2. If Contractor proposes to subcontract any portion of the Work, it shall submit to Purchaser the name of each proposed subcontractor(s) prior to engaging such subcontractor(s), with the proposed portion of the Work and such information about the subcontractor(s) as Purchaser may request. Purchaser may reject any and all subcontractors at its absolute discretion. Contractor

shall not be relieved of any responsibility or obligations under the Agreement by subcontracting any portion of the Work, whether or not such proposed subcontract is approved by Purchaser.

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