FIRSTEENERGY SERVICE COMPANY – GENERAL TERMS AND CONDITIONS
FOR PURCHASE OF MATERIALS AND EQUIPMENT

ARTICLE I – DEFINITIONS

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

A. “Goods” means the materials, equipment, supplies or other products and related incidental services.

B. “Purchase Order” is the cover sheet to these terms and conditions, and a part of the Agreement. It may contain additional terms and other messages unique to this transaction.

C. “Purchaser” means FirstEnergy Service Company, its successors and assigns, for itself and/or as an authorized agent of the affiliate company or companies and their respective successors and assigns, set forth on the face of the Agreement for which the Goods specified herein are being procured. If more than one company is identified, the liability of each company named shall be several and not joint and shall be limited to such company's interest in the Agreement, as identified therein.

D. “Supplier” means the organization, individual or entity which is furnishing the Goods.

ARTICLE II – TERMS OF AGREEMENT

A. Agreement. The terms and conditions set forth in this document, together with the Purchase Order and all attachments, exhibits, revisions, and supplements thereof, shall constitute the complete and entire agreement between Purchaser and Supplier (the “Agreement”). In case of any error, inconsistency or omission in the various documents comprising the Agreement, the matter will be submitted immediately to Purchaser, without whose decision said discrepancy shall not be adjusted by Supplier.

B. Offer and Acceptance. Supplier’s acknowledgement, commencement of performance, or any conduct by Supplier which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Supplier of the Agreement and all of its terms and conditions. Acceptance of the Agreement is expressly limited to Supplier’s assent to all of the terms and conditions of the Agreement. Additional or different terms provided in Supplier’s acceptance of Purchaser’s offer which vary in any degree from any of the terms of the Agreement shall be deemed material and are hereby objected to and rejected. If the Agreement shall be deemed an acceptance by Purchaser in response to an offer by Supplier and if any terms herein are additional to or different from any terms of such offer, then the issuance of the Agreement by Purchaser shall constitute an acceptance expressly conditioned upon Supplier’s assent to all of the terms and conditions of the Agreement. Additional or different terms in any acknowledgement, invoice, or communication submitted by Supplier, or any attempt by Supplier to vary in any degree any of the terms of the Agreement, unless expressly agreed to by Purchaser, shall be deemed material and are hereby objected to and rejected. Any such terms proposed by Supplier, whether by offer or acceptance, shall be void unless expressly agreed to in writing by Purchaser.

C. Integration; Modification. The parties intend this 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. The parties further intend that this complete, exclusive and fully integrated statement of their agreement may not be supplemented or interpreted by any evidence of trade usage or course of dealing. 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.

D. 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.

E. Audit. Purchaser shall have the right to audit books and records of Supplier upon reasonable notice for the purpose of confirming the amount due Supplier under the Agreement. Supplier, Supplier’s subcontractors and any other entity used by Supplier in the performance of the Agreement shall preserve all such records for a period of three (3) years after final payment hereunder. Upon request, Supplier shall provide Purchaser with sufficient information relating to prices of Goods to enable Purchaser to comply with accounting regulations of the Federal Energy Regulatory Commission (FERC). Supplier shall provide for such right to audit by Purchaser in all contracts with subcontractors and other entities relating to the Agreement.

F. Independent Contractor. Supplier in its performance hereunder shall at all times be an independent contractor and responsible for all acts or omissions (negligent or otherwise) of its agents, employees and subcontractors. Supplier alone shall be and remain liable and responsible for the manner and methods by which work is performed and for materials, work force and equipment, irrespective of whether or not any changes are made as a result of any comments received from Purchaser.

ARTICLE III – SHIPMENT AND DELIVERY

Packing lists in duplicate will be furnished with each shipment. Order identification information specified by Purchaser (such as the order number and project system identification number) shall appear on all invoices, packages, shipping cases, shipping documents, and correspondence. Unless otherwise specified in the Agreement, shipments shall be made F.O.B. Destination. Title and risk of loss of the Goods passes to Purchaser upon acceptance of delivery. Where shipment is made via rail, FOB Destination, Supplier shall ensure all Goods are shipped in the right car type and/or equipment to deliver in a reliable manner. THE OBLIGATION OF SUPPLIER TO MEET THE DELIVERY DATES, SPECIFICATIONS AND QUANTITIES SET FORTH HEREIN IS OF THE ESSENCE OF THE AGREEMENT. Supplier shall notify Purchaser immediately of any delay in delivery or shipment. Shipments in greater or lesser quantity than ordered may be returned at Supplier’s expense, unless written authorization is issued by Purchaser. Goods which are delivered in advance of schedule may, at Purchaser’s option, (a) be returned at Supplier’s expense (b) have payment therefor withheld by Purchaser until the date the Goods are actually scheduled for delivery, or (c) be placed in storage for Supplier’s account until delivery dates specified herein.

ARTICLE IV – CONTRACT PRICE AND PAYMENT

Invoices shall be submitted in a form acceptable to Purchaser to the address specified in the Agreement, except that invoices submitted electronically will have additional requirements. Supplier shall forward to Purchaser, with the invoice, original and duplicate bills of lading or express receipts, signed by the carrier, for Goods shipped. Unless otherwise set forth in the Agreement or any attachment thereto, payment terms are 2% 10 Net 45 Days. Payment dates shall be calculated from the date of receipt of invoice or acceptance of the Goods by Purchaser, whichever is later. All payments are made...
conditional upon acceptance by Purchaser of the Goods specified in the Agreement. No payment shall be evidence of satisfactory performance of the Agreement or shall be construed to be an acceptance of defective or nonconforming Goods. Except to the extent otherwise provided herein, Supplier shall pay all taxes, duties, levies, and all other fees and charges imposed by any governmental entity with respect to the Agreement and the Goods provided hereunder. 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.

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

Electronic Invoices. Unless exempted by Purchaser, Supplier shall utilize Purchaser’s then-current Electronic Invoice Presentment and Payment program to submit invoices and receive payment electronically from Purchaser.

ARTICLE V – INTELLECTUAL PROPERTY RIGHTS
Supplier warrants that the Goods supplied hereunder 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. In case such Goods now or in the future constitute patent, copyright or trademark infringement, Purchaser may, at its sole option, pursue any remedy or remedies available at law or in equity, including, without limitation, requiring Supplier to either procure for Purchaser the right to continue using such Goods, modify them so that they become non-infringing and/or remove them and refund the total purchase price thereof.

ARTICLE VI – WARRANTY
Supplier expressly warrants that all Goods furnished by Supplier hereunder will fully conform with the terms of the Agreement, and with all specifications, 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 Goods are used or intended and for any particular purpose of Purchaser of which Supplier is aware, and produced or supplied in compliance with applicable law. Unless otherwise specified and agreed to by 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 Goods, for a period of two (2) years from the date of performance of the work and final acceptance of the 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. Supplier agrees that all of its warranties shall survive performance and acceptance of and payment for the Goods provided hereunder and shall inure to the benefit of Purchaser, and to all subsequent purchasers of the Goods provided hereunder. If any Goods provided hereunder do not comply with the foregoing warranties, Purchaser may, at its sole option, and in each case at Supplier’s sole expense: (1) reject such Goods; (2) require Supplier to repair or correct such Goods as necessary to render them in conformance with the foregoing warranties, and consistent with Purchaser’s time schedule; (3) return such Goods and receive a full refund of the contract price; or (4) make any corrections required to cause such Goods to fully conform to the foregoing warranties and charge Supplier for the costs incurred by Purchaser thereby. Supplier 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 Supplier does not remove defective or non-conforming Goods within a reasonable time fixed by written notice from Purchaser, Purchaser may remove and store such Goods at the expense of Supplier. If Supplier does not pay the cost of such removal and storage within ten (10) days thereafter, Purchaser may, upon ten (10) additional days' written notice sell such Goods at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs. The remedies set forth in the Agreement are cumulative, and shall not preclude any other remedy available to Purchaser at law or in equity. Goods which are modified, adjusted, repaired or replaced under the terms of the Agreement shall be subject to the same warranties and remedies provided for the original Goods, provided that the warranty period shall extend from the date of modification, adjustment, repair, or replacement.

ARTICLE VII – INDEMNITY
A. Supplier’s Indemnity. Supplier shall indemnify, defend, and hold harmless Purchaser, its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees (the “Indemnified Parties”), from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys’ and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Supplier’s obligations under this Article VII) (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 Goods procured pursuant to the Agreement, the presence of Supplier and/or its subcontractors at Purchaser’s site, and/or the actions or omissions of Supplier and/or its subcontractors, including, without limitation, Losses relating to: (1) actual or alleged bodily or mental injury to or death of any person, including, without limitation, any person employed by Purchaser, Supplier, or any subcontractor; (2) damage to or loss of use of property of Purchaser, Supplier, 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 Supplier under the Agreement and/or (5) any violation by Supplier or any subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority; provided, however, Supplier’s indemnity obligations under this Article VII(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.

B. Intellectual Property Indemnity. Supplier shall indemnify, defend, and hold harmless the FirstEnergy Indemnified Parties from and against any and all Losses which any of the FirstEnergy Indemnified Parties may suffer or incur arising out of or related to any claim, suit, or proceeding alleging that the Goods, the intended use thereof, or any materials and information designed, specified, or used by Supplier or any subcontractor in the Goods, violates, infringes, or misappropriates any patent rights, copyrights, trade secrets, or other intellectual property rights of any third party. If the use of any Goods is enjoined or restrained, and Supplier fails to remove such injunction or restraining order within a reasonable time, Supplier shall promptly and at Supplier’s expense, either (1) secure for Purchaser the right to use the Goods or any portion thereof which is said to be infringing by procuring for Purchaser a royalty-free license or otherwise, or (2) replace the Goods or such portion thereof with non-infringing Goods that meets the requirements of the Agreement, or (3) remove such infringing Goods 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 Goods, all without damage or injury to Purchaser’s other property.
C. Waiver of Immunities. If an employee of Supplier or its subcontractor, or such employee’s heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death to such employee, brings an action at law against any Indemnified Party, then Supplier, for itself, its successors, assigns, and subcontractors, hereby expressly waives any provision of any workers’ compensation act or other similar law whereby Supplier 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. Supplier’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 Supplier under any worker’s compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Supplier or anyone employed directly or indirectly by Supplier or anyone for whose acts Supplier may be liable.

D. No Impairments. Supplier’s obligations under this Article VII shall not be limited to the extent of any insurance available to or provided by Supplier. Furthermore, the indemnification, defense and hold harmless of Purchaser by Supplier and any other right of Purchaser against Supplier shall not be impaired or affected in any way by the failure of Purchaser to provide Supplier with a copy of a notice to owner, notice of lien, mechanics lien, or other information.

ARTICLE VIII - INSURANCE

A. Supplier’s Insurance. If the Supplier is furnishing services on Purchaser’s site, such as technical direction for installation and/or start-up, the Supplier 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.

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 by Supplier as an additional insured to Supplier’s CGL and Automobile Liability policies (“Policies”), identified in the preceding paragraph, for any losses resulting from, or related to, the Supplier’s sole or concurrent negligence. Said Policies shall provide primary and non-contributory coverage to the additional insured in relation to any insurance carried by Purchaser for the same losses, 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 (blanket endorsement is acceptable) shall be attached to the certificate of insurance providing general liability coverage.

C. Lapse of Coverage. The insurance policies required by this Article shall not be canceled or allowed to lapse, and no change shall be made 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. In the event of cancellation or lapse of or prohibited change in any policy for which a certificate is required to be furnished under the Agreement, Purchaser shall have the right to suspend the work of Supplier until the policy and certificates in evidence thereof are reinstated or arrangements acceptable to Purchaser are made pending issuance of new policies and certificates. If any such insurance shall be about to lapse or be canceled, Supplier shall, at least thirty (30) days before coverage thereunder ceases, obtain a new policy with like coverage, and if Supplier 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 Supplier and shall be a legitimate deduction from any sum due it from Purchaser.

D. Waiver of Subrogation. Supplier 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 the Agreement, their respective agents or employees.

ARTICLE IX – ENCUMBRANCES

Supplier shall neither file nor cause or permit to be filed any lien or encumbrance with respect to the Work to be performed and hereby expressly waives any right to file or cause to be filed such lien or encumbrance. Supplier, in its subcontracts and agreements with suppliers, shall require all subcontractors and suppliers to expressly waive the right to file liens and shall provide Purchaser with copies of such waivers. Supplier hereby agrees to indemnify and save Purchaser, its subsidiaries and affiliates harmless against any and all liens and encumbrances arising out of or in connection with performance of the Agreement.

ARTICLE X – TERMINATION OR SUSPENSION BY PURCHASER

A. Termination for Convenience. Purchaser may terminate the Agreement, in whole or in part, at any time without cause and for its own convenience, by giving Supplier written notice. In the event termination is not based upon a breach by Supplier, Purchaser may pay Supplier the proportionate part of the purchase price representing Goods delivered and accepted prior to the date of termination. Acceptance of any portion of the Goods ordered shall not bind Purchaser to accept any future shipment nor deprive Purchaser of the right to revoke acceptance and return previously delivered Goods, nor waive its right to reject future deliveries. Supplier shall have no right to substitute for returned or rejected Goods without Purchaser’s written instructions and agreement. Purchaser shall not be liable for any consequential or incidental damages or the loss of any claims for anticipated profits on the unfinished or unshipped portion of Goods. The compensation described in this paragraph shall be Supplier’s sole and exclusive compensation and remedy if the Agreement is terminated for convenience.

B. Suspension. Supplier, upon written notice from Purchaser, shall suspend or temporarily stop performance hereunder.
ARTICLE XI – COMPLIANCE WITH LAWS, REGULATIONS, AND PERMITS

A. During the performance of the Agreement, Supplier shall strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the work.

B. Without limiting the foregoing, and unless exempted under the rules, regulations and relevant orders (41 CFR Chapter 60) of the Secretary of Labor, in connection with the work, Supplier agrees as follows:

1. Supplier shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age or disability. Supplier shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, gender, national origin, age or disability. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Supplier shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the U.S. Department of Labor setting forth the provisions of this nondiscrimination clause.

2. Supplier shall state, in all solicitations or advertisements for employees placed by or on its behalf, that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin, age or disability.

3. Supplier shall send to each labor union or representative of workers with which it has a collective bargaining agreement, contract or understanding, a notice to be provided by the U.S. Department of Labor, advising the labor union or workers' representative of Supplier's commitments under the following provisions, as amended from time to time:
   i. Section 202 of Executive Order 11246 (Equal Opportunity);
   ii. Executive Order 11701 (Employment of Veterans);
   iii. Executive Order 11758 (Employment of the Handicapped);
   iv. Executive Order 1141 (Employment Discrimination Because of Age);
   v. Executive Order 11625 and Public Law 95-507 (Utilization of Disadvantaged Business Enterprises); and
   vi. Executive Order 13496 (Employee Rights Under the National Labor Relations Act).

C. If this Agreement is a subcontract under a government contract or federally-funded project, Supplier shall comply with subcontractor flowdown requirements under the Federal Acquisition Regulations (48 CFR Chapter 4, amended from time to time, which are specified in supplemental terms to this Agreement.

D. Supplier shall comply with the Department of Commerce Export Administration Regulations ("EAR") in 15 CFR Chapter VII, subchapter C, including 15 CFR Section 734.2 which prohibits the export or release of controlled technology and/or software to foreign nationals within the United States who are not lawfully admitted to the United States for permanent residence. Supplier shall confirm that these regulations either do not apply to Supplier's activities under the terms of the Agreement or that Supplier has procedures to ensure compliance. If Supplier is directly or indirectly employing a foreign national not currently lawfully admitted to the United States for permanent residence to perform work under the Agreement, Supplier warrants to Purchaser that such employment does not violate the foregoing regulations.

E. Foreign Corrupt Practices Act ("FCPA"). The following provisions shall apply to Supplier (unless it is a foreign concern) if it performs or obtains any of the work in a foreign country:

1. All payments to Supplier shall be by check or bank transfer only. No payment shall be in cash or by bearer instrument, and no payment shall be made to any corporation or person other than Supplier. All payments due hereunder shall be made to Supplier at its principal place of business in the United States, even if Supplier performs or obtains the work in a foreign country.

2. Supplier represents that it is familiar with the FCPA and its purposes; and that, in particular, it is familiar with the prohibition against paying or giving of anything of value, either directly or indirectly, by an American company to an official of a foreign government for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with that government, to assist a company in obtaining or retaining business for or with, or directing business to, any person.

3. Supplier represents that none of its partners, purchasers, principals, and staff members are officials, officers, or representatives of any government or political party or candidates for political office. Supplier shall not use any part of its compensation for any purpose, and shall take no action, that would constitute a violation of any law of the United States (including the FCPA) or of any jurisdiction where it performs services or manufactures or sells goods. Supplier represents that it does not desire and will not knowingly request any work by Supplier that would or might constitute any such violation.

4. Purchaser may terminate the Agreement for default at any time and without any liability or obligation, if it believes, in good faith, that Supplier has violated this Article. Any action by Supplier which would or might constitute a violation of the FCPA, or a request for such action from Supplier's representative, shall result in immediate termination of the Agreement for default. Should Supplier ever receive, directly or indirectly, from any Purchaser representative a request that Supplier believes will or might violate the FCPA, Supplier shall immediately notify Purchaser's general counsel.

5. Purchaser may disclose the existence and terms of the Agreement, including the compensation provisions, at any time, for any reason and to whomever Purchaser's general counsel determines has a legitimate need to know the same including, without limitation, the United States government, the government of any country where the work is performed or obtained, and any regulatory agency with jurisdiction over Purchaser.

F. Supplier shall comply with the Occupational Safety and Health Act of 1970 and all rules, regulations, standards, requirements and revisions thereof or adopted pursuant thereto. If applicable, Supplier 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 within the workplace are evaluated, and that hazard information is transmitted to affected employees of Supplier, any subcontractor or Purchaser.
G. Unless the Agreement otherwise provides, Supplier shall, at its own expense, obtain from appropriate governmental authorities all permits, inspections and licenses which are required for the work and comply with all rules and regulations of insurance companies 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 Supplier.

I. Supplier 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 a Network/Systems Access Agreement governing Supplier and such employees’ use of such systems. The Network/Systems Access Agreement requires that each person given access is given a background check, is either a US Citizen or holds a valid green card and shall comply with the FE IT Cyber Security Policy (available upon request).

J. Supplier shall comply with all requirements of any governmental regulatory codes of conduct applicable to the work performed under the Agreement.

K. Supplier shall comply with all requirements of FirstEnergy’s Code of Conduct (located at www.firstenergycorp.com) and any governmental regulatory codes of conduct applicable to the work.

ARTICLE XII – LIMITATION OF LIABILITY/DAMAGES

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

ARTICLE XIII – ASSIGNMENT

Supplier may not assign any rights or claims, or delegate any duties under the Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of Purchaser. In the event of any assignment or delegation permitted hereunder, Supplier shall continue to be liable for the performance of its obligations hereunder.

ARTICLE XIV – NON-WAIVER

The delay or failure of either party to insist 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 on any future occasion.

ARTICLE XV – PROHIBITION OF PUBLICITY

Supplier shall not refer to the Agreement or reference Purchaser, its parent, subsidiaries and affiliates, directly or indirectly, in its advertising or promotional materials without the prior express written consent of Purchaser, such request considered on a case by case basis.

ARTICLE XVI – 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 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 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 which has a business relationship with FirstEnergy 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. Suppliers and prospective suppliers to FirstEnergy 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.

ARTICLE XVII – CONFIDENTIALITY

A. Supplier acknowledges that in the course of performing under the Agreement 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 knowledge, 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. Supplier 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 Supplier’s employees with a need to know such information in connection with the work. Supplier shall return Data and Confidential Information to Purchaser upon completion of performance of the Agreement.

B. Supplier shall not use or disclose Confidential Information for any reason or purpose without the prior written consent of the Purchaser. Supplier may use Confidential Information for the sole purpose of the performance of the Agreement for the benefit of the Purchaser. Supplier will take all precautions and actions to prevent sale, transfer, sublicense, use or disclosure of Confidential Information to any third party.

C. The restrictions set forth in this Article XVI shall not apply to information which Supplier can establish by documentary evidence: (1) is or has become generally known to, or readily ascertainable by, the public without the fault or omission of the Supplier or its employees or agents; or (2) was already known to Supplier prior to the first disclosure of such information to Supplier by Purchaser; or (3) was received by Supplier without restrictions as to its use from a third party who is lawfully in possession and not restricted as to the use thereof; or (4) is required to be disclosed by law or by order of a court of competent jurisdiction; or (5) was independently developed by Supplier through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by Purchaser.

D. If Supplier is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, Civil Investigative Demand or similar process, or otherwise in compliance with applicable law) to disclose any Confidential Information supplied to Supplier in its course of dealings with Purchaser, Supplier shall provide Purchaser with prompt notice of such request(s) so that Purchaser may seek an appropriate protective order and shall itself use appropriate efforts to limit the disclosure and maintain confidentiality to the maximum extent possible.
E. Supplier shall incorporate the above provisions in all agreements with its subcontractors, agents and assigns.

ARTICLE XVIII – 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 by various states to Purchaser. The Direct Payment Permit Numbers/Sales Tax Exemptions by state are as follows:

Maryland
The Potomac Edison Company – Direct Pay Permit issued but unnumbered
Allegheny Energy Supply Company – Sales Tax Exemption Certificate is available upon request
In Maryland, Sales and Use Tax Regulations 03.06.01.32-2 and 03.06.01.19.C.(3) provide for tax-exempt purchase of materials used in a production activity by contractors performing real property construction, improvements, alterations and repairs. In order to qualify for tax exemption, the property must be used directly and predominantly in the production activity of generating electricity for sale. Contract bids should be submitted accordingly. The successful bidder will be issued a Maryland Sales and Use Tax Exemption Certificate upon request to permit tax-exempt purchase of qualifying materials.

Michigan
Sales Tax Exemption Certificate is available upon request

New Jersey
Jersey Central Power & Light Company – DP-210-485-010

Ohio
American Transmission Systems, Inc. – 98-002721
FirstEnergy Generation, LLC – 98-002723
FirstEnergy Nuclear Operating Company – 98-002722
Ohio Edison Company – 98-001123
The Cleveland Electric Illuminating Company – 98-000312
The Toledo Edison Company – 98-001495
In Ohio, Direct Payment Permits do not apply to construction contracts under which the supplier is considered to be a 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
FirstEnergy Generation, LLC – 00398
FirstEnergy Nuclear Operating Company – 00399
Metropolitan Edison Company – 00135
Pennsylvania Electric Company – 00127
Pennsylvania Power Company – 00128
West Penn Power Company -00290
Allegheny Energy Supply Company – Sales Tax Exemption Certificate is available upon request
Trans-Allegheny Interstate Line Company – Sales Tax Exemption Certificate is available upon request
Pennsylvania Direct Payment Permits do not apply to construction contracts under which a supplier 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 supplier 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.

West Virginia
Allegheny Energy Supply Company – 94-2-002482
Monongahela Power Company – 91-1-024150
PATH Allegheny Transmission Company – L-2000193792
The Potomac Edison Company – 91-1-086241
Trans-Allegheny Interstate Line Company – L-1375690752
West Penn Power Company – 9-1-1064620
In West Virginia, Direct Payment Permits will apply to contractors performing construction contracting services. West Virginia Sales and Use Tax Regulation Section 11-15-9-(b)(2), and Administrative Notice 2007-19, provide for tax exemption for services, machinery, supplies and materials directly used or consumed in the activities of generation/production/selling of electric power, provision of a public utility service, operation of a utility service/utility business or transmission of electricity by wires. Contract bids should be submitted accordingly. The successful bidder will be issued a WV Contractor Tax Exemption Instructions form upon request for items qualifying for tax exemption.

When Direct Payment Permits apply, Purchaser agrees to maintain adequate records of all purchases and pay tax on the taxable items directly to the Treasurer of each respective state.

ARTICLE XIX – 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 portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

ARTICLE XX - FORCE MAJEURE
Neither party shall be liable to the other for any expenses, loss or damages resulting from delays, disruption, interferences, hindrances, impacts, or prevention of performance arising from causes beyond its reasonable control caused by fire, flood, accident, epidemic, strikes, civil commotion, governmental or military authority, insurrection, riots, embargoes or acts of God or public enemy. In the event of any delay, disruption, interference, hindrance, or impact arising by reason of any of the foregoing events, the time for performance shall be extended by a period of time equal to the time lost by reason for such delay. The affected party will notify the other party as soon as reasonably practical (but no later than within forty-eight (48) hours) of the affected party becoming aware of a force majeure occurrence as defined herein which will or has caused a delay, disruption, interference, hindrance, or impact. Within a reasonable period of time of such occurrence, the affected party will further define the precise cause or causes, the measures taken or to be taken to minimize, the time table by which the measures will be implemented, the duration of the delay, disruption, interference, hindrance, or impact, the extension of time for performance of the Agreement and documented evidence that supports the claim. 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 XXI – GOVERNING LAW
Any and all matters of dispute between the parties, whether arising from the Agreement itself, or arising from alleged extra-contractual facts prior to, during or subsequent to formation of the Agreement, shall be governed, construed, and enforced in accordance with the laws of the State of Ohio 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, 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 the 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 Supplier waives any objection which it may have now or hereafter to the laying of the venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

ARTICLE XXII - INTERPRETATION
The following principles of interpretation shall apply to the Agreement: (i) paragraph headings and captions are inserted for convenience only and shall not be considered in construing intent; (ii) neither Purchaser nor Supplier shall be considered to be the party responsible for the drafting of any particular provision of the Agreement; (iii) 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; (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); (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; and (viii) 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 or such a resolution would deny or dilute Purchaser's rights or benefits under the Agreement.

ARTICLE XXIII - EXECUTION AND COUNTERPARTS
The 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.