

**GENERAL TERMS AND CONDITIONS**  
**FOR PURCHASE OF PROFESSIONAL OR CONSULTING 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. "Consultant" means the organization, individual or entity which is furnishing the Work.
- D. "Data" means material that includes documentation, manuals, maps, plans, schedules, programs, Specifications, software, reports, drawings, designs and other relevant information.
- E. "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 thereto.
- F. "Purchaser" means: (1) for Agreements with a single purchaser, the affiliate company and its respective successors and assigns designated on the Purchase Order for which the Work shall be performed; and (2) for Agreements with multiple purchasers, the affiliate company and its respective successors and assigns designated on the Purchase Order or on the Release Order pertaining to each product or service included under the Work.
- G. "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.
- H. "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.
- I. "Specifications" means the portion of the Agreement describing the products and services to be delivered by Consultant, including without limitation, drawings, 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.
- J. "Work" means the deliverables, products, outcomes, results, information, new discoveries, inventions, improvements, technical consulting or other technical services, design services, analytical services, quality assurance, supervision and direction of work, or performance of labor, and all other facilities and services which are necessary for Consultant to complete its obligations under the Agreement.

**ARTICLE 2 – TERMS OF AGREEMENT**

- A. Offer and Acceptance. Consultant'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 Consultant of the Agreement and all of its terms and conditions. Acceptance of the Agreement is expressly limited to Consultant's assent to all of the terms and conditions of the Agreement. Additional or different terms provided in Consultant's acceptance of Purchaser's offer which vary in any degree from any of the terms herein or expressly referenced on the face of the 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 Consultant 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 Consultant's assent to all of the terms and conditions of the Agreement. Additional or different terms in any acknowledgement, invoice, or communication submitted by Consultant, or any attempt by Consultant to vary in any degree any of the terms of 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 Consultant, 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 Consultant, or if Purchaser desires additional Work not covered by the Agreement, Consultant shall only perform such Work as ordered by Purchaser in writing, and shall be paid for such Work as agreed to in writing between the parties.
- E. Independent Contractor. Consultant shall be considered an independent contractor in its performance of the Work and responsible for all acts or omissions (negligent or otherwise) of its agents, employees and subcontractors Consultant 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 Purchaser. 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 Consultant. Consultant shall be responsible for all contributions for unemployment compensation, workers' compensation, social security, and other employment benefits of its employees.

### **ARTICLE 3 – SHIPMENT, DELIVERY, AND INSPECTION OF WORK**

- A. **Title and Risk of Loss.** Title and risk of loss of products and materials incorporated into the Work passes to Purchaser upon notification to Consultant by Purchaser of acceptance of the Work. All products and materials brought to Purchaser's Site by Consultant or its subcontractors must be removed by Consultant or subcontractor immediately once no longer needed, or upon Consultant's departure.
- B. **Time is of the Essence.** THE OBLIGATION OF CONSULTANT TO MEET THE DELIVERY DATES, SPECIFICATIONS AND QUANTITIES SET FORTH HEREIN IS OF THE ESSENCE OF THE AGREEMENT
- C. **Delivery.** Consultant shall notify Purchaser immediately of any delay in delivery or shipment that may affect the completion date of the Work. If Consultant fails to meet the delivery schedule, Purchaser, without limiting its other rights or remedies, may: (1) direct expedited routing and charge to Consultant all additional and incidental costs incurred thereby; or (2) cancel all or part of the Work.
- D. **Inspection, Rejection and Revocation.** The Work shall be subject to inspection, tests, and count by Purchaser at any time or place at the discretion of Purchaser whether during or after manufacture, delivery or installation. Nothing herein shall relieve Consultant of the obligation to make full and adequate testing and inspection of any Work. If any of the Work is defective or otherwise not in conformity with the requirements of this Agreement, Purchaser, in addition to its other rights, may reject the same and: (1) receive full credit from Consultant; or (2) require its correction in accordance with Article 6. Any Work Purchaser rejects shall not thereafter be tendered for acceptance without Purchaser's written consent.
- E. **Records.** Consultant shall maintain books, records, documents and other information sufficient to determine the status of Consultant's performance, testing, and compliance with the requirements of the Agreement.
- F. **Work Acceptance.** Acceptance of the Work shall be when: (1) Consultant has completed the performance of the Work; (2) all required testing has been successfully completed; (3) the Work complies with applicable law and all of the requirements of this Agreement; (4) Consultant has provided all tools and spare parts, all drawings and specifications, all supplier warranties, and all manuals and other documentation related to the Work that are required to be provided by Consultant; (5) Consultant has removed all supplies, waste, materials, rubbish, and temporary facilities from Purchaser's Site; and (6) Consultant has delivered to Purchaser lien and claim waivers as required by Article 10.
- G. **Purchaser's Review and Approvals.** Purchaser's review or approval of, or right to review, release and/or approve, any Work provided or performed by Consultant under this Agreement (including approval of drawings and Specifications, subcontractors, safety and environmental protection guidelines, quality assurance, quality control, testing and inspection procedures) shall not in any way be deemed to limit or alter Consultant's responsibility to schedule, coordinate, perform, inspect, test, and complete the Work in strict accordance with the requirements of this Agreement, or Consultant's obligations under Article 6.

### **ARTICLE 4 – CONTRACT PRICE AND PAYMENT**

- A. **Pricing.** Pricing stated in the Agreement shall be the maximum Purchaser shall pay Consultant for the Work. Unless otherwise set forth in the Agreement, Purchaser will not be responsible for any additional charges, including boxing, packing, crating, carting, insurance or shipping. All amounts referenced in the Agreement are in United States dollars. Except to the extent otherwise provided in the Agreement, Consultant shall pay all taxes, duties, levies and all other fees and charges imposed by any governmental entity with respect to the Agreement and the Work.
- 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. For Work to be performed on a time and materials basis, each invoice must: (1) detail by activity the man-hours worked by Consultant; (2) detail by activity the labor cost; (3) detail the direct reimbursable costs in connection with the Work; (4) indicate the cumulative cost to date for all activities; (5) indicate the total monthly cost of the Work; and (6) include other information reasonably required by Purchaser. Any disputed invoice or portion thereof need not be paid, but in such case, Purchaser shall promptly notify Consultant of any rejected invoice or portion thereof (with reasons for such rejection). Invoices shall be submitted upon final completion of the Work, not later than the 10th day of each month. Purchaser may deduct five percent (5%) as a processing fee from Consultant for any invoice issued more than one hundred eighty (180) days after Purchaser's acceptance of the Work.
  2. **Electronic Invoices.** Unless otherwise expressly noted in the Agreement, Consultant 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 Consultant 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 4(D) hereof, will be paid without interest to Consultant in accordance with the terms of payment designated in the Agreement.
- D. **Withholding.**
1. If Purchaser has a claim under the Agreement, regardless of when it is discovered, including a claim that: (1) Consultant's invoice is erroneous; or (2) the Work is deficient, defective or incomplete; or (3) Purchaser, another supplier, subcontractor, or other party suffers damage or injury which is attributable to Consultant; or (4) Consultant fails to make a payment as and when due to a subcontractor or supplier for materials, labor or equipment; or (5) Consultant has failed to supply any affidavit, release or waiver of lien 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 Consultant. If any monies are so withheld, Purchaser shall only pay such amount when, without cost to the 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 Consultant.
2. New Jersey Withholding. If applicable, in accordance with New Jersey law, Purchaser shall withhold a portion of payments owed to Consultant for services to construct, improve, alter, or repair a building, structure, or improvement to real property unless Consultant provides written documentation that Consultant is an entity registered to do business within the State of New Jersey.
- E. Set-off. Purchaser shall be entitled at all times to set-off any amount owing from Consultant to Purchaser or any affiliate of Purchaser against any amount payable by Purchaser hereunder.
- F. Audit. Purchaser shall (upon reasonable notice) have the right to audit books and records of Consultant for the purpose of confirming the amount due to Consultant or Consultant's performance of its obligations under the Agreement. Consultant, its subcontractors and any other entity Consultant 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, Consultant shall provide Purchaser with information related to prices of materials, equipment and services sufficient to enable Purchaser to comply with accounting regulations of any governmental or quasi-governmental organization. Consultant shall provide for such right to audit by Purchaser in all contracts with subcontractors and other entities relating to the Agreement.
- G. Self-Employed Status. Consultant is deemed to be a self-employed independent contractor; and accordingly, no sums are contemplated to be withheld from Consultant's compensation to cover the payment of income taxes, FICA (social security), FUTA (unemployment compensation) or other taxes. Consultant agrees to file all required federal, state and local income tax and other tax returns (including, without limitation, all required declarations of estimated tax) covering Consultant's compensation hereunder. Consultant agrees to pay all such taxes and contributions when due; and Consultant hereby indemnifies Purchaser and holds it harmless from and against any and all loss, cost and liability whatsoever incurred by or claimed against Purchaser for any failure of Consultant to comply herewith.

#### **ARTICLE 5 – SERVICES AND CONSULTANT'S EMPLOYEES**

- A. Consultant Employees. Consultant will employ experienced, qualified, reliable and trustworthy persons to perform the Work. At Purchaser's request, the credentials of any of Consultant's employees assigned to perform the Work shall be submitted to Purchaser in advance of such assignment. Individuals employed by or representing Consultant 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 Consultant employee who, in Purchaser's opinion, does not meet these criteria or whose performance is unsatisfactory. In such case, Consultant shall, at its expense and risk, immediately replace or remove such individual from the Work. Notwithstanding the foregoing, Consultant shall be responsible for all acts or omissions (negligent or otherwise) of its agents, employees and subcontractors.
- B. Background Checks. Consultant shall make best efforts to ensure that 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 Consultant's actual knowledge of an employee having a criminal record or involvement in criminal activity, Consultant shall immediately remove such employee from the Work. Purchaser, at any time prior to the start of or during the Work, may request Consultant to verify that its employee or employees do not possess a criminal record.
- C. Substance Abuse. Consultant 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. Consultant is responsible for ensuring all Consultant'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.
- D. Non-Interference. Consultant shall conduct the Work so as to minimize interference with other activities at Purchaser's Site. If Consultant is working at Purchaser's Site, Consultant shall cooperate fully with Purchaser and other vendors, 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 vendors. Purchaser will establish priorities and, at the request of Consultant or other vendors, shall resolve interferences. Consultant shall not permit its employees or the employees of any of its subcontractors to operate the existing Purchaser's Site or any of Purchaser's equipment or facilities or to perform maintenance work on Purchaser's Site or any of Purchaser's other facilities, except as specified under the Agreement. Consultant and its employees, agents, subcontractors and suppliers shall enter and exit Purchaser's Site only by the entrances designated from time to time by Purchaser. Purchaser shall have the right to inspect all individuals, property, and vehicles entering and leaving any of Purchaser's facilities and exercise such control of individuals, property, and vehicles as Purchaser deems necessary in its sole discretion. Consultant shall comply with all of Purchaser's protection and safety rules for any Purchaser Site at which the Work is performed, and with all instructions and directives from Purchaser's Site manager or their designees.
- E. Safety and Health. Consultant shall conduct its operations in a manner to avoid risk of bodily harm to persons or damage to property. Consultant shall take all precautions necessary and shall be solely responsible for the safety of the Work and the safety and adequacy of the manner and methods it employs in performing the Work and shall not require any employee or representative performing hereunder to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to safety or health. Consultant 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 the Occupational Safety and Health Act (OSHA) and Purchaser's safety requirements) when at Purchaser's Site. Consultant 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, Consultant 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 Consultant, its subcontractor(s) and Purchaser.

- F. Testimony. Consultant agrees that (at the request of Purchaser) the persons performing Work under the Agreement shall be made available as consultants or witnesses in any litigation, hearing or proceeding to which Purchaser is or becomes a party, to explain or defend, as appropriate, any aspect of methods used by Consultant, or results or conclusions developed by Consultant in connection with the applicable Work. Purchaser shall pay Consultant at its prevailing rates for all time spent by its personnel in connection with any court, administrative or other legal proceedings arising from or relating to the Work (except in a dispute between the parties), regardless of whether or not Consultant is subpoenaed to appear at such proceedings by Purchaser or any third party. Purchaser shall be entitled to a credit against such fees for any statutory witness fees paid to Consultant by Purchaser or any third party.

#### **ARTICLE 6 - STANDARD OF CARE AND PERFORMANCE**

- A. Standard of Care. Consultant warrants the Work: (1) will be conducted in a manner consistent with the highest generally accepted level of care and skill ordinarily exercised by professionals and other persons performing work of a nature similar to the Work; and (2) will be performed safely, lawfully, efficiently and properly, and otherwise in a good and workmanlike manner; and (3) will be in strict conformity with the requirements of the Agreement, including, without limitation, all specific design standards and the Specifications and drawings incorporated into this Agreement; and (4) will be of good workmanship and quality, free from defects (including, without limitation, defects in design, material, workmanship and title); and (5) will be fit for the ordinary purposes for which such Work is used or intended and for any particular purpose by Purchaser of which Consultant is aware. Consultant further warrants that all equipment used in connection with performance of the Work shall be in safe and proper working order. Consultant acknowledges and agrees that Purchaser is relying upon Consultant's professional expertise for the accuracy, competence and completeness of Consultant's Work.
- B. Performance. Consultant represents and warrants that it is technically, physically, financially, and legally competent, able to perform, and capable of performing the Work. Consultant represents, warrants and covenants that it has, and will have throughout the term of the Agreement, the requisite personnel, competence, skill and physical resources to perform the Work, and that it has, and shall maintain, the capability, experience, registrations, and permits required to perform the Work.
- C. Remedies. Consultant shall cure any breach of the foregoing warranties at no cost to Purchaser and shall reimburse Purchaser for any damages that may be incurred by Purchaser as a result of reliance by Purchaser, its employees, agents, other consultants or subcontractors on such Work or anticipated performance by Consultant. The costs of transporting, repairing, replacing, removing or installing material to make the Work comply with the above performance standards, warranties and requirements shall be borne by Consultant. If Consultant should fail to cure such breach or if Purchaser determines that Consultant will be unable to cure such breach before the scheduled time of completion, Purchaser may correct such breach itself or through a third party and charge Consultant for the costs incurred therefor.

#### **ARTICLE 7 - INTELLECTUAL PROPERTY RIGHTS**

- A. Ownership. All items Consultant 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 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 Consultant 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 that any such material is not deemed to be a "work made for hire", Consultant 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 Consultant prior to the effective date of this Agreement; or (2) developed by Consultant outside of 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. Consultant warrants that the Work and every part thereof: (1) is and will be original; (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 previously 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 8(B) shall apply.
- C. Data Furnished by Purchaser. All Data Purchaser furnishes in connection with the Work shall remain Purchaser's exclusive property. Consultant shall not use Purchaser-furnished Data for any purpose other than for the Work. Consultant shall, 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 Purchaser-furnished Data and all copies thereof.

#### **ARTICLE 8 - INDEMNITY**

- A. Consultant's Indemnity. Consultant 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 Consultant'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 Consultant 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, Consultant, 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 Consultant under the Agreement; or (5) any violation by Consultant or any subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority; or (6) any lien or encumbrance arising out of or in connection with performance of Consultant's obligations under the Agreement; **provided, however**, that Consultant's indemnity obligations under this Article 8(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.** Consultant 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 Consultant 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 Consultant fails to remove such injunction or restraining order within a reasonable time, Consultant shall promptly and at Consultant'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 Consultant or its subcontractor, or such employee's heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death to such employee, brings an action at law against any Indemnified Party, then Consultant, for itself, its successors, assigns, and subcontractors hereby expressly waives any provision of any workers' compensation act or other similar law whereby Consultant could preclude its joinder by such Indemnified Party as an additional defendant in such actions, or avoid liability for damages, contribution, defense, or indemnity in any such action at law, or otherwise. Consultant's obligation to Purchaser under this Article 8 shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Consultant under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Consultant or anyone employed directly or indirectly by Consultant or anyone for whose acts Consultant may be liable.

#### **ARTICLE 9 - INSURANCE**

- A. **Consultant's Insurance.** Consultant 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 Consultant'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. Professional or Errors and Omissions insurance with minimum limits of \$2,000,000 per occurrence.
  6. If the Consultant will have access to the Purchaser's Network/Systems or any of Purchaser's customer data, Consultant is required to provide Cyber Liability Insurance with limits of 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 Consultant as an additional insured to the Policies for the portion of any losses resulting from, or related to, the Consultant'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 Consultant. The limits of insurance required herein will in no way be deemed to limit any liabilities or obligations assumed by Consultant 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 altering, restricting or reducing the insurance provided or changing the name of the insured without giving immediate 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 Consultant until the Policy and certificates in evidence thereof are reinstated or arrangements acceptable to Purchaser are made pending issuance of new Policies and certificates. If any Policy shall be about to lapse or be canceled, Consultant shall, obtain a new Policy with like coverage, and if Consultant fails to do so, Purchaser may terminate the Agreement.
- D. **Waiver of Subrogation.** Consultant 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 10 – ENCUMBRANCES**

Consultant shall neither file (nor cause or permit to be filed) any lien or encumbrance with respect to the Work and hereby waives any right to file (or cause to be filed) such lien or encumbrance. Consultant, in each of its subcontracts and agreements with suppliers related to the Work,

shall require all subcontractors and suppliers to expressly waive their rights to file liens and shall provide Purchaser with copies of such waivers.

#### **ARTICLE 11 - TERMINATION**

- A. **Events of Default; Termination for Cause.** If Consultant: (1) fails to comply with applicable laws and ordinances; or (2) assigns or subcontracts its obligations under 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 Consultant or of any substantial part of Consultant'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 Consultant 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; or (7) fails to perform the Work in accordance with the acceptable practices and customary diligence of the profession or industry of which Consultant is a member or in a timely way, 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. Upon a final determination by a court of competent jurisdiction that a termination pursuant to this Article 11(A) was improper, the termination shall be deemed a termination for convenience pursuant to Article 11(B).
- B. **Termination or Suspension for Convenience.** Purchaser may, at any time without cause and for its own convenience, terminate or suspend the Agreement, or from time to time, cancel any portion of the Work (and Purchaser's corresponding obligations) by giving Consultant written notice. Upon receiving a notice of termination, suspension or cancellation and (except as otherwise directed by Purchaser) Consultant 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 actions necessary (or as directed by Purchaser) to protect and preserve the Work; and (4) Consultant shall return all equipment, supplies, identification cards, etc. to Purchaser (collectively "**Cessation Actions**"). Purchaser shall pay Consultant its actual, necessary, reasonable and verifiable expenses as a direct consequence of such termination, suspension, or cancellation. Purchaser shall be entitled to the Work for which Purchaser has paid or, at Purchaser's option, Consultant shall attempt to liquidate the same, and Purchaser shall be entitled to the benefits of any value received. Consultant 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 11(B) shall be Consultant's sole and exclusive compensation and remedy if the Agreement is terminated, suspended or cancelled for convenience.
- C. **Return of Pre-Paid Funds.** Upon termination of the Agreement under this Article 11 for cause or convenience, Consultant shall return all pre-paid funds received from Purchaser to which Consultant is not entitled.

#### **ARTICLE 12- 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"). Consultant'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 Consultant 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. Consultant shall be paid for any additional Work by an amount to be determined, at Purchaser's option, by (a) unit prices, (b) lump sums, or (c) other methods of reimbursement, in each case as designated in the Agreement, or as subsequently agreed upon in writing.

#### **ARTICLE 13 – COMPLIANCE WITH LAWS, REGULATIONS, AND PERMITS**

- A. During the performance of the Agreement, Consultant shall strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the Work.
- B. Without limiting the foregoing, and unless exempted under the rules, regulations and relevant orders (41 CFR Chapter 60) of the U.S. Secretary of Labor, in connection with the Work, Consultant agrees as follows:
1. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age or disability. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, 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. Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the U.S. Department of Labor setting forth the provisions of this nondiscrimination clause.
  2. Consultant shall state, in all solicitations or advertisements for employees placed by or on its behalf, that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin, age or disability.
  3. Consultant shall send to each labor union or representative of workers with which it has a collective bargaining agreement, contract or understanding, a notice to be provided by the U.S. Department of Labor, advising the labor union or workers' representative of Consultant's commitments under the following provisions, as amended from time to time:
    - a. Section 202 of Executive Order 11246 (Equal Opportunity);

- b. Executive Order 11701 (Employment of Veterans);
  - c. Executive Order 11758 (Employment of the Handicapped);
  - d. Executive Order 11141 (Employment Discrimination Because of Age);
  - 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. Consultant 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. Consultant 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, Consultant 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. Consultant shall comply with the Department of Commerce Export Administration Regulations (“**EAR**”) in 15 CFR Chapter VII, subchapter C, including 15 CFR Section 734.2 which prohibits the export or release of controlled technology and/or software to foreign nationals within the United States who are not lawfully admitted to the United States for permanent residence. Consultant shall confirm that these regulations either do not apply to Consultant’s activities under the terms of the Agreement or that Consultant has procedures to ensure compliance. If Consultant is directly or indirectly employing a foreign national not currently lawfully admitted to the United States for permanent residence to perform work under the Agreement, Consultant warrants to Purchaser that such employment does not violate the foregoing regulations.
- E. **Foreign Corrupt Practices Act (“FCPA”).** The following provisions shall apply to Consultant (unless it is a foreign concern) if it performs or obtains any of the Work in a foreign country:
1. All payments to Consultant shall be by check or bank transfer only. No payment shall be in cash or by bearer instrument and no payment shall be made to any corporation or person other than Consultant. All payments due hereunder shall be made to Consultant at its principal place of business in the United States, even if Consultant performs or obtains the Work in a foreign country.
  2. Consultant represents that it is familiar with the FCPA and its purposes; and that, in particular, it is familiar with the prohibition against paying or giving of anything of value, either directly or indirectly, by an American company to an official of a foreign government for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with that government, to assist a company in obtaining or retaining business for or with, or directing business to, any person.
  3. Consultant represents that none of its partners, purchasers, principals, and staff members are officials, officers, or representatives of any government or political party or candidates for political office. Consultant shall not use any part of its compensation for any purpose, and shall take no action that would constitute a violation of any law of the United States (including the FCPA) or of any jurisdiction where it performs services or manufactures or sells goods. Purchaser represents that it does not desire and will not knowingly request any Work by Consultant 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 Consultant has violated this Article. Any action by Consultant which would or might constitute a violation of the FCPA, or a request for such action from Consultant’s representative, shall result in immediate termination of the Agreement for default. Should Consultant ever receive, directly or indirectly, from any Purchaser representative a request that Consultant believes will or might violate the FCPA, Consultant shall immediately notify Purchaser’s general counsel.
  5. Purchaser may disclose the existence and terms of the 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, Consultant shall, at its own expense, obtain from appropriate governmental authorities all permits, inspections and licenses which are required for the Work and comply with all rules and regulations of insurance companies that have insured Consultant 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 Consultant.
- H. **Network Access.** If Consultant’s employees are given access to Purchaser’s information and control systems, Consultant shall be required to sign a Network/Systems Access Agreement governing Consultant’s and such employees’ use of such systems. The Network/Systems 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, Consultant shall be subject to the following:
1. **Consultant Requirements:** Without limiting Consultant’s confidentiality obligations under the Agreement, Consultant 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 Consultant’s subcontractors, if any, comply with the foregoing. If Consultant’s information security system is breached, Consultant 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 Consultant in its performance of the Work.

2. Right to Audit. Consultant's information security program will be subject to periodic review, as requested by Purchaser. Consultant 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, Consultant shall conduct an independent third-party audit of its information security program and provide such audit results to Purchaser. Consultant shall implement any required safeguards as identified by such information security program audit.
- J. Codes of Conduct. Consultant 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 Consultant 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 Consultant) ("**CIP Employee**"). Upon request from Purchaser, at any time prior to the start of or during the Work, Consultant 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 Corporation ("**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, Consultant 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. Security Number verification in the U.S.) and a seven (7) year criminal check that revealed no evidence of a criminal conviction; or (ii) has been subject to a similar seven-year cycle recheck; and
- (z) has received the Purchaser-sponsored Security Awareness training or will receive such training prior to accessing BES Cyber Systems.

Consultant shall inform Purchaser immediately, but no later than four (4) hours after actual knowledge, via email and phone call, if Consultant's employee having authorized electronic or authorized unescorted physical access to BES Cyber Systems is terminated or when the access rights of a Consultant's employee to BES Cyber Systems needs to be changed or revoked. Consultant 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). Consultant 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 deliverable 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. Consultant 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. Consultant 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. Consultant 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 Consultant 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 Consultant has violated this Article 13(M).

- N. Identity Theft. Consultant 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 Part 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. Consultant 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 Consultant shall comply with the law, as amended, and shall be responsible for all computations related thereto. Further, Consultant will indemnify Purchaser for any claims arising from Consultant's failure to comply with this obligation.

#### **ARTICLE 14 – LIMITATION OF LIABILITY/DAMAGES**

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

#### **ARTICLE 15 – 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 hereto.

#### **ARTICLE 16 - PROHIBITION OF PUBLICITY**

Consultant 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 17 - CONFIDENTIALITY**

- A. Consultant 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, 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. Consultant 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. Consultant 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 Consultant'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. Consultant shall return Data and Confidential Information to Purchaser upon completion of performance of the Agreement.
- B. Consultant shall not use or disclose Confidential Information for any reason or purpose without the prior written consent of the Purchaser. Consultant may use Confidential Information for the sole purpose of the performance of the Agreement for the benefit of the Purchaser. Consultant will take all precautions and actions to prevent sale, transfer, sublicense, use or disclosure of Confidential Information to any third party.
- C. 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 fault or omission of the Consultant or its employees or agents; or (2) was already known to Consultant prior to the first disclosure of such information to Consultant by Purchaser; or (3) was received by Consultant 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 Consultant through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by Purchaser.
- D. If Consultant 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, Consultant shall provide Purchaser with prompt notice of such request(s) so Purchaser may seek an appropriate protective order and Consultant shall use appropriate efforts to limit the disclosure and maintain confidentiality to the maximum extent possible.
- E. If Consultant 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. Consultant shall incorporate the above provisions in all agreements with its subcontractors, agents and assigns.

#### **ARTICLE 18 - 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 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 the 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 19 – MISCELLANEOUS**

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

1. Consultant 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, Consultant shall continue to be liable for the performance of its obligations hereunder.
2. If Consultant 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. Consultant 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. Consultant 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 Consultant 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.