



2017
RESIDENTIAL AND HARD-TO-REACH
STANDARD OFFER PROGRAM
AGREEMENT

BETWEEN

TEXAS-NEW MEXICO POWER COMPANY

AND

(DATE)

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**2017 RESIDENTIAL AND HARD-TO-REACH
STANDARD OFFER PROGRAM AGREEMENT**

This 2017 Residential and Hard-to-Reach Standard Offer Program Agreement (the "SOP Agreement") is made and entered into by and between **TEXAS-NEW MEXICO POWER COMPANY**, a Texas corporation (hereinafter "TNMP") and _____ (hereinafter "Project Sponsor").

WHEREAS, TNMP has developed a demand-side Residential and Hard-to-Reach Standard Offer Program (the "SOP") for its residential customer classes; and

WHEREAS, the SOP seeks to procure Peak Demand Savings and Energy Savings through the installation and operation of energy efficiency measures at residential customer sites; and

WHEREAS, Project Sponsor has developed a plan for participation in the SOP through a set of proposed energy efficiency measures necessary to produce consistent and predictable Peak Demand Savings and Energy Savings over the Estimated Useful Life ("EUL") of the energy efficiency measure(s) installed;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I – DEFINITIONS

The following terms shall have the meanings set forth below. Capitalized terms not defined in this Article or elsewhere in this Agreement shall have the meanings specified in the SOP Program Manual.

1.1 "Affiliate" shall mean, for the purposes of this SOP

- (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider;
- (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
- (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider;
- (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
 - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or
 - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or

- (E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or
- (F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider; or
- (G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph; or
- (H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or
- (I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.

1.2 "Baseline" means, for the purposes of determining Peak Demand Savings and Energy Savings for equipment replacement projects implemented under the SOP, the energy consumed by equipment with efficiency levels that meet the applicable current federal standards and reflects current market conditions. Baseline is defined as a relevant condition that would have existed in the absence of the energy efficiency project or program being implemented, including energy consumption that would have occurred. Baselines are used to calculate program-related Peak Demand Savings and Energy Savings. Baselines can be defined as either project- specific baselines or performance Baselines for residential measures are defined in the Technical Reference Manual (the "TRM").

1.3 "Contract Documents" shall mean i) Project Sponsor's approved Project Application, attached hereto and incorporated herein as Exhibit A; ii) Project Sponsor's approved Supplemental Project Information, attached hereto and incorporated herein as Exhibit B; iii) a Host Customer Agreement; iv) the SOP Program Manual, as amended from time to time, attached hereto and incorporated herein as Exhibit C; v) a Vendor Profile Form and Substitute W-9 Form, attached hereto and incorporated herein as Exhibit F; and vi) this Agreement; and any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.

1.4 "Customer Acknowledgments or Certificates" must be included in each monthly report submitted by the Project Sponsor. Among other things, the

certification provides the Project Sponsor with a release for TNMP, allowing energy use and billing information to be provided to the Project Sponsor and provides TNMP with permission to inspect installations.

- 1.5 “Deemed Savings” shall mean a pre-determined, validated estimate of Peak Demand Savings and Energy Savings attributable to a Measure in a particular type of application, as filed in the Technical Reference Manual (the “TRM”).
- 1.6 “Energy Savings” shall mean a pre-determined, validated estimate of Energy Savings attributable to a Measure in a particular type of application, as filed in the TRM.
- 1.7 “Hard-to-Reach Customers” shall mean customers with an annual household income at or below 200% of the poverty guidelines, and who have properly completed a Public Utility Commission of Texas approved income verification form.
- 1.8 “Host Customer” shall mean a residential distribution system customer of TNMP that owns or leases facilities at a Project Site or sites and that has entered into a Host Customer Agreement with the Project Sponsor or is acting as its own Project Sponsor for the installation of Measures as a part of the Project. For the purposes of this Agreement, a residential customer shall mean a TNMP distribution customer with one or more metered facilities, none individually exceeding 100 kW demand nor together exceeding 250 kW demand in the aggregate; a customer’s load within a service territory that is under common ownership shall be combined.
- 1.9 “Host Customer Agreement” shall mean the agreement between the Host Customer and the Project Sponsor that specifies the rights and obligations of each party with respect to the installation of the Measures and other related and/or unrelated matters at the Project Site. In the case of a multifamily project, the agreement is between the Project Sponsor and the property management/owner.
- 1.10 “Measure” shall mean equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both.
- 1.11 “Peak Demand Savings” shall mean a pre-determined, validated estimate of Peak Demand Savings attributable to a Measure in a particular type of application, as filed in the TRM.
- 1.12 “Project” shall mean an energy efficiency measure or combination of measures installed under this Agreement that results in both a reduction in

customers' electric energy consumption and peak demand, and energy costs.

- 1.13 "Project Site" shall mean the location of a Host Customer's facilities where approved Measures will be installed and from which Peak Demand Savings and Energy Savings will be obtained.
- 1.14 "Project Sponsor" shall mean any organization, group, or individual who contracts with TNMP to provide Peak Demand Savings and Energy Savings under the SOP.
- 1.15 "Prudent Electrical Practices" shall mean those practices, methods, standards and equipment commonly used in prudent electrical engineering and operations to operate electrical equipment lawfully and with safety, dependability and efficiency and in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal, state and local codes provided, however, that in the event of a conflict, the applicable federal, state or local code shall govern.
- 1.16 "Technical Reference Manual" or "TRM" refers to the common reference document for estimating Peak Demand Savings and Energy Savings resulting from the installation of energy efficiency measures installed. This document is a compilation of deemed savings values approved by the Public Utility Commission of Texas.

ARTICLE II - TERM AND TERMINATION

- 2.1 The term of this Agreement shall commence on the date of execution by TNMP (the "Effective Date") and, unless otherwise terminated as set forth herein, shall continue in force and effect until payment by TNMP of all Incentive Payments due to Project Sponsor pursuant to Article VI herein below.
- 2.2 However, irrespective of anything contained in this Agreement, TNMP reserves the right, in its sole discretion, to terminate this Agreement for any or no reason.

ARTICLE III - COMPLIANCE WITH SOP PROGRAM MANUAL

- 3.1 By executing this Agreement, the Project Sponsor acknowledges that it has become familiar with all TNMP SOP rules and information and all applicable laws and regulations prior to submission of its Initial Application.
- 3.2 The Project Sponsor acknowledges that it meets or exceeds all of the following qualifications required by TNMP for participation in the SOP:
 - Possesses and can demonstrate experience relevant, in the sole discretion of TNMP, to implementation of the Project;
 - Can produce evidence of a good credit rating;

- Can produce evidence of financial strength and capability through 10Ks or financial statements;
- Can produce evidence of possession of all applicable licenses required under state law and local building codes;
- Can produce evidence of possession of all building permits required by governing jurisdictions;
- Can produce the proof of insurance required by Article VIII and Exhibit D of this Agreement; and

3.3 Project Sponsor acknowledges that its Project meets all regulatory requirements, including:

- The Project results in a reduction in purchased energy consumption, peak demand, and a reduction in energy costs for the end-use customer;
- The Project will result in consistent and predictable Peak Demand Savings and Energy Savings over the EUL of the energy efficiency measures installed;
- The Project discloses any potential adverse environmental or health effects associated with the energy efficiency measures to be installed;
- The Project does not achieve demand reduction by eliminating an existing function or shutting down a facility or operation, or result in building vacancies or the re-location of existing operations to locations outside of the facility or area served by TNMP;
- Measures installed pursuant to the Project would not be installed in the absence of the Project;
- The Project does not result in negative environmental or health effects, including effects that result from improper disposal of equipment and materials; and
- The Project does not involve the installation of self-generation or cogeneration equipment, but may involve renewable DSM technologies.

3.4 Project Sponsor acknowledges that it received a copy of the SOP Program Manual prior to submission of its Project Application, and that the SOP Program Manual constitutes a part of this Agreement, and that the terms of the SOP Program Manual are incorporated into this Agreement as if set forth herein. Project Sponsor represents and affirms that its participation in the SOP has at all times been in compliance with the procedures and conditions set forth in the SOP Program Manual and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the fact that such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the SOP as described in the SOP Program Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement.

- 3.5 Procedures or conditions set forth in the SOP Program Manual may only be waived or modified by written agreement of the parties. Any such agreement shall be attached hereto and incorporated herein for all purposes.

ARTICLE IV – HOST CUSTOMER AGREEMENT and CERTIFICATE

- 4.1 The Project Sponsor will be solely responsible for entering into a Host Customer Agreement(s) with the Host Customer(s) as appropriate for implementation of the Project. The Host Customer must execute a Host Customer Agreement prior to Project Sponsor beginning installation of Measures at the Project Site.

TNMP will not award incentive payments without proper completion of the Host Customer Agreement as provided for in the Contract Documents.

To the extent possible, Host Customer Agreements will be kept confidential.

- 4.2 The Project Sponsor shall execute the standard TNMP Host Customer Agreement, which is available on the program website.
- 4.3 Project Sponsor must obtain an acknowledgement from each Host Customer indicating that the Measures contracted for were actually installed at the Project Site. The acknowledgement should be in the form of the Customer Acknowledgement set forth on the SOP website (www.tnmpefficiency.com). The Customer Acknowledgement(s) should be submitted to TNMP with the invoice described in Section 5.5 below. If a Host Customer refuses to sign the Customer Acknowledgement, Project Sponsor may request, at Project Sponsor's expense, that TNMP perform an inspection of the Project Site. TNMP shall not make final payment of incentives unless and until all documentation has been captured in accordance with the terms of the Contract Documents.

ARTICLE V - PROJECT IMPLEMENTATION

- 5.1 Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Contract Documents.
- 5.2 Measures shall be designed, constructed and installed in a good and workmanlike manner only with materials and equipment of appropriate quality, and, in any event, in accordance with Prudent Electrical Practices.
- 5.3 Project Sponsors treating multiple Project Sites must complete and submit invoices and all required documentation to TNMP on a monthly basis.

If the Project Sponsor completes multiple Projects within that month, the installation data should be summarized on a single invoice and submitted along with official TNMP forms (up to 20% of the program budget).

5.4 Project Sponsor shall notify TNMP of homes that measures are to be installed by submitting the home information into the Work Schedule. Each project submitted into the Work Schedule is subject to a pre-inspection. Once a project has been input into the database, Project Sponsor will be contacted to schedule pre-installation inspections. During the program year, Program Implementer will monitor the number of projects implemented by each project sponsor, and will attempt to conduct a sufficient number of pre-inspections to maintain the percentage at or above 10%.

5.5 Project Sponsor shall notify TNMP of Measure installation at each Project Site by submitting an invoice documenting the Measures actually installed at the Project Site. Each invoice must be completed electronically along with official TNMP forms. An invoice for each month during the Project implementation period shall be submitted to TNMP by the 10th of each succeeding month. Within thirty (30) days of receipt of the invoice, TNMP shall complete a random sample inspection of the Measure installations at the Project Site(s). This inspection shall be used to determine whether the Measures were installed and are capable of performing their intended function of producing Peak Demand Savings and Energy Savings. If TNMP reasonably determines that the Measures at the Project Site(s) have been installed, tested and inspected to the extent required by TNMP and found to be capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, the invoice will be approved as submitted. The savings attributable to the Measures documented in the approved invoice will be used for purposes of calculating the Incentive Payment in Article VI.

5.6 TNMP, its designee or a third-party evaluator may inspect measures or a sample of measures installed as part of a Project. These inspections shall be used to determine whether the Measures were installed and are capable of performing their intended function of producing Peak Demand Savings and Energy Savings. If TNMP determines that the Measures at the Project Site have been installed, tested and inspected to the extent required by TNMP and found to be capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, the invoice will be approved as submitted. If TNMP determines that any of the Measures installed at the Project Site are not capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, a reduction of savings may be required for purposes of calculating the Incentive Payment in Section 6.

5.7 Any review, inspection, or acceptance by TNMP, its designee or any third-party evaluator of any Project Site or of the design, construction, installation, operation and maintenance of the Measures is solely for the information of TNMP. In performing any such inspection or review or in accepting the Measures, TNMP makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the

Measures, their installation by Project Sponsor or their compatibility with the Host Customer's facilities.

ARTICLE VI – INCENTIVE PAYMENTS

- 6.1 The total Incentive Payment due to Project Sponsor will be calculated by multiplying the savings associated with the Measures installed at the Project Site by the applicable "Incentive Rate" specified in the SOP Program Manual. The Incentive Payment for Savings shall be payable in one installment.
- 6.2 Upon completion of Measure installation and approval of an invoice, TNMP will pay the Incentive Payment.

ARTICLE VII - AUDIT AND RECORDS

- 7.1 Project Sponsor or its assignee shall keep and maintain accurate and detailed records and documentation relating to the Project and its associated Peak Demand Savings and Energy Savings under this Agreement for a period of not less than three (3) years beyond the termination of this Agreement. During the retention period, such records shall be made available at the offices of the Project Sponsor or other mutually agreeable location, upon reasonable notice, for inspection during normal business hours by TNMP or any governmental agency having jurisdiction over the SOP or any portion of the Project.

ARTICLE VIII – INSURANCE

- 8.1 Project Sponsor represents and agrees that it and its subcontractors will carry:
 - all statutorily required insurance for the protection of its employees and that each of its subcontractors will carry such insurance for the protection of their respective employees; and
 - all insurance required by Exhibit D, which is attached hereto and incorporated herein for all purposes.

Prior to commencement of installation, Project Sponsor shall mail and/or email to TNMP a certificate or certificates of insurance indicating Project Sponsor's compliance with this paragraph and stating that the insurance described therein shall not be canceled or terminated except on thirty (30) days written notice in the format below to:

Texas-New Mexico Power Company (TNMP)
Attn: Ashley Mitchell
577 N Garden Ridge Blvd
Lewisville, TX 75067
Ashley.Mitchell@tnmp.com

Additionally, the Project Sponsor represents and agrees that:

- TNMP shall be named as an additional insured on all policies (except worker's compensation) in the amounts of coverage therein stated;
- all policies will include a waiver of subrogation naming TNMP, with the appropriate certificates of insurance evidencing that TNMP has been named as an additional insured on such policies and that such policies include a waiver of subrogation naming TNMP.
- the Project Sponsor shall furnish evidence that such policies have been issued in accordance with the requirements of this paragraph by furnishing copies of such for TNMP's inspection.

ARTICLE IX - INDEMNITY

- 9.1 The Project Sponsor agrees to and will defend, protect, indemnify and hold harmless TNMP, its affiliates, officers, directors, agents and employees (collectively referred to as "TNMP Group") from and against all claims, losses, expenses, attorneys' fees, damages, demands, judgments, causes of action, suits, and liability in tort, contract, or any other basis and of every kind and character whatsoever (collectively referred to as "Claims"), for personal injury, death, or property damage of any member of the Project Sponsor or its agents, employees or contractors (collectively referred to as "Project Sponsor Group"), arising out of or incident to or related in any way to, directly or indirectly, this Agreement, or the work, services, or materials to be performed or supplied thereunder, or to any activities of any member of the Project Sponsor Group while on any premises actually or allegedly owned, controlled, or operated by TNMP, including, but not limited to, Claims arising out of or resulting from (1) any condition of the Customer premises, (2) separate operations being conducted on the Customer premises, or (3) the imperfection or defective condition, whether latent or patent, of any material or equipment sold, supplied, or furnished by TNMP Group. **IT IS THE EXPRESS INTENT OF THE PARTIES THAT, FOR THE PURPOSES OF THIS PARAGRAPH, CLAIMS, AND THE PROJECT SPONSOR'S OBLIGATIONS TO DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS, WILL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM TNMP'S SOLE OR CONCURRENT NEGLIGENCE; PROVIDED HOWEVER, THE PROJECT SPONSOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT INCLUDE CLAIMS ARISING OUT OF OR RESULTING FROM TNMP'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

In addition to Claims for personal injury, death, or property damage of any member of the Project Sponsor within the scope of the preceding paragraph, the Project Sponsor agrees to and will defend, protect, indemnify, and hold harmless TNMP from and against any and all Claims arising out of or incident

to or related in any way to, directly or indirectly, this Agreement, or the work, services, or materials to be performed or supplied thereunder, including, but not limited to, Claims arising out of or resulting from (1) any condition of the Customer premises, or (2) separate operations being conducted on the Customer premises, or (3) the imperfection or defective condition, whether latent or patent, of any material or equipment sold, supplied, or furnished by TNMP, or (4) any energy or demand savings expected to be achieved as a result of the Project Sponsor Program, or (5) any cost expected to be saved as a result of the Project Sponsor Program. **IT IS THE EXPRESS INTENT OF THE PARTIES THAT, FOR THE PURPOSES OF THIS PARAGRAPH, CLAIMS, AND THE PROJECT SPONSOR'S OBLIGATIONS TO DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS, WILL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM TNMP'S CONCURRENT; PROVIDED HOWEVER, THE PROJECT SPONSOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT INCLUDE CLAIMS ARISING OUT OF OR RESULTING FROM TNMP'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

To the extent necessary to permit TNMP to enforce any term, clause, or condition of this Agreement, the Project Sponsor agrees that with respect to any Claims brought against TNMP Group, the Project Sponsor will and does hereby waive as to TNMP any defense it may have by virtue of the workers' compensation laws of any state.

ARTICLE X - PERMITS, LICENSES AND COMPLIANCE WITH LAWS

- 10.1 Any review, inspection, or acceptance by TNMP of any Project Site or of the design, construction, installation, operation and maintenance of the Measures is solely for the information of TNMP. In performing any such inspection or review or in accepting the Measures, TNMP makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by Project Sponsor or their compatibility with the Host Customer's facilities.
- 10.2 Any review, inspection, or acceptance by TNMP of any Project Site or of the design, construction, installation, operation and maintenance of the Measures is solely for the information of TNMP. In performing any such inspection or review or in accepting the Measures, TNMP makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by Project Sponsor or their compatibility with the Host Customer's facilities.
- 10.3 Project Sponsor represents and warrants that prior to beginning installation of Measures, Project Sponsor will, at its own cost and expense, obtain all permits and other authorizations from governmental authorities as then may be required to install, construct, operate and maintain the Measures in question and to perform its obligations hereunder. During the term hereof, Project Sponsor will obtain all such additional governmental permits, licenses, and

other authorizations when required with respect to any of the Measures under this Agreement. If requested by TNMP, the Project Sponsor shall furnish to TNMP copies of each such permit, license or other approval promptly following receipt thereof. Project Sponsor shall maintain in full force and affect all such governmental permits, licenses and other authorizations as may be necessary for the construction, operation or maintenance of the Measures in accordance herewith.

- 10.4 Project Sponsor shall be responsible for all royalties, fees, or claims for any licensed, copyrighted or similarly protected intellectual property, device, process or procedure used, installed, or provided by it. Project Sponsor shall defend any suit that may be brought against TNMP and shall hold TNMP harmless from any liability or infringement of any such intellectual property used by Project Sponsor in the implementation of the Project.
- 10.5 All work performed by Project Sponsor in connection with the implementation of the Project and all Measures installed or maintained by Project Sponsor shall conform to all applicable laws, statutes, ordinances, rules, regulations, and decrees of any governmental or administrative body having jurisdiction over the SOP or any portion of the Project, including without limitation, Occupational Safety and Health Administration (OSHA) regulations, the National Electric Safety Code (NESC), the National Electric Code (NEC) and Sections 752.001 – 752.008 of the Texas Health and Safety Code. Handling of hazardous waste must be in compliance with all applicable Environmental Protection Agency (EPA) and state and local codes.

ARTICLE XI – CONSUMER PROTECTION

- 11.1 Each Project Sponsor shall provide the Host Customer with the Customer Disclosure Form, which is available on the program website.
- 11.2 Project Sponsor shall enter into a contract using the TNMP Host Customer Agreement.

ARTICLE XII - DEFAULT AND REMEDIES

- 12.1 Each of the following events will be deemed to be an Event of Default hereunder:
 - (a) Failure of Project Sponsor to perform its responsibilities in a timely manner or implement the Project in compliance with the SOP Manual and other Contract Documents;
 - (b) Failure of Project Sponsor to provide TNMP and/or its contractors with sufficient access to the Project Sites for the purposes of conducting inspections or EM&V activities;
 - (c) Failure of Project Sponsor to maintain any necessary permits, licenses or insurance required pursuant to the Contract Documents;

- (d) Project Sponsor's assignment or subcontracting of all or part of the duties required under the Contract Documents without the prior written consent of TNMP;
 - (e) Project Sponsor's submission to TNMP of any false, misleading or inaccurate information or documentation with respect to implementation of the Project or Project Sponsor's performance hereunder, when Project Sponsor knew or reasonably should have known that such information was false, misleading or inaccurate; or
 - (f) Failure of either party in a material fashion to perform or observe any of the material terms, conditions or provisions of this Agreement which failure materially adversely affects the other party and continues after notice and a thirty (30) day period to cure, or, if such failure cannot reasonably be cured within thirty (30) days, after notice and such period to cure in excess of thirty (30) days as may be reasonably required (provided that the non-performing party commences action to cure within an initial period of thirty (30) days after notice and thereafter pursues such cure with reasonable diligence).
- 12.2 If an event of a Default occurs, the non-defaulting party shall be entitled to exercise any and all remedies provided for by law or in equity, including the right to terminate this Agreement upon written notice to the other party. Termination shall be effective upon the receipt of properly served notice. Termination of this Agreement will not relieve the defaulting party of any obligations accruing prior to the event of termination.

ARTICLE XIII - INDEPENDENT CONTRACTOR

- 13.1 Project Sponsor will act as and be deemed to be an independent contractor. Project Sponsor will not act as, nor be deemed to be, an agent or employee of TNMP. Project Sponsor will have the sole right to control and directly supervise the method, manner and details of the Project providing it is in accordance with the Contract Documents.
- 13.2 No part of the work contemplated under this agreement may be performed by subcontractors without the prior written approval of TNMP.

ARTICLE XIV - NOTICES

- 14.1 All notices from one party to the other will be deemed to have been delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid to the following addresses:

TNMP:

Project Sponsor:

Ashley Mitchell

577 N. Garden Ridge Blvd.

Lewisville, TX 75067

Phone: (214) 222-4186

- 14.2 Either party may change its address by written notice to the other in accordance with Article XVI.

ARTICLE XV - AMENDMENT

- 15.1 No amendment or modification of this Agreement shall be binding on either party unless it is in writing and signed by both parties. Amendments to this Agreement will be attached hereto and made a part hereof for all purposes.

ARTICLE XVI – FORCE MAJEURE

- 16.1 Should either Party be rendered unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligation of the Party so rendered, that is affected by the event of Force Majeure, will be suspended only during the continuance of that inability. The Party so affected will give written notice of the existence, extent and nature of the Force Majeure to the other Party within forty-eight (48) hours after the occurrence of the event. The Party so affected will use its best efforts to remedy its inability as soon as possible and will provide the other Party with prompt notice when it is able to resume the performance of its obligations. Failure to give notice will result in the continuance of the affected Party’s obligation regardless of the extent of any existing Force Majeure.
- 16.2 The term “Force Majeure” as used in this Agreement will mean acts of God (except as excluded herein), strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, priority allocations of pipe or other materials or restraints or prohibitions by any court, board, department, commission or agency of the United States or of any State, any arrests and restraints, civil disturbances, explosions, and inability despite reasonable diligence to obtain materials essential to this Agreement. Rain, snow, ice or other adverse weather conditions will not be considered events of Force Majeure.
- 16.3 The term “Force Majeure” does not include: events or circumstances that affect the costs of installing the Measures but do not prevent performance, including, but not limited to, requirements, actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or

regulation or environmental constraints lawfully imposed by federal, state or local governmental bodies); changes in market conditions; and events or conditions attributable to normal wear and tear or flaws randomly experienced in materials and equipment and their assembly and operation, unless such events and conditions are caused by an occurrence which would fit the definition of Force Majeure set forth in Section 16.2.

- 16.4 In no event will any Force Majeure extend this Agreement beyond its stated term.
- 16.5 If any Force Majeure causes a reduction in the Measures, the Parties may at any time agree to reduce the number of Measures for the duration of the Force Majeure event.

ARTICLE XVII - MISCELLANEOUS

- 17.1 Project Sponsor will not assign, transfer or otherwise dispose of any of its obligations or duties without the prior written approval of TNMP. Any assignment or transfer made without the express written approval of TNMP will be null and void.
- 17.2 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.
- 17.3 The Contract Documents constitute the entire Agreement between the parties with respect to the subject matter hereof and there are no express or implied warranties or representations upon which any party may rely beyond those set forth therein. The execution of this Agreement supersedes all previous agreements, discussions, communications and correspondence with respect to such subject matter.
- 17.4 In the event any provision of this Agreement is held to be void, unlawful, or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
- 17.5 This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Texas. The parties agree that the proper venue and jurisdiction for any cause of action relating to the Agreement will be in Denton County, Texas.
- 17.6 Project Sponsor shall submit all marketing materials to TNMP for approval prior to soliciting customers for participation.

17.7 To the extent there is any conflict between the terms of this Agreement and other Contract Documents, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

TEXAS-NEW MEXICO POWER COMPANY

PROJECT SPONSOR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**EXHIBIT A -
PROJECT APPLICATION**

To be submitted in P3

**EXHIBIT B -
SUPPLEMENTAL APPLICATION INFORMATION**

To be uploaded to P3

**EXHIBIT C -
SOP PROGRAM MANUAL**

The SOP Program Manual, for purposes of Exhibit C, is available from the www.tnmpefficiency.com site under Homes – Existing Homes – Resources

**EXHIBIT D –
INSURANCE REQUIREMENTS**

NOTE: Each policy shall include a Waiver of Subrogation in favor of Texas-New Mexico Power Company (TNMP), and shall provide for 30 days prior written notice of cancellation.

TYPE/COVERAGE LIMITS OF LIABILITY

WORKERS' COMPENSATION	Statutory
EMPLOYERS' LIABILITY)	\$100,000. Each Accident
)	\$500,000. Disease Policy Limit
)	\$100,000. Disease Employee Limit
COMMERCIAL GENERAL LIABILITY, OCCURRENCE FORM with the following coverages included (not excluded):	Bodily Injury & Property Damage Combined:
- Premises/Operations	Each Occurrence: \$1,000,000
- Underground Explosion and Collapse Hazard	General Aggregate: \$1,000,000.
- Products/Completed Operations Hazard	Products Comp/Ops. Aggregate: \$1,000,000.
- Contractual Insurance (applicable to indemnity clause contained in contract(s))	
- Independent Contractors	
- Broad Form Property Damage	
- Personal Injury	
AUTOMOBILE LIABILITY, with coverage applicable to all owned, hired, and owned vehicles	BI and PD Combined: Each accident: \$1,000,000 non- OR: Evidence of Self-Insurance

INFORMATION FOR PROJECT SPONSOR:

- Insurance provided by Project Sponsor must be maintained in effect during the entire term of this Agreement.
- A copy of this sheet and a copy of this Agreement should be furnished to Project Sponsor's Insurance Agent.
- Amendment or waiver of the insurance requirements will only be valid if prior written consent is received from Risk & Insurance Management.

INFORMATION FOR INSURANCE AGENTS:

- Policies written on a claims-made basis shall be maintained for five years after performance of the Agreement is completed.
- Required insurance should be certified using the ACCORD CERTIFICATE OF INSURANCE, or a form similar thereto.
- Project Sponsor's insurance agent is responsible to list on CERTIFICATE OF INSURANCE all endorsements which eliminate any required coverages.
- Project Sponsor's insurance agent is responsible to state on the CERTIFICATE OF INSURANCE that all policies of insurance include Waiver of Subrogation in favor of TNMP.
- CERTIFICATE OF INSURANCE must be dated and signed by insurance agent or authorized representative.
- CERTIFICATE HOLDER must be shown as Texas-New Mexico Power Company (TNMP)
Attn: Kelly Bradford, 1515 S. Capital of Texas Hwy, Suite 110, Austin, TX 78746.
- The original CERTIFICATE OF INSURANCE must be forwarded to the CERTIFICATE HOLDER.

EXHIBIT E - HOST CUSTOMER AGREEMENT

The Host Customer Agreement, for purposes of Exhibit E, is available from the www.tnmpefficiency.com site under Homes – Existing Homes – Resources and should be uploaded to P3

**EXHIBIT F -
VENDOR PROFILE FORM AND SUBSTITUTE W-9 FORM**

The VENDOR PROFILE FORM AND SUBSTITUTE W-9 FORM, for purposes of Exhibit F, is available from the www.tnmpefficiency.com site under Homes – Existing Homes – Resources and should be uploaded to P3