

## **ATTACHMENT 4: GENERAL TERMS AND CONDITIONS FOR SERVICES**

### **1.0 DEFINITIONS**

The following definitions shall apply to the Contract, all Contract Documents and Amendments thereto and to related correspondence. A word or expression defined in this Contract containing capital letter(s) shall be identified, in any section of this Contract where the whole text is printed in block capitals, or by such word or expression being underlined and/or printed in a more prominent typeface.

1.1 “Acceptance” shall mean the official written notification of acceptance of the Work to Participant from the authorized representative of TNMP following satisfactory completion of the Work in accordance with the Contract.

1.2 “Affiliate” shall mean (A) a person who directly or indirectly owns or holds at least 5.0 percent of the voting securities of an energy efficiency service provider; (B) a person in a chain of successive ownership of at least 5.0 percent of the voting securities of an energy efficiency service provider; (C) a corporation that has at least 5.0 percent 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 percent 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 percent 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 percent 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 percent of the voting securities of an energy efficiency service provider; (F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider; (G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph; (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.

1.3 “Baseline” shall mean the amount of demand in the period(s) determined by TNMP to be the Baseline for comparison to Curtailment to calculate Demand Savings. Baseline shall be calculated based on the methodology defined in the applicable Texas Technical Reference Manual (TRM).

1.4 “TNMP” shall mean Texas-New Mexico Power Company or any of its representatives, successors, or assigns.

1.5 “Commercial Customer” shall mean a nonresidential customer taking service at a metered point of delivery at a distribution voltage under an electric utility’s tariff during the prior calendar year and a non-profit customer or government entity, including an educational institution. For purposes of this section, each metered point of delivery shall be considered a separate customer.

1.6 “Competitive Energy Efficiency Services” shall mean energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).

1.7 “Contract” or “Agreement” shall mean, collectively, the entire agreement between TNMP and Participant, the terms and conditions incorporated therein and other documents, if any, which are by reference made a part of the Contract and providing for signature of a duly authorized representative of each party thereto.

1.8 “Contract Administrator” shall mean TNMP’s duly authorized agent who shall initiate and administer all contract activities related to the contractual terms and conditions.

1.9 “Contract Documents” or “Agreement Documents” shall mean 1) Participant’s approved application (“Application”) and Application Agreement, attached hereto as Attachment A and incorporated by reference herein, 2) the Program Manual (“Program Manual”), which is incorporated by reference herein, and 3) this Contract together with any and all other exhibits, addenda, or amendments referenced in the Agreement Documents or made a part thereof in accordance with this Agreement.

1.10 “Contract Supplement” shall mean the written instrument describing additions, changes or deletions to Participant’s scope of work as defined by the Contract Documents, or in the time of performance of the Contract (or any other change desired by TNMP) authorized and executed by duly authorized representatives of the parties hereto with the same formality as this Contract.

1.11 “Curtable Load” shall mean the equipment, material, or systems at a Project Site that is identified in the application as load that will be interrupted at the request of TNMP pursuant to the Program.

1.12 “Curtailement” shall mean shutting down the operation of Curtable Load at the request of TNMP pursuant to the SOP.

1.13 “Curtailement Demand Usage” shall mean the average demand that occurs during the period of a Curtailement.

1.14 “Customer Agreement” shall mean the agreement between Customer and the Participant 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.

1.15 “Demand” shall mean the rate at which electric energy is used at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

1.16 “Demand Savings” shall mean a quantifiable reduction in demand.

1.17 “Eligible Customers” shall mean residential and commercial customers. In addition, to the extent that they meet the criteria for participation in load management programs developed for industrial customers and implemented prior to May 1, 2007, industrial customers are eligible customers solely for the purpose of participating in such Programs.

1.18 “Energy Savings” shall mean a quantifiable reduction in a customer's consumption of energy.

1.19 “Estimated Demand Savings” shall mean: 1) the amount of demand that Participant proposes in the Application to save in a one-hour period during Summer Peak Demand Hours through Curtailments that are implemented pursuant to the Program and that TNMP approves after review of the Application and receipt of all Customer Agreements, or 2) the amount of approved Unscheduled Curtailment Demand Savings from the Scheduled Curtailment that occurs, whichever is less.

1.20 “Governmental Authority” shall mean any federal, state, local or municipal governmental body or agency or subdivision thereof, including, but not limited to, any legislative or judicial body, having appropriate jurisdiction to exercise authority or control over TNMP, its parent corporation, or any part or all of the Work to be performed under this Contract.

1.21 “Growth in Demand” shall mean the annual increase in demand in the Texas portion of an electric utility's service area at time of peak demand, as measured in accordance with this section.

1.22 “IDR” shall mean Interval Data Recorder.

1.23 “Incentive Budget” shall mean the amount of money budgeted by TNMP for the Program.

1.24 “Incentive Payment” shall mean payment made by a utility to an energy efficiency service provider under the Program.

1.25 “Load Control” shall mean activities that place the operation of electricity-consuming equipment under the control or dispatch of a Participant with the objective of producing energy or Demand Savings.

1.26 “Load Management” shall mean load control activities that result in a reduction demand on an electric utility system.

1.27 “Measurement and Verification” shall mean activities intended to determine the actual energy and Demand Savings resulting from the Program.

1.28 “Program operating period” shall mean the period from December 1, 2021 through February 28, 2022.

1.29 “Incentive Payment” shall mean the payment made by TNMP to Participant for Scheduled and Unscheduled Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule.

1.30 “Participant” shall mean the party who is the provider of the energy efficiency services being purchased under this Contract and who is entering into this Contract with TNMP.

1.31 “Program Manager” shall mean TNMP’s designee who shall manage and coordinate the work activities furnished under this Contract.

1.32 “Notice” shall mean any formal written correspondence providing notice of action, purpose, intent or the like given under the provisions of this Contract.

1.33 “Personnel” shall mean Participant's employees or subcontractor employees performing Work under this Contract.

1.34 “Project Site” shall mean the location of a Customer’s Curtailable Load, as identified in the Application. For the purposes of this Agreement, multiple facilities representing Curtailable Load

may be combined into one Project Site as long as they are connected to a single IDR or advanced meter.

1.35 “Participant Contact Telephone Number” shall be the telephone number identified in the Application as the telephone number that TNMP will call to notify Participant of a required Curtailment.

1.36 “PUCT” shall mean the Public Utility Commission of Texas.

1.37 “Scheduled Curtailment” shall mean a Curtailment that is pre-scheduled by TNMP to occur at the beginning of the Program operating period.

1.38 “Specifications” shall mean collectively, all technical descriptions and data referenced in the Contract, and such amendments, revisions, deductions or additions as may be made and all written agreements made or to be made, pertaining to the processes, workmanship, products and quantities and qualities of the materials to be furnished under this Contract.

1.39 “Contract” shall mean a contract between an approved Participant and TNMP specifying standard payments based upon the amount of Demand Savings achieved through the installation of energy efficiency measures at electric customer sites, the measurement and verification protocols, and other terms and conditions, consistent with this section.

1.40 “Program” shall mean a program under which a utility administers contracts between the utility and Participants.

1.41 “Unscheduled Curtailment” shall mean a Curtailment that is requested by TNMP in response to a notification by the Electric Reliability Council of Texas (ERCOT) that ERCOT has reached EEA 2 or a higher level of emergency or has otherwise directed TNMP to shed load.

1.42 “Work” shall mean any and all labor, evaluations, reports and services, including all equipment, material, duties and obligations that are the responsibility of Participant under this Contract.

## **2.0 CONTRACT DOCUMENTS**

2.1 The Contract Documents consist of the Contract Cover Sheet, the Compensation Schedule, the Scope of Work, these Terms and Conditions for Services, the Program Manual, and all other exhibits, addenda, drawings, Specifications, Applications and any Contract Supplements issued subsequently.

2.2 The Contract Documents are intended to be complementary and what is set forth in any one document is as binding as if set forth in each document. In the event there are any conflicting provisions or requirements in the Contract Documents, the provisions and requirements thereof shall take the following order priority:

1. Contract Supplements
2. Compensation Schedule
3. Scope of Work
4. Program Manual
5. Terms and Conditions for Services
6. Application
7. Contract Cover Sheet

TNMP assumes no responsibility for bidding errors or omissions caused by failure of Participant or any of its Subcontractors to inspect and familiarize themselves with the complete set of Contract Documents.

### **3.0 EFFECT OF HEADINGS**

Article headings appearing in this Contract are for convenience and reference only and shall in no way be construed to define, limit or interpret the text hereof.

### **4.0 APPLICABLE STATE LAW**

The rights, obligations and remedies of the parties to this Contract shall be interpreted and governed in all respects by the laws of the State of Texas. Should any provision of this Contract or part thereof, or the application of any provision or part thereof, be judicially determined to be illegal or invalid or otherwise unenforceable, the validity of the remaining provisions or parts thereof and other applications of such provisions or parts thereof shall not be impaired.

### **5.0 NOTICES AND CORRESPONDENCE**

5.1 All Notices or correspondence arising from or pertaining to the legal requirements, terms & conditions or the performance required by this Contract shall be in writing and either delivered in person, via email, or sent by registered or certified mail to the appropriate individual at the following addresses:

(a) To TNMP:

Attn: Stefani Case  
TNMP  
577 N. Garden Ridge Blvd.  
Lewisville, TX 75067

[stefani.case@tnmp.com](mailto:stefani.case@tnmp.com)

(b) To Participant: Address stated on the Contract Cover Sheet.

5.2 All Notices or correspondence to TNMP arising from or pertaining to project administration shall be in writing and either delivered in person, via email, or sent by registered or certified mail to the appropriate individual at the following address:

Attn: Stefani Case  
TNMP  
577 N. Garden Ridge Blvd.  
Lewisville, TX 75067

[stefani.case@tnmp.com](mailto:stefani.case@tnmp.com)

5.3 Either of the parties may, at any time, change its mail, email, or delivery address by giving the other party ten (10) days prior written Notice.

5.4 The effective date of any written Notice delivered or mailed pursuant to this Contract shall be the date of receipt by the TNMP or Participant, as applicable, if delivered, or the postmark date if mailed.

## **6.0 AUTHORIZATION TO COMMENCE WORK**

Participant shall not commence Work until receipt of a signed Contract.

## **7.0 EQUAL EMPLOYMENT OPPORTUNITY**

Participant represents that it is in compliance with all applicable laws, regulations and orders with respect to equal employment opportunity and either has heretofore provided or will provide to TNMP the certifications and representations regarding equal employment opportunity that TNMP may require under such laws, regulations and orders.

## **8.0 NON-WAIVER OF RIGHTS**

Failure of TNMP to insist upon strict performance of any of the provisions hereof, or its failure or delay in exercising any rights or remedies provided herein or by law, or TNMP's Acceptance of, or use of or payment for the Work, or any part or combination thereof, or any approval of Work by TNMP, or any purported oral modification or rescission of this Contract, or any part hereof, by any employee or other authorized representative of TNMP shall not release Participant of any of its obligations under this Contract and shall not be deemed as a waiver of any of TNMP's rights to insist upon strict performance hereof or of any of TNMP's rights or remedies under this Contract or by law, and shall not operate as a waiver of any of the provisions hereof.

## **9.0 REPRESENTATIONS AND WARRANTIES**

9.1 By executing this Agreement, Participant warrants and represents that it is aware of, is in compliance with, and will continue to comply for the term of this Agreement with, all of the Agreement Documents and all applicable laws and regulations related to the Program.

9.2 Participant warrants and represents that the Project meets all federal, state, and local regulatory requirements, including:

The Project may result in Demand Savings over the Agreement period;

The Application disclosed all potential adverse environmental or health effects associated with the Project, if any;

The Project will not result in negative environmental or health effects;

The Project will not result in building vacancies or the re-location of existing operations to a location outside of the area served by TNMP; and

The Project would not have been implemented in the absence of the Program.

9.3 Participant acknowledges that it received a copy of the Program Manual prior to submission of its Application. Participant warrants and represents that its participation in the Program has at all times been in compliance with, and will continue to comply for the term of this Agreement with, the procedures and conditions set forth in the 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. Participant also acknowledges that it meets or exceeds all of the qualifications required to participate in the Program as described in the Program Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement. Procedures or conditions set forth in the 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.

9.4 Participant warrants and represents it and its Affiliates may be limited to 40% of the Incentive Budget for any year of the Project.

9.5 Participant warrants and represents that any relevant Agreement(s) or agreement(s) between a Customer and the Customer's retail electric provider concerning electric service to Curtailable Load do not prohibit or inhibit Curtailments.

9.6 Participant 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 Agreement Documents.

9.7 One Scheduled Curtailment shall be required to be implemented by Participant at each Project Site at the beginning of the Program operating period. A maximum of four Unscheduled Curtailments shall be required to be implemented by Participant at each Project Site.

All Curtailments shall be implemented at the time and for the duration specified by TNMP.

TNMP must notify Participant at least 30 minutes prior to the required start-time of any Curtailment by calling the Participant Contact Telephone Number. A representative of Participant must be available to personally answer calls made to the Participant Contact Telephone Number during the Program operating period.

Participant may change the Participant Contact Telephone Number by providing notice to the Program Manager of the new Participant Contact Telephone Number a minimum of two business days prior to the date that the new Participant Contact Telephone Number is to become effective. In order for notice of a new Participant Contact Telephone Number to be valid, Participant must verify that the TNMP Program Manager has actually received such notice by the above-mentioned deadline.

Participant represents that the project schedule, (as noted in the Project Authorization Form) and applicable compensation is based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of TNMP. TNMP assumes no responsibility for any understanding or representation made or alleged to have been made by any of its representatives, unless such understandings or representations are expressly and fully stated in this written Contract.

## **10.0 SAFETY AND HEALTH**

10.1 Participant shall be solely responsible for the safety and health of Participant's Personnel, its Subcontractors' Personnel, and other persons required in the execution of the Work.

10.2 Participant shall take all precautions for the safety and health of, and shall provide all protection necessary to prevent damage, injury or loss to all Personnel engaged in the Work and any other persons who may be affected thereby;

## **11.0 STANDARDS, CODES, LAWS AND REGULATIONS**

11.1 Participant shall comply with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal Governmental Authority having jurisdiction over the Work covered by this Contract.

11.2 Project's Sponsor shall indemnify TNMP for loss occasioned by the noncompliance with the authorities listed in Article 11.1 above as set forth in Article 16.2

11.3 Participant shall secure and pay for all permits, governmental fees and licenses necessary for proper execution and completion of the Work, unless otherwise specified in the Contract Documents.

## **12.0 INDEPENDENT CONTRACTOR AND SUBCONTRACTOR**

12.1 Participant agrees to perform the Work as an independent contractor and not as a subcontractor, agent or employee of TNMP.

12.2 There shall be no contractual relationship between TNMP and any of Participant's subcontractors or suppliers, arising out of or by virtue of this Contract. TNMP shall not be responsible for the payment of any sums to any subcontractor or supplier.

12.3 Participant shall include in all agreements with Vendors and Subcontractors liability limitation, suspension, termination and attorneys' fees terms at least as favorable to TNMP as those set forth herein. SHOULD **PARTICIPANT** FAIL TO OBTAIN SUCH LIABILITY LIMITATION, TERMINATION, SUSPENSION AND ATTORNEYS' FEES RIGHTS IN VENDOR AND SUBCONTRACTOR AGREEMENTS, **PARTICIPANT** SHALL INDEMNIFY AND HOLD **TNMP** HARMLESS TO THE EXTENT THAT ANY SUBCONTRACTORS OR VENDORS ASSERT CLAIMS OR CAUSES OF ACTION FOR DAMAGES IN EXCESS OF AMOUNTS PERMITTED PURSUANT TO TERMINATION (WITH OR WITHOUT CAUSE) AND/OR SUSPENSION INCLUDING ATTORNEY'S FEES. THIS INDEMNITY PROVISION IS ADDITIONAL TO ANY INDEMNITY OWED BY PARTICIPANT UNDR ARTICLE 16 (AND ITS SUBPARAGRAPHS) BELOW.

## **13.0 ASSIGNMENT AND SUBCONTRACTING**

13.1 Neither this Contract nor the duties to be performed hereunder nor monies to become due hereunder shall be subcontracted, assigned, delegated or otherwise disposed of by Participant without prior written consent of TNMP.

13.2 Neither permitted assignment of this Contract, nor shall delegation of any duties hereunder, relieve Participant of any of its obligations hereunder.

13.3 If this Contract should be permitted by TNMP to be assigned by Participant, it shall be binding upon and shall inure to the benefit of the permitted assignee.

## **14.0 FORCE MAJEURE**

14.1 Performance of this Contract by each party shall be pursued with due diligence in all requirements hereof; however, neither party shall be liable for any loss or damage for delay or for nonperformance due to causes not reasonably within its control, including but not limited to, acts of civil or military authority, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, fires, or floods. In the event of any delay resulting from such causes, the time



for performance of each of the parties hereto (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delays. No further modification to other terms and conditions of this Contract shall occur.

14.2 In the event of any delay or nonperformance caused by the above causes, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement and the anticipated extent of such delay, and shall indicate whether it is anticipated that any completion dates will be affected thereby

## **15.0 INSPECTION, TESTING AND ACCEPTANCE**

15.1 All Work commenced pursuant to this Contract shall be subject to inspection and verification by the TNMP. TNMP shall be responsible for all costs associated with such inspection and verification.

15.2 Inspection by the TNMP of any Work does not relieve Participant from any responsibility regarding defects or other failures to meet the Contract requirements.

## **16.0 INDEMNITY**

**16.1 General Liability; Indemnification.** To the fullest extent permitted by law, Participant shall indemnify, defend and hold harmless TNMP, and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against any and all damages, losses, claims, obligations, demands, assessments, penalties, liabilities, costs, and expenses (including attorney fees and expenses) (“**Damages**”), arising out of or resulting from performance of the Services or this Agreement, but only to the extent that the Damages are caused by, or arise out of, the acts or omissions of Participant, any subcontractor of Participant, anyone directly or indirectly employed or retained by them, or anyone for whose acts they may be liable. For purposes of this Agreement, “**Affiliate**” of a Party means any other person that, directly or indirectly, controls, is controlled by, or is under common control with such Party and any person in which a Party has an ownership interest and to which the Party or an Affiliate of the Party provides services. For the purposes of this definition, control means the power to direct the management or policies directly or indirectly whether

**16.2 Compliance with Laws.** Participant shall comply with all Applicable Laws. Participant shall indemnify, defend, and hold harmless TNMP and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against any and all Damages asserted or awarded against or incurred by such indemnities arising out of, resulting from or relating to the violation by Participant of any Applicable Laws.

**16.3 Intellectual Property Rights Infringement Indemnity.** Participant warrants that none of the Services, or the results thereof, performed by Participant, or any subcontractor, or the documents, drawings, goods or equipment produced, designed, fabricated, delivered or assembled by Participant, or any subcontractor, pursuant to this Agreement, infringe upon or violate any patent, copyright, trade secret, or any other intellectual or property rights of any third party. If any third party makes a claim or commences a proceeding against TNMP or any of its Affiliates alleging such an infringement or violation, Participant shall indemnify, defend and hold harmless TNMP and its Affiliates and their respective directors, officers, employees, representatives, agents,

advisors, consultants and counsel from and against any and all Damages asserted or awarded against or incurred by such indemnities. TNMP will notify Participant if any such claim is made or proceeding is commenced. TNMP may, at its option, be represented by separate legal counsel in any claim or proceeding. Participant shall reimburse TNMP the costs and expenses incurred by TNMP in being so represented, including reasonable attorney fees. If the use of any of the Services, or the results of such Services, or documents, goods, or equipment, or any part thereof, furnished under this Agreement is held in any such claim or proceeding to constitute an infringement and/or is enjoined, whether temporarily or permanently, Participant shall, at its sole cost and expense, either:

- (a) procure for TNMP the right to use the results of such Services or such documents, goods and equipment; or
- (b) replace the results of such Services or such documents, goods, or equipment with non-infringing results, documents, goods or equipment having the equivalent functionality as the infringing or allegedly infringing results, documents, goods or equipment; or
- (c) modify the results of such Services or such documents, goods, or equipment so as to make them non-infringing, but equivalent in functionality.

**16.3.1 Best Efforts.** Participant shall use its best efforts to obtain for the benefit of TNMP identical intellectual property rights indemnification protection in all subcontracts, purchase orders, and other agreements entered into under this Agreement. The requirements of this **Section 16.3.1** are not intended to abridge, abrogate, amend, or otherwise affect Participant’s obligations under **Section 16.3 “Intellectual Property Rights Infringement Indemnity”** through the ownership of voting securities, by contract, or otherwise.

## **17.0 TERMINATION FOR CAUSE OR CONVENIENCE**

17.1 Either party shall have the right to terminate this Contract in whole or in part at any time by written Notice to the other party. Any such written Notice shall specify the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

17.2 In the event of termination by TNMP as provided herein, TNMP shall compensate Participant for any and all Work approved in writing. TNMP shall not be required to compensate Participant for expenses connected with preparation of an Initial or Final Application, or any other cost not directly approved by in writing.

17.3 In the event of termination, those provisions of this Contract that by their nature continue beyond the Termination of this Contract shall remain in full force and effect after such termination.

17.4 The rights and remedies of TNMP provided in this Article 17.0 are not exclusive and are in addition to any other rights and remedies provided under this Contract, or at law, or in equity.

## **18.0 COMPLETE AGREEMENT**

This Contract is intended as the exclusive statement of the agreement between the parties. Parole or extrinsic evidence shall not be used to vary or contradict the express terms of this Contract, and recourse shall not be had to allege prior dealings, usage of trade, course of dealing, or course of

performance to vary or contradict the express terms of this Contract. This Contract shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by duly authorized representatives.