



Texas New Mexico Power Open Small Business Program

CONTRACTOR PARTICIPATION AGREEMENT

COMPANY INFORMATION

My company is applying to be a participating contractor in the following programs (check all that apply): TNMP Open Small Business

Business Name:		Contact Name:
Business Address:		Number of Employees:
City:	State:	Zip:
Email:	Office Phone:	Mobile Phone:

CERTIFICATION(S) & EXPERIENCE

I am currently certified and have received training in the following areas (check all that apply):

TX Electrician's License TX Contractor's License.

I currently own and use the following tools required to perform air and duct sealing (check all that apply):

Blower Door Manufacturer: Model #: Duct Blaster® Model #:

I am currently experienced and ready to perform the following services. I acknowledge that some of these program measures require additional training verification (check all that apply):

<input type="checkbox"/> Lighting Controls and Retrofits	<input type="checkbox"/> HVAC/Chiller Controls and Equipment Replacement	<input type="checkbox"/> VFD and Motor Retrofits and Installation	<input type="checkbox"/> WWTP Upgrades
<input type="checkbox"/> Window Film Installation	<input type="checkbox"/> Data Center Upgrades	<input type="checkbox"/> Industrial Process or Equipment Upgrades	<input type="checkbox"/> Other:
<input type="checkbox"/> Refrigeration Retrofits	<input type="checkbox"/> Kitchen Upgrades and Appliances	<input type="checkbox"/> Air Compressors	

BUSINESS CAPABILITY:

I confirm that I have the following to demonstrate business capability (not applicable for architectural or engineering firms):

Satisfactory Dun and Bradstreet Rating DUNS ID:

Or at least **TWO** of the following:

Banking reference* Three professional/trade references* Principals of Company have satisfactory credit score/no outstanding liens/judgments*

*Use table below to complete required reference or principal information

Banking Reference:

Email:	Phone:
Address:	

Reference/Principal Name 1:

Email:	Phone:
Address:	

Reference/Principal Name 2:

Email:	Phone:
Address:	

Reference/Principal Name 3:

Email:	Phone:
Address:	

INSURANCE:

Contractor and any of its subcontractors shall maintain the following types of insurance at the following minimum levels of coverage for the life of this Agreement:

- Commercial General Liability covering bodily injury and property damage, minimum \$1,000,000 aggregate and per occurrence
- Automotive Liability covering owned, non-owned and hired vehicles, minimum \$1,000,000 combined single limit
- Workers' Compensation in accordance with statutory minimums, but including no less than Employer's Liability minimum \$500,000 aggregate and \$100,000 per occurrence and per employee

Contractor and subcontractors shall maintain any claims-based policy for at least three (3) years after the expiration or termination of this agreement. Each certificate of insurance shall list CLEAResult and Sponsor (as defined below) as additional insured on a primary, non-contributory basis. Contractor and subcontractors shall waive all rights of recovery against CLEAResult, Sponsor, and any of their respective affiliates for any loss or damage covered by the policy. Evidence of this requirement shall be noted on all certificates of insurance provided to CLEAResult.

Yes

Contractor certificate of insurance is attached

Program Overview

From January 1, 2022, until December 31, 2022, CLEAResult is implementing the Texas-New Mexico Power Company ("TNMP") Open Small Business Program (the "Program") to improve the energy efficiency of small commercial facilities located within TNMP's service territory. TNMP contracted with CLEAResult to promote and administer the program.

This Program is funded by Texas utility ratepayers under the auspices of the Texas Public Utilities Commission and administered by TNMP. CLEAResult is in the business of implementing energy efficiency programs funded by utility ratepayers such as TNMP's ratepayers. CLEAResult is responsible for recruiting qualified contractors to perform services under the Program and manage the implementation of the Program. The Program pays contractors incentives to provide Energy Efficiency Measures ("EEM"), that is, to provide products or services to customers that save energy and reduce energy demand.

Enrollment Instructions

Step 1: Complete a Contractor Participation Agreement.

Step 2: Complete a W-9

Step 3: Submit completed Contractor Participation Agreement, W-9, certificate of insurance, and copies of required licenses and/or training certificates (if applicable) via email or mail:

Email: TNMP.Open@clearesult.com

Mail: TNMP Open Small Business CLEAResult
6504 Bridge Point Parkway
Suite 425
Austin, TX 78730

Step 4: Submit certificates of insurance and copies of required licenses and/or training certificates (if applicable) at least annually, and upon any material revisions or cancellations, to CLEAResult via email or mail listed above.

After your Agreement is received, a Program representative will contact you to confirm receipt and continue the enrollment process. Contractors do not become participating contractors until they complete required administrative and field trainings and receive confirmation of participation from the Program manager. Contractor eligibility is at the sole discretion of the Program. Participation in the Program and this Contractor Participation Agreement are subject to the CLEAResult Standard Terms and Conditions for Participating Contractors.

CONTRACTOR AGREED AND ACCEPTED

I have read and understood the Contractor Participation Agreement and the CLEAResult Standard Terms and Conditions for Participating Contractors and certify that the information I have provided is true and correct.

Signature:	Date:
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Name (printed):	Title:
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CLEAResult CONSULTING INC., AND/OR AN AFFILIATE THEREOF AGREED AND ACCEPTED

Signature:	Date:
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Name (*printed*):

Title:

STANDARD TERMS AND CONDITIONS FOR PARTICIPATING CONTRACTORS

These CLEAResult Standard Terms and Conditions for Participating Contractors and the Contractor Participation Agreement (collectively, the “**Agreement**”) are made and entered into by and between CLEAResult Consulting Inc., a Texas corporation and/or an affiliate thereof (“**CLEAResult**”), and _____ (“**Contractor**”). CLEAResult administers the TNMP Open Small Business Program (the “**Program**”) on behalf of Texas-New Mexico Power Company (“**Sponsor**”) to provide energy efficiency services to eligible Sponsor customers (each, a “**Customer**”). The parties hereby agree as follows:

1. **TERM.** This Agreement is effective upon the date it is executed by both parties and will continue for the duration of the Program (the “**Program Period**”), unless earlier terminated in accordance with the provisions in this Agreement.
2. **ELIGIBILITY.** The Program determines eligibility of contractors at its sole discretion. CLEAResult may request from Contractor verification of its eligibility requirements at any time during the Program Period. Contractor acknowledges and agrees that participation in the Program shall not constitute an endorsement by CLEAResult of Sponsor of Contractor or Contractor’s services.
3. **PROGRAM MATERIALS.** CLEAResult will provide the Contractor with branded Program materials, as applicable, and Customer data exclusively for use for the Program and during the Program Period. Contractor shall not use the trademarks, logos or other intellectual property of CLEAResult, Sponsor or any of their affiliates without prior written approval by CLEAResult or Sponsor, as applicable.
4. **INSPECTIONS.** CLEAResult or Sponsor may inspect any or all work performed by Contractor, with or without notice to Contractor, and by any means CLEAResult or Sponsor may select, including accompanying Contractor to a Customer’s location. Failure of Contractor to meet quality standards will be grounds for termination of this Agreement. Contractor agrees to cooperate with CLEAResult and Sponsor and use its best efforts to allow CLEAResult or Sponsor access to the Customer’s location for this purpose. Contractor also agrees to remedy any issue(s) arising from auditing and monitoring results at no additional cost within the timeframe provided by the Program.
5. **RECORDKEEPING.** Contractor shall maintain hard copy or digital records of all work performed and products installed under this Agreement for a minimum of three (3) years from the time the work is performed, including records of data collected, visits made, materials furnished or installed, individual staff providing the services, costs incurred, invoices, and agreements. Copies of these records shall be made available to CLEAResult within five (5) business days upon request.
6. **INCENTIVE PAYMENT.** Contractor acknowledges that incentives will be paid by Sponsor only if: (a) Customer(s) and installed measure(s) or services meet the Program eligibility requirements and the requirements outlined by the Program; (b) measures are installed in eligible project sites; and (c) measures are installed at a project site that has not received incentives from any other of Sponsor’s energy efficiency programs for the same measure(s). Contractor understands that Sponsor, in its sole discretion, may withhold incentive payments committed to a Customer and Contractor if a project site is proven ineligible or a project otherwise does not comply with the requirements set forth by the Program. If applicable, Contractor agrees that CLEAResult shall not make any incentive payment to Contractor until CLEAResult receives a corresponding payment from Sponsor. In addition, Contractor agrees that all incentives paid under this Program are available on a first-come, first-served basis until allocated funds are depleted.
7. **SERVICES AND MATERIALS WARRANTY.** Contractor shall warranty services and materials provided by Contractor and installed pursuant to this Agreement against any defect in materials, manufacture, design or installation for a period of one (1) year for the latter of the date the materials are provided and/or installed.
8. **PERFORMANCE.** Contractor, its employees, agents and subcontractors, agrees that: (a) the services performed for a Customer through the Program shall be performed in a good workmanlike, skilled, and professional manner; (b) the services shall comply in all material respects with the specification and other requirements set forth in each applicable contract with a Customer and in strict accordance with the Program and this Agreement; (c) Contractor’s performance of the services shall not violate any applicable law, rule, regulation, contracts with third parties; and (d) Contractor currently has in effect, and will keep in effect throughout the term of this Agreement, insurance in the forms and amounts and with insurance companies acceptable to CLEAResult in no event less than the minimum insurance levels set forth in this Agreement. Contractor is solely responsible for any damage incurred by Customer as a result of Contractor’s services under the Program. Neither CLEAResult nor Sponsor is responsible for Customer complaints or damages.
9. **CONFIDENTIALITY.** Contractor will have access to Confidential Information (as defined below) by participating in this Program. Contractor will not use any Confidential Information for any purpose other than as needed to perform Contractor’s obligations in connection with this Agreement and the Program.
 - a. Contractor will hold all Confidential Information in strict confidence and will not disclose any Confidential Information to any person other than to its employees and independent contractors who: (a) have a “need to know;” (b) have been advised of the confidential and proprietary nature of the Confidential Information; and (c) are subject to confidentiality obligations at least as protective of the Confidential Information as that set forth in this Section; except as compelled by court order or otherwise required by law. If Contractor is required by law to disclose Confidential Information, Contractor will immediately notify CLEAResult and cooperate with CLEAResult to obtain a protective order or other appropriate remedy to maintain the confidentiality of the information. Contractor agrees to comply with the Data Security Policy, attached and incorporated as [Exhibit A](#).
 - b. The term “**Confidential Information**” means all Customer data and all information and materials relating to CLEAResult’s or Sponsor’s business, in whatever form or medium, disclosed to or received by Contractor, whether visually, by perception, orally or in writing, whether disclosed before or after the Effective Date, and whether or not specifically marked or otherwise identified as “Confidential” or “Proprietary.”

10. **INSURANCE AND LICENSING.** Contractor shall provide CLEAResult with all applicable certificates of insurance for itself and any of its subcontractors before performing any work for the Program. Contractor will provide CLEAResult with updated insurance certificates as appropriate but no less frequently than every time a policy required under this Agreement is renewed or modified. Contractor shall provide CLEAResult with at least thirty (30) days' prior written notice before an insurance policy required by this Agreement is reduced, cancelled, or expires. At all times during the Program Period, Contractor and its agents and subcontractors shall retain all necessary licensures, certification, training, and other requirements as deemed necessary by law, the Program policies and guidelines, and all relevant documentation pertaining to the installation of the energy efficiency measures, and will provide immediate access to such documentation to CLEAResult and Sponsor upon request.
11. **MECHANICS LIENS.** Contractor shall not file any lien or claim against any Customer's property and shall keep each Customer's property free of liens and claims filed by subcontractors and vendors of subcontractors and others claiming by or through Contractor, and shall defend, indemnify and hold CLEAResult, Sponsor, and any Customer harmless from all expenses and losses incurred as a result of any such liens of claims. If a lien or claim is filed by a vendor or subcontractor, Contractor shall cause such lien to be discharged or bonded off within forty-eight (48) hours of notice by CLEAResult. If contractor fails to do so, CLEAResult may, without prejudice to any other remedies available at law, pay all sums necessary to obtain a release or discharge of such lien and deduct those sums, including costs, expenses and reasonable attorney's fees, from amounts due or to become due to Contractor.
12. **INDEPENDENT CONTRACTOR.** Contractor is an independent contractor in relation to CLEAResult and Sponsor and is voluntarily participating in the Program to deliver the services as outlined by the Program directly to Customers. This Agreement shall not create the relationship of employer and employee, a partnership, or a joint venture. CLEAResult and Sponsor shall not control or direct the details or the means by which Contractor performs any services under this Agreement. Contractor will pay all of its administrative, overhead, and other costs, including withholding taxes, social security, unemployment, disability, health, workers' compensation, or other insurance coverage. Contractor understands that participation in the Program does not constitute an endorsement of any kind on the part of CLEAResult or Sponsor and shall not state or imply any such endorsement, either directly or indirectly, in written or verbal form.
13. **INDEMNITY; LIMITATION ON DAMAGES.** Contractor shall defend, protect, indemnify, and hold harmless Sponsor and CLEAResult, their respective officers, directors, agents, and employees, and each of their parents and affiliates, and each of their respective officers, directors, agents, and employees (collectively, the "**Indemnified Parties**") from and against any and 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, whether actual or alleged ("**Claims**"), arising out of Contractor's, or its agents or subcontractors, acts or omissions, including but not limited to any violation of labor or employment laws, incident to or related in any way to, directly or indirectly, the services provided in connection with the Program or this Agreement. Contractor acknowledges and agrees that with respect to any Claims brought against the Indemnified Parties, Contractor will be required to waive as to the Indemnified Parties any defense it may have by virtue of the Workers' Compensation Laws of any state, to the extent allowed by law. CLEAResult AND SPONSOR SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED REVENUE, PROFITS, OR GOODWILL, WHETHER ARISING IN NEGLIGENCE, BREACH OF CONTRACT, OR UNDER STATUTE OR RULE. The parties agree that Sponsor is a third-party beneficiary of this Section. Contractor agrees that CLEAResult shall be entitled to set-off, against the amounts that it is required to pay Contractor, the amount of any indemnification to which it is entitled under this Section 13.
14. **TERMINATION.** Contractor agrees that CLEAResult may terminate this Agreement at any time and for any reason, including, without limitation, for Contractor's noncompliance with the Program guidelines, any law, or any provision of this Agreement. Upon termination of this Agreement, Contractor shall immediately cease participating in the Program. CLEAResult will not pay Contractor any incentives for post-termination activity. In the event of termination for cause, Contractor shall be liable to the Program for any and all damages sustained by reason of the default that gave rise to termination. In the event either party terminates this Agreement, CLEAResult shall have the right to assign to another contractor the responsibility for completion of any work not completed by Contractor prior to the effective date of termination in compliance with this Agreement prior to the date of termination. Contractor agrees that CLEAResult may withhold payments for work completed by Contractor for a period of up to one (1) year from the effective date of termination, or expiration of this Agreement, to ensure funding is available for any damages, claims, or deficiencies discovered after termination or expiration. If the amount of CLEAResult's claims or damages against Contractor exceeds the unpaid amount earned by Contractor, CLEAResult shall notify Contractor, and Contractor shall pay CLEAResult the difference within thirty (30) days after receipt of such notification.
15. **NOTICE.** Any notice required to be given under this Agreement shall be deemed given when placed in the mail and mailed by overnight registered mail via a nationally recognized courier (e.g., USPS, FedEx, UPS) and postage prepaid. Notice to CLEAResult shall be to Attn: Legal Department, 100 SW Main St., Suite 1500, Portland, OR 97204. Notice to Contractor shall be to the address provided above.
16. **MISCELLANEOUS.** This Agreement shall be governed by and construed under the laws of the State of Texas, without regard to conflict of law rules. Any dispute or claim that relates to this Agreement shall be resolved by arbitration by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment upon the award rendered pursuant to such arbitration may be entered in any court with jurisdiction. The parties acknowledge that mediation helps parties settle their disputes and any party may propose mediation whenever appropriate through the American Arbitration Association or any mediator selected by the parties. Contractor shall not assign or this Agreement or any of its duties hereunder without the prior written permission of CLEAResult pursuant to the Subcontractor Authorization Form, attached and incorporated as **Exhibit B**. The failure of either party to enforce strict performance by the other of any provision of this Agreement, or to exercise any right available to the party under this Agreement, shall not be construed as a waiver of such party's right to enforce strict performance in the same or any other instance. This Agreement supersedes all previous signed agreements between the parties and sets forth the entire agreement of the parties with respect to the subject matter hereof and may not be altered, changed abridged or amended other than in writing signed by the parties.

EXHIBIT A – DATA SECURITY POLICY

1. **Applicability.** This Data Security Policy applies to the use and storage of any “Program Data,” which shall mean:
 - a. All data or information provided, transferred, uploaded, migrated or otherwise sent to Contractor by or on behalf of CLEAResult or Sponsor in connection with this Agreement or a Program; and
 - b. Any account number, forecast, or other similar information of any customer of Sponsor disclosed to or otherwise made available to Contractor by or on behalf of CLEAResult, Sponsor, or any customer of Sponsor.
2. **Use and Storage of Program Data**
 - a. Contractor will comply with (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of Program Data (“Privacy and Data Security Law”), and (ii) all applicable industry standards concerning privacy, data protection, confidentiality or information security.
 - b. Contractor shall not store, maintain or process any Program Data outside the country.
3. **Implementer System Access.** Contractor agrees that it may have access to CLEAResult’s network, including but not limited to any server, intranet, or other type of information storing and sharing device or conduit owned or operated by CLEAResult (the “Network”), solely for the purpose of meeting its obligations under the agreement. Contractor agrees that access for other purposes, or the use of the Network to access other networks, is not permitted and that Contractor is responsible and liable for all damages or unauthorized access resulting from these actions. Such activity will result in the discontinuation of any and all connections to the Network and termination of the Agreement. Contractor agrees that any use of the Network will be solely for necessary business purposes. Contractor and its employees shall not introduce any viruses, worms, Trojan horses or other bugs or errors in the network. CLEAResult reserves the right to monitor Contractor’s use of the Network. Contractor further agrees that any information that it obtains from access to the Network is Program Data. CLEAResult and Contractor agree that, in the event of a breach or threatened breach of this section, CLEAResult shall be entitled to specific performance of the provisions of this Data Security Policy and the Agreement, including an injunction prohibiting any such breach. Any such relief will be in addition to and not in lieu of any other appropriate relief in the way of money damages or otherwise. CLEAResult reserves the right, in its sole discretion, to terminate Contractor’s access to and use of the Network at any time, for any reason, and without notice to Contractor.
4. **Security Controls**
 - a. In addition to any other requirements set forth herein, Contractor will establish and implement appropriate administrative, technical and physical safeguards (i) to ensure the security and confidentiality of Program Data, (ii) to protect against any anticipated threats to the security or integrity of Program Data, and (iii) to ensure that Program Data is not disclosed contrary to the provisions of this section or any applicable Privacy and Data Security Law.
 - b. In addition to the specific requirements of this section, Contractor will develop, implement and maintain a comprehensive data and systems security program (“Security Program”). Such Security Program shall include, but shall not be limited to, reasonable and appropriate technical and organizational security measures, procedures and practices against the destruction, loss, unauthorized access or alteration of Program Data, including but not limited to:
 - i. Written policies regarding information security, disaster recovery, third-party assurance auditing, penetration testing;
 - ii. Password protected workstations at Contractor’s premises, any premises where the Contractor is performing its obligations under the agreement, and any premises of any third party who has access to Program Data;
 - iii. Encryption of Confidential Information (as defined in the Agreement), including but not limited to any personally identifiable information of customers of Sponsor; and
 - iv. Measures to safeguard against the unauthorized access, destruction, use, alteration or disclosure of any Program Data including, but not limited to, restriction of physical access to Program Data, implementation of logical access controls, sanitization or destruction of media.
5. **Security Breach.** Contractor shall notify Implementer immediately (and, in any case, within twenty-four (24) hours) in writing of any actual, threatened or imminent breach of this Data Security Policy (regardless of whether there is any identified disclosure, compromise, loss, or damage to Program Data) or any other unauthorized use, disclosure or acquisition of or access to, or loss of any Program Data of which Contractor becomes aware. Such notice will summarize in reasonable detail the effect on CLEAResult, Sponsor, and customers of Sponsor, if known, of the breach or unauthorized use, disclosure or acquisition of, or access to, or loss of any Program Data and the corrective action taken or to be taken by Contractor. Contractor will promptly take all necessary corrective actions, and will cooperate fully with CLEAResult in all reasonable and lawful efforts to prevent, mitigate or rectify such breach or unauthorized use, disclosure, acquisition, access or loss, all at Contractor’s sole expense, including developing and distributing notices, in writing, to affected persons as required by applicable law, rule, regulation or order or as Implementer may otherwise deem necessary or advisable.

EXHIBIT B – SUBCONTRACTOR AUTHORIZATION

By signing below, _____ (“Contractor”) requests and CLEAResult Consulting Inc. (“CLEAResult”) consents to Contractor engaging with _____ (“Subcontractor”) to perform services subject to the Contractor Participation Agreement, dated _____, between Contractor and CLEAResult (the “Agreement”), subject to the terms and conditions of this Subcontractor Consent Form (this “Form”). Any capitalized terms not defined in this Form shall have the meaning described in the Agreement.

1. Effective Date. This Form is effective upon signature by both parties.
2. Contractor Warranty. Contractor represents and warrants that Subcontractor shall not perform any Work until Subcontractor has signed a written agreement to meet the obligations of Contractor under the Agreement. Contractor shall remain liable to CLEAResult and Sponsor for any failure of Subcontractor to comply with the Agreement.
3. Subcontractor Insurance. Contractor shall provide to CLEAResult a certificate of insurance for Subcontractor that meets the requirements of the Agreement, including but not limited to each minimum coverage amount specified in the Agreement and including CLEAResult as an additional insured.

CLEAResult

Contractor

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____