

**2013
RESIDENTIAL STANDARD OFFER PROGRAM
HVAC PROJECT CONTRACT**

BETWEEN

TEXAS NEW-MEXICO POWER COMPANY

AND

(DATE)



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**2013 RESIDENTIAL HVAC PROJECT
STANDARD OFFER PROGRAM CONTRACT**

This 2013 Residential HVAC Standard Offer Program Agreement (the "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 Standard Offer Program for its residential HVAC customer classes (the "Res HVAC SOP"); and

WHEREAS, the Res HVAC SOP seeks to procure energy and peak demand 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 Res HVAC SOP through a set of proposed energy efficiency measures necessary to produce consistent and predictable energy and peak demand savings over a ten-year period (the "Project");

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 Manual.

- 1.1 "Affiliate" shall mean, for the purposes of this Res HVAC 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;
 - (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.
- 1.2 "Baseline" means, for the purposes of determining estimated and measured energy savings for equipment replacement projects implemented under the Res HVAC SOP, the energy consumed by equipment with efficiency levels that meet the applicable current federal standards and reflects current market conditions. The baseline may be determined by the equipment or conditions currently in place under the following conditions: a) when federal energy efficiency standards do not apply, or b) when the existing equipment can be shown by the Project Sponsor to have a remaining service life of at least ten years.
- 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) the Measurement and Verification Plan, attached hereto and incorporated herein as Exhibit C; iv) where required, a Host Customer Agreement, and v) this Agreement together with the SOP Manual, as amended from time to time, and any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.
- 1.4 "Customer 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 Energy Savings” shall mean a pre-determined, validated estimate of Energy Savings attributable to a Measure in a particular type of application that TNMP may use instead of Measured Energy Savings.
 - 1.6 “Deemed Peak Demand Savings” shall mean a pre-determined, validated estimate of Peak Demand Savings attributable to a Measure in a particular type of application that TNMP may use instead of Measured Peak Demand Savings.
 - 1.7 “Deemed Savings” shall mean a pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that TNMP and the Project Sponsor may use instead of energy and peak demand savings determined through measurement and verification activities.
 - 1.8 “Energy Savings” shall mean a quantifiable reduction in a customer’s consumption of energy, or the amount by which energy consumption is reduced, as a result of the installation of qualifying energy-efficient equipment. Energy Savings will be determined by comparing the efficiency of the installed equipment to that of an appropriate baseline.
 - 1.9 “Estimated Energy Savings” shall mean the Energy Savings expected to be derived in a single year from Measures to be installed at the Project Site.
 - 1.10 “Estimated Peak Demand Savings” shall mean the Peak Demand Savings expected to be derived in a single year from Measures to be installed at the Project Site.
 - 1.11 “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.
 - 1.12 “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 small residential customer shall mean a TNMP distribution commercial 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.
 - 1.13 “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.

- 1.14 "Implementation Payment" shall be the first of two incentive payments made to a Project Sponsor for 40% of the total estimated incentive amount as specified in the Res HVAC SOP Agreement.
- 1.15 "Implementation Period" shall begin on the Execution Date and shall continue for a period of one year, and shall be the period during which Measures are installed.
- 1.16 "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.
- 1.17 "Measured Energy Savings" shall mean the Energy Savings derived during the Performance Period from the Measures installed at the Project Site as determined in accordance with the Measurement and Verification Plan set forth in Exhibit C.
- 1.18 "Measured Peak Demand Savings" shall mean the Peak Demand Savings derived during the Performance Period from the Measures installed at the Project Site as determined in accordance with the Measurement and Verification plan set forth in Exhibit C.
- 1.19 "Peak Demand Savings" shall mean, for purposes of the TNMP Standard Offer Program, the maximum average load reduction occurring during any one-hour period between 1 PM and 7 PM CDT weekdays, from June 1 through September 30 (holidays excluded). Peak Demand Savings will be determined by comparing the efficiency of the installed equipment to that of an appropriate baseline.
- 1.20 "Performance Period" shall mean, for each Measure, the one-year period following the approval of a Project Sponsor's Project Implementation Report and accompanying invoice on which a Measure is initially reported, during which measurement and verification activities are to take place.
- 1.21 "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.
- 1.22 "Project Implementation Report" shall mean the reporting instrument used by the Project Sponsor during the Program Implementation Period. Except for certain TNMP customers implementing projects at their own facilities, all Project Sponsors must submit the required Project Implementation reports.
- 1.23 "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. A single Project may include Measures installed at multiple sites.

- 1.24 “Project Sponsor” shall mean any organization, group, or individual who contracts with TNMP to provide Energy Savings and Peak Demand Savings under the Standard Offer Program.
- 1.25 “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.
- 1.26 “Simplified Measurement and Verification Procedure” shall mean the process used by the Project Sponsor to measure specific lighting retrofits as defined in the Standard Offer Program manual.

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 VII herein below, or until payment by Project Sponsor of any negative Performance Payment pursuant to Article 7.5 herein below, whichever last occurs.

ARTICLE III - COMPLIANCE WITH SOP MANUAL

- 3.1 By executing this Agreement, the Project Sponsor acknowledges that it has become familiar with all TNMP Res HVAC 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 Res HVAC 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 IX and Exhibit E 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 energy and peak demand savings over a ten-year period;
 - The Project discloses any potential adverse environmental or health effects associated with the energy efficiency measures to be installed;
 - The Project includes appropriate and adequate measurement, verification and reporting procedures;
 - 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 Res HVAC SOP;
 - 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 Manual prior to submission of its Project Application, and that the SOP Manual constitutes a part of this Agreement, and that the terms of the SOP 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 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 Res HVAC SOP as described in the SOP 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 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 Host Customer Agreement shall contain the following provisions:
- (a) Host Customer agrees, upon three (3) days' prior oral notice, to provide TNMP and the independent measurement and verification expert selected by the Public Utility Commission of Texas with full and complete access to the Project Site for any purpose related to the Res HVAC SOP. The right of access will be subject to Host Customer's reasonable access requirements and, unless otherwise agreed, must occur within the normal business hours of the Host Customer.
 - (b) Host Customer acknowledges that any view, inspection, or acceptance by TNMP of the Project Site or of the design, construction, installation, operation or maintenance of the Measures is solely for the information of TNMP and that, 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.
 - (c) Host Customer acknowledges that Project Sponsor is an independent contractor with respect to TNMP and the Res HVAC SOP and that Project Sponsor is not authorized to make representations or incur obligations on behalf of TNMP. Host Customer further acknowledges that TNMP is not a party to the Host Customer Agreement or any contract between the Project Sponsor and Host Customer and that Project Sponsor is solely responsible for performance thereunder.
 - (d) Host Customer agrees to provide TNMP with access to Host Customer's utility bills, project documentation, contractor invoices, and technical and cost information directly related to the Project.

- (e) Host Customer acknowledges that TNMP makes no warranty or representation regarding the qualifications of the Project Sponsor, and that the Host Customer is solely responsible for the selection of the Project Sponsor.
- (f) Host Customer acknowledges that it may file a complaint with the Public Utility Commission of Texas concerning the Project Sponsor, but that TNMP will play no role in resolving any disputes that arise between the Host Customer and the Project Sponsor.
- (g) Host Customer agrees to release TNMP from any and all claims, demands, losses, damages, costs, and legal liability including, but not limited to 1) injury or death of persons, 2) damage to natural resources, 3) violation of any local, state, or federal law or regulation including, but not limited to, environmental and health and safety laws or regulations, 4) strict liability imposed by any law or regulation, 5) equipment malfunctions, or 6) energy savings shortfalls arising out of, related to, or in any way connected with the Project, regardless of any strict liability or negligence of TNMP, whether active or passive, excepting only such claims, demands, losses, damages, costs, expenses, liability, or violation of law or regulation as may be caused by the gross negligence or willful misconduct of TNMP, and resulting from its acceptance of the Project for participation in the Res HVAC SOP Program.

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 web site. The Customer Acknowledgement(s) should be submitted to TNMP with the Project Implementation Report described in Section 5.4 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 a Customer Acknowledgement or inspection has been completed 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 If the Project involves multiple Project Sites, the Project Sponsor must complete sufficient Measure installations, Project Implementation Reports

and invoices to earn 100% of incentive reservation within ninety (90) days of incentive request.

- 5.4 Project Sponsors shall notify TNMP of installation of Measures by submitting a report (“Project Implementation Report”) basis that documents the Measures actually installed at the Project Site. Project Sponsors shall submit an invoice and Customer Acknowledgements associated with the installed Measures with the Project Implementation Report. TNMP must receive the Project Implementation Report within sixty (60) days of initial incentive request. If a Project Implementation Report or accompanying invoice or Customer Certificate is deficient, TNMP will notify Project Sponsor of the deficiency and Project Sponsor shall correct the deficiency within the period of time specified in the notice of deficiency.
- 5.5 TNMP 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 Energy Savings and Peak Demand 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/or Energy Savings in material compliance with the Contract Documents, the Project Implementation Report will be approved as submitted. The Estimated Savings attributable to the Measures documented in the approved Project Implementation Report will be used for purposes of calculating the Incentive Payment in Section 7.3.
- 5.6 If TNMP determines that any of the Measures installed at the Project Site are not capable of providing Peak Demand Savings and/or Energy Savings in material compliance with the Contract Documents, a reduction of Estimated Savings may be required for purposes of calculating the Incentive Payment in Section 7.3. The Estimated Savings attributable to the Measures documented in the Project Implementation Report may be reduced by the percentage of Measures that failed to pass inspection. This adjustment may also be expressed as follows:

$$ES = (PMES / IMES) * PIRES$$

ES = the amount of Incentives associated with the Estimated Savings to be used for calculation of the Implementation Payment in Section 7.3

PMES = the amount of Incentives associated with the Estimated Savings attributable to Measures that passed inspection

IMES = the amount of Incentives associated with the Estimated Savings attributable to all Measures that were inspected

PIRES = the amount of Incentives associated with the Estimated Savings attributable to all Measures documented in the Project Implementation Report Summary.

- 5.7 Within thirty (30) days of the conclusion of the Performance Period, the Project Sponsor shall submit a report to TNMP documenting the Measured Peak Demand Savings and/or Measured Energy Savings for the Performance Period (the "Performance Report"). If the Performance Report is deficient, TNMP will notify Project Sponsor of the deficiency and Project Sponsor shall correct the deficiency and submit a revised Performance Report within the period of time specified by TNMP in the notice of deficiency.
- 5.8 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.

ARTICLE VI - MEASUREMENT AND VERIFICATION

- 6.1 The monitoring and measurement of the Energy Savings and Peak Demand Savings that result from the Measures installed as a part of the Project shall be as set forth in the Measurement and Verification Plan that is attached hereto as Exhibit C. The measurement and verification activities shall be performed by the Project Sponsor.

ARTICLE VII - INCENTIVE PAYMENTS

- 7.1 TNMP agrees to make an "Incentive Payment" to the Project Sponsor based upon the sum of the Deemed Savings and Measured Savings derived from the Project. No more than sixty-five percent (65%) of the total savings may be derived from lighting Measures. If a project consists of lighting Measures only, compensation shall be calculated in accordance with P.U.C. SUBST. R. 25.181(m)(2)(D).
- 7.2 The total Incentive Payment due to Project Sponsor will be calculated by multiplying the Deemed Savings and Simplified M&V Procedure Savings associated with the Measures installed at the Project Site by the applicable "Incentive Rate" specified in Section 7.3. The Incentive Payment for Deemed Savings and Simplified M&V Procedure Savings shall be payable in one installment. Regardless of the actual calculated Incentive Payment for the Project, the total Incentive Payment for the Project shall not exceed \$5,000. The maximum cumulative Residential Incentive Payment for a "Small Projects" Project Sponsor, regardless of the number of individual Projects completed in 2013, is 20% of the total program incentive budget.
- 7.3 Under no circumstances shall the total Incentive Payment exceed

\$740/kW for non-Hard-to-Reach customer projects subject to additional limitations for lighting only projects, as calculated using the following formula:

$$\text{Non-Hard-to-Reach Customer Installations Total Incentive Payment} = \text{Installation Payment} + \text{Performance Payment} \leq \$740/\text{kW}$$

The applicable Incentive Rates are as follows:

Residential HVAC Customer Projects

- (1) Peak Demand Savings Incentive Rate = \$450.00/kW (coincident with system peak)
- (2) Energy Savings Incentive Rate = \$0.15/kWh

7.4 Upon completion of Measure installation and approval of a Project Implementation Report and invoice, TNMP will pay the first installment of the Incentive Payment (the "Implementation Payment"). TNMP will make the Implementation Payment within thirty (30) days of its approval of the Project Implementation Report and invoice. The Implementation Payment will be one hundred percent (100%) of the Incentive Payment due for Deemed Savings Measures and Simplified M&V Measures, plus forty percent (40%) of the total Incentive Payment due based upon the Estimated Measured Savings set forth in an approved Project Implementation Report or as adjusted in accordance with Section 5.7. The amount of the Implementation Payment will be calculated using the following formula where DIP is the portion of the Implementation Payment attributable to Deemed Savings, SIP is the portion of Implementation Payment attributable to Simplified M&V Savings, and EIP is the portion of the Implementation Payment attributable to Estimated Savings:

$$\text{DIP} = [(\text{DES} \times \text{ESIR}) + (\text{DDS} \times \text{DSIR})]$$

$$\text{SIP} = [(\text{SES} \times \text{ESIR}) + (\text{SDS} \times \text{DSIR})]$$

$$\text{EIP} = 0.40 \times [(\text{EES} \times \text{ESIR}) + (\text{EDS} \times \text{DSIR})]$$

Where:

DES is the amount of Deemed Energy Savings;

ESIR is the applicable Energy Savings Incentive Rate;

DDS is the amount of Deemed Peak Demand Savings;

DSIR is the applicable Peak Demand Savings Incentive Rate;

SES is the amount of Simplified M&V Energy Savings;

SDS is the amount of Simplified M&V Peak Demand Savings;

EES is the amount of Estimated Energy Savings; and

EDS is the amount of Estimated Peak Demand Savings.

Measured Savings are subject to load factor adjustments in accordance with procedures approved by the Public Utility Commission of Texas.

- 7.5 At the conclusion of the Performance Period and upon final approval of the Performance Report and invoice, TNMP will pay the second installment of the Incentive Payment (the "Performance Payment"). TNMP will make the Performance Payment within thirty (30) days of its approval of the Performance Report and invoice. The Performance Payment will be the remaining amount of the total Incentive Payment due based upon the Measured Savings. The amount of the Performance Payment may be calculated using the following formula:

$$\text{Performance Payment} = [(MES \times ESIR) + (MDS \times DSIR)] - EIP$$

Where:

MES is the amount of Measured Energy Savings;

ESIR is the applicable Energy Savings Incentive Rate;

MDS is the amount of Measured Peak Demand Savings;

DSIR is the applicable Peak Demand Savings Incentive Rate; and

EIP is the portion of the Implementation Payment attributable to Estimated Savings as calculated and paid pursuant to Section 7.3.

The Performance Payment will be negative if the Measured Savings are less than forty percent (40%) of the Estimated Savings upon which the Implementation Payment was based. In the event that the above formula results in a negative Performance Payment, then Project Sponsor will refund that amount to TNMP within thirty (30) days of TNMP's approval of the Performance Report and invoice.

ARTICLE VIII - AUDIT AND RECORDS

- 8.1 Project Sponsor or its assignee shall keep and maintain accurate and detailed records and documentation relating to the Project and its associated Energy Savings and Peak Demand 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 Res HVAC SOP or any portion of the Project.

ARTICLE IX - INSURANCE

9.1 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 E, which is attached hereto and incorporated herein for all purposes.

Prior to commencement of installation, Project Sponsor shall furnish 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 to:

Kyle Caffey
1515 S Capital of Texas Hwy
Suite 110
Austin, TX 78746-6544

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 X - INDEMNITY

10.1 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 Group within the scope of the preceding paragraph, the Project Sponsor agrees to and will defend, protect, indemnify, and hold harmless TNMP Group 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 (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 Group any defense it may have by virtue of the workers' compensation laws of any state.

ARTICLE XI - PERMITS, LICENSES AND COMPLIANCE WITH LAWS

- 11.1 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 effect all such governmental permits, licenses and other authorizations as may be necessary for the construction, operation or maintenance of the Measures in accordance herewith.
- 11.2 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.
- 11.3 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 Res HVAC 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 XII – CONSUMER PROTECTION

- 12.1 Each Project Sponsor shall provide clear disclosure to the Host Customer of the following:
- (a) The customer’s right to a cooling-off period of three business days, in which the contract may be cancelled, if applicable under law.
 - (b) The name, telephone number, and street address of the Project Sponsor, the contractor, and written disclosure of all warranties.
 - (c) The fact that incentives are made available to the Project Sponsor through a ratepayer funded program, manufacturers or other entities.

- (d) Notice of provisions that will be included in the Host Customer Agreement as described in Section 12.3 below.
- 12.2 A form developed and approved by the Public Utility Commission of Texas may be used to satisfy the requirements of Section 12.1 above.
- 12.3 Project Sponsor shall enter into a contract with each Host Customer that includes the following provisions:
- (1) Information on the Project Sponsor's or its contractors' work activities and completion dates, and the terms and conditions that protect residential Host Customers in the event of non-performance by the Project Sponsor.
 - (2) Written and oral disclosure of the financial arrangement between the Project Sponsor and Host Customer. This includes an explanation of the total Host Customer payments, the total expected interest charged, all possible penalties for non-payment, and whether the Host Customer's installment sales agreement may be sold.
 - (3) Disclosure of contractor liability insurance to cover property damage.
 - (4) An "All Bills Paid" affidavit be given to the Host Customer to protect against claims of subcontractors.
 - (5) Provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs.
 - (6) Information on complaint procedures offered by the Project Sponsor, or by TNMP, as required by P.U.C. SUBST. R. 25.181(m), and toll free numbers for the Office of Customer Protection of the Public Utility Commission of Texas, and the Office of Attorney General's Consumer Protection Hotline.
 - (7) Disclosure that the Project Sponsor is not endorsed by the Public Utility Commission of Texas or TNMP.

ARTICLE XIII - DEFAULT AND REMEDIES

- 13.1 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 measurement and verification 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).

13.2 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 XIV - INDEPENDENT CONTRACTOR

- 14.1 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.
- 14.2 No part of the work contemplated under this agreement may be performed by subcontractors without the prior written approval of TNMP.

ARTICLE XV - NOTICES

- 15.1 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:
1515 S Capital of Texas Hwy

Project Sponsor:

Suite 110 _____
Austin, TX 78746-6544 _____
Phone: (512) 372-8778, ext. 131 _____
Attn: Kyle Caffey Attn: _____

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

ARTICLE XVI - AMENDMENT

- 16.1 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 XVII – FORCE MAJEURE

- 17.1 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.
- 17.2 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.
- 17.3 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 15.2.

- 17.4 In no event will any Force Majeure extend this Agreement beyond its stated term.
- 17.5 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 XVIII - MISCELLANEOUS

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 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.
- 18.5 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 Tarrant County, Texas.
- 18.6 Project Sponsor shall not use TNMP's or any affiliate of TNMP's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers for participation in its project.

18.7 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

EXHIBIT B
SUPPLEMENTAL APPLICATION INFORMATION

EXHIBIT C
MEASUREMENT AND VERIFICATION PLAN

EXHIBIT D
SOP MANUAL

THE OFFICIAL MANUAL, FOR PURPOSES OF EXHIBIT D, SOP MANUAL, IS THE FILE AVAILABLE FROM THE WWW.TNMPEFFICIENCY.COM SITE.

EXHIBIT E
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 non-owned vehicles	BI and PD Combined: Each accident: \$1,000,000 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), 1515 S. Capital of Texas Hwy, Suite 110, Austin, Texas 78746, ATTN: Kyle Caffey.
- ** The original CERTIFICATE OF INSURANCE must be forwarded to the CERTIFICATE HOLDER.

EXHIBIT F
HOST CUSTOMER AGREEMENT

An example of the Host Customer Agreement can be found on the TNMP program website at www.tnmpefficiency.com. Project sponsors may change the format (font, margins, etc.) of this document, subject to advanced written approval by Texas-New Mexico Power Company, but may not alter the wording of the document in any way.