

APPENDIX 1

TERMS AND CONDITIONS

The following terms and conditions (“Terms and Conditions”) are incorporated in that certain 2009 Commercial Standard Offer Program Small Project Master Agreement (the “Agreement”) made and entered by and between **AEP TEXAS NORTH COMPANY**, a Texas corporation (hereinafter “TNC”) and Project Sponsor dated _____.

ARTICLE I - DEFINITIONS

- 1.1 “Baseline” is generally defined, for the purposes of determining Energy Savings for equipment replacement projects implemented under the SOP, as the energy consumed by equipment with efficiency levels that meet the applicable current federal standards and reflect 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. For determining savings for building shell improvements, the Baseline is generally determined by the building’s current condition, e.g., existing insulation R-values, air infiltration rates, etc.
- 1.2 “Commercial Customer” shall mean a non-residential customer taking distribution service at less than 69,000 volts.
- 1.3 “Deemed Energy Savings” shall mean a pre-determined, validated estimate of Energy Savings attributable to a Measure in a particular type of application.
- 1.4 “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.
- 1.5 “Deemed Savings” shall mean the sum of Deemed Energy Savings and Deemed Peak Demand Savings.
- 1.6 “Demand Savings” shall mean a quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or average over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).
- 1.7 “Energy Savings” shall mean a quantifiable reduction in a customer’s consumption of energy, or the amount by which a customer’s energy consumption is reduced, as a result of the installation of qualifying energy efficient Measures. Energy Savings will be determined by comparing the efficiency of the installed Measures to that of an appropriate Baseline.
- 1.8 “Estimated Energy Savings” shall mean the Energy Savings, in kWh, expected to be derived in a single Implementation Period from Measures to be installed or actually installed at the Project Site.
- 1.9 “Estimated Peak Demand Savings” shall mean the Peak Demand Savings expected to be derived in a single Implementation Period from Measures to be installed or actually installed at the Project Site.
- 1.10 “Host Customer” shall mean a qualified Commercial customer of TNC that (i) owns or leases facilities at a Project Site or Sites, and (ii) has entered into a Host Customer Agreement and Acknowledgement with a Project Sponsor for the installation of Measures as a part of the Project.
- 1.11 “Measure” shall mean new equipment, material, or systems that, when installed and used at a Project 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. Measures shall improve the electrical efficiency of existing and ongoing electricity-consuming end-uses which meet the requirements of the Contract Documents. Measures do not include equipment, material or systems that are installed as a part of new construction.

- 1.12 “Project Sponsor and Customer Agreement” shall mean the agreement between Host Customer and Project Sponsor that specifies the rights and obligations of each party with respect to the installation of the Measures at the Project Site and other related and/or unrelated matters.
- 1.13 “PUCT” shall mean the Public Utility Commission of Texas.
- 1.14 “Peak Demand” shall mean electrical demand at the time of highest annual demand on the utility’s system, measured in 15-minute intervals.
- 1.15 “Peak Demand Savings” shall mean, for purposes of the SOP, 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 (federal holidays excluded). Peak Demand Savings will be determined by comparing the efficiency of the installed Measures to that of an appropriate Baseline.
- 1.16 “Project” shall mean all activities and Measures required to achieve the Energy and Peak Demand Savings necessary to meet the Requested Incentive.
- 1.17 “Project Site” shall mean the location of a Host Customer's facilities where approved Measures will be installed and from which Peak Demand and Energy Savings will be obtained.
- 1.18 “Project Sponsor” shall mean any organization, group, or individual who contracts with TNC to provide Energy and Peak Demand Savings under the SOP.
- 1.19 “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.

ARTICLE II – PROJECT SPONSOR AND CUSTOMER AGREEMENT

- 2.1 Project Sponsor will be solely responsible for entering into a Project Sponsor and Customer Agreement with the Host Customer. The Project Sponsor and Customer Agreement must be executed by the Host Customer prior to Project Sponsor beginning installation of Measures at the Project Site. TNC will not award incentive payments without proper completion of the Project Sponsor and Customer Agreement as provided for in the Contract Documents. To the extent possible, Project Sponsor and Customer Agreements will be kept confidential.
- 2.2 Project Sponsor agrees to disclose to Host Customer any potential adverse environmental or health effects associated with the Measures to be installed at the Project Site.
- 2.3 Project Sponsor must submit a copy of the Project Sponsor and Customer Agreement and a copy of the Customer Acknowledgement Form. Each submitted form must include the signature of the Host Customer certifying that the Measures contracted for were installed at the Project Site. If a Host Customer refuses to sign either of these documents, Project Sponsor may request, at Project Sponsor's expense, that TNC perform an inspection of the Project Site. Final payment of incentives will not be made unless and until the

inspection by TNC has been completed in accordance with the terms of the Contract Documents. If TNC is unable to inspect Measure installations at the Project Site, those measures shall be counted as failures.

ARTICLE III - PROJECT IMPLEMENTATION

Project Sponsor agrees to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Contract Documents. 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. To the extent of any conflict between the Agreement or Terms and Conditions and other Contract Documents, the terms of the Agreement and Terms of Conditions shall prevail.

ARTICLE IV - INCENTIVE PAYMENTS

- 4.1 **TNC'S PAYMENT OF INCENTIVE PAYMENT(S) TO PROJECT SPONSOR IS EXPRESSLY AND SPECIFICALLY CONDITIONED UPON TNC RECEIVING ALL REQUIRED NOTICES, SUBMITTALS AND MATERIALS FROM PROJECT SPONSOR WITHIN THE APPLICABLE PERIOD SPECIFIED IN THIS AGREEMENT. FAILURE BY PROJECT SPONSOR TO DELIVER ANY REQUIRED NOTICE, SUBMITTAL, OR MATERIAL WITHIN THE APPLICABLE PERIOD SPECIFIED IN THIS AGREEMENT SHALL BE DEEMED A MATERIAL BREACH OF THIS AGREEMENT.**
- 4.2 TNC agrees to make an "Incentive Payment" to the Project Sponsor based upon the Deemed Savings derived from the Project. No more than sixty-five percent (65%) of the total savings for the Project 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(j)(2)(G).
- 4.3 As set forth in the SOP Manual, a Load Factor cap governs the maximum total payment allowed, based on the ratio between demand and energy savings from a Project.

ARTICLE V - AUDIT AND RECORDS

- 5.1 Project Sponsor or its assignee shall keep and maintain accurate and detailed records and documentation relating to a Project and its associated Energy Savings and Peak Demand Savings under the Agreement for a period of not less than three (3) years beyond the termination of the Agreement. During the retention period, such records shall be made available, upon reasonable notice, for inspection during normal business hours by TNC or any governmental agency having jurisdiction over the SOP or any portion of the Project.
- 5.2 Project Sponsor understands that the PUCT may request or require an audit of the matters addressed in the Agreement or commence an investigation or other regulatory proceeding. Project Sponsor agrees to cooperate with any such process without claim against TNC for additional compensation or reimbursement for expenses incurred in connection therewith.

ARTICLE VI - INSURANCE

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. Copies of all insurance "Notices of Coverage" shall be delivered directly to TNC from the insurance company or insurance companies agent prior to the approval of Project Sponsor's application.

ARTICLE VII - INDEMNITY

- 7.1 **PROJECT SPONSOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS TNC, AND ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH TNC AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, LOSSES, DAMAGES AND LIABILITIES OF ANY KIND INCLUDING ALL EXPENSES OF LITIGATION, COSTS OF COURT AND/OR ALTERNATIVE DISPUTE RESOLUTION, ATTORNEYS' FEES AND EXPERT WITNESS FEES (WHETHER THE SAME ARE BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) FOR INJURIES, DEATH OR PROPERTY DAMAGES OR LOSS (INCLUDING INJURIES, DEATH OR PROPERTY DAMAGES SUFFERED BY PROJECT SPONSOR OR ITS AGENTS, EMPLOYEES OR CONTRACTORS) WHICH OCCURRED, OR ARE ALLEGED TO HAVE OCCURRED DIRECTLY OR INDIRECTLY AS A RESULT OF (i) PROJECT SPONSOR'S OR ITS SUBCONTRACTOR'S PARTICIPATION IN ANY STAGE OF THE SOP; (ii) AN ACT OR OMISSION OF PROJECT SPONSOR IN OR COLLATERAL TO ITS PERFORMANCE OF WORK OR SERVICES UNDER OR IN CONNECTION WITH THE AGREEMENT; OR (iii) ANY DEFECT (INCLUDING A DESIGN OR MANUFACTURING DEFECT OR THE FAILURE TO PROVIDE PROPER WARNING OR INSTRUCTIONS FOR USE) IN OR MALFUNCTION OF OR FINDING OF STRICT LIABILITY IN TORT ATTRIBUTABLE TO ANY MEASURE PROVIDED UNDER OR IN CONNECTION WITH THE AGREEMENT. THIS INDEMNITY OBLIGATION SPECIFICALLY INCLUDES ANY CLAIMS, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, LOSSES, DAMAGES AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSE OF LITIGATION, COSTS OF COURT AND/OR ALTERNATIVE DISPUTE RESOLUTION, ATTORNEYS' FEES AND EXPERT WITNESS FEES (WHETHER THE SAME ARE BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, OR STRICT LIABILITY OR OTHERWISE) ALLEGING TNC'S NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY REGARDLESS OF WHETHER SUCH NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY IS A JOINT AND CONCURRING CAUSE OF THE INJURIES, DEATH OR PROPERTY DAMAGE. THIS PROVISION SHALL NOT APPLY TO CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, LOSSES, DAMAGES AND LIABILITIES TO THE EXTENT CAUSED BY THE NEGLIGENCE OF TNC IN THE CONDUCT OF TNC'S ON-SITE INSPECTION OF THE PROJECT SITE PURSUANT TO THIS AGREEMENT.**
- 7.2 **IN ADDITION TO THE INDEMNITIES AND OTHER PROTECTIONS PROVIDED UNDER THIS ARTICLE VII, PROJECT SPONSOR HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS TNC, AND ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH TNC AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, DAMAGES, LIABILITIES, EXPENSES, CONTRIBUTIONS, REMEDIATION OR CLEANUP COSTS, OR OTHER LOSSES OF ANY KIND INCLUDING ALL EXPENSES OF LITIGATION, COSTS OF COURT AND/OR ALTERNATIVE DISPUTE RESOLUTION, ATTORNEYS' FEES AND EXPERT WITNESS FEES (WHETHER THE SAME ARE BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) ARISING FROM, ASSOCIATED WITH, OR RELATING IN ANY WAY TO:**

- 7.2.1 **ANY BREACH OF ANY REPRESENTATION, WARRANTY, OR COVENANT OF PROJECT SPONSOR CONTAINED IN THE AGREEMENT;**
- 7.2.2 **ANY VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, OR POLICY RESPECTING PROTECTION OF THE ENVIRONMENT, HEALTH, AND/OR SAFETY (HEREINAFTER “EHS LAWS”) ASSOCIATED WITH OR RELATED IN ANY WAY TO THE PROJECT;**
- 7.2.3 **ANY PROPERTY DAMAGE OR IMPAIRMENT OR ANY PERSONAL INJURY ALLEGED TO BE ASSOCIATED WITH ANY EXPOSURE TO MATERIALS REGULATED UNDER ANY EHS LAW RELATING IN ANY WAY TO THE PROJECT; OR**
- 7.2.4 **ANY RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS SUBSTANCE OR OTHER MATERIAL OR SUBSTANCE REGULATED UNDER ANY EHS LAW RELATING IN ANY WAY TO THE PROJECT.**
- 7.3 **THE ENVIRONMENTAL INDEMNITY PRESCRIBED BY THIS ARTICLE VII SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS ARISE FROM THE JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY IN TORT OR WILLFUL MISCONDUCT OF OR BREACH OF CONTRACT BY TNC, OR ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH TNC AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES.**
- 7.4 The representations, warranties, covenants, indemnities, and other obligations or protections provided by Project Sponsor pursuant to this Article VII shall not be limited by time and shall survive the completion of the Project or any other completion, expiration or termination of the Agreement.

ARTICLE VIII - PERMITS, LICENSES AND COMPLIANCE WITH LAWS

- 8.1 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, at its own cost and expense, obtain all such additional governmental permits, licenses, and other authorizations when required with respect to any of the Measures under the Agreement. If requested by TNC, Project Sponsor shall furnish to TNC 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. Failure to maintain licenses, permits and other authorizations required to perform the work detailed in the Agreement constitutes a material breach of Project Sponsor’s obligations under the Agreement.
- 8.2 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 TNC and shall hold TNC and any individual, corporation, partnership, limited liability company, association, trust, or other business organization of any kind directly or indirectly controlling, controlled by, or under common control with TNC and its and their respective shareholders, members, partners, officers, directors, managers, trustees, incorporators, agents, attorneys, consultants, servants, representatives, and employees harmless from any

liability or infringement of any such intellectual property used by Project Sponsor in the implementation of the Project.

- 8.3 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 SOP or any portion of the Project, including without limitation, the 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 federal, state and local laws, rules and regulations.

ARTICLE IX – CONSUMER PROTECTION

- 9.1 Each Project Sponsor shall provide clear disclosure to the Host Customer of the following:

- (a) The Host 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 Project Sponsor and Customer Agreement as described in Section 9.2 below.

- 9.2 In addition to those contractual provisions required by Section 2.2, the Project Sponsor shall, in accordance with P.U.C. Subst. R. 25.181(o)(3), include the following provisions in the Project Sponsor and Customer Agreement:

- (1) Information on the Project Sponsor's or its contractor’s work activities and completion dates, and the terms and conditions that protect 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 Host Customer’s total payment, 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 TNC, as required by P.U.C. SUBST. R. 25.181(j)(2)(L), and toll free numbers for the Office of

Customer Protection of the PUCT, and the Office of Attorney General's Consumer Protection Hotline.

- (7) Disclosure that the Project Sponsor is not part of, or endorsed by the PUCT or TNC.

ARTICLE X - DEFAULT AND REMEDIES

10.1 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 timely complete or report a Project pursuant to the project completion and reporting deadlines established in Article IV of the Agreement;
- (c) failure of Project Sponsor to provide TNC and/or its contractors with sufficient access to the Project Sites for the purposes of conducting inspections, observations, or measurement and verification activities;
- (d) failure of Project Sponsor to obtain or maintain any necessary permits, licenses or insurance required pursuant to the Contract Documents;
- (e) Project Sponsor's assignment or subcontracting of all or part of the duties required under the Contract Documents without the prior written consent of TNC;
- (f) Project Sponsor's use of marketing materials containing any unapproved references to TNC;
- (g) Project Sponsor's submission to TNC 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
- (h) failure of either Party in a material fashion to perform or observe any of the material terms, conditions or provisions of the Agreement not otherwise described in this Section 10.1, 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).

10.2 If an Event of Default occurs, the non-defaulting Party shall be entitled to exercise any and all remedies provided for by the Agreement, by law or in equity, including, but not limited to, the right to immediately terminate the Agreement upon written notice to the other Party. Termination shall be effective upon the receipt of properly served notice. Termination of the Agreement will not relieve the defaulting Party of any obligations accruing prior to the event of termination.

ARTICLE XI - LIMITATION OF LIABILITY

11.1 TNC AND ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH TNC AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS,

AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES SHALL NOT BE LIABLE TO PROJECT SPONSOR OR ANY HOST CUSTOMER FOR ANY LOSSES, COSTS, INJURIES, LIABILITIES, EXPENSES (INCLUDING ATTORNEY'S FEES), OR CLAIMS FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE CONNECTED WITH OR RESULTING FROM

- (i) NEGOTIATION, EXECUTION, OPERATION OR TERMINATION OF THE AGREEMENT;**
- (ii) PERFORMANCE OR NON-PERFORMANCE OF ANY COMMITMENT TO A HOST CUSTOMER; OR**
- (iii) ANY ACTS, OMISSIONS, OR REPRESENTATIONS MADE BY PROJECT SPONSOR IN CONNECTION WITH SOLICITING HOST CUSTOMERS OR PERFORMING ANY OTHER FUNCTIONS,**

INCLUDING WITHOUT LIMITATION, CLAIMS IN THE NATURE OF LOST REVENUES, INCOME OR PROFITS, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON WARRANTY, NEGLIGENCE, STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE AND PROJECT SPONSOR SHALL PROTECT, INDEMNIFY AND HOLD TNC HARMLESS FROM SAME.

11.2 BOTH PARTIES AGREE THAT, IN THE EVENT OF (i) ANY DISPUTE THAT ARISES OUT OF THE NEGOTIATION, EXECUTION, OPERATION, OR TERMINATION OF THIS AGREEMENT AND ITS SUBJECT MATTER, WHETHER THE DISPUTE SOUNDS IN CONTRACT OR TORT, OR AS A RESULT OF A CLAIMED STATUTORY OR REGULATORY VIOLATION, OR (ii) ANY OTHER CLAIM THAT MAY ARISE OUT OF THE RELATIONSHIP OF THE PARTIES, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES, EXPERT WITNESS FEES, LITIGATION EXPENSES, AND COSTS OF COURT OR ALTERNATIVE DISPUTE RESOLUTION FROM THE LOSING PARTY.

ARTICLE XII - INDEPENDENT CONTRACTOR

Project Sponsor will act as and be deemed to be an independent contractor, and nothing in the Agreement shall be construed to create the relationship of employer and employee, master and servant, principal and agent or joint venturers. Project Sponsor will be solely responsible for and 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. TNC shall have no responsibility with respect to withholding, deductions or payment of any federal or state tax on behalf of Project Sponsor or any of Project Sponsor's employees. Project Sponsor agrees to pay and comply with and hold TNC harmless from and against the payment of all contributions, taxes and premiums which may be payable by Project Sponsor under federal, state or local laws arising out of the performance of the Agreement and all other taxes of whatever nature levied or assessed against Project Sponsor arising out of the Agreement, including any interest or penalties, and Project Sponsor hereby waives any and all claims for additional compensation because of any increase in the aforementioned taxes.

ARTICLE XIII - AMENDMENT

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

ARTICLE XIV - ALTERNATIVE DISPUTE RESOLUTION

- 14.1 BOTH PARTIES AGREE TO RESOLVE ANY AND ALL DISPUTES THAT ARISE OUT OF THE NEGOTIATION, EXECUTION, OPERATION OR TERMINATION OF THE AGREEMENT AND ITS SUBJECT MATTER, WHETHER THE DISPUTE SOUNDS IN CONTRACT OR TORT, OR AS A RESULT OF A CLAIMED STATUTORY OR REGULATORY VIOLATION, OR ANY OTHER CLAIM WHICH MAY ARISE OUT OF THE RELATIONSHIP OF THE PARTIES, THROUGH ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES. BOTH PARTIES AGREE TO FIRST ATTEMPT TO RESOLVE DISPUTES THROUGH MEDIATION. IF, HOWEVER, SUCH DISPUTES CANNOT BE RESOLVED THROUGH MEDIATION, BOTH PARTIES AGREE TO SUBMIT SUCH DISPUTES FOR RESOLUTION THROUGH BINDING ARBITRATION, TO BE CONDUCTED BY ONE QUALIFIED INDEPENDENT ARBITRATOR THAT IS MUTUALLY SELECTED BY BOTH PARTIES, IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES (“RULES”) OF THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) THEN IN EFFECT. IF THE PARTIES CANNOT AGREE UPON THE SELECTION OF THE ARBITRATOR, THEN EITHER PARTY MAY FILE ITS DEMAND WITH THE AAA AND THE ARBITRATION SHALL BE ADMINISTERED IN ACCORDANCE WITH ITS RULES. VENUE OF THE ARBITRATION SHALL BE THAT VENUE SET FORTH IN SECTION 17.5, UNLESS THE PARTIES AGREE OTHERWISE. THIS BINDING ARBITRATION PROVISION SHALL NOT PROHIBIT OR RESTRICT EITHER PARTY FROM SEEKING EMERGENCY INJUNCTIVE OR OTHER EQUITABLE RELIEF IN THE DISTRICT COURTS OF THE COUNTY OF VENUE TO PRESERVE THE STATUS QUO. IF ANY SUCH RELIEF IS SOUGHT AND OBTAINED, THE MATTER WILL THEN BE IMMEDIATELY REFERRED TO ARBITRATION IN ACCORDANCE WITH THE TERMS OF THIS PROVISION FOR A HEARING ON THE MERITS OF THE RELIEF SOUGHT.**
- 14.2 BOTH PARTIES AGREE THAT THE TERMS OF ANY AGREEMENT, SETTLEMENT, JUDGMENT OR AWARD RESULTING FROM ANY MEDIATION OR ARBITRATION PROCEEDINGS DESCRIBED IN SECTION 14.1 SHALL BE CONFIDENTIAL, AND THE PARTIES AGREE NOT TO DISCLOSE SUCH TERMS, OR ANY DRAFTS OR COMMUNICATIONS CONCERNING SUCH TERMS, TO ANY THIRD-PARTY EXCEPT AS FOLLOWS:**
- 14.2.1 THE TERMS MAY BE DISCLOSED, BUT ONLY TO THE EXTENT REASONABLY NECESSARY, TO A PARTY’S ATTORNEYS, INSURERS, AGENTS, EMPLOYEES, AND ACCOUNTANTS, PROVIDED THAT THOSE PERSONS HAVE AGREED TO KEEP SUCH INFORMATION CONFIDENTIAL AND NOT DISCLOSE IT TO ANY OTHER PERSON OR ENTITY; OR**
 - 14.2.2 THE TERMS MAY BE DISCLOSED TO A COURT OR TRIBUNAL IN CONNECTION WITH AN ACTION TO ENFORCE ANY AGREEMENT, SETTLEMENT, JUDGMENT OR AWARD RESULTING FROM ANY MEDIATION OR ARBITRATION PROCEEDING DESCRIBED IN SECTION 14.1; OR**
 - 14.2.3 THE TERMS MAY BE DISCLOSED TO OTHERS (i) PURSUANT TO AN APPROPRIATE COURT ORDER ENTERED AFTER EVERY OTHER PARTY TO THE AGREEMENT HAS BEEN GIVEN REASONABLE NOTICE AND AN OPPORTUNITY TO BE HEARD, OR (ii) IF REQUIRED BY A GOVERNMENTAL AGENCY AFTER EVERY OTHER PARTY TO THE AGREEMENT HAS BEEN GIVEN REASONABLE NOTICE AND AN OPPORTUNITY TO BE HEARD, OR (iii) WITH THE PRIOR WRITTEN APPROVAL OF EVERY OTHER PARTY TO THE AGREEMENT.**

ARTICLE XV – FORCE MAJEURE

- 15.1 The term “Force Majeure” as used herein means causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including, but not limited to, acts of God, labor disputes, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, change in laws or applicable regulations subsequent to the date hereof and action or inaction by any federal, state or local legislative, executive, administrative or judicial agency or body, which, in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.
- 15.2 The term “Force Majeure” shall not include either of the following:
- (a) Any removal, reduction, curtailment or interruption of operation of any or all Measures whether in whole, or in part, which removal, reduction, curtailment or interruption is caused by or arises from the action or inaction of the Host Customer or any third party, including without limitation, any vendor or supplier to the Project Sponsor or TNC, unless, and then only to the extent that, any such action or inaction was beyond the reasonable control of, and occurred without the fault or negligence of such third party, and such third party, by exercise of due foresight, could not reasonably have been expected to avoid such action or inaction; or
 - (b) Any outage, whether or not due to the fault or negligence of TNC or Project Sponsor, of the Measures or TNC’s system attributable to a defect or inadequacy in the manufacture, design or installation of the Measures that prevents, curtails, interrupts or reduces the ability of the Measures to provide Peak Demand and/or Energy Savings.
- 15.3 The Parties shall be excused from performing their respective obligations under the Agreement and shall not be liable in damages or otherwise if, and to the extent that, they are unable to so perform or are prevented from performing by an event of Force Majeure, provided that:
- (a) The non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than fourteen (14) days thereafter, gives the other Party written notice describing the particulars of the occurrence;
 - (b) The suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure;
 - (c) The non-performing Party uses its best efforts to remedy its inability to perform; and
 - (d) As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, it shall give prompt written notification thereof to the other Party.

ARTICLE XVI – NONDISCLOSURE

- 16.1 If either Party hereto provides confidential information to the other in writing and identified as such, the receiving Party shall protect the confidential information from disclosure to third parties. Neither Party shall be required to hold confidential any information which (i) becomes publicly available other than through the recipient; (ii) is required to be disclosed by a governmental or judicial order, rule or regulation; (iii) is independently developed by the receiving Party as evidenced by written records; or (iv) becomes available to the receiving Party without restriction from a third party. These obligations shall survive expiration or termination of the Agreement.
- 16.2 Should any person or entity seek to legally compel a receiving Party (by oral questions, interrogations, requests for information or documents, subpoena, civil investigative demands, regulation, statute or

otherwise) to disclose any confidential information, the receiving Party will provide the disclosing Party prompt written notice so that the disclosing Party may seek a protective order or other appropriate remedy (including participating in any proceeding to which the receiving party is a party, which receiving Party will use its reasonable business and legal efforts to permit). If, in the absence of a protective order, the receiving party is, in the opinion of its legal counsel, compelled to disclose the confidential information, the receiving Party may disclose only such of the confidential information to the person or entity compelling disclosure as is required by applicable law, order, regulation or rule.

ARTICLE XVII - MISCELLANEOUS

- 17.1 Project Sponsor will not assign, transfer or otherwise dispose of any of its obligations or duties without the prior written approval of TNC. No assignment of the Agreement shall relieve Project Sponsor of any of its obligations under the Agreement. When duly assigned in accordance with the foregoing, the Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment or transfer made without the express written approval of TNC will be null and void. No part of the work contemplated under the Agreement may be performed by subcontractors without the prior written approval of TNC.
- 17.2 The rights and remedies provided by the 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 the Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.
- 17.3 The Contract Documents constitute the entire Agreement between the Parties with respect to the subject matter hereof and there are no express or implied warranties or representations upon which any party may rely beyond those set forth therein. The execution of the Agreement supersedes all previous agreements, discussions, communications and correspondence with respect to such subject matter.
- 17.4 In the event any provision of the Agreement is held to be void, unlawful, or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
- 17.5 The Agreement will be governed by, construed and enforced in accordance with the laws of the State of Texas excluding any conflict or choice of law rules that direct the application of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signature of the Parties hereto are affixed or of the place or places of performance. Except for matters and disputes with respect to which the PUCT is the sole proper venue for dispute resolution pursuant to applicable law or the Agreement, the Parties agree that the proper venue and jurisdiction for any cause of action relating to the Agreement will be in Travis County, Texas and the Parties hereto submit to the exclusive jurisdiction of the federal and state courts located in such county with respect to such matters and disputes.
- 17.6 The duties, obligations, and liabilities of the Parties hereto are intended to be several and not joint or collective. Nothing contained in the Agreement shall ever be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under the Agreement.
- 17.7 Project Sponsor shall not use TNC's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers for participation in its project, without TNC's written consent.

- 17.8 The Parties expressly agree that time is of the essence for all portions of the Agreement. In no event shall the arbitration of any controversy or the settlement thereof delay the performance of the Agreement.
- 17.9 The descriptive headings of the various sections of the Agreement have been inserted for convenience of reference only and shall in no way define, modify, or restrict any of the terms and provisions thereof.