

COMMERCIAL
STANDARD OFFER PROGRAM AGREEMENT

This Commercial Standard Offer Program Agreement (the “Agreement”) is made and entered into by and between **AEP TEXAS CENTRAL COMPANY**, a Texas corporation (hereinafter “TCC”), and _____ (hereinafter “Project Sponsor”), (TCC and Project Sponsor each hereinafter referred to as a “Party” and together as the “Parties”).

WHEREAS, TCC has developed a Standard Offer Program (the “SOP”), for its non-residential customer classes; and

WHEREAS, the SOP seeks to procure energy savings and peak demand savings through the installation and operation of energy efficiency measures at the facilities of such customers; and

WHEREAS, Project Sponsor has developed a plan for participation in the SOP through a set of proposed or installed energy efficiency measures and other improvements necessary to produce energy savings or peak demand savings, or both;

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

Business Day shall mean normal working days (8:00am – 5:00pm), Monday through Friday, January 1 through December 31, excluding holidays.

1.1 “Contract Documents” shall mean (i) the Project Sponsor’s approved Initial Application, attached hereto and incorporated herein as Exhibit A; (ii) the Project Sponsor’s approved Final Application, attached hereto and incorporated herein as Exhibit B; (iii) the SOP Procedures Manual, attached hereto and incorporated herein as Exhibit C; and (iv) this Agreement together with any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.

1.2 “Customer” shall mean a non-residential distribution system customer of TCC that owns or leases facilities at a Project Site and that has entered into a Customer Agreement with the Project Sponsor for the installation of Measures as a part of the Project. For the purposes of this Agreement, a “non-residential distribution system customer” shall mean a non-residential retail customer with a demand that exceeds 100 kW or a group of non-residential retail customers under common ownership within a service territory in which the combined demand exceeds 250kW.

1.3 “Customer Agreement” shall mean the agreement between Customer and the Project Sponsor that specifies the rights and obligations of each Party with respect to the

- installation of the Measures at the Project Site(s) and other related and/or unrelated matters.
- 1.4 “Deemed Energy Savings” shall mean a pre-determined, validated estimate of Energy Savings attributable to a Measure in a particular type of application that TCC may use instead of Measured Energy Savings.
 - 1.5 “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 TCC may use instead of Measured Peak Demand Savings.
 - 1.6 “Deemed Savings” shall mean the sum of Deemed Energy Savings and Deemed Peak Demand Savings.
 - 1.7 “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). Demand Savings will be determined by comparing the efficiency of the installed qualifying energy efficiency equipment to that of new equipment that meets all applicable minimum efficiency standards—not to that of the customer’s existing equipment. In cases where no standard currently exists, existing equipment efficiencies will be used. Equipment standard efficiencies are ASHRAE 90.1-1989, ASHRAE 90.1M-1995, and the TCC Standard Lighting Wattage Table.
 - 1.8 “Energy Savings” shall mean a quantifiable reduction in the Customer's consumption of energy, or the amount by which the 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 new measures that meet all applicable minimum efficiency standards—not to that of the customer’s existing measures. In cases where no standard currently exists, existing measure efficiencies will be used. Measure standard efficiencies are ASHRAE 90.1-1989, ASHRAE 90.1M-1995, and the TCC Standard Lighting Wattage Table.
 - 1.9 “Estimated Energy Savings” shall mean the Energy Savings expected to be derived in a single Performance Period from Measures to be installed or actually installed at the Project Site.
 - 1.10 “Estimated Peak Demand Savings” shall mean the Peak Demand Savings expected to be derived in a single Performance Period from Measures to be installed or actually installed at the Project Site.
 - 1.11 “Estimated Savings” shall mean the sum of Estimated Energy Savings and Estimated Peak Demand Savings.

- 1.12 “Measure” shall mean new equipment, material, or systems that (i) 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; (ii) meet the requirements of the Contract Documents; and (iii) in the determination of TCC, are not ineligible for incentive payments pursuant to P.U.C. SUBST. R. 25.181(i)(6). Measures may include equipment, material, or systems that are installed as part of new construction.
- 1.13 “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 found in the Final Application, set forth in Exhibit B, and as documented in a Savings Report approved by TCC.
- 1.14 “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 found in the Final Application, set forth in Exhibit B, and as documented in a Savings Report approved by TCC.
- 1.15 “Measured Savings” shall mean the sum of Measured Energy Savings and Measured Peak Demand Savings.
- 1.16 “PUCT” shall mean the Public Utility Commission of Texas.
- 1.17 “Peak Demand” shall mean electrical demand at the time of highest annual demand on the utility’s system, measured in 15-minute intervals.
- 1.18 “Peak Demand Savings” shall mean Demand Savings calculated as the maximum, one-hour average demand reduction that occurs while the system undergoing retrofit is operating at full load conditions during the peak summer period, defined as weekdays, between the hours of 1 p.m. and 7 p.m. CDT from June 1 until September 30, excluding federal holidays.
- 1.19 “Performance Period” shall mean the one (1) year period following approval of the Installation Report during which measurement and verification activities take place.
- 1.20 “Project” shall mean the sum of all activities and Measures required to achieve the Estimated Energy Savings and the Estimated Peak Demand Savings necessary to meet the reserved incentive amount listed in the Project Sponsor’s Final Application. New construction projects are eligible for this SOP.
- 1.21 “Project Site” shall mean the location of a Customer’s facilities where approved Measures will be installed and from which Energy Savings or Peak Demand Savings, or both, will be obtained.

- 1.22 “Project Sponsor” shall mean any organization, group, or individual who contracts with TCC to provide Energy Savings or Peak Demand Savings, or both, under the SOP.
- 1.23 “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 – TERM AND TERMINATION

The term of this Agreement shall commence on the date of execution by TCC (the “Effective Date”) and, unless otherwise terminated as set forth herein, shall continue in force and effect until payment by TCC of the Performance Payment due pursuant to Article 7.4 herein, or until eighteen (18) months following the Effective Date, whichever occurs first.

ARTICLE III – COMPLIANCE WITH SOP PROCEDURES MANUAL

- 3.1 By executing this Agreement, Project Sponsor acknowledges that it received a copy of the SOP Procedures Manual (Exhibit C) prior to submission of its Initial or Final Application. 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 Procedures Manual and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the fact that such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the SOP as described in the SOP Procedures Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement.
- 3.2 Procedures or conditions set forth in the SOP Procedures Manual may only be waived or modified by written agreement of both Parties. Any such agreement shall be attached hereto and incorporated herein for all purposes.

ARTICLE IV – PROJECT SPONSOR AND CUSTOMER AGREEMENT AND CUSTOMER ACKNOWLEDGEMENT FORM

- 4.1 Project Sponsor will be solely responsible for entering into a Project Sponsor and Customer Agreement with the Customer as appropriate for implementation of the Project. A Customer acting as its own Project Sponsor will not be required to provide a Project Sponsor and Customer Agreement; however, such Customer will still be bound by the provisions in Section 4.2, below. The Project Sponsor and Customer Agreement must be executed by the Customer prior to Project Sponsor beginning installation of Measures at the Project Site. To the extent possible, Project Sponsor and Customer Agreements will be kept confidential.

4.2 Project Sponsor agrees to disclose to Customer any potential adverse environmental or health effects associated with the Measures to be installed at the Project Site. The Project Sponsor and Customer Agreement includes the following provisions:

- (a) Customer agrees, upon five (5) business days' prior oral notice, to provide TCC and the independent measurement and verification expert selected by the PUCT with full and complete access to the Project Site for any purpose related to the SOP. The right of access will be subject to Customer's reasonable access requirements and, unless otherwise agreed, must occur within the Customer's normal business hours.
- (b) Customer acknowledges that any review, inspection, or acceptance by TCC of the Project Site or of the design, construction, installation, operation or maintenance of the Measures is solely for the information of TCC and that, in performing any such inspection or review or in accepting the Measures, TCC 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 Customer's facilities.
- (c) Customer acknowledges that Project Sponsor is an independent contractor with respect to TCC and the SOP and that Project Sponsor is not authorized to make representations or incur obligations on behalf of TCC.
- (d) Customer acknowledges that TCC is not a party to the Customer Agreement and that Project Sponsor and Customer are solely responsible for performance thereunder.
- (e) Customer acknowledges that TCC makes no warranty or representation regarding the qualifications of Project Sponsor, and that the Customer is solely responsible for the selection of Project Sponsor.
- (f) Customer acknowledges that the Customer may file a complaint with the PUCT concerning Project Sponsor, but that TCC will play no role in resolving any disputes that arise between the Customer and Project Sponsor.
- (g) Customer agrees to provide TCC with access to Customer's utility bills, project documentation, contractor invoices, and technical and cost information directly related to the Project.
- (h) **CUSTOMER AGREES TO RELEASE TCC AND ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING,**

- 4.3 Project Sponsor must obtain a completed Customer Acknowledgement Form from each Customer indicating that the Measures contracted for were installed at the Project Site. The completed Customer Acknowledgement Form should be submitted to TCC with the Installation Report described in Section 5.3 below. If a Customer refuses to sign the completed Customer Acknowledgement Form, Project Sponsor may request, at Project Sponsor's expense, that TCC perform an inspection of the Project Site. Final payment of incentives will not be made unless and until a completed Customer Acknowledgement Form or inspection by TCC 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. To the extent of any conflict between this Agreement and other Contract Documents, the terms of this Agreement shall prevail.
- 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. Installation of Measures at all Project Sites shall be completed and an Installation Report, as defined below, shall be submitted to TCC within six (6) months of the Effective Date. Project Sponsor may apply, in writing, for an extension of this time period. The extension may be granted to Project Sponsor for this Project at TCC's sole discretion. Any extension will be for a period of no more than three (3) months beyond the initial six (6) month period. If granted, the extension must be made in writing as an amendment to this Agreement. Such amendment will be

- 5.3 Within fifteen (15) business days of completing installation of Measures at a Project Site, Project Sponsor shall so notify TCC by submitting a report for review and approval documenting the Measures actually installed (the “Installation Report”). The Installation Report shall be submitted to TCC pursuant to the notice provisions of Section 15.1. Within thirty (30) business days of receipt of the Installation Report, TCC may complete an inspection of all or some of the Measure installations at the Project Site. This inspection 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. Approval of the Installation Report shall be granted if TCC reasonably determines that the Measures at the Project Site have been installed, tested and inspected to the extent required by TCC and found to be capable of providing Energy Savings and Peak Demand Savings in material compliance with the Contract Documents. If Measures are rejected, TCC will set forth the written reasons for such rejection and Project Sponsor may attempt to remedy the deficiencies and resubmit its Installation Report. If any Measure is rejected a second time, TCC will consider it a material breach of this Agreement and will not pay any incentive for such Measure. The Estimated Savings attributable to the Measures documented in the approved Installation Report will be used for purposes of calculating the Installation Payment in Section 7.3.
- 5.4 Project Sponsor acknowledges that any review, inspection, or acceptance by TCC of any Project Site or of the design, construction, installation, operation and maintenance of the Measures is solely for the information of TCC. In performing any such inspection or review or in accepting the Measures, TCC 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 Customer's facilities.
- 5.5 Within thirty (30) business days of the conclusion of the Performance Period, Project Sponsor shall submit a report to TCC documenting the Measured Energy Savings and Measured Peak Demand Savings for the Performance Period (the “Savings Report”). If the Savings Report is deficient, TCC will provide, in writing, notice of the deficiency, and Project Sponsor shall revise and resubmit the Savings Report until it is approved by TCC. Any necessary revisions shall be performed in the time-period specified by TCC in the notice of deficiency.

ARTICLE VI – MEASUREMENT AND VERIFICATION

Project Sponsor shall document the measurement and verification of the Energy Savings or Peak Demand Savings, or both, that result from the Measures installed as a part of the Project as set forth in the Measurement and Verification Plan found in the Final Application, which is attached hereto as Exhibit B. The measurement and verification activities shall be performed by Project Sponsor.

ARTICLE VII – INCENTIVE PAYMENTS

7.1 TCC agrees to make incentive payments to Project Sponsor based upon the sum of the documented Deemed Savings and Measured Savings derived from the Project. The total incentive payments due to Project Sponsor will be calculated by multiplying the Deemed Savings and Measured Savings by the applicable “Incentive Rate” specified in Section 7.2. The total incentive payment shall be payable as set forth herein. As set forth in Section I of the SOP Manual, a Load Factor cap governs the maximum payment allowed, based on the ratio between demand and energy savings from a Project. Regardless of the actual sum of Deemed Savings and Measured Savings for the Project, the total incentive payment for this Project shall not exceed _____ based upon a total Peak Demand Savings of _____ kW and Energy Savings of _____ kWh. 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).

7.2 The Incentive Rate applicable to each type of measure is set forth in the following table:

Energy Incentive Rate (\$/kWh)	Demand Incentive Rate (\$/kW)
\$0.060	\$175.00

7.3 Upon completion of Measure installation and approval of the Installation Report, Project Sponsor shall submit an invoice for review and approval to TCC for the first installment of the incentive payment (the “Installation Payment”). TCC will make the Installation Payment within thirty (30) business days of its approval of the invoice. The Installation Payment will be one hundred percent (100%) of the incentive payment due for Deemed Savings plus forty percent (40%) of the total incentive payment due based upon the Estimated Savings set forth in an approved Installation Report. Individual Measures will be eligible for incentive payments based on either a Deemed Savings basis or an Estimated/Measured Savings basis, but not both. The amount of the Installation Payment will be calculated using the following formula:

$$\mathbf{IP = DIP + EIP}$$

$$\mathbf{DIP = [(DES \times \$0.06) + (DDS \times \$175.00)]}$$

$$\mathbf{EIP = 0.40 \times [(EES \times \$0.06) + (EDS \times \$175.00)]}$$

Where:

IP is the total Installation Payment
DIP is the portion of the incentive payment attributable to Deemed Savings
EIP is the portion of the incentive payment attributable to Estimated Savings
DES is the amount of Deemed Energy Savings;
DDS is the amount of Deemed Peak Demand Savings;
EES is the amount of Estimated Energy Savings; and
EDS is the amount of Estimated Peak Demand Savings.

- 7.4 At the conclusion of the Performance Period and upon TCC's approval of the Savings Report, Project Sponsor shall submit an invoice for review and approval to TCC for the second installment of the incentive payment (the "Performance Payment"). Subject to the limitation in Section 7.1, 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 shall be calculated using the following formula:

$$\text{Performance Payment} = [(MES \times \$0.06) + (MDS \times \$175.00)] - EIP$$

Where:

MES is the amount of Measured Energy Savings (not including DES);
MDS is the amount of Measured Peak Demand Savings (not including DDS); and
EIP is the portion of the Installation Payment attributable to Estimated Savings as calculated and paid pursuant to Section 7.3.

TCC will make the Performance Payment within thirty (30) business days of its approval of the invoice. In the event that the above formula results in a negative Performance Payment, then Project Sponsor will refund that amount to TCC within thirty (30) business days of receipt of notification of TCC's approval of the invoice.

- 7.5 TCC will retain the security deposit provided by Project Sponsor pursuant to Section I (Program Description) of the SOP Procedures Manual unless and until Project Sponsor receives approval of (i) for Measured Savings, the Installation Report and Savings Report documenting Measures representing seventy-five percent (75%) of the total incentive payment set forth in Section 7.1, or (ii) for Deemed Savings, the Installation Report documenting Measures representing seventy-five percent (75%) of the total incentive payment set forth in Section 7.1. Furthermore, in the event Project Sponsor fails to adhere to the SOP timelines set forth in the SOP Procedures Manual, the security deposit may be retained. If Project Sponsor chooses to resubmit the Project, an additional security deposit will be required.

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, upon reasonable notice, for inspection during normal business

hours by TCC or any governmental agency having jurisdiction over the SOP or any portion of the Project.

- 8.2 Project Sponsor understands that the PUCT may request or require an audit of the matters addressed in this Agreement or commence an investigation or other regulatory proceeding. Project Sponsor agrees to cooperate with any such process and make available detailed records and documentation relating to the Project, upon reasonable notice by TCC or any governmental agency having jurisdiction over the SOP.

ARTICLE IX – 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.

ARTICLE X – INDEMNITY

- 10.1 **PROJECT SPONSOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS TCC, 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 TCC 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 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 THIS 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 THIS AGREEMENT. THIS INDEMNITY OBLIGATION SPECIFICALLY INCLUDES ANY CLAIMS, CAUSES OF ACTION, LAWSUITS,**

JUDGMENTS, LOSSES, DAMAGES AND LIABILITY OF EVERY 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, OR STRICT LIABILITY OR OTHERWISE) ALLEGING TCC'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 TCC IN THE CONDUCT OF TCC'S ON-SITE INSPECTION OF THE PROJECT SITE PURSUANT TO THIS AGREEMENT.

10.2 IN ADDITION TO THE INDEMNITIES AND OTHER PROTECTIONS PROVIDED UNDER THIS ARTICLE X, PROJECT SPONSOR HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS TCC, 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 TCC 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:

10.2.1 ANY BREACH OF ANY REPRESENTATION, WARRANTY, OR COVENANT OF PROJECT SPONSOR CONTAINED IN THIS AGREEMENT;

10.2.2 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;

- 10.2.3 **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**
- 10.2.4 **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.**
- 10.3 **THE ENVIRONMENTAL INDEMNITY PRESCRIBED BY THIS ARTICLE X 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 TCC, 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 TCC AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES.**
- 10.4 The representations, warranties, covenants, indemnities, and other obligations or protections provided by Project Sponsor pursuant to this Article X shall not be limited by time and shall survive the completion of the Project or any other completion, expiration or termination of this Agreement.

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, 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 this Agreement. If requested by TCC, Project Sponsor shall furnish to TCC 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 this Agreement constitutes a material breach of Project Sponsor's obligations under this Agreement.

- 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 TCC and shall hold TCC 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 TCC 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.
- 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 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 XII – DEFAULT AND REMEDIES

- 12.1 Each of the following events will be deemed to be an Event of Default hereunder:
- (a) failure of Project Sponsor to perform its responsibilities in a timely manner or implement the Project in compliance with the SOP Procedures Manual and other Contract Documents;
 - (b) failure of Project Sponsor to provide TCC and/or its contractors with sufficient access to the Project Sites for the purposes of conducting inspections, observations, or measurement and verification activities;
 - (c) failure of Project Sponsor to obtain or 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 TCC;
 - (e) Project Sponsor's submission to TCC 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 not otherwise described in this Section 12.1, 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).

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

ARTICLE XIII – LIMITATION OF LIABILITY

13.1 TCC 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 TCC 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 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 THIS AGREEMENT;

(ii) PERFORMANCE OR NON-PERFORMANCE OF ANY COMMITMENT TO A CUSTOMER; OR

(iii) ANY ACTS, OMISSIONS, OR REPRESENTATIONS MADE BY PROJECT SPONSOR IN CONNECTION WITH SOLICITING 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 TCC HARMLESS FROM SAME.

- 13.2 **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 AND/OR ALTERNATIVE DISPUTE RESOLUTION FROM THE LOSING PARTY.**

ARTICLE XIV – INDEPENDENT CONTRACTOR

Project Sponsor will act as and be deemed to be an independent contractor, and nothing in this 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. TCC 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 TCC 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 this Agreement and all other taxes of whatever nature levied or assessed against Project Sponsor arising out of this 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 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 mail to the following addresses:

AEP Texas Central Company: (Project Sponsor)

Attn: Russell G. Bego Attn: _____

539 N. Carancahua Street _____

Corpus Christi, TX 78401 _____

Phone: (361) 881-5710 Phone: _____

15.2 Either Party may change its address by written notice to the other in accordance with this Article XV.

ARTICLE XVI – AMENDMENT

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 – ALTERNATIVE DISPUTE RESOLUTION

17.1 **BOTH PARTIES AGREE TO RESOLVE ANY AND ALL DISPUTES THAT ARISE 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 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 20.5 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.

17.2 BOTH PARTIES AGREE THAT THE TERMS OF ANY AGREEMENT, SETTLEMENT, JUDGMENT OR AWARD RESULTING FROM ANY MEDIATION OR ARBITRATION PROCEEDINGS DESCRIBED IN SECTION 17.1 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:

17.2.1 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

17.2.2 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 17.1; OR

17.2.3 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 XVIII – FORCE MAJEURE

18.1 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.

18.2 The term “Force Majeure” shall not include any of the following:

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 Customer or any third party, including without limitation, any vendor or supplier to Project Sponsor or TCC, 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;

Any outage, whether or not due to the fault or negligence of TCC or Project Sponsor, of the Measures or TCC’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 Savings and/or Energy Savings; or

Any reduction in Measured Peak Demand Savings and/or Measured Energy Savings caused by or resulting from a Customer’s termination or reduction of electrical distribution service received from TCC and the substitution therefor of electric service from any other source.

18.3 The Parties shall be excused from performing their respective obligations under this 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:

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;

The suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure;

The non-performing Party uses its best efforts to remedy its inability to perform; and

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 XIX – NONDISCLOSURE

- 19.1 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 this Agreement.
- 19.2 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 XX – MISCELLANEOUS

- 20.1 Project Sponsor will not assign, transfer or otherwise dispose of any of its obligations or duties without the prior written approval of TCC. No assignment of this Agreement shall relieve Project Sponsor of any of its obligations under this Agreement. When duly assigned in accordance with the foregoing, this 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 TCC will be null and void. No part of the work contemplated under this Agreement may be performed by subcontractors without the prior written approval of TCC.
- 20.2 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.

- 20.3 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.
- 20.4 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.
- 20.5 This 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 this 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.
- 20.6 The duties, obligations, and liabilities of the Parties hereto are intended to be several and not joint or collective. Nothing contained in this 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 this Agreement.
- 20.7 Project Sponsor shall not use TCC's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers for participation in its project, without TCC's prior written consent.
- 20.8 The Parties expressly agree that time is of the essence for all portions of this Agreement. In no event shall the arbitration of any controversy or the settlement thereof delay the performance of this Agreement.
- 20.9 The descriptive headings of the various sections of this 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.

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

AEP TEXAS CENTRAL COMPANY

(PROJECT SPONSOR)

By: _____

By: _____

Name: _____Billy G. Berny_____

Name: _____

Title: _____Manager, EE/DR Programs_____

Title: _____

Date: _____

Date: _____

EXHIBIT A
INITIAL APPLICATION

EXHIBIT B
FINAL APPLICATION

EXHIBIT C
SOP PROCEDURES MANUAL

The SOP Procedures Manual in its entirety is considered part of this Agreement. By executing this Agreement, Project Sponsor acknowledges that it has acquired a copy of the SOP Procedures Manual in its entirety. The SOP Procedures Manual is available at www.aepefficiency.com.