**2022 Residential Load Management**

**Standard Offer Program**

**Participation Agreement**

**Participant/Contractor Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**Effective Date: January 15, 2022**

**Valid End Date: December 31, 2022**

For and in consideration of the promises and mutual covenants contained herein, CenterPoint Energy Service Company, LLC, on behalf of itself and its parent company, CenterPoint Energy, Inc., and all of its subsidiaries and affiliates, (hereinafter jointly "CenterPoint Energy" or "Company") hereby enters into a Contract by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_ , (Herein after "Contractor" or "Vendor") for Miscellaneous services related to the REP Program, Residential Load Management, all in accordance with the current program manual and with the following:

Attachment 1: Compensation Schedule

Attachment 2: Scope of Work

Attachment 3: Terms and Conditions

Attachment 4: Residential Demand Response Guidelines

Attachment 5: Tetra Tech Memo dated March 31, 2015

**NOTICE TO CONTRACTOR**

This Contract is issued on a non-exclusive basis. Nothing herein shall limit or otherwise restrict CenterPoint Energy from procuring like or similar services from other Contractors.

The Residential Load Management Program operates on an "annual program year" basis. Each Contractor must apply for participation in each program year. CenterPoint Energy will notify Contractor if/when specific projects are approved. Contractors are required to reference the Residential Load Management Guidelines annually for current program guidelines and incentives.

**THIS CONTRACT IS PLACED SUBJECT TO THE TERMS & CONDITIONS AS REFERENCED**

**Authorized Signature and Date – Vendor Authorized Signature and Date – Company**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**ATTACHMENT 1**

**COMPENSATION SCHEDULE**

CenterPoint Energy will perform the Verification Process after any curtailment (scheduled or unscheduled) occurs. Demand savings and incentive payment amounts will be based on actual, verified Curtailable Load reduction.

**Baseline Methodology**

The Baseline Methodology will be calculated in accordance with the attached memorandum from Tetra Tech dated March 31, 2015.

**Compensation**

CenterPoint Energy pays Project Sponsors the Incentive Payment in a single lump sum installment following the close of the season. The payment will be made as soon after September 30 as the calculations and payment procedures can be reasonably completed, usually by the end of November.

CenterPoint Energy’s payment of the Incentive Payment to Project Sponsor is expressly conditioned upon Project Sponsor’s meeting its obligations, including receipt by CenterPoint Energy of all required notices, submittals and materials from Project Sponsor, as well as performance.

CenterPoint Energy’s residential Load Management database performs the baseline calculations for each ESIID and prepares an invoice for the incentive payment. As a result, it is not necessary for the project Sponsor to submit an invoice for the incentive payment.

## **Incentive Prices**

The REP Program provides standard incentive price per kW for demand savings each year of participation. This may vary from year to year.

## **Incentive Payment Limitations**

To ensure that incentives are available to multiple customers and energy service providers, each participating Project Sponsor of CenterPoint will be limited to twenty percent (20%) of the annual program goal. Provided that if there are not sufficient Project Sponsor applications to fill CenterPoint Energy’s annual demand savings goal, CenterPoint reserves the right to waive this limitation. CenterPoint Energy may require Project Sponsors to verify their affiliate status through an affidavit.

CenterPoint Energy will not be obligated to pay a Project Sponsor for verified demand savings that exceed the amount of estimated demand savings approved in the Project Sponsor’s Application, provided that CenterPoint Energy, at its sole discretion and provided REP Program funds are available, may revise a Project Sponsor’s estimated contract kW upward and pay a Project Sponsor accordingly. The incentive rates are set prior to each application period and are subject to changes to PUCT rules or orders.

## **Payment Schedule (Scheduled and Unscheduled Curtailments)**

All Verification Process activities for curtailments must be completed before the Contractor will receive the Incentive Payment. After successful participation in the scheduled curtailment, verification of the Smart Meter data and demand savings, CenterPoint Energy shall pay the Contractor the then current Incentive per kW for the average of all Scheduled and Unscheduled Curtailments. Payment will be based upon the verified demand savings using the following equation:

|  |  |
| --- | --- |
| Incentive Payment ($) = | Incentive Rate x Average Verified Demand kW Savings for all curtailments |

## **Payment Schedule**

CenterPoint Energy will typically make the Performance Period Payment in November, at the conclusion of the Performance Period and after CenterPoint Energy’s approval of the Smart Meter data for the Agreement year.

In the event no unscheduled curtailments are performed, the Performance Period Payment will be calculated by multiplying the verified kW savings of the Scheduled Curtailment(s) by the incentive rate for that Agreement year.

**LIMITATIONS TO THE COMPENSATION SCHEDULE**

###### Notwithstanding anything to the contrary, CenterPoint Energy may, at its sole discretion, revise the calculation of the Incentive Payment to allow payment to Contractor for an amount of peak demand reduction that exceeds the amount of Estimated Demand Savings and is less than or equal to the amount of Demand Savings, as detailed above.

###### The sum of the Scheduled Curtailment Payment and Performance Period Payment “Incentive Payment” to any Contractor may not exceed 20% of the Incentive Budget for that Project year unless CenterPoint Energy has determined it necessary to meet the overall annual Demand Savings goal. CenterPoint Energy’s payment of Incentive Payment(s) to Contractor is expressly and specifically conditioned upon CenterPoint Energy receiving all required notices, submittals and materials from Contractor within the applicable period specified in this Agreement. Failure by Contractor 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. In accordance with the Public Utility Commission of Texas rule, a load-control standard offer program may not receive incentives under the utility program for the same demand reduction for which it is compensated under a demand response program conducted by an independent organization, independent system operator, or regional transmission operator.

**ATTACHMENT 2**

**SCOPE OF WORK**

1. All Work shall be accomplished herein and in accordance with this Scope of Work, the Residential Demand Response Guidelines, the latter incorporated herein by reference only.
2. Contractor shall furnish everything necessary to provide   
   Residential Demand Response services to CenterPoint Energy and hereby acknowledges that the rates and fees stipulated in the Compensation Schedule represent full and complete payment for service rendered, including, but not limited to, labor, materials, consumable materials, tools, equipment, transportation, parking, supervision, permits and insurance.
3. CenterPoint Energy will not withhold from any amounts payable under this Contract federal, state, local or other taxes. It is the responsibility of the Contractor to pay or withhold, as may be appropriate, all such taxes that shall be required pursuant to any law or governmental regulation or ruling.
4. Contractor shall not at any time wear, use or display CenterPoint Energy's company name including, but not limited to, CenterPoint Energy's logo.
5. If a project falls outside of program guidelines, a formal request outlining the reason for the exemption must be submitted and approved by the Energy Efficiency and Business Development Director.

**ATTACHMENT 3**

**TERMS AND CONDITIONS FOR**

**ENERGY EFFICIENCY STANDARD OFFER PROGRAMS**

[**1** **DEFINITIONS 1**](#_Toc396474276)

[**2** **PRIORITY, EXHIBITS AND HEADINGS 3**](#_Toc396474277)

[**2.1** **Contract Documents – Order of Priority 3**](#_Toc396474278)

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[**3** **STANDARDS, CODES, LAWS, AND REGULATIONS 3**](#_Toc396474280)

[**3.1** **Compliance with Laws/Change in Laws 3**](#_Toc396474281)

[**3.2** **Equal Employment Opportunity Compliance 4**](#_Toc396474282)

[**3.3** **Noncompliance Indemnity 4**](#_Toc396474283)

[**4** **VENDOR 5**](#_Toc396474284)

[**4.1** **Independent Contractor 5**](#_Toc396474285)

[**4.2** **Subcontractor 6**](#_Toc396474286)

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[**5** **ASSIGNMENT 7**](#_Toc396474289)

[**6** **WORK 8**](#_Toc396474290)

[**6.1** **General 8**](#_Toc396474291)

[**6.2** **Authorization to Commence Work 8**](#_Toc396474292)

[**6.3** **Performance Schedule 8**](#_Toc396474293)

[**6.4** **Company Inspection and Testing 8**](#_Toc396474294)

[**7** **JOBSITE 9**](#_Toc396474295)

[**7.1** **Safety and Health 9**](#_Toc396474296)

[**7.2** **Right of Entry 10**](#_Toc396474297)

[**8** **WARRANTY 10**](#_Toc396474298)

[**8.1** **Warranty of Work 10**](#_Toc396474299)

[**9** **Indemnity 10**](#_Toc396474300)

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[**9.2** **Intellectual Property Indemnification 11**](#_Toc396474302)

[**9.3** **Indemnification Actions 12**](#_Toc396474303)

[**9.4** **Indemnification Survival 14**](#_Toc396474304)

[**10** **TERMINATION 14**](#_Toc396474305)

[**10.1** **Termination for Cause 14**](#_Toc396474306)

[**10.2** **Termination for Convenience 15**](#_Toc396474307)

[**11** **FORCE MAJEURE 15**](#_Toc396474308)

[**12** **PROPRIETARY AND CONFIDENTIAL INFORMATION 16**](#_Toc396474309)

[**12.1** **Confidentiality and Non-Disclosure 16**](#_Toc396474310)

[**13** **RECORDS AND AUDITS 18**](#_Toc396474311)

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[**14.1** **Governing Law; Jurisdiction; Venue 18**](#_Toc396474313)

[**14.2** **Third Party Beneficiaries 19**](#_Toc396474314)

[**14.3** **Counterparts 19**](#_Toc396474315)

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[**14.5** **Notices and Correspondence 19**](#_Toc396474317)

[**14.6** **Publicity 20**](#_Toc396474318)

[**14.7** **Modification; Non-Waiver of Rights 20**](#_Toc396474319)

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[**14.10** **Complete Agreement 20**](#_Toc396474322)

1. **DEFINITIONS**
   * 1. **Acceptance** means the earliest to occur of (i) Company’s final payment of the Contract Price to Vendor and (ii) issuance of notice of acceptance from the Contract Administrator to Vendor, in each case following satisfactory completion and acceptance of the Work in accordance with the requirements of the Contract.
     2. **Affiliate** with respect to any Person, means any other Person that directly or indirectly controls, is controlled by or is under common control with such Person, with control in such context meaning the ability to direct the management and policies of a Person through ownership of voting shares or other equity rights, pursuant to a written agreement or otherwise.
     3. **Business Day** means Monday through Friday, 8:00 a.m. to 5:00 p.m. local time, excluding Company-recognized holidays.
     4. **Company** means the Company entity whose name appears on the Contract Cover Sheet.
     5. **Company’s Designated Point of Contact** means the Person assigned by Company to manage Company’s day-to-day activities under the Contract. However, such Person shall have no authority to amend any term or condition of the Contract.
     6. **Contract** means, collectively, the entire agreement between Company and Vendor, and includes the Contract Cover Sheet, these Terms and Conditions, any Statement of Work, any Contract Amendment, and any other documents, which are by reference made a part of the Contract.
     7. **Contract Administrator** means Company’s duly authorized agent who shall initiate and administer all activities related to Company’s rights and obligations under the Contract. Such Person is identified on the Contract Cover Sheet.
     8. **Contract Amendment** means a written agreement, which incorporates an addition, change or deletion to the Contract that is duly executed by authorized representatives of the Parties. As used herein, the term Contract Amendment shall also include any document entitled “Contract Supplement” or “Change Order” and any subsequent Contract Cover Sheet.
     9. **Contract Cover Sheet** means the Contract document, which sets forth the names of the Parties and their authorized agents, the Contract number, and any other mutually agreed-upon terms and conditions of the Contract, and acts as the signature page to the Contract.
     10. **Contract Price** means the total amount payable to Vendor in consideration for the performance of the Work.
     11. **Drawings** mean, collectively, all drawings, maps, and supplementary drawings and maps incorporated into the Contract, which illustrate the Work.
     12. **Jobsite** means any property, warehouse, building or facility owned, leased or operated by Company from time to time, where any of the Work is performed or where Vendor or any Vendor Personnel is present for the purposes of performing the Work.
     13. **Party** means either Company or Vendor, individually, and Parties means Company and Vendor, together.
     14. **Person** means any individual, firm, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, or governmental authority or any other entity.
     15. **Purchase Order** means a document issued by Company to Vendor, indicating types, quantities, and agreed-upon prices for the Work provided to Company by Vendor.
     16. **Specifications** means, collectively, any technical and functional requirements, descriptions, samples, models, and documentation pertaining to the processes, workmanship, products, quantities and qualities of the Work to be furnished under the Contract.
     17. **Statement of Work** means a formal document that sets forth a detailed description of the Work and which may include Vendor’s deliverables, a timeline for performance of the Work, and any Drawings, Specifications, or pricing information. As used herein, the term Statement of Work shall also include any document entitled “Scope of Work”.
     18. **Subcontractor** means any Person, other than Vendor, that performs any portion of the Work (including any subcontractor of any tier, any Affiliates of Vendor that perform any of the Work, and any supplier of equipment and materials) in furtherance of Vendor’s obligations under the Contract, whether by supplying labor, services, or equipment and materials or by performing some other activity.
     19. **Vendor** means the Person with whom Company has entered into the Contract for the performance of the Work and whose name appears on the Contract Cover Sheet.
     20. **Vendor Personnel** means Vendor’s employees, agents, representatives, Subcontractors, Subcontractors’ employees, agents or representatives, and anyone directly or indirectly employed by any of them performing Work under the Contract.
     21. **Vendor’s Designated Point of Contact** means the Person or their designee who is assigned by Vendor to manage Vendor’s rights and obligations under the Contract, is responsible for Vendor’s day-to-day activities, and has authority to alter or amend any term, condition, or provision under the Contract. Vendor’s Designated Point of Contact shall also serve as Vendor’s liaison with Company for day-to-day management of Vendor’s activities under the Contract.
     22. **Work** means, in whole or in part, the work, services, deliverables, duties and activities to be performed by Vendor under the Contract.
2. **PRIORITY, EXHIBITS AND HEADINGS**
   1. **Contract Documents – Order of Priority**
      1. The documents composing the Contract are intended to be complementary. What is set forth in any one document is binding as if set forth in each document, and it is intended that the terms of such documents be read together giving effect to all. If there is a conflict between any documents constituting a part of the Contract, that conflict will be resolved in accordance with the following order of precedence, with items higher in the list prevailing over items lower in the list:

Contract Amendment

Terms and Conditions

Compensation Schedule

Statement of Work

Contract Cover Sheet/Signature Page

* + 1. Notwithstanding the foregoing, if the irreconcilable provisions pertain to the scope of the Work, applicable Specifications or matters of a technical nature to be provided by Vendor in connection with the performance of the Work, then the provisions of the Statement of Work shall govern, and if the irreconcilable provisions pertain to the rights, duties or obligations of the Parties, then the terms and conditions shall govern.
  1. **Exhibits and Headings**
     1. The section headings and the table of contents used herein are for reference and convenience only, and shall not affect the Contract’s construction or interpretation. Any exhibits referred to herein and attached (or to be attached) hereto, are incorporated herein by reference to the same extent as if set forth in full herein. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to the Contract as a whole and not to any particular section or other subdivision.

1. **STANDARDS, CODES, LAWS, AND REGULATIONS**
   1. **Compliance with Laws/Change in Laws**
      1. Vendor shall, and shall cause each Vendor Personnel to, comply in all respects with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal governmental authorities.
      2. Vendor shall, and shall cause each Subcontractor to, comply in all respects with all applicable labor, employment and immigration statutes, rules, codes, regulations and guidelines, including the Immigration and Control Act of 1986 and Form I-9 Employment Eligibility Verification requirements. Without limiting the generality of the previous sentence, Vendor shall, and shall cause each Subcontractor to, perform all required employment eligibility and verification checks and maintain all required employment records for any employees that will be performing the Work. Vendor shall, and shall cause each Subcontractor to, conduct adequate screening of its employees and agents prior to assigning any of those Persons to perform any of the Work. Vendor represents and warrants that (i) it maintains the required employment eligibility documentation, which complies with the immigration laws referred to above, and (ii) Vendor’s employees are authorized to work in the United States in accordance with all such laws.
      3. In addition, Vendor shall identify the impact of any changes in applicable laws and regulations on its ability to deliver the Work. Vendor shall promptly notify Company of such changes and shall work with Company to identify how such changes affect Company’s use of the Work. Company and Vendor shall promptly make any resulting modifications to the Work as reasonably necessary because of such changes in applicable laws and regulations.
   2. **Equal Employment Opportunity Compliance**
      1. Vendor represents and warrants that it is in compliance with all applicable laws, regulations and orders with respect to equal employment opportunity and, upon Company’s request, shall provide to Company any certifications and representations regarding equal employment opportunity that Company may require under such laws, regulations and orders.
      2. Vendor and Subcontractors shall comply with the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
   3. **Noncompliance Indemnity**
      1. **TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (THE “COMPANY-INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL DAMAGES (“DAMAGES” MEANS THE AMOUNT OF ANY ACTUAL LIABILITY, LOSS, COST, EXPENSE, CLAIM, AWARD OR JUDGMENT INCURRED OR SUFFERED BY AN INDEMNIFIED PERSON ARISING OUT OF OR RESULTING FROM THE INDEMNIFIED MATTER, WHETHER ATTRIBUTABLE TO PERSONAL INJURY OR DEATH, PROPERTY DAMAGE, CONTRACT CLAIMS (INCLUDING CONTRACTUAL INDEMNITY CLAIMS), TORTS, OR OTHERWISE, INCLUDING COSTS OF ENFORCEMENT OF THE INDEMNITY AND (I) REASONABLE FEES AND EXPENSES OF ATTORNEYS, CONSULTANTS, ACCOUNTANTS OR OTHER AGENTS AND EXPERTS REASONABLY INCIDENT TO MATTERS INDEMNIFIED AGAINST, AND (II) THE COSTS OF INVESTIGATION AND/OR MONITORING OF SUCH MATTERS)** **INCURRED OR SUFFERED BY THE COMPANY-INDEMNIFIED PARTIES AS A RESULT OF NONCOMPLIANCE BY VENDOR OR VENDOR PERSONNEL WITH ANY APPLICABLE LAWS OR REGULATIONS RELATING TO OR ARISING OUT OF THEIR PERFORMANCE OF THE WORK, EVEN IF SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, CONTRIBUTING, OR COMPARATIVE) STRICT LIABILITY, OR OTHER LEGAL FAULT OF THE COMPANY-INDEMNIFIED PARTIES.**
      2. **THE INDEMNITY PROVISIONS IN THIS SECTION (NONCOMPLIANCE INDEMNITY) SHALL SURVIVE ANY TERMINATION OF THE CONTRACT.**
2. **VENDOR**
   1. **Independent Contractor**
      1. Vendor and all Vendor Personnel are acting as independent contractors unrelated to Company or any of its Affiliates. Nothing in the Contract creates a relationship, express or implied, of employer-employee or principal-agent between Company and Vendor or any Vendor Personnel.
      2. Company retains no control or direction over Vendor and Vendor Personnel regarding the detail, manner or methods of the performance of the Work by Vendor or Vendor Personnel.
      3. No Vendor Personnel will be entitled to participate in any plans, arrangements, or distributions by Company relating to any pension, deferred compensation, bonus, stock bonus, hospitalization, insurance, or other benefits extended to Company’s employees. Company shall not be required to make employee contributions provided for in Social Security or other laws on behalf of Vendor, Vendor Personnel, or their respective employees, agents, or consultants. Company shall not be responsible for withholding federal, state, or local income, Social Security, or other taxes from the amounts paid to Vendor.
      4. Vendor shall be fully responsible for all acts and omissions of Vendor Personnel and shall be specifically responsible for sufficient and competent supervision and inspection to ensure Vendor Personnel’s compliance in every respect with the Contract requirements.
   2. **Subcontractor**
      1. Vendor shall not enter into a subcontract agreement for performance of the Work without Company’s prior consent. Without limiting the foregoing, Company may require submission of such subcontract agreement for Company’s approval prior to award.
      2. No subcontract shall bind or purport to bind Company. Vendor shall ensure that all Work performed by Subcontractors is pursuant to an appropriate written subcontract agreement containing provisions that (a) preserve and protect the rights of Company under the Contract and to the Work to be performed under the subcontract agreement, so that the subcontracting of the Work will not prejudice those rights; (b) require that the Work be performed in accordance with the applicable requirements of the Contract; and (c) require the Subcontractor to make reasonably available a representative with whom Company may discuss questions regarding the Work being performed by that Subcontractor. Vendor shall promptly provide all information requested by Company relating to the identity of the Subcontractors and the scope of their services or supply.
   3. **Character and Skill of Personnel**
      1. Vendor shall employ a sufficient number of qualified Persons so that Vendor may complete performance of the Work and Vendor’s obligations under the Contract in an efficient, prompt, economical and professional manner. Vendor represents and warrants that all Vendor Personnel who will perform any portion of the Work have received all necessary training and possess all licenses and certifications required by law to perform the Work.
      2. Vendor shall supervise, coordinate and direct the performance of the Work in accordance with industry standards. Vendor shall at all times enforce strict discipline and good order among all Vendor Personnel engaged in the performance of the Work and shall not employ in the Work any Person not skilled or qualified for the task(s) assigned to them.
   4. **Vendor Representations and Warranties**
      1. Vendor shall have the sole responsibility for, and hereby represents and warrants that it has, by careful examination, satisfied itself concerning the nature and location of Work and the general and local conditions of the Jobsite. Failure of Vendor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or costs of successfully performing the Work.
      2. Vendor further represents and warrants that Vendor’s progress schedule, if applicable, and compensation are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation from Company. Company assumes no responsibility for any understanding or representation made or alleged to have been made by any of its representatives, unless such understanding or representation is expressly stated in the Contract.
      3. Vendor shall carefully study and review the Contract prior to commencing any portion of the Work, shall carefully review applicable Drawings and Specifications, and shall promptly notify Company by written notice of any conflict with applicable law or of any errors, inconsistencies or omissions it may discover.
      4. Vendor represents and warrants that it has the full power and authority to execute, deliver and perform its obligations under the Contract and to engage in the business it presently conducts and contemplates conducting, and is and will be (i) duly licensed or qualified to do business and (ii) in good standing under the laws of the jurisdiction wherein the Work is to be performed.
      5. Unless otherwise specified, all loss or damage to Vendor arising out of Vendor’s performance of the Work in connection with the above-mentioned representations and warranties shall be sustained and borne by Vendor at its own cost and expense.
3. **ASSIGNMENT**
   * 1. Vendor shall not assign any part of its rights or delegate any performance under the Contract, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without Company’s prior written consent, which consent shall not be unreasonably withheld. For purposes of the Contract, (a) a “change in control” is deemed an assignment; (b) “control” means the power, directly or indirectly, to (i) vote at least fifty percent (50%) of the securities that have ordinary voting power for the election of Vendor’s directors or managers, or (ii) direct or cause the direction of the management and policies of Vendor whether by voting power, contract or otherwise; and (c) “merger” refers to any merger in which Vendor participates, regardless of whether it is the surviving or disappearing entity.
     2. No permitted assignment of the Contract or of any duties hereunder shall relieve Vendor of any of its obligations hereunder.
     3. If Company permits Vendor’s assignment of the Contract, the Contract shall be binding upon and shall inure to the benefit of the permitted assignee; however, Vendor shall provide prompt written notice of such changes or transfers.
     4. Any purported assignment of rights or delegation of performance in violation of this section (Assignment) is void and of no effect.
     5. Company is entitled to assign its rights or delegate performance under the Contract, in whole or in part.
4. **WORK**
   1. **General**
      1. Vendor shall, in consideration of the Contract Price payable in accordance with the Contract, provide or perform the Work, or cause the Work to be provided or performed, in accordance with the terms and conditions of the Contract.
   2. **Authorization to Commence Work**
      1. Vendor shall not commence the Work until Company has received a fully executed Contract Cover Sheet. Any Work performed before such time is at Vendor’s sole risk and expense.
   3. **Performance Schedule**
      1. Vendor shall perform the Work to meet the schedule agreed upon by the Parties. The schedule shall be computed by excluding the first calendar day and including the last calendar day of said time frame. If the last calendar day of said time frame is a Sunday or Company-recognized holiday, the time frame shall end on the next Business Day.
      2. Vendor shall be responsible for any damages that Company may incur due to delay in the completion of the Work, or delay in the completion of any other obligation of Vendor set forth herein, unless excused under the Force Majeure section**.**
   4. **Company Inspection and Testing**
      1. Vendor shall deliver the Work as specified in the Contract. Vendor shall cooperate with Company to carry out all tasks necessary for implementation, inspection, and testing of the Work.
      2. Company may perform inspection and testing on the Work until it is satisfied that such Work conforms to the Specifications and any other requirements in the Contract. If Company discovers any deficiencies in the Work, Company shall notify Vendor, and Vendor, at its own expense, shall modify, repair, adjust or replace the Work within fifteen (15) calendar days after the date of Company’s deficiency notice. Company may perform additional inspections and tests on the corrected Work. If the Work remains deficient, Company may reject the Work and repeat the procedure in this paragraph as often as necessary or, at its option, terminate all or a portion of the Contract in accordance with the provisions of the Termination for Cause section.
      3. Inspection and testing by Company of any Work does not relieve Vendor from any responsibility regarding defects or other failures to meet the Contract requirements.
5. **JOBSITE**
   1. **Safety and Health**
      1. **Vendor Responsibility** –Vendor shall be solely responsible for the safety and health of Vendor Personnel and other Persons required in the performance of the Work, as well as for the protection of the improvements being erected and the property.
      2. **Vendor Precautions** –Vendor shall take all precautions necessary to ensure the safety and health of all Vendor Personnel in their performance of the Work and any other Persons who may be affected thereby. Vendor shall also provide all protection necessary to prevent damage to any Work, materials, and equipment under the care, custody, or control of Vendor or Subcontractors.
      3. **Hazardous Materials** –When the Work requires the use or storage of explosives or other hazardous materials or equipment, Vendor shall exercise a heightened standard of care and carry on such activities under the supervision of properly qualified Persons. Vendor shall obtain Company’s written consent prior to bringing any explosives or hazardous material onto the Jobsite or any other property owned, leased or controlled by Company.
      4. **Safety Program** – Vendor shall maintain a safety program to ensure a safe workplace and compliance with the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970 (“OSHA”), as now or hereafter amended and as set forth in 29 Code of Federal Regulations Sections 1926 and 1910, together with other applicable rules and regulations.
      5. **Safe Work Environment** – Vendor and Subcontractors are responsible for providing and maintaining a safe working environment on the Jobsite. Vendor and Subcontractors shall implement appropriate measures, including their own alcohol and drug screening programs, to ensure a safe working environment.
      6. **Safety Violations** – If Company verbally notifies Vendor of Vendor’s violations of OSHA requirements, Company safety and health programs or Vendor’s individual safety or health programs, Vendor shall immediately take corrective action. If Vendor does not respond appropriately and immediately, Company may issue a written notice to Vendor, requiring the suspension of Work until the noncompliance is corrected. IN SITUATIONS WHERE THERE IS IMMINENT DANGER, WORK SHALL BE SUSPENDED IMMEDIATELY.
      7. **Safety Training** –Vendor shall be responsible for ensuring compliance with all applicable sections of the National Fire Codes, Occupational Safety and Health Standards for the Construction Industry (29 CFR 1926), and 29 CFR 1910, General Industry Safety and Health Standard applicable to the Work, any state or local laws or codes and any additional requirements imposed by Company. Vendor shall maintain documents or records verifying all the required qualifications and certifications of Vendor Personnel assigned to perform the Work.
   2. **Right of Entry**
      1. Company reserves the right to authorize its agents or designees to enter Vendor’s work area or any other portion of the Jobsite for any purpose. Vendor understands and agrees that representatives of any governmental authority may enter the Jobsite at any time. Vendor waives any right to additional compensation caused by such entry.
6. **WARRANTY**
   1. **Warranty of Work**
      1. Vendor represents and warrants that (a) the Work will be performed in accordance with the Contract; (b) Vendor shall use sound and professional principles and practices in accordance with consistently accepted industry standards in the performance of the Work hereunder; (c) performance of the Work by Vendor Personnel shall reflect sound professional knowledge, skill and judgment; and (d) Vendor shall, and shall cause Vendor Personnel to, perform the Work in accordance with applicable laws, rules and regulations, and required state and local licenses and permits.
      2. Vendor represents and warrants that the Work covered by the Contract will (a) be suitable for the purpose intended and for any purposes for which its suitability is represented in writing by Vendor; (b) be free from defects in design, workmanship and materials; (c) conform to the Drawings and Specifications supplied to Vendor, if any; and (d) if installed by Vendor, be properly installed and activated. Vendor shall correct any defects in the Work, and all repairs, replacements, modifications or adjustments required under this warranty shall be at Vendor’s expense, including transportation, shipping and incidental expenses.
      3. Remedies for breach of the warranties in this section (Warranty of Work) may include, at Company’s sole discretion and in addition to all other remedies available to Company at law or in equity, the repair or replacement of, or the reimbursement of the purchase price for, the applicable Work.
      4. The warranties set forth in this section (Warranty of Work) are cumulative and in addition to any other warranty provided by law or equity.
7. **Indemnity**
   1. **Indemnification**
      1. **TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (THE “COMPANY-INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, DAMAGES (“DAMAGES” MEANS THE AMOUNT OF ANY ACTUAL LIABILITY, LOSS, COST, EXPENSE, , AWARD OR JUDGMENT AN INDEMNIFIED PERSON ARISING OUT OF OR RESULTING FROM THE INDEMNIFIED MATTER, WHETHER ATTRIBUTABLE TO PERSONAL INJURY OR DEATH, PROPERTY DAMAGE, CONTRACT CLAIMS (INCLUDING CONTRACTUAL INDEMNITY CLAIMS), TORTS, OR OTHERWISE, INCLUDING COSTS OF ENFORCEMENT OF THE INDEMNITY AND (I) REASONABLE FEES AND EXPENSES OF ATTORNEYS, CONSULTANTS, ACCOUNTANTS OR OTHER AGENTS AND EXPERTS REASONABLY INCIDENT TO MATTERS INDEMNIFIED AGAINST, AND (II) THE COSTS OF INVESTIGATION AND/OR MONITORING OF SUCH MATTERS) INCURRED OR SUFFERED BY THE COMPANY-INDEMNIFIED PARTIES WITH RESPECT TO BODILY INJURY OR DEATH OF ANY PERSON, OR LOSS OF, DAMAGE TO OR DESTRUCTION OF REAL OR PERSONAL PROPERTY IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED OR TO BE PERFORMED BY VENDOR HEREUNDER OR OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE PRESENCE OF VENDOR AND VENDOR PERSONNEL ON THE JOBSITE, IN EACH CASE TO THE EXTENT SUCH BODILY INJURY, DEATH OR DAMAGE IS CAUSED BY THE SOLE, NEGLIGENCE OR OTHER LEGAL FAULT OF VENDOR OR VENDOR PERSONNEL.**
      2. **TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, VENDOR SHALL ASSUME FULL RESPONSIBILITY FOR AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE COMPANY-INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, DAMAGES INCURRED OR SUFFERED BY THE COMPANY-INDEMNIFIED PARTIES WITH RESPECT TO THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF VENDOR, ITS AGENT, OR SUBCONTRACTOR IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED OR TO BE PERFORMED BY VENDOR HEREUNDER OR OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE PRESENCE OF VENDOR AND VENDOR PERSONNEL ON THE JOBSITE, EVEN IF SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, CONTRIBUTING, OR COMPARATIVE), STRICT LIABILITY, OR OTHER LEGAL FAULT OF THE COMPANY-INDEMNIFIED PARTIES**
   2. **Intellectual Property Indemnification**
      1. **TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COMPANY, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (THE “COMPANY-INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, DAMAGES (“DAMAGES” MEANS THE AMOUNT OF ANY ACTUAL LIABILITY, LOSS, COST, EXPENSE, AWARD OR JUDGMENT INCURRED OR SUFFERED BY AN INDEMNIFIED PERSON ARISING OUT OF OR RESULTING FROM THE INDEMNIFIED MATTER, WHETHER ATTRIBUTABLE TO PERSONAL INJURY OR DEATH, PROPERTY DAMAGE, CONTRACT CLAIMS (INCLUDING CONTRACTUAL INDEMNITY CLAIMS), TORTS, OR OTHERWISE, INCLUDING COSTS OF ENFORCEMENT OF THE INDEMNITY AND (I) REASONABLE FEES AND EXPENSES OF ATTORNEYS, CONSULTANTS, ACCOUNTANTS OR OTHER AGENTS AND EXPERTS REASONABLY INCIDENT TO MATTERS INDEMNIFIED AGAINST, AND (II) THE COSTS OF INVESTIGATION AND/OR MONITORING OF SUCH MATTERS) INCURRED OR SUFFERED BY THE COMPANY-INDEMNIFIED PARTIES WHICH ARISE OUT OF OR ARE RELATED TO ANY CLAIM OR SUIT FOR INFRINGEMENT OR MISAPPROPRIATION OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT (“INTELLECTUAL PROPERTY” MEANS ALL PATENTS, DESIGN RIGHTS, COPYRIGHTS, DATABASE RIGHTS, TRADEMARKS, TRADE NAMES, RIGHTS IN INVENTIONS, KNOW-HOW, AND TRADE SECRETS, AND ALL OTHER INTELLECTUAL PROPERTY RIGHTS THROUGHOUT THE WORLD, WHETHER REGISTERED OR UNREGISTERED, AND INCLUDING ALL APPLICATIONS AND RIGHTS TO APPLY FOR ANY OF THE SAME) OF A THIRD PERSON IN CONNECTION WITH THE MANUFACTURE, SALE, USE OR OTHER DISPOSITION OF ANY ARTICLE, MATERIAL, EQUIPMENT OR INTELLECTUAL PROPERTY FURNISHED HEREUNDER BY VENDOR, OR THE PERFORMANCE OR USE OF THE WORK OR PART THEREOF, EVEN IF SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, CONTRIBUTING, OR COMPARATIVE), STRICT LIABILITY, OR OTHER LEGAL FAULT OF THE COMPANY-INDEMNIFIED PARTIES. IF, BY REASON OF ANY SUCH CLAIM, SUIT OR THREATENED ACTION CONCERNING INTELLECTUAL PROPERTY, COMPANY IS ENJOINED FROM USING THE WORK OR ANY PART THEREOF, VENDOR SHALL, PROMPTLY AND AT ITS OWN EXPENSE, (A) DILIGENTLY PROCURE FOR COMPANY THE RIGHT TO USE THE WORK; (B) SUBSTITUTE EQUIVALENT BUT NON-INFRINGING OR NON-MISAPPROPRIATING WORK SATISFACTORY TO COMPANY; OR (C) MODIFY THE WORK, IN A WAY SATISFACTORY TO COMPANY, SO IT BECOMES NON-INFRINGING OR NON-MISAPPROPRIATING, PROVIDED THAT IF SUCH ACTIONS ARE NOT PRACTICABLE IN THE REASONABLE OPINION OF VENDOR, AFTER GIVING DUE CONSIDERATION TO ALL FACTORS INCLUDING FINANCIAL EXPENSE, VENDOR MAY ELECT TO REFUND TO COMPANY ALL AMOUNTS PAID BY COMPANY TO VENDOR HEREUNDER.**
   3. **Indemnification Actions**
      1. All claims for indemnification under this section (Indemnity) and any other indemnity provision of the Contract shall be asserted and resolved as follows:
         1. For purposes of this section (Indemnification Actions), (a) “Damages” means the amount of any actual liability, loss, cost, expense, claim, award or judgment incurred or suffered by an indemnified Person arising out of or resulting from the indemnified matter, whether attributable to personal injury or death, property damage, contract claims (including contractual indemnity claims), torts, or otherwise, including costs of enforcement of the indemnity and (i) reasonable fees and expenses of attorneys, consultants, accountants or other agents and experts reasonably incident to matters indemnified against, and (ii) the costs of investigation and/or monitoring of such matters and (b) “Indemnified Person” means the Person or Persons having the right to be indemnified with respect to particular Damages by Vendor pursuant to the Contract.
         2. In the case of a claim for indemnification based upon a Third Party Claim, Vendor shall have thirty (30) calendar days from its receipt of the Claim Notice to notify the Indemnified Person in writing whether it admits or denies its obligation to defend the Indemnified Person against such Third Party Claim. If Vendor does not provide such notice to the Indemnified Person within such thirty (30) day period , it shall be conclusively deemed obligated to provide such indemnification hereunder. The Indemnified Person is authorized, prior to and during such thirty (30) day period, to file any motion, answer or other pleading that it shall deem appropriate to protect its interests or those of Vendor.
         3. If Vendor assumes control of a Third Party Claim, it shall have the right, for only so long as it conducts such defense with reasonable diligence, and obligation to diligently defend, at its sole cost and expense, the Third Party Claim, and shall have control of such defense and proceedings, including any compromise or settlement thereof, provided that if the Third Party Claim (i) consists of a demand for equitable relief, (ii) is a criminal proceeding or regulatory proceeding with potential criminal sanctions by any governmental authority against the Indemnified Person, (iii) would require an admission of guilt or wrongdoing on the part of the Indemnified Person, or (iv) would impose any continuing obligation on or require payment from the Indemnified Person, in each case, the Indemnified Person shall have the option, by notice to Vendor within the thirty (30) day period set forth above, to control such defense and proceedings. Vendor shall keep the Indemnified Person advised of the status and defense of any Third Party Claim on a current basis and shall consider in good-faith the recommendations made by the Indemnified Person with respect thereto. If requested by Vendor, the Indemnified Person agrees to use its commercially reasonable efforts to cooperate in contesting any Third Party Claim, which Vendor elects to assume the defense of (provided, however, that the Indemnified Person shall not be required to bring any counterclaim or cross-complaint against any Person). The Indemnified Person may at its own expense participate in, together with its own separate counsel, but not control, any defense or settlement of any Third Party Claim controlled by Vendor pursuant to this section (Indemnification Actions); provided that, notwithstanding the foregoing, Vendor shall pay the reasonable costs and expenses of such defense (including reasonable attorneys’ fees and expenses) of the Indemnified Person if (x) the Indemnified Person’s counsel reasonably concludes and advises that there are defenses available to such Indemnified Person that are different from or additional to those available to Vendor, or (y) the Indemnified Person’s counsel advises that there is a conflict of interest that could make it inappropriate under applicable standards of professional conduct to have common counsel for the Indemnified Person and Vendor. Vendor shall not, without the prior written consent of the Indemnified Person, settle or compromise any Third Party Claim or consent to the entry of any judgment with respect thereto which (i) does not result in a final resolution of the Indemnified Person’s liability with respect to the Third Party Claim (including, in the case of a settlement, an unconditional written release of the Indemnified Person from all further liability with respect to the Third Party Claim) or (ii) may materially and adversely affect the Indemnified Person (other than as a result of money damages covered by the indemnity).
         4. If Vendor does not assume the defense of a Third Party Claim or assumes the defense of a Third Party Claim but fails to diligently defend or settle the Third Party Claim, then the Indemnified Person shall have the right to assume the defense of the Third Party Claim (at the sole cost and expense of Vendor), with counsel of the Indemnified Person’s choosing, and shall have full control of such defense and proceedings, including any compromise or settlement thereof, provided that the prior written consent of Vendor to any such compromise or settlement shall be required if the Third Party Claim (i) consists of a demand for equitable relief on the part of Vendor, (ii) is a criminal proceeding or regulatory proceeding with potential criminal sanctions by any governmental authority against Vendor or (iii) would require an admission of guilt or wrongdoing on the part of Vendor.
         5. In the case of a claim for indemnification not based upon a Third Party Claim, Vendor shall have thirty (30) calendar days from its receipt of the Claim Notice to (i) cure the Damages complained of (at no cost to any Indemnified Person), (ii) admit its obligation to provide indemnification with respect to such Damages or (iii) dispute the claim for such Damages. If Vendor does not notify the Indemnified Person within such thirty (30) calendar day period that it has cured the Damages or that it disputes the claim for such Damages, Vendor shall be conclusively deemed obligated to provide such indemnification hereunder.
   4. **Indemnification Survival**
      1. The indemnity obligations in this section (Indemnity) shall survive any termination of the Contract.
8. **TERMINATION**
   1. **Termination for Cause**
      1. Company shall have the right to terminate the Contract in whole or in part at any time by written notice to Vendor if Vendor (1) fails to perform any of its material obligations under the Contract or to observe any provision of the Contract (including any provision of the Contract providing for payment of money to Company); (2) becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, makes any assignment for the benefit of creditors, or commences, or has commenced against it, any insolvency, receivership, reorganization, bankruptcy or similar proceedings; or (3) fails to make progress so as to give Company reason to believe that such failure to make progress may endanger performance of the Contract in accordance with its terms; and Vendor, in any of these circumstances, does not provide adequate assurances of performance within a period of three (3)calendar days (or such longer period as Company may authorize in writing) after receipt of said notice from Company specifying such failure.
      2. If, after Company delivers a notice of termination under the provisions of this section (Termination for Cause), it is determined that Vendor was not in default of the Contract or if Company elects to excuse such default but still desires to terminate the Contract, the rights and obligations of the Parties shall be the same as if notice of termination had been given pursuant to the Termination for Convenience section.
   2. **Termination for Convenience**
      1. The Contract may be terminated by either party at any time, in whole or in part, at either parties’ sole and absolute discretion, with or without cause. Any such termination shall be effected by written notice specifying the extent to which the Contract is terminated, and the date upon which such termination becomes effective.
      2. After receipt of a notice of termination, Vendor shall submit to Company its final invoice, which shall be exclusive of any special, indirect, incidental or consequential damages, loss of profits, or expenses, in the form and with certification prescribed by Company. Any amounts payable by Company to Vendor shall be reasonable and based on actual incurred costs that are directly attributable to materials received and accepted in accordance with the Contract or Work timely and satisfactorily performed prior to the termination date. The responsibility of substantiating all costs and claims shall be borne by Vendor.
9. **FORCE MAJEURE**
   * 1. Performance of the Contract by each Party shall be pursued with due diligence in all respects thereof. However, neither Party shall be liable for any loss or damage for delay or for non-performance due to (a) an act or event that (i) is beyond the reasonable control of and not the fault of the non-performing Party, (ii) was not reasonably foreseeable, and (iii) the non-performing Party has been unable to avoid or overcome by the exercise of commercially reasonable efforts; or (b) in the case of Company, Company or its Affiliates activates an Emergency Operation Plan due to a disaster or threatened disaster in any of their service territories, or Company or any of its Affiliates provides disaster assistance elsewhere in the United States in connection with a declared emergency. In the event of any delay resulting from such causes, the time for performance of each of the Parties hereto (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delays and no further modification to other terms and conditions of the Contract shall occur. The Party claiming a force majeure delay shall use its best efforts to limit the duration and adverse effects of such event or occurrence and to promptly resume performance of its obligations under the Contract.
     2. In the event of any delay or nonperformance caused by the above causes, the affected Party shall promptly notify the other Party in writing of the nature, cause, date of commencement and anticipated extent of such delay, and shall indicate whether it is anticipated that any completion dates will be affected thereby.
10. **PROPRIETARY AND CONFIDENTIAL INFORMATION**
    1. **Confidentiality and Non-Disclosure**
       1. Company has a proprietary interest in the Contract, the Work provided hereunder, and the work product derived therefrom. Vendor and Vendor Personnel may have access to and become familiar with various customer lists, trade secrets, and other confidential or proprietary information of Company or other parties, including formulas, patents, devices, secret inventions, processes and compilations of information, records, programs, software and source codes, which are owned by Company or subject to the confidential obligations of Company (all hereinafter referred to as “Confidential Information”). Confidential Information shall not include information which Vendor can demonstrate by competent proof (a) is now, or hereafter becomes generally known or available in the public domain (other than as a result of a disclosure directly or indirectly by Vendor or any Vendor Personnel in violation of this section, Proprietary and Confidential Information); (b) is known by Vendor or any Vendor Personnel on a non-confidential basis at the time of disclosure to Vendor by Company, so long as the source of such information is not under a contractual, legal, fiduciary or other obligation not to disclose such information; or (c) is independently developed by Vendor or Vendor Personnel without any breach of the Contract.
       2. Vendor shall use Confidential Information solely for the purpose of performing the Work and not for any other purpose, including in any way detrimental or potentially detrimental to Company or any of its Affiliates. Vendor shall maintain the strict confidentiality of the terms of the Contract, the work product resulting from the Contract, and any Confidential Information provided to Vendor or any of its representatives and shall not disclose any of the foregoing, except that Vendor may disclose Confidential Information to those of its representatives and Subcontractors who have a reasonable need to know such information in order for Vendor to perform the Work if, prior to any such disclosure, (a) Vendor informs any such representative or Subcontractor of the terms of this section (Proprietary and Confidential Information) and (b) such representative or Subcontractor agrees in writing to preserve the confidentiality of the Confidential Information under the terms of this section (Proprietary and Confidential Information). Vendor shall cause its representatives and Subcontractors to comply with the terms of this section (Proprietary and Confidential Information), and shall be responsible for any breach of this section (Proprietary and Confidential Information) by any of its representatives or Subcontractors.
       3. If Vendor, or any of its representatives or Subcontractors, becomes required by law or applicable legal process to disclose any Confidential Information, Vendor shall provide Company with prompt prior written notice of such requirement and the terms of and circumstances surrounding such requirement so that Company may seek an appropriate protective order or other remedy, and Vendor shall provide, and shall cause such representative or Subcontractor to provide, such cooperation with respect to obtaining a protective order or other remedy as Company may reasonably request. If, in the absence of a protective order or other remedy or the receipt of a waiver by Company, Vendor or any of its representatives or Subcontractors are nonetheless, in the opinion of legal counsel to Vendor expressed in writing and reasonably acceptable in form and substance to Company, legally compelled to either disclose Confidential Information to any tribunal or stand liable for contempt or suffer other censure or penalty, Vendor or that representative or Subcontractor may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information that such counsel advises Vendor is legally required to be disclosed. Vendor shall exercise its best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information by such tribunal.
       4. Company retains the entire right, interest and title to its Confidential Information. All files, records, documents, source codes, programs, software, equipment and similar items relating to the business of Company, no matter by whom prepared, shall remain the exclusive property of Company.
       5. The covenants contained in this section (Proprietary and Confidential Information) shall be construed independently of any other provisions of the Contract and shall survive the termination of the Contract. The existence of any claim or cause of action of Vendor Personnel against Vendor, whether predicated on the Contract or otherwise, shall not constitute a defense to the enforcement by Vendor or Company of the covenants in this section (Proprietary and Confidential Information).
       6. Vendor acknowledges that disclosure of any Confidential Information by Vendor or Vendor Personnel will give rise to irreparable injury to Company, inadequately compensable in damages. Accordingly, Company shall be entitled to seek and obtain injunctive relief, in addition to other legal remedies, which may be available in the event of any disclosure of Confidential Information by Vendor or Vendor Personnel.
       7. Upon Company’s request, Vendor shall, and shall cause Vendor Personnel to, (a) immediately cease using the Confidential Information and (b) promptly return or destroy (at Company’s option) all Confidential Information, including materials prepared in whole or in part based on such Confidential Information, and all copies thereof. Upon Company’s request, an authorized officer of Vendor supervising the return or destruction of Confidential Information shall certify that Vendor no longer has in its possession or under its control any Confidential Information in any form whatsoever, or any copy thereof.
11. **RECORDS AND AUDITS**
    * 1. During the term of the Contract and for a period of four (4) years following the termination of the Contract, or longer as required by law, Vendor shall make, keep and maintain complete and accurate records relating to the Work. The records required to be made, kept and maintained by Vendor under the previous sentence include financial accounts, invoices, receipts, vouchers, books, schedules, written policies, safety records, personnel files, correspondence, instructions, plans, warranties, equipment maintenance records, drawings and memoranda of every description pertaining to the Work.
      2. Vendor’s records shall be open to inspection and subject to audit and reproduction, upon reasonable notice, during normal business working hours. Vendor shall provide Company with access to any and all information, materials and data of every kind and character that may in Company’s reasonable judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Contract, to the extent necessary to adequately permit evaluation and verification of Vendor compliance with Contract requirements, and Company’s business ethics policies and provisions for pricing change orders, invoices or claims submitted by Vendor or any of Vendor’s payees. Such records shall include hard copy, as well as computer-readable data if available. Audits may be performed by Company’s representative or an outside representative engaged by Company during the term of the Contract and for a period of four (4) years after the termination of the Contract or longer if required by law. Company’s representative or designee shall have reasonable access to Vendor’s facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with this section (Records and Audits).
      3. Vendor’s obligations under this section (Records and Audits) shall survive the termination of the Contract.
12. **MISCELLANEOUS**
    1. **Governing Law; Jurisdiction; Venue**
       1. The laws of the State of Texas, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to the Contract and all of the transactions it contemplates, including its validity, interpretation, construction, performance, and enforcement. Vendor hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of Texas and of the United States of America located in the State of Texas, County of Harris, for any actions, suits, or proceedings arising out of or relating to the Contract. Vendor hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit, or proceeding arising out of the Contract, in the courts of the State of Texas or the United States of America located in the State of Texas, County of Harris, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.
    2. **Third Party Beneficiaries**
       1. The Contract does not and is not intended to confer any rights or remedies upon any Person other than Vendor and Company, excepting those Persons expressly entitled to (1) indemnification under this Contract, or (2) any rights or benefits under the Insurance section. The Parties reserve the right to rescind, waive or vary the terms of the Contract without notice to or consent of any such third Person, even if, as a result, such third Person’s right to enforce a term hereof will be varied or extinguished.
    3. **Counterparts**
       1. The Parties may sign the Contract in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument. Any electronic signature by an authorized representative of a Party shall be a manifestation of assent and shall be given full effect. Any signature of the Contract delivered by facsimile or scanned document transmitted by email shall be deemed to be an original signature for all purposes.
    4. **Supplier Diversity**
       1. Company recognizes the importance of minority-owned and women-owned business enterprises (“MWBE”) and small business concerns to the economies of the nation, the state, and the communities they serve, as well as Company itself. Company’s objectives include actively and routinely seeking and utilizing qualified diverse suppliers, encouraging participation and support of supplier diversity initiatives by its prime suppliers, and assisting in the development and competitiveness of diverse suppliers.
       2. Company seeks to include diverse supplier participation in its solicitations of goods and services. Non-diverse prime contractors should seek to include diverse suppliers in support of solicitations and contracts received from Company.
       3. Company asks that Vendor be aware of the policies above and support them.
    5. **Notices and Correspondence**
       1. All notices or correspondence arising from or pertaining to the Contract must be in writing and delivered in person, or electronically, or sent by registered or certified mail or nationally or internationally recognized overnight courier, with all fees prepaid, to the receiving Party at the address identified on the Contract Cover Sheet.
       2. Either Party may, at any time, change its mail or delivery address by giving the other Party ten (10) calendar days prior written notice.
       3. The effective date of any written notice delivered or mailed pursuant to the Contract shall be the date of receipt by Company or Vendor, as applicable, if delivered, or the postmark date if mailed. If the receiving Party rejects or otherwise refuses to accept a notice, or if it cannot be delivered because of a change in address for which no notice was given, then notice will be deemed given upon that rejection, refusal or inability to deliver.
    6. **Publicity**
       1. Vendor shall not take any photographs, make any announcement or release any information concerning the Contract or any part thereof to any member of the public, the press or any third Person, unless prior written consent is obtained from Company. Vendor shall not, under any circumstances, represent itself as a Company-authorized contractor or a Company employee in any advertisement or telephone directory.
    7. **Modification; Non-Waiver of Rights**
       1. No amendment of the Contract will be effective unless it is in writing and signed by the Parties. No waiver of satisfaction of a condition or nonperformance of an obligation under the Contract will be effective unless it is in writing and signed by the Party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation. To be valid, any document signed by a Party in accordance with this section (Modification; Non-Waiver of Rights) must be signed by an officer or other authorized representative of that Party.
    8. **Severability**
       1. If any provision of the Contract is held invalid, illegal or unenforceable, (a) the remaining provisions of the Contract will remain in full force, if the essential terms and conditions of the Contract for both Parties remain valid, legal and enforceable; and (b) the court or other tribunal rendering the provision invalid, illegal or unenforceable shall modify the Contract so as to effect the original intent of the Parties to the fullest extent permitted by applicable law.
    9. **Further Assurances**
       1. If at any time after the date of the Contract any further action is necessary or appropriate to carry out the purposes of the Contract, Vendor shall take, or cause to be taken, that action.
    10. **Complete Agreement**
        1. The furnishing of Work hereunder, or any other definite and reasonable expression of acceptance by Vendor, shall operate as an acceptance of these Terms and Conditions by Vendor, and the effect of such acceptance shall be to make a contract on Company’s terms as set forth in this document.
        2. The terms and conditions of the Contract prevail over any terms and conditions contained in any other document and expressly exclude any of Vendor’s general terms and conditions. Additional or different terms and conditions will not become a part of the Contract unless mutually agreed to in writing by the Parties.
        3. The Contract contains the entire agreement between the Parties, and is the complete and exclusive expression of the Parties’ agreement on the subject matter of the Contract. The Contract supersedes all other oral or written agreements relating to the Contract. The provisions of the Contract may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings or performance. In entering into the Contract, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in the Contract.