



## TERMS & CONDITIONS

### 1. Terms of Agreement

The purchase order, together with these terms and conditions, attachments, exhibits, and/or a statement of work executed against these terms and conditions, in each case whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between the City of San Antonio, acting by and through City Public Service Board ("CPS Energy") and the supplier/contractor (the "Company") identified in the Purchase Order. Notwithstanding the foregoing, if a Master Agreement covering procurement of the work described in the Purchase Order exists between CPS Energy and Company, the terms of such master agreement shall prevail over any inconsistent terms herein.

CPS Energy's submission of the Purchase Order is conditioned on Company's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Company purports to condition its acceptance of the Purchase Order on CPS Energy's agreement to such different or additional terms. In the event of a conflict in terms or provisions, the conflict shall be resolved in favor the Purchase Order, or if executed after the Purchase Order, a Change Authorization Order (defined in Section 15 below).

### 2. Definitions

- a. "Delivery Date" means the dates or dates specified in the Purchase Order by which Company is required to deliver the Work.
- b. "Goods" means tangible goods and materials specified in the Purchase Order to be delivered on or before the Delivery Date.
- c. "Services" means the services that Company is to perform for CPS Energy specified in the Purchase Order.
- d. "Work" means the Goods or Services specified in the Purchase Order, including any Statements of Work.

### 3. Delivery

Delivery of Goods shall be Freight on Board ("FOB") (current Incoterms) to the CPS Energy location(s) listed on the face of the Purchase Order, unless otherwise specified in the Purchase Order. The terms of delivery are as stated on the Purchase Order and the obligation of Company to meet the Delivery Date, specifications and quantities set forth herein is of the essence of the Purchase Order. If Company becomes aware that it will not be able to meet a delivery date, then it shall (i) promptly notify CPS Energy of the delay and its proposed solution and recovery plan, and (ii) expedite delivery of any (rev'd 11/2023)

such Goods, at its sole expense.

The acceptance by CPS Energy of early or late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Company.

Shipments in greater or lesser quantity than ordered or items delivered substantially in advance of a scheduled Delivery Date may be returned at Company's expense, including transportation charges both ways, unless written authorization is issued by CPS Energy.

Delivery hours, location and contact information by storeroom are available on our website, [www.cpsenergy.com](http://www.cpsenergy.com) (search keyword "warehouse"). A notice of 48 hours is required prior to any delivery when the delivery is away from the storeroom address or for shipments requiring special unloading equipment and/or crews. Delivery shall not be considered complete until the Goods have actually been delivered to and accepted by CPS Energy notwithstanding any agreement to pay freight or other transportation charges.

### 4. Packing & Shipping

All Goods shall be properly packed, marked, loaded and shipped as required by the Purchase Order and in a manner which prevents damage or deterioration in transit and ensures the safe arrival of Goods at the named destination and that permits the lowest transportation rates to apply. CPS Energy is not liable for extra charges for boxing, crating, packing, cartage, handling or anything else unless stated in the Purchase Order. Company shall mark the CPS Energy Purchase Order, Company's name, packing slip number and other identification on all containers, invoices, correspondence, bills of lading and other shipping papers and enclose a packing slip with the Purchase Order number in each container. Company shall mark all containers with necessary lifting, handling and shipping information. For freight charges over \$100.00, Company must provide bulk-freight bill. CPS Energy will only pay for actual freight charges incurred by Company and will not pay for any marked-up freight charges.

### 5. Title and Risk of Loss

Title to all Goods ordered shall remain with Company until delivered to CPS Energy at the destination specified on the face of the Purchase Order. All risk of loss or damages to the Goods shall be on Company until title to the Goods passes to CPS Energy. If Goods are rightfully rejected by CPS Energy, Company shall bear all risk of loss or damage until such Goods are re-delivered to CPS Energy.

### 6. Safety Data Sheet ("SDS")

If a SDS is required by law on one or more of the Goods being supplied, Company must provide to CPS Energy, with the initial shipment of the Goods, and with the first shipment of the Goods after any changes in those Goods, a SDS in accordance with the Occupational Safety & Health Administration (OSHA)



Hazard Communication Standard (29 C.F.R. 1910.1200). The SDS document must be sent via email to EnvironmentalChemicalStorageUpdates@cpsenergy.com or in a weatherproof package if it is exposed to the elements. CPS Energy shall have a right to reject any shipment of Goods that do not include the required SDS. CPS Energy shall have the right to withhold any payments due to Company's failure to provide any required SDS.

## **7. Inspection & Acceptance**

All Goods purchased herein are subject to inspection at CPS Energy's destination either before or after payment. CPS Energy reserves the right to reject and refuse acceptance of Goods which are not in accordance with the instructions, specifications, drawings or data or Company's implied or express warranties. Any rejection of Goods resulting because of nonconformity to the terms and specifications of the contract, whether held by CPS Energy or returned shall entitle CPS Energy to full credit and shall be returned at Company's risk and expense including transportation charges both ways. No replacement of rejected Goods shall be made unless specified in writing by CPS Energy. Acceptance of all or part of the Goods shall not be deemed to be a waiver of CPS Energy's right to either cancel or to return all or any portion of the Goods because of failure to conform to the Purchase Order or by reason of latent or patent defects, or other breach of warranty or to make a claim for damages incurred by CPS Energy. Such rights shall be in addition to any other remedies provided by law.

## **8. Liens, Claims & Encumbrances**

Company warrants and represents that all Goods delivered are free and clear of all liens, claims, or encumbrances of any kind. If CPS Energy receives notice of a lien or claim on Company's delivered Goods, Company shall, at its own expense, take all action necessary to cause the lien or claim to be released or discharged immediately, or secure and file a security bond covering the amount of the lien or claim, at CPS Energy's election. Upon CPS Energy's request, Company shall provide evidence that the lien or claim has been released, discharged or secured. If Company fails to furnish adequate evidence within ten (10) calendar days of the demand, CPS Energy may discharge the indebtedness and deduct the total of all costs and fees from any money owed to Company.

## **9. Warranty**

Company warrants that all Goods covered by the Purchase Order will be merchantable, fit for the purpose intended, of the best quality and workmanship, free from defects and will conform to applicable specifications, drawings, samples and descriptions. Company shall promptly repair or replace any non-conforming Goods.

Company warrants that all Services will be provided in a good and skillful manner in accordance with industry standards, and in accordance with any specifications that the parties have agreed via plain and conspicuous language in the Purchase Order. Company represents and warrants that its personnel

assigned to provide the Services have appropriate training, skill, and experience to provide the Services in accordance with the warranties stated in this section.

Defects shall not be deemed waived by CPS Energy's failure to notify Company upon receipt of Goods or completion of Services, or by payment of an invoice. If Company fails to correct defects in or replace nonconforming Goods promptly, CPS Energy, after reasonable notice to Company, may make such corrections or replace such Goods and Services and charge Company for the cost incurred by CPS Energy in doing so. If Company, through the use of commercially reasonable efforts, is unable to repair or replace any non-conforming Goods, then Company shall refund the purchase price paid for the Goods and reimburse CPS Energy for its shipping and other direct costs of procurement of the Goods.

Company recognizes that CPS Energy's operational requirements may require immediate repairs or reworking of defective Goods or supply of conforming Goods, without notice to Company. In such an event, Company shall reimburse CPS Energy for the costs, delays or other damages that CPS Energy incurs resulting from Company's failure to provide conforming Goods.

## **10. Warranty Period**

The warranty period for Goods shall be no less than one (1) year from the date of shipment or longer as identified in the Purchase Order, so long as the Goods are free from defects in design, workmanship, and material, and meet the specifications stated in the applicable Purchase Order(s). The warranty period for replacement parts shall be one (1) year commencing upon the earlier of (i) installation, or (ii) one (1) year from the date of CPS Energy's receipt of the replacement parts.

The warranty period for Services shall be one (1) year. Company shall re-perform any part of the Services that fails to meet the warranties stated above, provided that CPS Energy gives notice of such failure within ninety (90) days of completion of the Services.

## **11. Assignment of Original Manufacturer Warranties**

Company shall assign to CPS Energy, or obtain for CPS Energy's benefit, the manufacturer's warranties for all Goods not manufactured by Company.

## **12. Payments**

Invoices for Goods or Services will be paid thirty (30) days following delivery and receipt of Goods or performance of Services. Company shall send invoices to the following address: CPS Energy, Attn: Accounts Payable - MD 100705, P.O. Box 2921, San Antonio, Texas 78299-2921, or as otherwise directed by CPS Energy. Invoices must reference the CPS Energy Purchase Order number, item number and description, sizes, quantities, and unit prices. Invoices which do not reference a CPS Energy Purchase Order number will be returned unpaid. Payments of invoices shall not constitute



acceptance of Goods or Services and shall be subject to adjustment for shortages, defects, or other failure of Company to meet the requirements of the Purchase Order. If Company fails to submit an invoice to CPS Energy within sixty (60) days following Company's performance of Services or delivery of Goods under the Purchase Order, then Company waives its right to payment for the work or deliverables and CPS Energy is relieved of any obligations to pay for the uninvoiced work or deliverables. Invoices not conforming to these requirements may be rejected.

### **13. Price Protection**

Unless otherwise specified, the Goods or Services herein will not be subject to any price increase following the acceptance of a Purchase Order and prior to delivery. Company represents and warrants that it will offer to CPS Energy pricing terms at least as favorable as those offered to any other customer. If Company offers more favorable pricing to any other customer during the term of a Purchase Order, then Company must provide written notice to CPS Energy of such offer and must (i) modify the pricing available to CPS Energy, and (ii) refund to CPS Energy an amount equal to the difference between the prices paid and the prices that would have been paid under the modified pricing back to the date that the more favorable pricing was made available to the other customer.

### **14. Sales & Use Tax**

CPS Energy is a municipally owned electric and gas utility and as such is a TAX-EXEMPT ORGANIZATION. CPS Energy is exempt from certain sales and use taxes with respect to the purchase price of all materials, supplies, equipment and consumables purchased under a Purchase Order. Company shall not invoice or charge CPS Energy for such taxes and shall be provided with a Sales Tax-Exemption Certificate upon request. Failure by Company to request a Sales Tax-Exemption Certificate shall not mean that CPS Energy waives its tax-exempt status. CPS Energy shall not pay any taxes for which it is exempt.

Additionally, unless expressly agreed otherwise in writing, Company shall be solely responsible for any taxes related to the Purchase order, including, but not limited to sales tax, use tax, value-added tax, withholding tax, goods and services tax, provincial sales tax, harmonized sales tax, ad valorem property and gross receipts taxes, taxes based on Company's net income, or any other similar taxes imposed on Company relating in any way to the Goods, Software, Deliverables, and/or Services provided under the Purchase Order.

### **15. Change Authorization Order**

In the event that the parties desire to change the terms of an existing Purchase Order, or in the event that the scope of the Services is expanded, revised, or modified for any Statement of Work ("SOW"), the parties shall prepare and sign a Change Authorization Order ("CAO"), which shall be incorporated into these Terms and Conditions. No changes to a Purchase Order shall become effective until both parties have signed a CAO.

### **16. Term (Services)**

The term for performance of Services shall be specified in the Purchase Order (or any subsequent CAO) unless terminated by the parties in accordance with the terms herein.

### **17. Termination for Convenience**

CPS Energy may terminate a Purchase Order, in whole or in part, by giving Company thirty (30) calendar days written notice. In the event of such termination, Company shall immediately stop work as to the terminated portion of the Purchase Order, notify all suppliers and sub-suppliers to stop work on contracts for performance hereunder and to protect and preserve property in its possession in which CPS Energy has or may acquire an interest. In order to entitle Company to any termination payment, Company shall, within thirty (30) days after receipt of said notice to terminate, advise CPS Energy in writing whether any termination charges will be submitted in connection with the termination. Company shall be paid a reasonable termination charge consisting of a percentage of the Purchase Order price reflecting the percentage of the work completed in compliance prior to the notice of termination, plus reasonable, actual direct costs for uncompleted work in progress. Company shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by its suppliers or sub-suppliers which Company could reasonably have avoided. In no event shall the aggregate of all termination payments plus all other payments made for Goods under the Purchase Order exceed the total sum due under the Purchase Order.

### **18. Termination for Cause**

If Company fails to make any delivery in accordance with the Delivery Date, fails to observe or comply with any other instruction, term, condition or warranty, defaults in its obligations applicable to the Purchase Order, fails to make progress so as to endanger timely performance, or a receiver or trustee is appointed or an assignment is made in favor of a creditor, CPS Energy may, in addition to any other right or remedy, terminate all or a portion of the Purchase Order by written notice to Company. In the event of termination for cause, CPS Energy shall not be liable to Company for any amount (except for Goods already received and Services properly performed and accepted by CPS Energy as completed and in conformance), and CPS Energy may acquire, produce, or otherwise purchase supplies or Services elsewhere on such terms or in such a manner as CPS Energy deems appropriate, and Company shall be liable to CPS Energy for any and all damages, expenses or costs incurred by CPS Energy. If it should be determined that CPS Energy has improperly terminated this Purchase Order for default, such termination shall be deemed a termination for convenience.

### **19. Termination for Insolvency**

CPS Energy shall have the right to immediately terminate the Purchase Order, by providing written notice to Company in the event that (i) Company becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit





of creditors; or (ii) a substantial part of Company's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.

## **20. Indemnification**

Company shall indemnify, defend and hold harmless CPS Energy, its employees, principals, officers, employees, representatives, and agents from and against any third party claims, demands, loss, damage or expense directly caused by the negligence, intentional misconduct, or breach of Company's obligations under the Purchase Order, its personnel or agents in connection with the Purchase Order. To the extent that any claim arises from the concurrent conduct of CPS Energy, Company and/or any third party, it is expressly agreed that each party's obligations of indemnity under this section shall be effective only to the extent of each party's pro rata share of liability. CPS Energy shall provide reasonable cooperation and authority to defend or settle any claim or suit. Settlement of any claim or suit shall not be made without CPS Energy's written consent. CPS Energy reserves the right to employ counsel and participate in the defense and/or settlement of any claim covered by this subsection.

## **21. Limitation of Liability**

Neither party (nor its employees, agents, suppliers or affiliates) shall be liable to the other for any lost profits or any indirect, special, incidental, punitive, or consequential loss or damage of any kind arising in connection with the Purchase Order, even if the party has been advised or should be aware of the possibility of such damages. Each party's liability to the other on any claim of any kind for any loss or damage arising out of or connected with or resulting from this Purchase Order or from the breach thereof, shall in no case exceed the contract price to the Goods or Services or unit thereof which gives rise to the claim.

Notwithstanding the foregoing, nothing in the Purchase Order limits or excludes either party's liability for loss or damage caused by its gross negligence, willful misconduct, or any fraud or fraudulent misrepresentation, and nothing contained in the foregoing is intended in any way to limit indemnification obligations for third party claims.

## **22. Confidentiality**

If CPS Energy and Company have entered into a confidentiality agreement or a Non-Disclosure Agreement (collectively, "NDA") to cover disclosure of confidential information under the Purchase Order, and if the term of the NDA expires before the expiration or termination of the Purchase Order, then the term of the NDA shall be automatically extended to match the term of the Purchase Order.

## **23. Authorized Distributor**

Company shall be an authorized distributor for the manufacturer of the Goods furnished to CPS Energy under a Purchase Order. Company warrants and guarantees that the manufacturer's warranty of the Goods supplied under the Purchase Order apply through Company.

(rev'd 11/2023)

## **24. Waste Handling**

Company is responsible for accidental spills, construction waste and debris, and any other waste generated on CPS Energy's premises as a result of the Goods or Services provided under the Purchase Order. Immediately contact your CPS Energy Field Representative or CPS Energy's service desk (210-353-2020), if any of these situations arise for more detailed information.

## **25. Product Hazard**

In the event that either party becomes aware that the Goods or the use of the Goods could cause death or bodily injury to a person, or substantial damage to tangible property, or becomes aware of information that such a condition could exist, that party shall notify the other party immediately, and in all events within twenty-four (24) hours. Company shall be responsible for all costs associated with such a hazard, such as the cost of recall or substitution. Unless otherwise required by law, in the reasonable opinion of a party's legal counsel, neither party shall disclose the existence of such a hazard to a governmental agency without the participation of the other party.

## **26. Assignment**

A Purchase Order and any payments to be made thereunder may not be assigned or transferred without the prior written approval of CPS Energy. No delegation of any obligation or of the performance of any obligation shall be made without the written permission of CPS Energy. Any attempted assignment or delegation shall be void and ineffective for all purposes unless made in conformity with this section.

## **27. Successors and Third Party Beneficiaries**

The Purchase Order shall inure to the benefit of Company and CPS Energy and any successors or assigns of Company and CPS Energy. No third parties shall have any rights hereunder.

## **28. Utilization of Small Businesses**

It is CPS Energy's policy to ensure that small, disadvantaged, veteran-owned, service-disabled veterans, HUBZone and women-owned businesses have the maximum practicable opportunity to participate as contractors and suppliers. It is CPS Energy's policy to assist these businesses to overcome the barriers that kept them from full and equal participation in the mainstream of the American Business Enterprise System in the past. Furthermore, CPS Energy strongly encourages large prime suppliers to also provide maximum practicable opportunity to small, disadvantaged, veteran-owned, service-disabled veterans, HUBZone and women-owned businesses. Contact our [Supplier Diversity Office](#) on our website [www.cpsenergy.com](http://www.cpsenergy.com) for more information.

Small Business Concerns. If the Purchase Order offers subcontracting opportunities, both parties to the Purchase Order agree to comply with 48 CFR 52.219-8 (Utilization of Small, Service-Disabled Veteran-Owned Small Business, HUBZone Small Business, Small Disadvantaged Business and Woman-



Owned Small Business Concerns) and 48 CFR 52.219-9 (Small Service-Disabled Veteran-Owned Small Business, HUBZone Small Business, Small Disadvantaged Business and Woman-Owned Small Business Subcontracting Plan). If Company is classified as a large business it will be required to furnish the subcontracting documents for any contracts expected to meet or exceed \$700,000 (or \$1,500,000 for construction of a public work). Failure to meet this requirement may result in the Purchase Order being cancelled.

Subcontracting Plan. If the Purchase Order offers subcontracting opportunities, Company shall adopt and deliver to CPS Energy a Subcontracting Plan for both large and small, non-minority, minority, HUBZone, service-disabled veteran and/or woman-owned businesses. Company shall also submit the Summary Subcontract Report Standard Form 294 or 295, in accordance with the instructions on the form and all supporting documentation as required by governmental directives in the terms of the contract between CPS Energy and the U.S. Government. The aforementioned documentation should be submitted to: CPS Energy, P.O. Box 1771, Mail Drop #110901, San Antonio, Texas 78296-1771, Attn: Supplier Diversity Coordinator. Company may be required to submit a copy to the Director of Small and Disadvantaged Business Utilization, General Services Administration, 18th & F Streets NW, Washington, DC 20405, upon his/her request. Failure to timely supply subcontracting documents and/or failure to adhere to the Subcontracting Plan may result in the Purchase Order being cancelled.

## **29. Independent Contractor**

Company is an independent contractor and nothing within the Purchase Order shall be construed to create a joint venture, partnership, agency, or other employment relationship between the parties. All Company employees, contractors, representatives, or agents shall be considered to be an employee, contractor, representative, or agent of Company only and will not be considered an agent or employee of CPS Energy for any purpose. Company shall be solely responsible for payment of all compensation owed to its employees, contractors, representatives, or agents, including all applicable federal, state and local employment taxes and shall make deductions for all taxes and withholdings required by law. In no event will any Company employee be eligible for or entitled to participate in any of the employee benefit plans or similar programs of CPS Energy.

## **30. Right to Audit**

Company's and its subcontractor's books, records, correspondence, accounting procedures and practices and any other supporting evidence relating to the Purchase Order (all the foregoing hereinafter referred to as "Records") shall be open to examination and subject to audit and/or reproduction, during normal working hours, by CPS Energy or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims based on Company's or subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended, directly in the performance of work under the

(rev'd 11/2023)

Purchase Order to determine compliance to terms and conditions of the Purchase Order, or ascertain any facts relative to any claim against Company which may become a charge against CPS Energy. CPS Energy or its authorized representative shall have access during normal working hours, to all necessary Company and subcontractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this Section. Company shall require subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to the Purchase Order. CPS Energy or its authorized representative shall have access to said Records from the date of the Purchase Order, for the duration of the Purchase Order and until two (2) years after the date of final payment by CPS Energy to Company pursuant to the Purchase Order.

## **31. Notices**

All notices required under or regarding the Purchase Order will be in writing. Notices to Company shall be sent to the address stated on the front of the Purchase Order. Notices to CPS Energy will be considered properly given if delivered personally, mailed via registered or certified mail (return receipt requested and postage prepaid), by email or sent by courier (confirmed by receipt) to the following address:

CPS Energy  
Attn: General Counsel  
P.O. Box 1771  
San Antonio, Texas 78296  
LegalNotices@cpsenergy.com

## **32. Intellectual Property**

Company warrants that CPS Energy's use of the Goods or Services associated as permitted by the terms of the Purchase Order and delivered hereunder will not infringe any third party patent, trademark, copyright, trade secret or other intellectual property right. Company agrees that it will defend and indemnify CPS Energy against any third party claim that the Goods supplied under the Purchase Order infringe the third party's patent, trademark, copyright, trade secret or other intellectual property right, and indemnify CPS Energy from all resulting losses, damages, costs, and expenses (including reasonable attorneys' fees). Company may settle, at its sole expense, any indemnified claim for which Company is responsible under this subsection. CPS Energy reserves the right to employ counsel at its own expense and participate in the defense and/or settlement of any claim.

## **33. Force Majeure**

Neither party will be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its control, including and without limitation: failures or fluctuations in electric power, heat, light, air conditioning or telecommunication equipment; strikes, lockouts, or other industrial disturbances; civil disturbances; fires; acts of God; acts of a public enemy; compliance with any regulations, order, or requirement of any



governmental body or agency; a pandemic declared by the World Health Organization or a public health emergency declared by the United States Secretary of Health and Human Services (HHS), in either case resulting in the United States Center for Disease Control and Prevention (CDC) or other governmental body or agency imposing restrictions which prevent a party's ability to perform; or inability to obtain transportation or necessary materials in the open market. The party subject to the force majeure event shall use its best efforts to eliminate and mitigate the consequences thereof. In the event of a force majeure event and without fault of the party so affected, CPS Energy may elect either to have the quantities so affected eliminated without liability or extend the period of delivery of the quantities or Services so affected by the period that the force majeure event effects persists. If a Force Majeure event results in an excusable delay that exceeds a total period of thirty (30) days, CPS Energy may terminate the all or part of the Order without liability.

### **34. Adherence to Laws**

Company and its representatives or agents agree that in carrying out their duties and responsibilities under the Purchase Order, they will neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any applicable laws, decrees, rules, or regulations in effect in the United States or applicable to the Purchase Order, or (ii) would have the effect of causing CPS Energy to be in violation of any laws, decrees, rules, or regulations in effect in the United States or applicable to the Purchase Order. Company and its representatives or agents shall protect and indemnify CPS Energy and CPS Energy officers and agents against any claim or liability arising from or based on any violation of the same.

### **35. Attorneys' Fees**

In the event either party brings any action for any relief, declaratory or otherwise, arising out of the Purchase Order, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses to the extent permitted by law, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **36. Applicable Law and Venue**

The Purchase Order is performable in San Antonio, Bexar County, Texas, and is governed by the laws of the State of Texas. Exclusive venue for all actions under the Purchase Order shall be in the state courts of the State of Texas, Bexar County, Texas.

### **37. Survival**

The following provisions shall survive expiration or termination of the Purchase Order: Confidential Information, Limitation of Liability, Indemnification, Insurance, Right to Audit, and any other provisions that by their nature are intended

to survive expiration or termination.

### **38. Severability**

If any term or provision of the Purchase Order is held to be unenforceable, the validity or enforceability of the remainder of the Purchase Order will not be affected. In the event an ambiguity or question of intent or interpretation arises, the Purchase Order shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of the Purchase Order.

### **39. Trademarks**

Neither party may use the other party's name, logo, trade or service marks, or similar indicia without the other party's prior written consent. Except as expressly stated herein, each party retains all right, title and interest in and to its intellectual property.

### **40. Insurance**

Company shall carry and keep in full force during the term of the Purchase Order, insurance considered reasonable in the industry of Company for such Goods or Services and sufficient to fully protect CPS Energy from all damages, claims, suits and/or judgments to include errors, omissions, violations, fees and penalties caused or claimed to have been caused by, or in connection with, the Goods or Services provided by the Purchase Order, Company, or its agents or employees.

Notwithstanding any limitation of liability provision that purports to limit company's liability for various types of damages, if CPS Energy has set forth minimum insurance requirements by attachment of an "Addendum A," titled "Minimum Insurance Requirements" to the Purchase Order, CPS Energy shall not be precluded from claiming recovery available to CPS Energy to the extent such claim is covered under any insurance as required in accordance with Addendum A.

### **41. Preservation of Contract Information.**

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the Purchase Order and contractor or vendor agrees that the contract can be terminated if contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

### **42. Certificate of Interested Parties.**

If required under the Texas Government Code, Company agrees to submit Form 1295, entitled "Certificate of Interested Parties" online to the Texas Ethics Commission pursuant to the provisions of Texas Government Code Section 2252.908 if a Purchase Order has a value of at least \$1 million dollars. Company understands and acknowledges that the Purchase Order will be void if Company fails to timely file this form.



#### 43. Firearm Anti-Discrimination Verification.

If Company has at least ten (10) full time employees and the value of this Purchase Order exceeds \$100,000, then Company hereby verifies that under the definitions set forth in Texas Government Code 2274, Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and Company will not discriminate during the Term of the Purchase Order against a firearm entity or firearm trade association.

#### 44. Prohibition on Boycotting Israel.

If Company has at least ten (10) full time employees and the value of this Agreement exceeds \$100,000, then Company hereby verifies that under the definitions set forth in Texas Government Code 2271, Company does not have a practice, policy, guidance, or directive to boycott Israel; and Company will not boycott Israel during the Term of the Agreement.

#### 45. Record Keeping.

Company shall maintain (and provide to CPS Energy upon written request) relevant business and accounting records to support invoices under this Purchase Order and proof of required permits and professional licenses, for a period of time

as required by law, but not for less than four (4) years following completion or termination of Purchase Order. Company's business and accounting records provided to CPS Energy pursuant to this provision shall be considered Confidential Information and subject to the confidentiality requirements set forth herein.

#### 46. Mini-Bid

If CPS Energy engages in contracts with multiple companies for the same Services as a result of competitive bidding, certain Services may be subject to a mini-bid process. Any Services to be mini-bid will be set forth in an applicable SOW or Purchase Order.

#### 47. Signatures

Any documents signed in connection with the Purchase Order may be signed in multiple counterparts which, taken together, will constitute one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures. Each person executing the Purchase Order warrants that he/she is authorized to do so on behalf of the party for whom he/she signs the Purchase Order.

IN WITNESS WHEREOF, the parties have executed these Terms and Conditions as of last date identified below.

**The City of San Antonio,  
acting by and through  
City Public Service Board**

**Company**  
Company Notice Address:

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Signature

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Signature

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Printed Name

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Printed Name

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Title

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Title

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Date

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Date