

# Small Business Market Transformation Program Guidebook

## Program Year 2021

prepared for



Xcel Energy  
Southwestern Public Service Company

by



Program website: <http://www.Xcelenergyefficiency.com/TX/Business/SBMTP/>

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## 1. Program Overview

### 1.a. Program Description

The Small Business Market Transformation Program (hereafter, “Program”) offers financial incentives for the installation of energy efficient lighting and lighting controls, HVAC equipment and cool roofs on the premises of eligible small business Customers served by Xcel Energy/Southwestern Public Service Company (the “Utility”). The Program is provided by the Utility as part of its commitment to help its customers become smarter energy consumers by reducing energy consumption and demand. It is administered by Frontier Energy.

This Guidebook presents Program participation guidelines applicable to Customers, Project Sponsors, and Projects submitted in the 2021 program year. All projects must be completed by November 15, 2021.

The Program participation process, in summary, is as follows:

1. Project Sponsors (which may be eligible Customers or other entities, such as equipment suppliers or contractors) register with [P3®](#), and use it to: determine customer and project eligibility, define and upload project specifications, calculate available incentives, and obtain approval from the Program Manager to move forward with the project.
2. The Program Manager reviews the incentive application, possibly conducts a pre-inspection to validate existing equipment to be replaced, and either approves the application or informs the Customer/Project Sponsor of the reasons for denial. Approvals indicate the incentive dollar amount reserved and the period of time the incentive reservation is valid.

The Project Sponsor completes installation of the proposed project and submits backup documentation and notice to the Program Manager of its completion. The Program Manager arranges an on-site inspection and, once approved, sends an incentive check directly to the Program Sponsor or Customers.

### 1.b. Program Management and Contacts

For questions about the status of your Project Sponsor or Project application, or incentive check, please contact:

**Charles Winkle**, Program Manager, Frontier Energy  
[cwinkle@frontierenergy.com](mailto:cwinkle@frontierenergy.com), (806) 681-2741

For technical questions related to use of P3®, please contact:

**Tracie Cooper**, Enertrek Analyst, Frontier Energy  
[tcooper@frontierenergy.com](mailto:tcooper@frontierenergy.com), (512) 372-8778 x136

For other questions, please contact:

**Steve Wiese**, Director of Implementation Services, Frontier Energy  
[swiese@frontierenergy.com](mailto:swiese@frontierenergy.com), (512) 372-8778 x118

Frontier Energy works on behalf of the Utility to implement the Program, and is referred to as the Program Manager. For questions regarding Frontier Energy' relationship to the Utility and the Program, please contact:

**Bryan Whitson, P.E.**, DSM Product Portfolio Manager, Xcel Energy  
[Bryan.J.Whitson@Xcelenergy.com](mailto:Bryan.J.Whitson@Xcelenergy.com), (806) 378-2887

### **1.c. Program Changes**

This document is intended to provide a detailed and consistent reference on Program design and implementation processes to market participants, but does not address every possible situation or complication which may arise during Program implementation. When instances requiring clarification are identified, the Program Manager will attempt to provide guidance consistent with Program intent as well as with other goals and priorities.

The Utility and the Program Manager reserve the right to change Program guidelines, processes, requirements, budgets, budget allocations and other Program details at any time without prior notice to market participants. However, the Utility and Program Manager will strive to provide timely notice of such changes.

## **2. Eligibility**

### **2.a. Project Sponsors**

Any entity meeting the participation requirements that installs eligible energy efficiency measures at an eligible facility or group of facilities is eligible to participate in the program as a Project Sponsor. Eligible Project Sponsors include:

- National or local energy service companies (ESCOs)
- National or local companies that provide energy-related services (e.g., contracting) or products (e.g., lighting, HVAC equipment)
- Commercial property developers or managers
- Individual customers who implement energy efficiency measures in their own facilities

The Program Manager may also perform the role of Project Sponsor for certain projects.

To ensure that the program incentive budget is allocated to projects that are likely to meet with success, all Project Sponsors will be required to demonstrate a commitment to fulfilling program objectives and competency in completing the proposed project. Project Sponsors will be required to submit the following information as part of the application process:

- A description of the Project Sponsor firm, including relevant experience, areas of expertise and references.
- Proof of applicable insurance, including: all statutorily required coverages, including Workers' Compensation; Commercial General Liability at \$1 million each occurrence, general aggregate; Excess Umbrella (including Bodily Injury and Property Damage combined) at \$1 million. Insurance policies should name as additional insured: Frontier Energy, 1515 S Capital of Texas Hwy, Suite 110, Austin TX 78756, 512-372-8778.

## **2.b. Facilities/Customer Sites**

Eligible facilities are defined as existing customer sites located in Xcel Energy's Texas service territory with non-residential electricity distribution service provided by Xcel Energy. A basic service area map is included at right; more detailed maps and a list of Texas communities served by Xcel Energy can be found in Appendix A.

In the Small Commercial Market Transformation Program, a small commercial customer shall mean a maximum demand at any individual meter of less than or equal to 100 kW, or a maximum aggregate demand less than or equal to 250 kW.

For the purposes of this Program, master-metered multi-family buildings are considered to be small commercial facilities, provided the maximum demand of that facility is less than 100 kW and that the aggregate demand of all of the customer's facilities is less than 250 kW. If the facility's (or facilities') demand exceeds these limits, then the multi-family building would qualify as a large commercial customer. (More information about incentives available to large commercial customers is available at [www.Xcelenergyefficiency.com](http://www.Xcelenergyefficiency.com).)

For individually-metered multi-family properties, each dwelling unit is considered as a separate residential account, and the common areas are considered as either small or large commercial accounts, depending upon their maximum demand, as described above. (More information about the Residential and Hard-To-Reach Standard Offer Program is available at [www.Xcelenergyefficiency.com](http://www.Xcelenergyefficiency.com).)



## **2.c. Projects**

A project is defined by a set of proposed or installed measures and estimated demand and energy savings included in a single application. Comprehensive projects that include a range of measure types are encouraged. All projects must meet the following requirements:

- One project may involve the installation of measures at more than one customer site, if the customers and sites are similar. For example, installation of measures for retail clothing stores may include more than one customer but may constitute a single project. Combining similar measures/sites into a single project reduces administrative costs for performing due-diligence review of applications and can streamline the project's M&V activities.
- For projects with incentives paid based on verified energy savings, measurement and verification of energy savings may continue for up to 12 months and carry into the following year.

Projects must be fully documented by the Project Sponsor to receive payment. Documentation requirements generally follow those outlined in the current version of the [Texas Technical Reference Manual \(TRM\)](#), but additional documentation may be requested by the Program Manager. Projects requiring electrical or building permits must submit evidence of the permit and evidence of having passed all required final inspection by the authority having jurisdiction.

## 2.d. Measures

Energy efficiency measures eligible for incentives under the Program include:

- Lighting and Lighting Controls
- HVAC
- Cool Roofs

Each eligible measure is described in the sections which follow.

### Lighting and Lighting Controls

Commercial lighting measures include most commercial lamp and fixture retrofits permitted by the current version of the [Texas Technical Reference Manual \(TRM\)](#). These include:

- Linear Fluorescent T5s, and High-Performance or Reduced Watt T8s. Linear fluorescent measures may also involve delamping with or without the use of reflectors.
- Fluorescent Electrodeless Induction lamps and fixtures
- Pulse-start (PSMH) and Ceramic Metal Halide (CMH) lamps, and other High Intensity Discharge (HID) lamps
- Light Emitting Diode (LED) screw-based lamps and hard-wired LED fixtures

*Compact Fluorescent Lamp (CFL) screw-based lamps and hard-wired pin-based fixtures are not eligible in this program.*

All qualifying lamps must be rated and approved by DLC version 3.0 or newer, or ENERGY STAR™. Non-qualifying lamps and fixtures may be approved through independent lab testing results. Contact the program manager for more information.

Energy savings for lighting measures are determined using Frontier Energy' Lighting Survey Form (LSF), which is provided in the Program Downloads section of the program website.

*Project Sponsors considering lighting retrofits should note that savings estimates for replacements of 40, 60, 75 and 100 W general service incandescent lamps in commercial applications are now subject to [Energy Independence and Security Act \(EISA\)](#) requirements that were previously applicable via the TRM only to residential lighting retrofits:*

- *When replacing a 100 W general service incandescent lamp, savings are calculated as if replacing a 72 W lamp.*
- *When replacing a 75 W lamp, savings are calculated as if replacing a 53 W lamp.*
- *When replacing a 60 W lamp, savings are calculated as if replacing a 43 W lamp.*
- *When replacing a 40 W lamp, savings are calculated as if replacing a 29 W lamp.*

*In 2021, these baseline wattage values will decrease further unless existing legislation is overturned or not enforced. These changes are reflected in the current Lighting Survey Form (LSF).<sup>1</sup>*

Lighting controls in retrofit applications would typically be installed where there is no existing control other than a manual switch (wall or circuit panel). Energy savings are determined by the methods described in the current version of the [Texas TRM](#).

## **HVAC**

Eligible HVAC system retrofits include the installation of air-cooled Split System and Single Packaged Air Conditioning (AC) and Heat Pump (HP) systems. These include:

- Packaged and Split air conditioners (DX or air-cooled)
- Packaged and Split heat pumps (air-cooled)
- System Type Conversions - retrofits involving a change from a chiller-based system to a packaged/split system
- Packaged terminal air conditioners and heat pumps
- Computer room air conditioners
- Room air conditioners

Energy savings for HVAC retrofits are determined using Frontier Energy' Air Conditioning Evaluator (ACE), which is provided in the Program Downloads section of the program website.

## **Cool Roofs**

The installation of an ENERGY STAR® roof decreases the roofing heat transfer coefficient and reduces the solar heat transmitted to the building space. During hours when cooling is required in the building, this measure decreases the cooling energy use. During hours when heating is required in the building, this measure may increase or decrease the heating energy use depending on the project.

Eligible roof retrofits must have a slope of 2:12 or less, and the roof product selected must have an initial solar reflectance of greater than or equal to 65% and must maintain solar reflectance of greater than or equal to 50% after three years of installation under normal conditions. Further requirements and savings calculation methods apply, as described in the current version of the [Texas TRM](#).

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<sup>1</sup> In the LSF, there are two types of incandescent fixture codes: 1) those that use the EISA reduced wattages, and 2) those that are exempt and use the full wattage. In 2016, the default incandescent fixture codes were the exempt lamps that used the full wattage (I60/1). Users were required to add other characters to get the EISA fixture code (I60/1-A, where the "A" stood for "adjusted"). In 2017, LSF was updated to change the EISA compliant lamp to the default I60/1 fixture code. The exempt fixtures now use a different format fixture code (I60S/1). The "S" stands for specialty, which matches the language from the Residential TRM.

Energy savings for cool roofs are determined using Frontier Energy' Roofing Survey, which is provided in the Program Downloads section of the program website.

### **Ineligible Equipment**

Plug load lighting retrofits are ineligible unless operated in an “always on” configuration. Compact Fluorescent Lamp (CFL) screw-based lamps and hard-wired pin-based fixtures are not eligible in this program.

### **Indemnification of Utility and Program Administrator**

Neither the Utility nor Frontier Energy is a manufacturer, supplier or guarantor of eligible energy efficiency measure components, nor a guarantor of Project Sponsors, and neither makes any representations or warranties of any nature, directly or indirectly, express or implied, as to performance of the Project Sponsor or of the reliability, performance, durability, condition or quality of the energy efficiency measure components selected, purchased, and installed at customer premises.

## ***2.e. Installation Practices***

### **Codes/Standards/Permits**

All installations must obtain appropriate local building permits and pass all required local inspections and must be in full compliance with the National Electric Code and all other applicable federal, state, and local codes and standards.

### **Manufacturer's Instructions**

All equipment must be installed and maintained in accordance with manufacturer's instructions.

### **Best Practices**

All aspects of system design and installation shall conform with industry best practices as regionally appropriate.

### **Warranties**

Manufacturer warranties must be provided with all installed equipment.

## ***2.f. Free Ridership***

Incentive eligibility is limited to proposed projects that are wholly contingent upon a commitment of incentive funding. Projects contracted without the express written assumption of incentive funding availability are ineligible to receive such funding, as are projects for which construction has begun prior to the commitment of incentive funds.

## **3. Incentive Design and Delivery**

### ***3.a. Total Funding***

In Program Year 2021, the total amount of incentive funding available to Project Sponsors is approximately **\$250,000**.

This value may vary depending on the mix of measures that apply and are accepted. The program plan assumes approximately 90% of program funds are allocated to lighting projects.

The Program Manager reserves the right to limit funding of non-lighting projects to ensure the program achieves contracted energy savings goals.

### **3.b. Incentive Levels**

Incentive levels for Program Year 2021 are as follows:

- Lighting projects: \$0.15/kWh savings
- HVAC projects: \$0.40/kWh savings
- Cool roof projects: \$0.40/kWh savings

The final incentive for any project will be determined following verification of the installed system by a program inspector. Systems not meeting all Program requirements are ineligible for incentives.

### **3.c. Incentive Assignments**

The incentive may be assigned by the Project Sponsor to the Project Sponsor, Customer, equipment supplier, or other third party with a material interest in the project.

### **3.d. First-Come, First-Served Policy**

Incentive funding is offered to eligible Project Sponsors and Projects with complete applications on a first-come, first-served basis, subject to the limits on participation described above.

### **3.e. Incentive Commitment and Expiration**

From the date of pre-approval, projects must be completed within 90 days or by November 15, whichever comes first. Frontier reserves the right to revoke funding committed to projects that are not completed prior to the incentive expiration date.

### **3.f. Other Utility Programs**

Participation in this Program does not affect a Customer's eligibility to participate in other Utility-sponsored energy efficiency/conservation programs.

## **4. Participation Process**

### **4.a. Overview**

Project Sponsors interact with the Program primarily via P3<sup>®</sup> (the Program Portfolio Portal). Frontier Energy has designed P3<sup>®</sup> to accommodate certain process steps common to most projects. This section provides a high level overview of these process steps.

Participating in the Xcel Small Commercial Market Transformation Program is comprised of distinct stages. Below are the stages to create a Small Commercial project and move it through the workflow process:

1. Project Sponsor Enrollment
2. Project Initiation and Submittal
3. Pre-Approval
4. Installation, Completion and Submittal
5. Final Inspections and Approval
6. Payment

The following sections provide further detail on each process step. Additional detail may be found in the P3® User's Guide available to Project Sponsors upon enrollment.

#### **4.b. Detailed Process Steps**

##### **1. Project Sponsor Enrollment**

Project Sponsors begin the enrollment process by navigating to the P3 URL [sps.p3.enertrek.com](https://sps.p3.enertrek.com) and clicking the Create Account link. Registration begins by providing basic information and a password, after which the system generates a verification email which is sent to the email address entered by the enrollee. Clicking a link in the verification email enables the user to log in and create a new market actor profile, which may require uploads of certain company information, such as a W9 form, a current certificate of insurance, and/or other information. Once enrolled, these uploaded documents may be downloaded, edited, deleted, and re-uploaded by the Project Sponsor, in order to maintain current documentation of the Project Sponsor's eligibility to participate.

Once the market actor profile is complete, the Project Sponsor must complete an enrollment application for the Xcel Small Commercial Market Transformation Program. When the enrollment application is submitted, the application will be reviewed and the Project Sponsor will be notified via email upon approval or denial. Once approved, all Project Sponsors must sign and submit the Project Sponsor Agreement and other documentation referenced therein before they will be able to initiate and submit projects in the system.

##### **2. Project Initiation and Submittal**

Initiating a project requires the Project Sponsor to select the project type and enter all information required to create the project. This typically consists of the following information:

- Project name
- Contact name and contact information
- Estimated start and completion dates
- Customer information
- Premise information
- Measure survey forms
- Other project documents
- Notes

When all required information has been uploaded, the Project Sponsor submits the project for review.

##### **3. Pre-Approval**

Once an administrator has reviewed the project details, the project will be approved, denied, or sent back for more information. This is also where the Pre-Inspection generally takes place. The Program Manager may schedule a Pre-Inspection to verify eligibility of the project, savings and incentive estimates, before approving the project. Once pre-approval is granted, the Project Sponsor may begin project-related work.

##### **4. Installation, Completion and Submittal**

The Project Sponsor begins installation of the contracted energy efficiency measures. During the work completion pending stage, all project-related work is completed and, if necessary, new

Survey Forms are uploaded to correctly represent the measures that were implemented. After confirmation that Project measures for each premise are completed, and all required documentation has been uploaded, the Project Sponsor submits the work for final approval.

## **5. Final Inspections and Approval**

The Program Manager may schedule a final inspection to verify project details prior to final approval. The Project is then reviewed by the Program Administrator and either approved, sent back for corrections or denied. The Project Sponsor will receive an email indicating the status and any additional notes if deemed necessary.

## **6. Payment**

Once a project has been approved it will be invoiced by the Program Administrator and payment made. Project status will be indicated as Payment Pending (Invoicing) and Paid. Market Actor will receive email notification once Payment has been made. Payment delivery may require up to 6 weeks from the date marked as Payment Pending.

### ***4.c. Differences Between Pre-Applications and Final Applications***

Changes which decrease the total savings of a project will reduce the incentive amount. Changes which increase the total capacity of a project may increase the incentive amount, subject to availability at the time the Program Manager is notified of the change. Project Sponsors are encouraged to clearly communicate any such changes in advance with the Program Manager to determine the effect, if any, on project eligibility and/or the Customer incentive amount.

## **5. Quality Control / Quality Assurance**

The program design employs pre- and post-inspections as well as non-conformance procedures for investigating the root causes of any failed inspections. Handled on a one-by-one basis, consequences may include a reduction/refusal of incentive payment. In instances where incorrect information was deliberately provided by a contractor or distributor, those businesses may be suspended or expelled from the program.

Applicants with projects that are found to be unlikely to produce estimated savings through the pre-inspection process will be notified of the issues regarding their project design or documentation and will be allowed to re-submit or amend their application.

Applicants with projects that fail the post-installation inspections will be required to correct the problems identified and either submit evidence of correction or schedule a second inspection, at the Program Manager's discretion. Project Sponsors that fail to correct deficiencies in a timely manner may be removed from the Program and/or be denied an incentive.

## **6. Project Sponsor Performance Standards**

### ***6.a. Project Sponsor Standing***

All Project Sponsors must maintain good standing with the Program. Project Sponsors in good standing are defined as those:

- Who have attended all required Project Sponsor meetings, technical training sessions and other mandatory events;

- Whose three most recent installations subject to a Program inspection have passed those inspections on the first attempt;
- Who have maintained and documented to the Program Manager proper and current licensure, certificates, insurance, and other eligibility requirements;
- Who have provided all required progress reports in a timely fashion;
- Who have completed more than 80% of approved projects within the applicable incentive reservation period; and,
- Who work in good faith with the Program Manager to resolve any Customer disputes or complaints and to change business practices as appropriate to reduce the likelihood of future disputes or complaints.

Project Sponsors who are not in good standing may be removed from the Program. They will be notified by the Program Manager of their status and will be required to work with the Program Manager to develop a plan to correct the problem(s). A lack of progress on this plan may lead to disqualification.

#### ***6.b. Project Sponsor Disqualification***

All Project Sponsors are required to maintain proper licensure, certificates, insurance, and other eligibility requirements as stated in the online registration system. The Program Manager may also determine and maintain metrics of Project Sponsor performance which may be used to disqualify Project Sponsors from participation in the Program. Project Sponsor performance metrics which indicate potential grounds for disqualification may include, but are not limited to:

- High rates of Customer complaints handled by Program Management staff;
- High rates of submitting incomplete or ineligible project applications;
- Low rates of passing Program inspections;
- Low rates of completing pre-approved projects within the incentive reservation period.

#### ***6.c. Dispute Resolution***

Unresolved disputes hurt the success of the Program. In this respect, the overriding objective of all the participants in the Program is to achieve 100% Customer satisfaction and to satisfactorily resolve all disputes at the lowest level possible.

Disputes, concerns or complaints arising from Customers should, in general, be addressed at the lowest level possible. Most of the time, this means the problem should be resolved between the Project Sponsor and Customer.

Issues that cannot be addressed by the Project Sponsor and Customer and are brought to the attention of the Program Manager may be addressed by the Program Manager. The Program Manager's first level response shall be to document the date and nature of the complaint and the specific details. This shall include contact information, name, address, phone number and/or email of all parties involved. The Program Manager will maintain all contact and status records. This will open the issue; next an appropriate action step must be completed for it to be resolved and closed. The Program Manager shall be responsible to delegate or take action to resolve the issue within 2 weeks.

Disputes, concerns or complaints arising between Project Sponsors and the Program Manager shall follow a similar path. The Program Manager's first level response shall be to document the date and nature of the complaint and the specific details. Again, this will include contact information, name, address, phone number, and/or email of all parties involved. The Program Manager will maintain all contact and status records. This will open the issue; next an appropriate action step must be completed for it to be resolved and closed. The Program Manager shall be responsible to delegate or act to resolve the issue within 2 weeks.

Disputes that cannot be resolved or have future action agreed to by all parties during initial contact may be brought to the second level or to the Energy Efficiency Program Manager.

## **7. Technical Training/Technical Assistance**

The Program Manager may provide and support technical training and technical assistance opportunities to Project Sponsors, local code officials, and potential Customers. In addition, the Program Manager may conduct periodic Program update conference calls for Project Sponsors and periodic Customer information sessions for Customers. Attendance by Project Sponsors at certain of these events may be mandatory. Details of available training opportunities will be made available as they arise.

## **8. Additional Considerations**

### ***8.a. Tax Considerations***

Customers should consult a tax professional regarding taxation and potential tax benefits of any energy efficiency investments made, such as eligibility of their project for federal tax credits, treatment of incentive funds provided by the Utility, depreciation and all other tax matters. Neither the Utility nor the Program Manager make any representation to Customers or Project Sponsors as to these matters.

## Appendix A. Xcel Energy Texas Communities Served

In Texas, Xcel Energy serves 261,896 electricity customers. To see the list of communities in which we provide electricity, view the [Texas Territory Electric Service Area \(PDF\)](#) and refer to pages IV-3 (“Territory”). Xcel Energy provides electric service to the following cities and unincorporated (U) communities.

Abernathy	Happy	Ropesville
Adrian	Hart	Sanford
Amarillo	Hereford	Seagraves
Amherst	Higgins	Seminole
Anton	Idalou	Shallowater
Booker	Kress	Silverton
Borger	Lake Tanglewood	Skellytown
Bovina	LeFors	Slaton
Cactus	Levelland	Spearman
Canadian	Littlefield	Springlake
Canyon	Lockney	Stinnett
Channing	Lorenzo	Stratford
Claude	McLean	Sudan
Crosbyton	Meadow	Sunray
Dalhart	Miami	Tahoka
Darrouzett	Mobeetie	Timbercreek
Denver City	Morton	Vega
Dimmitt	Muleshoe	Wellman
Dumas	New Deal	Wheeler
Earth	Olton	White Deer
Farwell	Palisades	Whiteface
Floydada	Pampa	Wilson
Follett	Panhandle	Wolfforth
Friona	Perryton	
Fritch	Petersburg	
Groom	Plainview	
Gruver	Post	
Hale Center	Ralls	



## **Appendix B. Project Sponsor Agreement**



**PROJECT SPONSOR AGREEMENT  
XCEL ENERGY TEXAS SMALL BUSINESS MARKET TRANSFORMATION PROGRAM  
IMPLEMENTED BY FRONTIER ENERGY  
PROGRAM YEAR 2021**

1. This Participation Agreement is between Frontier Energy, Inc., hereinafter known as Frontier, and \_\_\_\_\_, hereinafter known as Project Sponsor (each, the “Party”, together, the “Parties”), who seeks to participate in the 2021 Xcel Energy Texas Small Business Market Transformation Program (the “Program”).
  - 1.1.1. Whereas Frontier has been engaged by Xcel Energy Texas (Xcel), to deliver energy efficiency services to qualified Xcel electric distribution customers via the Programs; and
  - 1.1.2. Whereas, Frontier has an existing contract (the “Contract”) with Xcel; and
  - 1.1.3. Whereas, Frontier desires to provide Project Sponsor with incentive payments for eligible energy efficiency measures and services installed or performed at eligible residential properties (“Eligible Premises”) as described in the current Program Guidebook, and Project Sponsor desires access to such incentives:
2. Referenced Documents. All Work shall be accomplished in accordance with this Participation Agreement, the current Program Guidebook and all other program information, documents, forms, websites, online tracking systems, updates provided by Frontier or Xcel staff to Project Sponsor, and the current version of the Texas TRM.
3. Term. The term of this Agreement shall end on December 31, 2021, unless extended per mutual written consent by Frontier and Project Sponsor. All Authorized Work shall be completed by November 30, 2021, unless a modified timetable is agreed to in writing by the Parties.
4. Frontier Energy. Frontier is solely responsible for directing Project Sponsor for all services required for the implementation of the Programs in conformance with established guidelines (“Authorized Work”) and may, at its sole discretion, adjust any compensation requested to comply with the Program guidelines.
5. Definitions:
  - 5.1. “Affiliate” – The following definition of "Affiliate" is adapted from Public Utility Commission Substantive Rule §25.181(c)(1) should be used to determine whether an affiliate relationship exists between a Project Sponsor and any other business or organization. An "Affiliate" is defined as:
    - 5.1.1. A person who directly or indirectly owns or holds at least 5.0% of the voting securities of another business or organization;
    - 5.1.2. A person in a chain of successive ownership of at least 5.0% of the voting securities of another business or organization;
    - 5.1.3. A corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by another business or organization;
    - 5.1.4. A corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
    - 5.1.5. A person who directly or indirectly owns or controls at least 5.0% of the voting securities of another business or organization; or

- 5.1.6. A person in a chain of successive ownership of at least 5.0% of the voting securities of another business or organization; or
  - 5.1.7. A person who is an officer or director of another business or organization in a chain of successive ownership of at least 5.0% of the voting securities of another business or organization;
  - 5.1.8. A person who exercises substantial influence or control over the policies and actions of another business or organization;
  - 5.1.9. A person over which another business or organization exercises the control described in subparagraph (F) of this paragraph;
  - 5.1.10. A person who exercises common control over another business or organization, where "exercising common control over another business or organization" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of another business or organization, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or
  - 5.1.11. A person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of another business or organization even though neither person may qualify as an affiliate individually.
- 5.2. "Authorized Work" - All services performed by the Project Sponsor at an Eligible Premise after authorization by Frontier and required for the implementation of the Programs in conformance with established guidelines.
- 5.3. "Baseline" means, for the purposes of determining Peak Demand Savings and Energy Savings for equipment replacement projects implemented under the SOP, the energy consumed by equipment with efficiency levels that meet the applicable current federal standards and reflects current market conditions. Baseline is defined as a relevant condition that would have existed in the absence of the energy efficiency project or Programs being implemented, including energy consumption that would have occurred. Baselines are used to calculate program-related Peak Demand Savings and Energy Savings. Baselines can be defined as either project-specific baselines or performance Baselines for residential measures are defined in the Technical Reference Manual (the "TRM").
- 5.4. "Contract Documents" shall mean i) Project Sponsor's approved Enrollment Application; ii) the current Program Guidebook; iii) a copy of the Project Sponsor's current insurance certificate; iv) the Project Sponsor's Vendor Certification Form, W-9 Form, and ACH setup form/cancelled check; v) this Agreement; and any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.
- 5.5. "Customer Acknowledgments or Certificates" must be included in each monthly report submitted by the Project Sponsor. Among other things, the certification provides the Project Sponsor with a release for Xcel, allowing energy use and billing information to be provided to the Project Sponsor and provides Xcel with permission to inspect installations.
- 5.6. "Deemed Savings" shall mean a pre-determined, validated estimate of Peak Demand Savings and Energy Savings attributable to a Measure in a particular type of application, as filed in the current version of the Technical Reference Manual (the "TRM").

- 5.7. “Energy Savings” shall mean a pre-determined, validated estimate of Energy Savings attributable to a Measure in a particular type of application, as filed in the TRM.
- 5.8. “Estimated Useful Life” (“EUL”) – The average amount of time in years that an Eligible Energy Efficiency Measure is estimated to function when installed new and assuming routine maintenance is practiced, as defined in the current version of the Texas TRM.
- 5.9. “Host Customer” shall mean a small business distribution system customer of Xcel that owns or leases facilities at a Project Site or sites and that has entered into a Host Customer Agreement with the Project Sponsor or is acting as its own Project Sponsor for the installation of Measures as a part of the Project. For the purposes of this Agreement, a small business customer shall mean a Xcel distribution customer with one or more metered facilities, none individually exceeding 100 kW demand nor together exceeding 250 kW demand in the aggregate; a customer’s load within a service territory that is under common ownership shall be combined.
- 5.10. “Host Customer Agreement” shall mean the agreement between the Host Customer and the Project Sponsor that specifies the rights and obligations of each party with respect to the installation of the Measures and other related and/or unrelated matters at the Project Site. In the case of a multifamily project, the agreement is between the Project Sponsor and the property management/owner.
- 5.11. “Measure” shall mean equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both.
- 5.12. “Peak Demand Savings” shall mean a pre-determined, validated estimate of Peak Demand Savings attributable to a Measure in a particular type of application, as filed in the TRM.
- 5.13. “Project” shall mean an energy efficiency measure or combination of measures installed under this Agreement that results in both a reduction in customers’ electric energy consumption and peak demand, and energy costs.
- 5.14. “Project Application” – A set of Eligible Energy Efficiency Measures proposed for installation and payment of incentives.
- 5.15. “Project Site” shall mean the location of a Host Customer's facilities where approved Measures will be installed and from which Peak Demand Savings and Energy Savings will be obtained.
- 5.16. “Project Sponsor” shall mean any organization, group, or individual who contracts with Frontier to provide Peak Demand Savings and Energy Savings under the SOP.
- 5.17. “Prudent Electrical Practices” shall mean those practices, methods, standards and equipment commonly used in prudent electrical engineering and operations to operate electrical equipment lawfully and with safety, dependability and efficiency and in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal, state and local codes provided, however, that in the event of a conflict, the applicable federal, state or local code shall govern.
- 5.18. “Technical Reference Manual” or “TRM” refers to the current version of the common reference document for estimating Peak Demand Savings and Energy Savings resulting from the

installation of energy efficiency measures installed. This document is a compilation of deemed savings values approved by the Public Utility Commission of Texas.

5.19. Texas TRM – The current version of the Texas Technical Reference Manual as published and approved by the Public Utility Commission of Texas.

6. Project Sponsor Acknowledgements: By executing this Agreement, the Project Sponsor acknowledges:

6.1. That it has become familiar with all Program rules and information and all applicable laws and regulations prior to submission of its Initial Application;

6.2. That it meets or exceeds all of the following qualifications required for participation in the Programs, including that the Project Sponsor:

6.2.1. Possesses and can demonstrate experience relevant to program participation and to implementation of Authorized Work at Eligible Premises;

6.2.2. Can produce evidence of a good credit rating;

6.2.3. Can produce evidence of financial strength and capability through SEC form 10-K or financial statements;

6.2.4. Can produce evidence of possession of all applicable licenses required under state law and local building codes for performing Authorized Work;

6.2.5. Can produce evidence of possession of all building permits required by governing jurisdictions related to the performance of Authorized Work; and,

6.2.6. Can produce the proof of insurance required by this Agreement.

6.3. Project Sponsor acknowledges that all Authorized Work will meet all regulatory requirements, including:

6.3.1. The Authorized Work results in a reduction in purchased energy consumption and/or peak demand for the end-use customer;

6.3.2. The Authorized Work will result in consistent and predictable Peak Demand Savings and/or Energy Savings over the EUL of the energy efficiency measures installed;

6.3.3. The Authorized Work discloses any potential adverse environmental or health effects associated with the energy efficiency measures to be installed;

6.3.4. The Authorized Work does not achieve demand reduction by eliminating an existing function or shutting down a facility or operation, or result in building vacancies or the re-location of existing operations to locations outside of the facility or area served by Xcel;

6.3.5. Measures installed pursuant to the Authorized Work would not be installed in the absence of the Programs and the incentives offered;

6.3.6. The Authorized Work does not result in negative environmental or health effects, including effects that result from improper disposal of equipment and materials; and

6.3.7. The Authorized Work does not involve the installation of self-generation or cogeneration equipment, but may involve renewable DSM technologies.

6.4. Project Sponsor acknowledges that it received a copy of the Program Guidebook prior to submission of any Project Application, that the Program Guidebook constitutes a part of this Agreement, and that the terms of the Program Guidebook are incorporated into this Agreement

as if set forth herein. Project Sponsor represents and affirms that its participation in the SOP has at all times been in compliance with the procedures and conditions set forth in the Program Guidebook and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the fact that such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the Programs as described in the Program Guidebook and that failure to meet the qualifications therein may be treated as a breach of this Agreement.

- 6.5. Procedures or conditions set forth in the Program Guidebook may only be waived or modified by written agreement of the parties. Any such agreement shall be attached hereto and incorporated herein for all purposes.
- 6.6. Host Customer Agreement and Customer Acknowledgement. The Project Sponsor is solely responsible for entering into a Host Customer Agreement(s) with the Host Customer(s) as appropriate for implementation of the Project. The Host Customer must execute a Host Customer Agreement prior to Project Sponsor beginning installation of Measures at the Project Site.
  - 6.6.1. Incentive payments will not be authorized without proper completion of the Host Customer Agreement as provided for in the Contract Documents.
  - 6.6.2. To the extent possible, Host Customer Agreements will be kept confidential.
  - 6.6.3. The Project Sponsor shall execute the standard Host Customer Agreement, which is available on the program website.
  - 6.6.4. After installation of Measures, Project Sponsor must obtain an acknowledgement from each Host Customer indicating that the Measures contracted for were actually installed at the Project Site. The acknowledgement should be in the form of the Customer Acknowledgement set forth on the Xcel website ([www.Xcelefficiency.com](http://www.Xcelefficiency.com)). The Customer Acknowledgement(s) should be submitted along with other required documentation. If a Host Customer refuses to sign the Customer Acknowledgement, Project Sponsor may request, at Project Sponsor's expense, that Frontier perform an inspection of the Project Site. Frontier shall not make final payment of incentives unless and until all documentation has been captured in accordance with the terms of the Contract Documents.
- 6.7. Project Implementation. Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Contract Documents.
  - 6.7.1. Measures shall be designed, constructed and installed in a good and workmanlike manner only with materials and equipment of appropriate quality, and, in any event, in accordance with Prudent Electrical Practices.
  - 6.7.2. Project Sponsors treating multiple Project Sites must complete and submit projects and all required documentation to Frontier in a timely manner.
  - 6.7.3. Project Sponsor shall notify Xcel of homes that measures are to be installed by submitting the home information into the Work Schedule. Each project submitted into the Work Schedule is subject to a pre-inspection by Frontier or its agent(s). Once a project has been input into the database, Project Sponsor will be contacted to schedule pre-installation inspections. During the program year, Frontier will monitor the number of projects implemented by each Project Sponsor, and will attempt to conduct a sufficient number of inspections to maintain a targeted percentage.

- 6.7.4. Project Sponsor shall notify Xcel of Measure installation at each Project Site by submitting the project documenting the Measures installed at the Project Site. Each project must be submitted electronically along with all required forms, photos, and other documentation. Within forty-five (45) days of receipt of the submitted project, Frontier may complete a random sample inspection of the Measure installations at the Project Site(s). This inspection shall be used to determine whether the Measures were installed and are capable of performing their intended function of producing Peak Demand Savings and Energy Savings. If Xcel and Frontier reasonably determine that the Measures at the Project Site(s) have been installed, tested and inspected to the extent required by Xcel and found to be capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, the invoice will be paid as submitted. The savings attributable to the Measures documented in the approved invoice will be used for purposes of calculating the Incentive Payment.
- 6.7.5. Frontier or a third-party evaluator may inspect measures or a sample of measures installed as part of a Project. These inspections shall be used to determine whether the Measures were installed and are capable of performing their intended function of producing Peak Demand Savings and Energy Savings. If Frontier determines that the Measures at the Project Site have been installed, tested and inspected to the extent required and found to be capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, the project will be approved as submitted. If Frontier determines that any of the Measures installed at the Project Site are not capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, a reduction of savings may be required for purposes of calculating the Incentive Payment.
- 6.7.6. Any review, inspection, or acceptance by Frontier, its designee or any third-party evaluator of any Project Site or of the design, construction, installation, operation and maintenance of the Measures is solely for the information of Frontier and Xcel. In performing any such inspection or review or in accepting the Measures, Frontier makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by Project Sponsor or their compatibility with the Host Customer's facilities.
- 6.7.7. Project Sponsors must utilize their own resources to identify eligible customers, and shall verify income eligibility of Hard-to-Reach customers by using eligibility verification procedures required by the Public Utility Commission of Texas.
- 6.7.8. Project Sponsor shall verify that the customer premise is in the electric distribution service territory of Xcel by obtaining the ESI ID number or meter ID number from the customer and inputting this number into the Program database.
- 6.7.9. Project Sponsor will enter all required customer information, including income eligibility information in the case of Hard-to-Reach program participants, into the Program database, as well as any notes or comments from the screening process, to create a Project Application, into the Program database.
- 6.7.10. Project Sponsor will contact customer to inform them to expect communication from various persons or entities that will assess the home for eligible Measures, install Measures, and perform post-installation inspection. In addition, Project Sponsor will facilitate scheduling of assessments, installations, or inspections if necessary.

- 6.7.11. Project Sponsor shall conduct pre- and post- blower door and/or duct blaster testing in support of applicable Measures, and shall be required to submit current (within 2 years) manufacturer's calibration certificates for blower door equipment.
- 6.7.12. Project Sponsor is responsible for verifying that the health and safety of customers will not be impacted by the installation of any of the above measures. This may include, but is not limited to, verifying carbon monoxide levels and minimum required ventilation rates.
- 6.7.13. Project Sponsor shall update Measure installation data, a copy of the Customer Acknowledgement Form, and all other supporting data, pre- and post- photos, and other documentation required, using the Program database for each home as soon as Measures are installed.
7. Incentives. Incentives available are as listed in the current Program Guidebook.
8. Incentive Budget Limits. Each Project Sponsor will be limited to capturing a portion of the total incentive budget available to all Project Sponsors. These limits will be posted on the online platform operated by Frontier, and may be updated over the program year by Frontier based on contractor performance and other factors.
9. Payment of Incentives. Frontier will pay Project Sponsors for approved incentives within 30 days after a project is completed and approved by program staff. Any amounts over or underpaid to Project Sponsors will be subject to reconciliation on the next invoice, or in the case of work completed near the end of Agreement Term, within 30 days, after a project is completed and inspected, or after Frontier receives reimbursement from Xcel.
10. Sales Taxes. Participating Project Sponsors are responsible for payment of all sales taxes. Applicable state and local sales tax should be added to the prices submitted for all measures and services.
11. Reconciliation of Payment. Frontier shall reconcile the total amount due on the monthly report against any adjustments to amounts payable for previous invoices. Any amount previously over or under paid shall be credited against or added to the amount requested on the current invoice, or in the case of an invoice submitted near the end of Agreement Term, within thirty (30) calendar days, after a project is completed and inspected, or after Frontier receives reimbursement from Xcel.
12. Independence of Project Sponsors. Project Sponsor shall be fully responsible for its own acts and omissions in addition to the acts and omissions of its affiliates, directors, officers, employees, and subcontractors, and shall be specifically responsible for sufficient and competent supervision and inspection to assure compliance in every respect with Participation Agreement requirements. Frontier shall not be responsible for the payment of any sums to any of the Project Sponsor's subcontractors or suppliers.
13. Standards, Codes, Laws and Regulations. Project Sponsors shall comply with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal Governmental Authority having jurisdiction over the Work covered by this Agreement.
14. Background Checks. Project Sponsors shall be responsible for conducting criminal background checks on all personnel who will be working in the home or on the property of any Xcel customer who is participating in the Programs. Any records matching any assigned personnel to the Texas Department of Public Safety criminal history file, sex offender registration or other name- based files shall be reported immediately to Frontier and Xcel. Prior to engaging in any work on the Programs, Project Sponsors shall provide a copy of all assigned personnel's Texas Driver's License or other government-issued photo identification to Frontier.

15. Insurance. Project Sponsor represents and agrees that it and its subcontractors will carry and provide proof of all required insurance as stated in the Program Guidebook throughout the term of the Agreement.
16. Termination for Cause. If Project Sponsor fails to perform a material term or condition of this Agreement, and fails to cure such default within 30 calendar days after receipt of written Notice of Default and Termination from Frontier, Frontier may declare this Agreement terminated, effective on the last day of said notice period ("Termination Date"). Project Sponsor shall be paid for all undisputed work performed prior to the Termination Date, which payment shall not be unreasonably withheld. Grounds for termination for cause include, but are not limited, to the following situations:
  - 16.1. the failure, refusal or inability of the Project Sponsor to perform any material aspect of the Authorized Work in accordance with the Scope of Work (except as specified in Section 32, "Force Majeure"); or
  - 16.2. Project Sponsor has become insolvent, has exhibited a pattern of failure to pay its bills, or has had checks for payment of its bills returned from suppliers and subcontractors due to insufficient funds; or
  - 16.3. a court of law has enjoined Project Sponsor from performing the Authorized Work; or
  - 16.4. In Frontier's reasonable judgment, the Authorized Work will not be completed within the specified time and/or budget and Frontier has reasonably requested Project Sponsor to take steps necessary to accomplish the required progress and completion and/or cost containment, and Project Sponsor has failed to do so; or
  - 16.5. Project Sponsor has misused the corporate name, brand, or logo associated with Xcel or Frontier.
17. Termination for Convenience. Notwithstanding anything to the contrary, Frontier reserves the right to terminate or suspend this contract at any time, for any reason. If, however, after consulting with Frontier, it is Project Sponsor's opinion that any of the Work is in a state such that interruption thereof would result in substantially increased costs upon resumption of the Work, Project Sponsor, with Frontier's written concurrence, may complete that portion of the Work.

Project Sponsor shall resume any of the Work so interrupted, suspended or delayed when directed to do so by Frontier, provided, however, that the schedule and the time for performance shall be revised by a period of time reasonably necessary to overcome the effect of the interruption, suspension or delay. Other provisions of this Agreement, such as the delivery dates and terms of payment, will also be adjusted if necessary and as appropriate. Project Sponsor shall make every reasonable effort to minimize any additional expense pursuant to this Section.

Project Sponsor may terminate the terms of this agreement without cause upon forty-five (45) days written notice to Frontier. Failure to provide such notice will maintain the agreement in full effect with all provisions included herein.
18. Reporting. Project Sponsor will provide data and required documentation, either by inputting or uploading required documents to the Program database, as specified in the Scope of Work.
19. Records and Audit. Project Sponsor's records, correspondence, procedures and practices and any other supporting evidence relating to this Agreement (all of the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Frontier or its authorized representative to the extent necessary to adequately permit evaluation and verification of customer eligibility forms, income documentation, customer



agreement, and other Program documentation. Frontier or its authorized representative shall have access to said Records from the effective date of this Agreement, for the duration of the Work and until three (3) years after the date of final payment by Frontier to Project Sponsor pursuant to this Agreement.

- 20. Use of Name. Project Sponsor may not use Xcel’s or Frontier’s corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including soliciting customers for participation in its project, without Xcel’s or Frontier’s prior written consent.\_
- 21. Publicity. Information relating to this Agreement may be released for publication and/or advertising only with the prior written approval of Frontier. Project Sponsor is expressly prohibited from using Xcel’s or Frontier’s name in any publication, advertising, or promotion without written approval Xcel’s and Frontier’ prior written consent.
- 22. Indemnity. Project Sponsor and any lower-tier subcontractor agrees to indemnify, defend, and hold harmless, Frontier and Xcel, their officers, directors, employees, agents and independent contractors, and each of Frontier’s and Xcel’s affiliates and each of their respective officers, directors, employees, agents and independent contractors from and against any and all liabilities resulting from third party claims for loss, damage, or injury to persons or property (“Liabilities”) arising from the negligence or misconduct of Project Sponsor, its affiliates, directors, officers, employees, and subcontractors.
- 23. Infringement Protection. Project Sponsor represents to Frontier and Xcel that the material prepared under this Agreement will not infringe on the copyright, patent, or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity. Project Sponsor agrees to indemnify and hold Frontier and Xcel, harmless from and against all liabilities, costs and damages arising out of such infringement, as well as claims of infringement. Project Sponsor further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim, and pay any reasonable attorney’s fees incurred by Frontier or Xcel in defense of such a suit.
- 24. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

Frontier:

Steve Wiese  
 Director of Implementation Services  
 Frontier Energy  
 1515 S Capital of Texas Hwy  
 Ste. 110Street  
 Austin, TX 78746-6544

Project Sponsor:

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Street Address 1: \_\_\_\_\_  
 Address 2: \_\_\_\_\_  
 City/State/ZIP: \_\_\_\_\_

Such information may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

- 25. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the Authorized Work, and there shall be no modification or waiver hereof except by writing, signed by the party asserted to be bound thereby. There are no oral representations or agreements between the parties.\_



- 26. Time is of the Essence. The Parties hereby acknowledge that time is of the essence in performing the duties under this Agreement. Failure to comply with stated deadlines or milestones may result in termination of this Agreement, payments being withheld, or other contractual modifications.
- 27. No Waiver. The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in duly force and effect.
- 28. Applicable Law. This Agreement shall be governed by the laws of the State of Texas, without application of its conflict of laws provisions. Venue shall lie exclusively in the state courts of Harris County, Texas, unless such cause of action is within the jurisdiction of the Public Utility Commission of Texas (PUCT), in which case the proper venue and jurisdiction will be at the PUCT.
- 29. Assignment Prohibited. This Agreement may not be assigned without the written consent of Frontier. Arrangements between Project Sponsors and subcontractors which result in the assumption of substantial contractual obligations by the Project Sponsor shall be considered as an assignment, and shall be subject to the provisions of this paragraph.
- 30. Modification. This Agreement may not be modified except by written agreement.
- 31. Severability. If any term or provision of this Participation Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Participation Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.
- 32. Force Majeure. Neither Party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure." As used in this Section, Force Majeure is defined as: Acts of war and acts of God such as earthquakes, floods and other natural disasters, or actions of others, including but not limited to strikes, lockouts or other industrial disturbance, not within the control or arising from the fault of the Party claiming Force Majeure.
- 33. No Joint Enterprise. Each party shall perform its obligations under this Agreement as an independent Project Sponsor, and nothing contained herein shall be deemed to create, nor does it create, any association, partnership, joint venture, or relationship of principal and agent or master and servant between the parties, or to provide either party with the right, power or authority, whether express or implied, to create any duty or obligation on behalf of the other party.
- 34. Attorney's Fees. In the event of any legal action or other proceeding between the Parties arising out of this Agreement or the transactions contemplated herein, the prevailing Party in such legal action or proceeding shall be entitled to have and recover from the other Party all costs and expenses incurred therein, including reasonable in-house and outside attorneys' fees.

AGREED as of \_\_\_\_\_ (date).

Frontier Energy, Inc.

Project Sponsor

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Steve Wiese

Name: \_\_\_\_\_

Title: Director, Implementation Services

Title: \_\_\_\_\_