

**APPENDIX A**

**VENDOR CONTRACT AND SIGNATURE FORM**

This Vendor Contract and Signature Form ("Contract") is made as of \_\_\_\_\_, by and between \_\_\_\_\_ ("Vendor") and Region 4 Education Service Center ("Region 4 ESC") for the purchase of HVAC Equipment, Installation, Service, & Related Products \_\_\_\_\_ ("the products and services").

**RECITALS**

WHEREAS, both parties agree and understand that the following pages will constitute the contract between the successful vendor(s) and Region 4 ESC, having its principal place of business at 7145 West Tidwell Road, Houston, TX 77092.

WHEREAS, Vendor agrees to include, in writing, any required exceptions or deviations from these terms, conditions, and specifications; and it is further understood that, if agreed to by Region 4 ESC, said exceptions or deviations will be incorporated into the final contract "Vendor Contract."

WHEREAS, this contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth below shall control.

WHEREAS, the Vendor Contract will provide that any state, county, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agencies or non-profit organization may purchase products and services at

prices indicated in the Vendor Contract upon registering and becoming a member with TCPN; and it being further understood that Region 4 ESC shall act as the Lead Public Agency with respect to all such purchase agreements.

WHEREAS, TCPN has the administrative and legal capacity to administer purchases on behalf of Region 4 ESC under the Vendor Contract with participating public agencies and entities, as permitted by applicable law.

### **ARTICLE 1- GENERAL TERMS AND CONDITIONS**

- 1.1 TCPN shall be afforded all of the rights, privileges and indemnifications afforded to Region 4 ESC under the Vendor Contract, and such rights, privileges and indemnifications shall accrue and apply with equal effect to TCPN, including, without limitation, Vendors obligation to provide insurance and other indemnifications to Lead Public Agency.
- 1.2 Awarded vendor shall perform all duties, responsibilities and obligations, set forth in this agreement, and required under the Vendor Contract.
- 1.3 TCPN shall perform its duties, responsibilities and obligations as administrator of purchases, set forth in this agreement, and required under the Vendor Contract.
- 1.4 **Purchasing procedure:**
  - Purchase orders are issued by participating governmental agencies to the awarded vendor indicating on the PO "Per TCPN Contract."
  - Vendor delivers goods/services directly to the participating agency.
  - Awarded vendor invoices the participating agency directly.
  - Awarded vendor receives payment directly from the participating agency.
  - Awarded vendor reports sales monthly to TCPN.
- 1.5 **Customer Support:** The vendor shall provide timely and accurate technical advice and sales support to Region 4 ESC staff, TCPN staff and participating agencies. The vendor shall respond to such requests within ~~five~~ (5) working days after receipt of the request.

### **ARTICLE 2- ANTICIPATED TERM OF AGREEMENT**

- 2.1 Unless otherwise stated, all contracts are for a period of one (1) year with an option to renew annually for an additional four (4) years if agreed to by Region 4 ESC. Region 4 ESC will notify the vendor in writing if the contract is extended. Awarded vendor shall honor all administrative fees for any sales made based on the contract ~~during the agreed term,~~ whether renewed or not.
- 2.2 Region 4 ESC shall review the contract prior to the renewal date and notify the current awarded vendor, no less than ninety (90) days of Region 4 ESC's intent renew the contract. Upon receipt of notice, awarded vendor must notify Region 4 ESC if it elects not to renew. Awarded vendor shall honor the administrative fee for any sales incurred ~~during the agreed term throughout the life~~ of the contract on any sales made based on a Region 4 ESC contract whether awarded a renewal or not. Region 4 ESC reserves the right to exercise each ~~two-year~~ extension annually, ~~subject to Vendor's mutual agreement to renew.-~~

### **ARTICLE 3- REPRESENTATIONS AND COVENANTS**



- 3.1. **Scope:** This contract is based on the need to provide the economic benefits of volume purchasing and reduction in administrative costs through cooperative purchasing to schools and other members. Although contractors may restrict sales to certain public units (for example, state agencies or local government units), any contract that prohibits sales from being made to public school districts may not be considered. Sales without restriction to any Members are preferred.
- 3.2. **Compliance:** Cooperative Purchasing Agreements between TCPN and its Members have been established under state procurement law.
- 3.3. **Offeror's Promise:** Offeror agrees all prices, terms, warranties, and benefits granted by Offeror to Members through this contract are comparable to or better than the equivalent terms offered by Offeror to any present customer meeting the same qualifications or requirements.

#### **ARTICLE 4- FORMATION OF CONTRACT**

- 4.1. **Offeror Contract Documents:** Region 4 ESC will review proposed offeror contract documents. Vendor's contract document shall not become part of Region 4 ESC's contract with vendor unless and until an authorized representative of Region 4 ESC reviews and approves it.
- 4.2. **Form of Contract:** The form of contract for this solicitation shall be the Request for Proposal, the awarded proposal(s) and best and final offer(s), and properly issued and reviewed purchase orders referencing the requirements of the Request for Proposals. If a firm submitting an offer requires Region 4 ESC and/or Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal.
- 4.3. **Entire Agreement (Parol evidence):** The contract, as specified above, represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.
- 4.4. **Assignment of Contract:** No assignment of contract may be made without the prior written approval of Region 4 ESC. Purchase orders and payment can only be made to awarded vendor unless otherwise approved by Region 4 ESC. Awarded vendor is required to notify Region 4 ESC when any material change in operations is made that may adversely affect members (i.e. bankruptcy, change of ownership, merger, etc.). Neither this contract nor any other contract, purchase order, service or maintenance agreement, etc. may be assigned by Region 4 ESC or any other participating governmental agency or Member except as approved by Vendor, in writing, prior to such assignment. Vendor will not unreasonably withhold such approval.
- 4.5. **Novation:** If contractor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. Region 4 ESC reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of contractor.
- 4.6. **Contract Alterations:** No alterations to the terms of this contract shall be valid or binding unless authorized and signed by a Region 4 ESC staff member.
- 4.7. **Order of Precedence:** In the event of a conflict in the provisions of the contract as accepted by Region 4 ESC, the following order of precedence shall prevail:

- Special terms and conditions
- General terms and conditions
- Specifications and scope of work
- Attachments and exhibits
- Documents referenced or included in the solicitation

4.8 **Supplemental Agreements:** The entity participating in the Region 4 ESC contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor. Neither Region 4 ESC, TCPN, its agents, members and employees shall be made party to any claim for breach of such agreement.

4.9 **Adding authorized distributors/dealers:** Awarded vendors are prohibited from authorizing additional distributors or dealers, other than those identified at the time of submitting their proposal, to sell under their contract award without notification and prior written approval from TCPN. Awarded vendors must notify TCPN each time it wishes to add an authorized distributor or dealer. Purchase orders and payment can only be made to awarded vendor unless otherwise approved by TCPN. Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder, unless otherwise approved by TCPN.



## **ARTICLE 5- TERMINATION OF CONTRACT**

5.1. **Cancellation for Non-Performance or Contractor Deficiency:** Region 4 ESC may terminate any contract if Members have not used the contract, or if purchase volume is determined to be low volume in any 12-month period. Region 4 ESC reserves the right to cancel the whole or any part of this contract due to failure by contractor to carry out any obligation, term or condition of the contract. Region 4 ESC may issue a written deficiency notice to contractor for acting or failing to act in any of the following:

- i. Providing material that does not meet the specifications of the contract;
- ii. Providing work and/or material that was not awarded under the contract;
- iii. Failing to adequately perform the services set forth in the scope of work and specifications;
- iv. Failing to complete required work or furnish required materials within a reasonable amount of time;
- v. Failing to make progress in performance of the contract and/or giving Region 4 ESC reason to believe that contractor will not or cannot perform the requirements of the contract; and/or
- vi. Performing work or providing services under the contract prior to receiving a Region 4 ESC reviewed purchase order for such work.

Upon receipt of a written deficiency notice, contractor shall have ten (10) days to provide a satisfactory response to Region 4 ESC. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by contractor under the contract shall become the property of the Member on demand.

5.2 **Termination for Cause:** If, for any reason, the Vendor fails to fulfill its obligation in a timely manner, or if the vendor violates any of the covenants, agreements, or stipulations of this contract Region 4 ESC reserves the right to terminate the contract immediately and pursue all other applicable remedies afforded by law. Such termination shall be effective by delivery of notice, to the vendor, specifying the effective date of termination. In such event, all documents, data, studies, surveys, drawings, maps, models and reports prepared by vendor for this solicitation may become the property of the participating agency or entity. If such event does occur then vendor will be entitled to receive just and equitable compensation for the satisfactory work completed on such documents.

5.3 **Delivery/Service Failures:** Failure to deliver goods or services within the time set forth in Vendor's quotation or otherwise within Vendor's standard lead times specified, or within a reasonable time period as interpreted by the purchasing agent or failure to make replacements or corrections of rejected articles/services when so requested upon reasonable notice shall constitute grounds for the contract to be terminated. ~~In the event that the participating agency or entity must purchase in an open market, contractor agrees to reimburse the participating agency or entity, within a reasonable time period, for all expenses incurred.~~

5.4 **Force Majeure:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United



States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

- 5.5 **Standard Cancellation:** Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order. ~~Vendor may be requested to provide additional items not already on contract at any time.~~ Provided, however, that in the event Vendor has accepted a purchase order, maintenance or service agreement, or other agreement prior to the cancellation of this contract, then such purchase order, maintenance or service agreement, or other agreement shall continue through its specified term or scope unless the parties mutually agree to its termination.

#### **ARTICLE 6- LICENSES**

- 6.1 **Duty to keep current license:** Vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by vendor. Vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. Region 4 ESC reserves the right to stop work and/or cancel the contract of any vendor whose license(s) expire, lapse, are suspended or terminated.
- 6.2 **Survival Clause:** All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

#### **ARTICLE 7- DELIVERY PROVISIONS**

- 7.1 **Delivery:** Vendor shall deliver said materials purchased on this contract to the Member issuing a Purchase Order. Conforming product shall be shipped within 7 days of receipt of Purchase Order. If delivery is not or cannot be made within this time period the vendor must receive authorization from the purchasing agency for the delayed delivery. At this point the participating entity may cancel the order if estimated shipping time is not acceptable.
- 7.2 **Inspection & Acceptance:** If defective or incorrect material is delivered, purchasing agency may make the determination to return the material to the vendor at no cost to the purchasing agency. The vendor agrees to pay all shipping costs for the return shipment. Vendor shall be responsible for arranging the return of the defective or incorrect material. Provided, however, that Vendor shall have a reasonable opportunity to cure prior to the purchasing agency's exercise of the aforementioned or any other right or remedy.

#### **ARTICLE 8- BILLING AND REPORTING**

- 8.1 **Payments:** The entity using the contract will make payments in full, without retention, directly to the awarded vendor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice, but in no case more than sixty (60) days from invoice date.
- 8.2 **Invoices:** The awarded vendor shall submit invoices to the participating entity clearly stating "Per TCPN Contract". The shipment tracking number or pertinent information for verification shall be made available upon request.
- 8.3 **Tax Exempt Status:** Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.
- 8.4 **Reporting:** The awarded vendor shall electronically provide TCPN with a detailed monthly report showing the dollar volume of all sales under the contract for the previous month. Reports shall be sent via e-mail to TCPN offices at [reporting@tcpn.org](mailto:reporting@tcpn.org). Reports are due on the **fifteenth (15<sup>th</sup>)** day after the close of the previous month. It is the responsibility of the awarded vendor to collect and compile all sales under the contract from participating Members and submit one (1) report. The report shall include at least the following information as listed in the example below:

Vendor Name  
TCPN Report  
Month of \_\_\_\_\_

Entity Name	Zip Code	State	PO or Job#	Sale Amount

Total \_\_\_\_\_

## ARTICLE 9- PRICING

- 9.1 **Best price guarantee:** The awarded vendor agrees to provide pricing to Region 4 ESC and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. The awarded vendor agrees to lower the cost of any product purchased through TCPN following a reduction in the manufacturer or publisher's direct cost. TCPN and Region 4 ESC recognize that vendor may have other group or cooperative purchasing agreements (for example healthcare group purchasing agreements), as well as vendor's GSA Schedule ("Other Contracts"). In the event such Other Contracts provide to Members more favorable pricing, vendor is under no obligation to make such pricing available under this contract. Additionally, vendor may have existing contracts with Members and in those instances, current pricing will not be affected or modified.
- 9.2 **Price increase:** Should it become necessary or proper during the term of this contract to make any change in design or any alterations that will increase expense Region 4 ESC must be notified immediately. Price increases must be approved by Region 4 ESC and no payment for additional materials or services, beyond the amount stipulated in the contract, shall be paid



without prior approval. All price increases must be supported by manufacture documentation, or a formal cost justification letter.

Awarded vendor must honor previous prices for thirty (30) days after approval and written notification from Region 4 ESC if requested.

It is the awarded vendor's responsibility to keep all pricing up to date and on file with Region 4 ESC. All price changes must be provided to Region 4 ESC, using the same format as was accepted in the original contract.

9.3 **Additional Charges:** All deliveries shall be freight prepaid, F.O.B. first destination and shall be included in all pricing offered unless otherwise clearly stated in writing. Title and risk of loss shall pass to Region 4 ESC or the participating entity upon delivery to the first designated destination.

9.4 **Price reduction and adjustment:** Price reduction may be offered at any time during contract and shall become effective upon notice of acceptance from Region 4 ESC. Special, time-limited reductions are permissible under the following conditions: 1) reduction is available to all Members equally; 2) reduction is for a specific time period, normally not less than thirty (30) days; 3) original price is not exceeded after the time-limit; and 4) Region 4 ESC has approved the new prices prior to any offer of the prices to a Member. Vendor shall offer Region 4 ESC any published price reduction during the contract period.

9.5 **Prevailing Wage:** It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser (Region 4 ESC or its Members). It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

9.6 **Administrative Fees:** All pricing submitted to Region 4 ESC shall include the administrative fee to be remitted to TCPN by the awarded vendor.

The awarded vendor agrees to pay administrative fees to TCPN of **four percent (4%)**. (Sales will be calculated for fiscal year of January 1<sup>st</sup> through December 31<sup>st</sup> and reset each year)

#### **ARTICLE 10- PRICING AUDIT**

10.1 **Audit rights:** Vendor shall, at Vendor's sole expense, maintain appropriate due diligence of all purchases made by Region 4 ESC and any entity that utilizes this Agreement. TCPN and Region 4 ESC each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In the State of New Jersey, this audit right shall survive termination of this Agreement for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. Region 4 ESC shall have the authority to conduct random audits of Vendor's pricing that is offered to eligible entities at Region 4 ESC's sole cost and expense. Notwithstanding the foregoing, in the event that Region 4 ESC is made aware of any pricing being offered to eligible agencies that is materially inconsistent with the pricing under this agreement, Region 4 ESC shall have the ability to conduct an extensive audit of Vendor's pricing at Vendor's sole cost and expense, which shall not exceed \$10,000 during the term of this contract. Region 4 ESC may conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated reasonably by Region 4 ESC or TCPN.

#### **ARTICLE 11- OFFEROR PRODUCT LINE REQUIREMENTS**

11.1 **Current products:** Proposals shall be for materials and equipment in current production and marketed to the general public and education/government agencies at the time the proposal is



submitted.

- 11.2 **Discontinued products:** If a product or model is discontinued by the manufacturer, vendor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model.
- 11.3 **New products/Services:** New products and/or services that meet the scope of work may be added to the contract. Pricing shall be equivalent to the percentage discount for other products. Vendor may replace or add product lines to an existing contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation. No products and/or services may be added to avoid competitive procurement requirements. Region 4 ESC may require additions to be submitted with documentation from Members demonstrating an interest in, or a potential requirement for, the new product or service. Region 4 ESC may reject any additions without cause.
- 11.4 **Options:** Optional equipment for products under contract may be added to the contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.
- 11.5 **Product line:** Offerors with a published catalog may submit the entire catalog. Region 4 ESC reserves the right to select products within the catalog for award without having to award all contents. Region 4 ESC may reject any addition of equipment options without cause.
- 11.6 **Warranty conditions:** ~~All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing. Vendor will pass through to Region 4 ESC, participating governmental agency or Member ("Members") the manufacturer's warranty for all parts and equipment furnished by Vendor, as Members' sole warranty and remedy. Vendor additionally warrants all labor or workmanship will meet industry standards for a period of thirty (30) days from the date work is performed and this warranty is limited to only that portion of equipment or parts upon which Vendor performed work. These warranties do not extend to equipment or parts that have been abused, altered, or misused, or have not been properly maintained or to work performed by others. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE WHICH ARE HEREBY SPECIFICALLY DISCLAIMED.~~
- 11.7 **Buy American requirement:** (for New Jersey and all other applicable States) Vendors may only use unmanufactured construction material mined or produced in the United States, as required by the Buy American Act. Where trade agreements apply, to the extent permitted by applicable law, then unmanufactured construction material mined or produced in a designated country may also be used. Vendors are required to check state specific requirements to ensure compliance with this requirement.

**ARTICLE 12- SITE REQUIREMENTS – APPLICATION ONLY WHERE THE SCOPE OF WORK REQUIRES VENDOR TO PROVIDE EQUIPMENT INSTALLATION SERVICES**

- 12.1 **Cleanup:** Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by Member. Upon completion of the work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.



- 12.2 **Preparation:** Vendor shall not begin a project for which Member has not prepared the site, unless vendor does the preparation work at no cost, or until Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.
- 12.3 **Registered sex offender restrictions:** For work to be performed at schools, vendor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the Member's discretion. Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.
- 12.4 **Safety measures:** Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Vendor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.
- 12.5 **Smoking:** Persons working under the contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.
- 12.6 **Stored materials:** Upon prior written agreement between the vendor and Member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to Member prior to payment. Such materials must be stored and protected in a secure location, and be insured for their full value by the vendor against loss and damage. Vendor agrees to provide proof of coverage and/or addition of Member as an additional insured upon Member's request. Additionally, if stored offsite, the materials must also be clearly identified as property of buying Member and be separated from other materials. Member must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by the Member, which shall be deemed to occur within three (30) days from vendor's completion of installation, it shall be the Vendor's responsibility to protect all materials and equipment. The Vendor warrants and guarantees that title for all work, materials and equipment shall pass to the Member upon final acceptance.

### **ARTICLE 13- MISCELLANEOUS**

- 13.1 **Funding Out Clause:** Any/all contracts exceeding one (1) year shall include a standard "funding out" clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity's current revenue only, provided the contract contains either or both of the following provisions:

"Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract."

- 13.2 **Disclosures:** Offeror affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

Include a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in TCPN.



The Offeror affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

- 13.3 (a) Indemnity:** The awarded vendor shall protect, indemnify, and hold harmless both Region 4 ESC and TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members. Any litigation involving either Region 4 ESC or TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN members shall be in the jurisdiction of the participating agency.

**13.3 (b) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED WITHIN THIS CONTRACT OR ANY OTHER PURCHASE ORDER, SERVICE, MAINTENANCE AGREEMENT OR OTHER AGREEMENT ("AGREEMENT"), IN NO EVENT SHALL ANY PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, DELAY OR LIQUIDATED DAMAGES FOR ANY REASON, WHETHER OR NOT FORESEEABLE, NOR SHALL EITHER PARTY SEEK OR APPLY FOR SAID DAMAGES. "CONSEQUENTIAL DAMAGES" INCLUDE, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS; BUSINESS INTERRUPTION; LOSS OF USE, REVENUE, AND REPUTATION OR DATA. IN NO EVENT WILL EITHER PARTY'S LIABILITY UNDER ANY AGREEMENT, WHETHER IN LAW, EQUITY, CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE EXCEED THE PRICE PAID OR PAYABLE FOR THE EQUIPMENT, PARTS OR SERVICES GIVING RISE TO THE CLAIM.**

- 13.4 Franchise Tax:** The Offeror hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.
- 13.5 Marketing:** Awarded vendor agrees to allow Region 4 ESC to use their name and logo within website, marketing materials and advertisement provided that Region 4 ESC will do so in accordance with Vendor's reasonable instructions, and only during the term of this contract. Any use of Region 4 ESC name and logo or any form of publicity, inclusive of press releases, regarding this contract by awarded vendor must have prior approval from Region 4 ESC.
- 13.6 Certificates of Insurance:** Certificates of insurance shall be delivered to the Region 4 ESC participant prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.
- 13.7 Legal Obligations:** It is the Offeror's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded contract and shall comply with all while fulfilling the RFP. Applicable laws and regulation must be followed even if not specifically identified herein.
- 13.8 Open Records Policy:** Because Region 4 ESC contracts are awarded by a governmental entity, responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by-page and line-by-line the parts of the response, which it

believes, are exempt. In addition, the Offeror must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s). Offeror must provide this information on the "Acknowledge and Acceptance to Region 4 ESC's Open Record Policy" form found at the beginning of this solicitation. Any information that is unmarked will be considered public information and released, if requested under the Public Information Act.

The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 4 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Offeror are not acceptable. Region 4 ESC must comply with the opinions of the OAG. Region 4 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Offeror are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

After completion of award, these documents will be available for public inspection.



## VENDOR CONTRACT SIGNATURE FORM

SEE  
NOTE.



The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this proposal in collusion with any other Respondent and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

Prices are guaranteed: **120 days**

NOTE: DAIKIN APPLIED AMERICAS INC. REQUESTS THE OPPORTUNITY TO REVIEW AND NEGOTIATE TERMS AND CONDITIONS WITH REGION 4 ESC, AS INDICATED WITHIN THE ENCLOSED REDLINED CONTRACT AND CLARIFICATIONS.



Company name Daikin Applied Americas Inc. dba Daikin Applied  
Address 13600 Industrial Park Boulevard  
City/State/Zip Minneapolis, MN 55441  
Telephone No. (763) 553-5330  
Fax No. (763) 553-5302  
Email address duane.rothstein@daikinapplied.com  
Printed name Michael G. Schwartz  
Position with company Vice President  
Authorized signature 

Accepted by The Cooperative Purchasing Network:

Term of contract \_\_\_\_\_ to \_\_\_\_\_

Unless otherwise stated, all contracts are for a period of one (1) year with an option to renew annually for an additional four (4) years if agreed to by Region 4 ESC and the awarded vendor. Awarded vendor shall honor all administrative fees for any sales made based on a contract whether renewed or not.

\_\_\_\_\_  
Region 4 ESC Authorized Board Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Region 4 ESC Authorized Board Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

TCPN Contract Number \_\_\_\_\_