CLEAResult®

# STANDARD TERMS AND CONDITIONS FOR PARTICIPATING CUSTOMERS

These Standard Terms and Conditions for Participating Customers and the Customer Participation Agreement (collectively, the "**Agreement**") are made and entered into by and between CLEAResult Consulting Inc., a Texas corporation and/or an affiliate thereof ("**CLEAResult**"), and Customer for the purpose of evaluating and installing energy efficient measures ("**EEM**") under the OPPD Energy Savings Assessment program (the "**Program**") funded by Omaha Public Power District, ("**Sponsor**"). CLEAResult and Customer may be referred to in this Agreement individually as a "**Party**" and collectively as the "Parties." The Parties acknowledge and agree that Sponsor is a third party beneficiary of this Agreement. In consideration of the mutual covenants and agreements set forth below, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. ACCESS AND PARTICIPATION. Customer agrees to support CLEAResult and assign a representative to facilitate services provided under this Agreement. Customer acknowledges its intent to install EEM using Program incentives. Customer agrees to allow CLEAResult to access its facilities, energy use and cost information for the purposes of implementing this Agreement. If Customer is a tenant, Customer represents that by signing this document they have obtained the property owner's permission to install EEM under this Agreement. Customer agrees not to use the name or identifying characteristics of Sponsor or its contractors for any advertising, sales promotion, or other publicity of any kind. Customer also confirms that it has not and will not receive rebates, incentives or services for any measures installed under this Program from another program funded by Sponsor. The Program may be modified or terminated without prior notice and this Agreement is subject to modifications by Sponsor.

2. ELIGIBILITY. Sponsor determines eligibility of Customers at its sole discretion. CLEAResult may request verification of eligibility requirements at any time during the Program period. Customer agrees to install all EEM provided by CLEAResult under this Program; provided, however, that if Customer does not install all EEM, then it shall return any uninstalled EEM to CLEAResult.

3. INCENTIVE PAYMENT. Customer acknowledges that incentives will be paid by Sponsor only if: (a) Customer(s) and installed measure(s) or services meet the Program eligibility requirements and the requirements outlined by the Program; (b) measures are installed in eligible project sites; and (c) measures are installed at a project site that has not received incentives from any other of Sponsor's energy efficiency programs for the same measure(s). Customer understands that Sponsor, in its sole discretion, may withhold incentive payments committed to Customer if a project site is proven ineligible or a project otherwise does not comply with the requirements set forth by the Program. Customer acknowledges that the incentive amount may not exceed the cost of the EEM.

4. AUDITING, MONITORING AND VERIFICATION. Customer also agrees to allow CLEAResult and Sponsor to access its facilities for the purpose of confirming Customer's participation in the Program, inspecting installed EEM, and verifying the energy savings achieved through the Program. Customer agrees to cooperate with CLEAResult and as necessary. Customer also agrees to remedy any issue arising from auditing and monitoring results at no additional cost within the timeframe provided by the Program. Customer understands that any incentives may be withheld if Customer refuses to participate in any required verification within a reasonable period. Customer verifies that all EEM is installed in accordance with all applicable federal, state and local laws and manufacturer's specifications.

5. CONFIDENTIALITY. CLEAResult shall keep Customer information confidential. Only Sponsor shall be granted access to Customer data as needed or required. CLEAResult will not use the name or identifying characteristics of Customer in advertising sales promotion or other publicity without Customer's written approval.

6. NO WARRANTY. CLEARESULT AND SPONSOR MAKE NO REPRESENTATIONS OR WARRANTIES, AND ASSUME NO LIABILITY WITH RESPECT TO QUALITY, SAFETY, PERFORMANCE, OR OTHER ASPECT OF ANY EEM INSTALLED PURSUANT TO THIS AGREEMENT AND EXPRESSLY DISCLAIM ANY SUCH REPRESENTATION, WARRANTY OR LIABILITY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO CREATE ANY DUTY TO, ANY STANDARD OF CARE WITH REFERENCE TO, OR ANY LIABILITY TO ANY THIRD PARTY. NEITHER SPONSOR, NOR CLEARESULT SHALL BE RESPONSIBLE FOR COSTS OR CORRECTIONS OF CONDITIONS ALREADY EXISTING IN THE FACILITIES INSPECTED WHICH FAIL TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

7. INDEMNIFICATION; LIMIT ON LIABILITY. CUSTOMER AGREES TO INDEMNIFY SPONSOR AND CLEARESULT AGAINST ALL LOSS, DAMAGES, COSTS AND LIABILITY ARISING FROM ANY CLAIMS RELATED TO ANY PRODUCTS INSTALLED OR SERVICES PERFORMED DURING THE INSTALLATION OR MAINTENANCE OF EEM. NEITHER SPONSOR, CLEARESULT, NOR CUSTOMER SHALL BE LIABLE TO EACH OTHER FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RELATED TO THIS AGREEMENT.

8. MISCELLANEOUS. This Agreement shall be governed by and construed under the laws of the State of Nebraska, without regard to conflict of law rules. The parties agree that all actions, disputes, claims and controversies arising out of or relating to this Agreement or the work performed hereunder will be subject to binding arbitration administered in the county where the Customer is located by the American Arbitration Association under its Commercial Arbitration Rules and judgment on the award may be entered in any court having jurisdiction. Customer shall not assign, delegate or subcontract this Agreement or its duties thereunder, in whole or in part, voluntarily or involuntarily (including a transfer to a receiver or bankruptcy estate) without the prior written permission of CLEAResult. CLEAResult may assign its rights and delegate its duties under this Agreement to any third party at any time without Customer's consent. If any provision of this Agreement is invalid or unenforceable in any jurisdiction, the other provisions in this Agreement shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of this Agreement. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction. The failure of either Party to enforce strict performance by the other of any provision of this Agreement, or to exercise any right available to the Party under this Agreement, shall not be construed as a waiver of such Party's right to enforce strict performance in the same or any other instance. Sections 1 and 4 through 7 shall survive the term of this Agreement.

*I have read and understood the Customer Participation Agreement and the attached Standard Terms and Conditions for Participating Customers and certify that the information I have provided is true and correct.*

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