

ATTACHMENT A

PRIME CONTRACT FLOWDOWN PROVISIONS

FROM THE

AMEREN ILLINOIS ENERGY EFFICIENCY PROGRAM SERVICES AGREEMENT

TO THE SUBCONTRACT

BETWEEN

LEIDOS ENGINEERING, LLC

AND

SUPPLIER

DATED – November 15, 2021

The clauses identified in this Attachment A are hereby incorporated and made a part of the referenced Subcontract between Leidos Engineering, LLC (“Leidos”) and Subcontractor or Supplier. In all such clauses, unless otherwise specified, the term “Ameren Illinois” as defined below shall mean “Leidos” as defined in the Subcontract and the term “Supplier” as defined below shall mean “Supplier” as defined in the Subcontract. The term “Agreement” shall mean the “Subcontract” and attachments.

It is intended that the clauses shall apply to Supplier in such a manner as is necessary to reflect the position of Supplier as a subcontractor to Leidos, to ensure Supplier’s obligations to Leidos in meeting its obligations under its prime contract agreement with Ameren Illinois.

**ENERGY EFFICIENCY
PROGRAM SERVICES AGREEMENT**

This Energy Efficiency Program Services Agreement (“Agreement”) is made effective as of the 1st day of January, 2022 (“Effective Date”) by and between Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois”), an Illinois corporation with offices at 10 Executive Drive, Collinsville, IL 62234 and Leidos Engineering, LLC (“Supplier”), a Delaware limited liability company with offices located in _1750 Presidents St., Reston, VA 20190. Ameren Illinois and Supplier are each sometimes referred to as a “Party” herein and collectively as the “Parties.”

In consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1: DEFINITIONS

- 1.1 “Acceptance Criteria” shall mean with respect to a Deliverable or a Service, a statement from Ameren Illinois and included in a Statement of Work defining the criteria for acceptance of that Deliverable or Service.
- 1.2 “Act” shall mean the Illinois Public Utilities Act, 220 ILCS § 5/1-101 *et seq.*
- 1.3 “Affiliate(s)” shall mean any entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such Party.
- 1.4 “Agreement” has the meaning set forth in the preamble.
- 1.5 “Ameren Illinois” has the meaning set forth in the preamble.
- 1.6 “Ameren Illinois Indemnitees” has the meaning set forth in Section 12.1.
- 1.7 “Ameren Illinois Materials” has the meaning set forth in Article 8.
- 1.8 “Ameren Illinois System” has the meaning set forth in Section 9.3.
- 1.9 RESERVED
- 1.10 RESERVED
- 1.11 RESERVED
- 1.12 “Confidential Information” has the meaning set forth in Article 11.
- 1.13 “Customer Information” has the meaning set forth in Section 9.4.

- 1.14 “Deliverable” or “Deliverables” shall mean all work product or other items developed for and delivered to Ameren Illinois or any other Person pursuant to this Agreement and any Statement of Work issued hereunder (including, without limitation, any implementation plans, as defined and set forth in any Statement of Work), whether by Supplier or any Subcontractor or other Person engaged by Supplier, including all rights, title and interest related thereto. By way of example only, and without limitation, a “Deliverable” may consist of a plan, software, a report, or a design.
- 1.15 “Disclosing Party” has the meaning set forth in Article 11.
- 1.16 “Effective Date” has the meaning set forth in the preamble.
- 1.17 “Efficiency Credit” shall mean any instrument, certificate, “white tag”, program (including without limitation under any renewable portfolio, energy efficiency, natural gas efficiency or similar program), credit, benefit, attribute, offset, reduction, right (including registration, trading and recording rights), allowances or indicia, however entitled, now existing or hereafter arising, for or relating to or arising out of a reduction in energy, natural gas or fuel consumption, a shifting of energy or natural gas consumption from higher consumption periods to periods of lower consumption, or an increase in output or performance for any given level of energy, natural gas or fuel usage, including without limitation any of the following: (i) the provision of demand-side technologies, hardware, software, controls or services designed to conserve or curtail electricity or natural gas, or to manage electricity load or reduce the need for additional or existing generation, production, transmission or distribution capacity, which includes demand-side management solutions, peak-shaving or peak-shifting measures, and conservation and load management technologies and measures of whatsoever nature; (ii) offering time-of-use rates that include mandatory peak, shoulder and off-peak time-of-use rates; (iii) offering interruptible or load response rates; (iv) implementing programs focused on load curtailment, peak reduction, demand response systems and retrofit conservation, (v) the measures described in the Plan and the Statement of Work, and (vi) installation or operation of customer-side generation resources, customer-side renewable energy generation, combined heat and power or other efficient generation resources.
- 1.18 “EM&V Contractor” shall mean the evaluation, measurement and verification contractor engaged by Ameren Illinois in connection with its obligations under the Act.
- 1.19 “EM&V Requirements” shall mean the requirements imposed under the Act, any Order and the Plan, determined in accordance with the methodologies established by the EM&V Contractor and as determined by the ICC.
- 1.20 “Emission Reduction Credits” shall mean any and all credits, attributes, benefits, offsets, reductions, rights (including registration, trading and recording rights),

allowances or indicia, however entitled, for or relating to the reduction, mitigation or control of greenhouse gas.

- 1.21 RESERVED
- 1.22 “ICC” shall mean the Illinois Commerce Commission.
- 1.23 "Implementation Plan" shall mean the annual portfolio implementation plan that establishes, among other relevant information, program or initiative or channel-level elements, budgets, energy savings goals, target markets, performance milestones, tracking processes, training and program-ally involvement, as well as any anticipated challenges, barriers and participation estimates, for each Project in the Plan. Each Implementation Plan, and all updates thereto, must be approved by Ameren Illinois.
- 1.24 “Incentive Payments” means any pass-through payments made to end-use customers for purposes of incentivizing such customers to participate in a Project.
- 1.25 “Intellectual Property Right” shall mean any proprietary right, including without limitation any trade secret, copyright, patent or trademark right.
- 1.26 “NOx Set-Asides” shall mean nitrogen oxide allowances from the annual or seasonal Clean Air Set-Aside under the CAIR NOx Annual Trading Program and the CAIR NOx Ozone Season Trading Program, as such programs may be modified or amended, and any successor or replacement programs dealing with nitrogen oxide.
- 1.27 “Order” or “Orders” shall mean any order issued by the ICC relating to Energy Efficiency programs or initiatives, as such Orders may be affected, updated, modified or supplemented from time to time.
- 1.28 “Party” and “Parties” have the meanings set forth in the preamble.
- 1.29 “Performance Objectives” shall mean the budgetary constraints, energy efficiency and demand response standards, customer satisfaction requirements and market transformation deliverables set forth in the Statement of Work.
- 1.30 “Person” shall mean any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization or entity, trust, union, association or governmental authority.
- 1.31 “Plan” shall mean the Electric and Gas Energy Efficiency and Demand Response Plan approved by ICC Docket 21-0158, as such plan is updated, modified or supplemented from time to time, including to reflect any Orders or stakeholder considerations.

- 1.32 “Project” or “Projects” shall mean any Energy Efficiency program or initiative implemented by Supplier under this Agreement and more particularly described in any Statement of Work.
- 1.33 “Project Attributes” shall mean all Emission Reduction Credits, NOx Set-Asides, Efficiency Credits and any other credit, right, benefit, attribute, offset, reduction, allowance or indicia arising out of or relating to a Project.
- 1.34 “Program Year” shall mean each twelve (12) month period beginning on January 1 and ending on December 31 thereafter during the term of this Agreement.
- 1.35 RESERVED
- 1.36 “Receiving Party” has the meaning set forth in Article 11.
- 1.37 “Services” shall mean the turn key design, development, implementation, and administration of the Projects, including, without limitation, the Services described or required pursuant to the terms and conditions of this Agreement and any Statement of Work related thereto.
- 1.38 RESERVED
- 1.39 “Statement of Work” shall mean any statement of work entered into in connection with this Agreement and shall include without limitation all statements of work entered into by the Parties in connection with any Project, Service and/or Deliverable. Each Statement of Work shall state, with respect to the Projects, Services and Deliverables described therein, one or more of the following elements: the scope of the Projects, Services and Deliverables, SOW Amount, responsibilities of Ameren Illinois, responsibilities of Supplier, the Acceptance Criteria applicable to Services and Deliverables, the fees and payment schedule pertinent to any Project, and other pertinent matters, as agreed by the Parties.
- 1.40 “Subcontractor” shall mean any Person who enters into a contract for the performance of any portion of any Project, Service or Deliverable including, without limitation, all independent contractors, vendors, suppliers, equipment lessors, materialmen or similar Person of whatever tier, but shall not include any employees of Supplier or Ameren Illinois.
- 1.41 “Supplier” has the meaning set forth in the preamble.
- 1.42 RESERVED
- 1.43 RESERVED

ARTICLE 2: SERVICES

- 2.1 Supplier shall render the Services and prepare and deliver the Deliverables to Ameren Illinois in accordance with the Statement of Work within the periods contemplated by a Project schedule and in a manner designed to achieve the applicable Performance Objectives and any other methodologies for the evaluation, measurement and verification of any Project hereafter established by the EM&V Contractor or the ICC in any Order.
- 2.2 Supplier acknowledges that the Services contemplated by this Agreement are turn-key in nature and, unless otherwise specifically provided in a Statement of Work, Supplier shall provide and pay for all labor, equipment, insurance, materials, tools, machinery, water, heat, utilities, transportation and any other facilities and services necessary for the proper execution, performance and completion of Supplier's obligations under this Agreement and any related Statement of Work.
- 2.3 Supplier shall reasonably cooperate with Ameren Illinois, or other designated entity, and all other contractors or subcontractors who may be performing work on behalf of Ameren Illinois, including without limitation the EM&V Contractor, and Supplier shall conduct its operations so as to not unreasonably interfere with the work of Ameren Illinois or any such contractors or subcontractors performing work on behalf of Ameren Illinois.
- 2.4 Supplier acknowledges that nothing contained in this Agreement or any Statement of Work shall limit Ameren Illinois' right or ability to adopt, implement or maintain additional energy efficiency and demand response Projects or engage in any activities related thereto, including obtaining similar services from third parties.
- 2.5 Supplier shall cooperate with Ameren Illinois with respect to any ICC proceeding or requests for information by the ICC or other stakeholders.

ARTICLE 3: RESERVED

ARTICLE 4: RESERVED

ARTICLE 5: PERFORMANCE AND OVERSIGHT

- 5.1 Supplier shall exercise due professional care and competence at all times and shall perform all Services and deliver all Deliverables (i) with a degree of skill and judgment normally exercised by professional firms which are generally recognized as being consistent with high levels of quality, care, performance and professionalism and performing services of the same or substantially similar nature, (ii) in a workmanlike manner and (iii) in conformance to applicable specifications, drawings, and standards of quality and performance incorporated into this Agreement and any Statement of Work. Supplier shall be solely responsible for the

safety, adequacy, and efficiency of its personnel, employees, Subcontractors, equipment and methods and any insurance related thereto.

- 5.2 Subject to any additional requirements set forth in any Statement of Work issued pursuant to this Agreement, Supplier shall, prepare monthly reports detailing kilowatt hours and therms saved, by Project, for the prior month and a forecast for future savings, attributable to the Project or Projects detailed in any Statement of Work, for the upcoming three (3) months, budget information (including a reconciliation of variances of actual costs to budgeted amounts) and any such other information as Ameren Illinois may reasonably request and will be subject to mutual agreement by the Parties, which agreement shall not be unreasonably withheld. At the end of each Program Year, Supplier shall provide an annual report detailing, and Ameren Illinois may perform an annual review of, the progress made in designing, developing, implementing and administering any Project.
- 5.3 Ameren Illinois and/or the EM&V Contractor may inspect any portion of a Project, Services and/or Deliverables upon reasonable prior written notice to Supplier. Any such inspection is for the sole benefit of Ameren Illinois and shall not relieve Supplier of the responsibility for providing quality control measures in accordance with good industry practices. For avoidance of doubt, no inspection by Ameren Illinois shall be construed as constituting or implying either a waiver or acceptance of any portion of a Project, Services and/or Deliverables under the requirements of this Agreement and any Statement of Work.
- 5.4 If Ameren Illinois believes that any of the Services provided under this Agreement do not comply with the terms of this Agreement, any Statement of Work and/or Change Order, Ameren Illinois shall promptly notify Supplier to permit Supplier an opportunity to investigate and remedy. If the Services do not meet the requirements under this Agreement, Statement of Work and/or Change Order, including but not limited to the applicable standard of care, Supplier will promptly perform the required Services at no additional cost to Ameren Illinois to bring the Services within compliance, including assisting Ameren Illinois in selecting remedial actions. If Ameren Illinois believes that any of the Services provided under this Agreement do not comply with the terms of this Agreement but fails to provide Supplier with prompt notice of non-compliance and an opportunity to investigate and remedy, and such failure to promptly notify would directly result in additional costs to Supplier to remedy the defect than it would have cost Supplier if timely notice and opportunity to cure was given by Ameren Illinois, Supplier's obligation to remedy will be limited to the costs Supplier would have incurred to perform the Services notwithstanding its nonperformance, unless Ameren Illinois agrees in writing to reimburse Supplier for such additional costs. If at any time during the term of this Agreement Ameren Illinois has reasonable concerns about the creditworthiness of Supplier and/or its ability to perform the Services in a timely, compliant manner, Supplier shall provide financial information or other information about Supplier reasonably requested by Ameren Illinois within ten (10)

business days of such request. Nothing in this section limits Ameren Illinois' rights under any other provision of the Agreement.

5.5 Audit

During the Term, and for a period of four years thereafter, Supplier shall maintain direct records of account (timekeeping records, invoices, expense reports and technical data, including but not limited to marketing, quality assurance and quality control records) related to any Ameren Illinois Project described in any Statement of Work, which records are contained in the Supplier System or otherwise (the "Records").

Supplier shall cooperate with Ameren Illinois, its EM&V Contractor, and ICC Staff, in any related Project evaluation or docket proceeding. This obligation shall survive termination of this Agreement for a period of four years.

Ameren Illinois, its EM&V Contractor, independent auditors under contract with Ameren Illinois, and ICC Staff, shall, upon reasonable prior notice, have access to the Records maintained pursuant to this Agreement at Supplier's regular place of business and/or the Peoria Office during normal business hours to review, audit, and verify any information connected with this Agreement required by Ameren Illinois to determine the costs associated with the Services or Deliverables; to document the energy savings component of invoices submitted by Supplier to Ameren Illinois for payment, as well as Incentive Payments submitted for reimbursement; for cancellation of work in progress; or to evaluate and monitor quality assurance and quality control programs. Copies of any material shall be made for the requesting party at its request and reasonable costs of reproduction shall be borne by Ameren Illinois.

Access to Supplier's records for the above audit purposes or for technical review purposes relative to Supplier's performance of the Services under this Agreement shall be granted to Ameren Illinois, its EM&V Contractor, and ICC Staff, for four (4) years following termination of this Agreement. Any audit of invoices submitted for payment by Ameren Illinois shall be conducted by authorized representatives of its own or a third party selected by Ameren Illinois.

Both Parties understand and agree that should errors occur, payment shall be made in accordance with the following terms. For all errors found in Ameren Illinois' favor, such errors shall be offset by any errors in favor of Supplier. More specifically, if the total aggregate errors found demonstrate underpayments to the Supplier, Ameren shall reimburse Supplier for the corresponding underpayments. Conversely, should the total aggregate errors found demonstrate overpayments to Supplier, then Ameren shall be reimbursed for the corresponding overpayments made. Both Parties agree that any undercharges or overpayments, once identified and agreed upon, shall be paid within thirty (30) days of notice to the other Party.

Notwithstanding the foregoing, in the event that by audit or otherwise, it is determined that Supplier has materially misrepresented the energy savings associated with a Project or other material item reported by Supplier to Ameren Illinois in connection with a Project, the Services or Deliverables under this Agreement or any Statement of Work, Ameren Illinois' shall be indemnified and held harmless from any liability including penalty related to such misrepresentation, and, in addition to its other remedies in this Agreement, or at law, shall be entitled to pursue recovery of amounts paid to Supplier pursuant to this Agreement.

ARTICLE 6: RESERVED

ARTICLE 7: DELIVERY AND ACCEPTANCE

- 7.1 Supplier shall furnish to Ameren Illinois the Deliverables, including all Program Deliverables, meeting notes, working papers, related information and other supporting documentation described in the applicable Statement of Work in accordance with the terms of that Statement of Work as modified in any Change Order. Supplier shall also furnish any additional detail as reasonably available and reasonably requested by Ameren Illinois or the ICC. Nothing in this Article shall limit the audit rights as set forth in Article 5.
- 7.2 In the event of early termination of this Agreement, Supplier shall produce and deliver all Program Deliverables, meeting notes, working papers, and any other related information (all documents, data, and information shall be in suitable and orderly condition) to Ameren Illinois within fifteen (15) business days of the termination date of this Agreement.
- 7.3 Upon delivery, Ameren Illinois shall have the right to evaluate and test each Deliverable in accordance with the applicable Acceptance Criteria. Ameren Illinois shall notify Supplier of any deficiencies in the Deliverables within the time specified in a Statement of Work (or within fifteen (15) business days of delivery of a Deliverable if not specified in a Statement of Work) from the delivery of the Deliverable and provide Supplier with a written description of any non-conformances.
- 7.4 Supplier shall correct any deficiencies or errors and/or omissions in the Services and/or Deliverables at Supplier's cost so that the Deliverables, in the reasonable judgment of Ameren Illinois, meet the Acceptance Criteria.
- 7.5 If, within fifteen (15) business days after Ameren Illinois gives Supplier written notice of a defect, in the reasonable judgment of Ameren Illinois, Supplier does not make or undertake with due diligence to make the necessary corrections to remedy the defect, Supplier agrees and Ameren Illinois is authorized to make the corrections itself, or order the corrections to be done by a third party, with the reasonable cost of the corrections to be paid by Supplier.

- 7.6 In the event of an emergency where, in the reasonable judgment of Ameren Illinois, the delay resulting from giving formal notice would cause serious loss or damage which could be prevented by immediate action, Supplier agrees that any defects may be corrected by Ameren Illinois, or a third party chosen by Ameren Illinois, without giving prior notice to Supplier, with the reasonable cost of the corrections to be paid by Supplier. In the event such action is taken by Ameren Illinois, Supplier will be notified promptly and shall assist wherever possible in making the corrections.
- 7.7 The reasonable cost identified in this Article shall include but is not limited to all materials, parts, labor, transportation, supervision, special tools and supplies and insurance required for replacement or repair of parts and for correction of defects.
- 7.8 Supplier shall furnish to Ameren Illinois any Deliverables, meeting notes, other working papers and other detail, if any, associated with the Services performed by Supplier under the Agreement or as part of any applicable Statement of Work at the completion of each Program Year.

ARTICLE 8: SUPPLIER’S USE OF AMEREN ILLINOIS MATERIALS

- 8.1 No license or right is granted under this Agreement to Supplier to use, execute, reproduce, display, perform, distribute externally, sell copies of, or prepare derivative works based upon, any materials provided by Ameren Illinois to Supplier in connection with this Agreement or any Statement of Work issued hereunder (collectively the “Ameren Illinois Materials”), except that Supplier may use, reproduce, display and distribute externally the Ameren Illinois Materials solely for the purpose of rendering performance as required by a Statement of Work. In connection with the foregoing, Ameren Illinois hereby grants to Supplier a non-exclusive, non-transferable license for the term of this Agreement to use the Ameren Illinois marks and logos in the Deliverables and in the performance of the Services; provided, that Ameren Illinois has consented in writing to the proposed use of the Ameren Illinois Materials in each and every instance. Notwithstanding anything herein to the contrary, no ownership rights in any Ameren Illinois mark or logo are conferred upon Supplier by this Agreement and Ameren Illinois has the right to terminate any license and/or use of any Ameren Illinois Materials at any time for any reason. Upon completion of such performance, all Ameren Illinois Materials (including any adaptations thereof) shall be returned in their entirety to Ameren Illinois. The terms of this Article do not, however, affect the obligations of the Parties under Article 11 (Confidentiality) below.

ARTICLE 9: OWNERSHIP AND RIGHTS

- 9.1 Subject to Ameren Illinois’ access to information stored therein, Supplier shall retain ownership of its pre-existing Intellectual Property Rights. To the extent that any of Supplier’s pre-existing Intellectual Property, is incorporated in the Deliverables provided to Ameren Illinois in connection with this Agreement or any

Project, then Supplier hereby grants to Ameren Illinois a non-exclusive, irrevocable, perpetual, worldwide and royalty-free license to use such Supplier pre-existing Intellectual Property to the extent necessary to utilize in any manner, but only in connection with, the Deliverables. Notwithstanding anything else contained in this Agreement or a Statement of Work, Supplier shall retain all right, title, and interest in and to any and all Supplier pre-existing Intellectual Property. Under no circumstances will any Supplier pre-existing Intellectual Property be considered as work made for hire under the copyright laws. With respect to the Supplier System, at the termination or expiration of this Agreement, at Ameren Illinois' option and so long as Ameren Illinois has not failed to cure any breach of this Agreement or any Statement of Work, the preceding license shall survive the expiration or sooner termination hereof for a period of 120 days. During this 120 day period, Ameren Illinois shall have the option to transfer the data to Ameren Illinois System.

- 9.2 In order to promote the growth and enhance consumer awareness of Ameren Illinois' sponsorship of Projects, Ameren Illinois reserves the right to brand or choose not to brand, in its sole discretion, any Project or portion of any Project, including any Deliverable relating thereto, and Supplier shall cooperate in such branding efforts as part of the Services.
- 9.3 All information provided to Supplier or any Subcontractor by any Person who is or hereafter becomes a customer of Ameren Illinois, or who participates in any Project, including without limitation their names, social security numbers, credit card numbers, identifying information, mailing and email address, marketing, product or other preferences, energy consumption, savings, performance and other data, and other information provided by them or collected about them as part of any Project or otherwise (collectively, the "Customer Information"), shall, as between Ameren Illinois and Supplier, not be owned by Supplier and shall be treated in the same manner as Ameren Illinois Confidential Information and in accordance with applicable laws and regulations restricting the disclosure and use of such information. Supplier acknowledges that the customer relationships and goodwill associated with any Project and the benefits thereof belong exclusively to Ameren Illinois. Supplier shall include in its subcontracts provisions necessary to implement the intent and meet the requirements of this Article 9.

ARTICLE 10: PROJECT TERMINATION

- 10.1 Ameren Illinois shall have the right to terminate this Agreement, any Project, any Statement of Work, any Change Order or any portion of the foregoing at any time at its option without cause upon thirty (30) days' prior written notice to Supplier; provided, that, Supplier shall promptly, upon request by Ameren Illinois, take steps to wind-down any work related to performing Services and delivering Deliverables related to the termination. In the event of such termination, Ameren Illinois shall release and pay to Supplier any eligible Holdback Amount withheld by Ameren Illinois for the then current Program Year within twenty (20) business days after the termination date. If Ameren Illinois elects to terminate any portion of any

Project and/or any Statements of Work pursuant to this Section 10.1, Ameren Illinois may issue a written Change Order reflecting an appropriate reduction in the SOW Amount in accordance with the procedures set forth in this Agreement.

- 10.2 Ameren Illinois or Supplier may terminate this Agreement or any Statement of Work for material breach thereof by the other Party by providing fifteen (15) business days prior written notice describing the material breach in reasonable detail, if the breach is not cured within such fifteen (15) business day cure period; provided that such breach is not reasonably capable of being cured within such fifteen (15) day notice period or within the periods provided therefor in the Project Schedule, then this Agreement or Statement of Work, as the case may be, may be terminated immediately. Neither Party shall be obligated to provide more than one opportunity to cure the same material breach during the term of this Agreement.
- 10.3 Ameren Illinois or Supplier may terminate this Agreement and all Statements of Work hereunder effective immediately upon giving notification thereof to the other Party in the event the other Party is adjudged insolvent or bankrupt, or upon the institution of any proceeding against the other Party seeking relief, reorganization or arrangement under any laws relating to insolvency, or for the making of any assignment for the benefit of creditors, or upon the appointment of a receiver, liquidator or trustee of any of the other Party's property or assets, or upon liquidation, dissolution or winding up of the other Party's business.
- 10.4 In the event of any termination provided in Sections 10.1, 10.2 or 10.3 above, Supplier shall, immediately upon request by Ameren Illinois, suspend the provision of Services other than such Services (a) as may be requested by Ameren Illinois or (b) as may be necessary to wind-down any Project (or the portion thereof so terminated) as soon as reasonably practicable and in an orderly manner, but not to exceed ninety (90) days after the effective date of such termination. With respect to any termination under Section 10.1, and subject to Supplier's duty to mitigate all such costs in a commercially reasonable manner, Ameren Illinois shall reimburse Supplier for the direct, non-cancellable, out-of-pocket charges unavoidably incurred by Supplier prior to receipt of notice of termination arising out of the termination through the effective date of termination. In order to obtain reimbursement for unavoidable, non-cancelable out-of-pocket charges incurred, Supplier shall provide reasonable support and documentation related to the out-of-pocket charges incurred, including but not limited to, the sharing of actual Project costs with Ameren Illinois. Only costs that cannot be mitigated in a commercially reasonable manner and that include the appropriate documentation in support thereof, are reimbursable by Ameren Illinois. Following any termination, Supplier shall promptly deliver to Ameren Illinois all materials and information supplied by Ameren Illinois in connection with the terminated Project (or portion thereof), together with all Deliverables in process at the effective date of termination, whether complete or partially complete. Upon termination pursuant to Section 10.2 hereof, in addition to the rights provided for in this Article 10, the terminating party shall have all other rights or remedies available to it at law or in equity.

- 10.5 In the event this Agreement or any Statement of Work expires or is terminated for any reason, Supplier shall reasonably cooperate with Ameren Illinois with the transfer of Services and/or Deliverables to Ameren Illinois and a third party designated by Ameren Illinois in order to facilitate a smooth transition of operational responsibility for such Services. Ameren Illinois may, at its option, require Supplier to make commercially reasonable efforts to transfer and assign to Ameren Illinois or its designated third party (the "Assignee") the rights of Supplier under all subcontracts and arrangements, provided that such Assignee shall assume the obligations arising under all subcontracts and arrangements acquired by it from and after the date on which it took assignment of the subcontract or arrangement. Supplier shall continue to be responsible for all liabilities and obligations that arose prior to the date of such assignment, unless such liabilities and obligations are expressly assumed by Assignee in writing. Supplier shall reasonably cooperate with Ameren Illinois and, if applicable, its designated third party in the transfer of such Project rights. Supplier shall make commercially reasonable efforts to ensure that any agreement with a Subcontractor will obtain all necessary agreement and consent to affect any transfer or assignment contemplated by this Section 10.5.

ARTICLE 11: CONFIDENTIALITY

- 11.1 In the course of performing the Services, either Party (the "Disclosing Party") may use and disclose to the other Party (the "Receiving Party") Confidential Information. "Confidential Information," as used in this Agreement, means all nonpublic business and technical information of a Party and its Affiliates (whether disclosed orally or in writing), including but not limited to Ameren Data, sales information, customer information, procurement or supplier information, financial information, product and brand information, product concepts, potential names and slogans, operational information, personnel information, marketing and promotional information, advertising plans and information, software programs, research, concepts, ideas, designs, techniques, plans, strategies, any other information considered by a Party to be competitive business information or a trade secret, as well as the respective terms of this Agreement and all Statements of Work entered into by the Parties. The Receiving Party agrees to safeguard and keep confidential the Confidential Information, and to use such Confidential Information only as necessary to design, develop and implement any Project; provided, that the Confidential Information may be disclosed by Ameren Illinois to its EM&V Contractor, in any required filing with, or request for information from, the ICC, except for any requests or filings that include the Intellectual Property Rights for the Supplier System and the pre-existing Intellectual Property Rights of Supplier contained in the Deliverables. The Receiving Party will limit the use of, and access to, the Confidential Information to the Receiving Party's employees and contractors whose use of, or access to, the Confidential Information is necessary for the purposes of this Agreement the Receiving Party will have in effect, and will enforce, rules and policies designed to protect against unauthorized use or reproduction of the Confidential Information, including instruction of and written

agreements with the Receiving Party's employees and contractors to insure that they use and protect the Confidential Information in a manner which protects the Disclosing Party's proprietary rights. Unless otherwise provided in the Statement of Work, the Receiving Party shall not provide access to the Disclosing Party's Confidential Information to any third party without the Disclosing Party's prior written consent. The Receiving Party shall have no obligation of confidentiality with respect to Confidential Information that: (i) was rightfully in possession of or known to the Receiving Party without any obligation of confidentiality prior to receiving them from the Disclosing Party; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; (v) is transmitted by a Party after receiving written notification from the other Party that it does not desire to receive any further Confidential Information; or (vi) is disclosed by the Receiving Party pursuant to a valid order issued by a court or government agency, provided that the Receiving Party provides the Disclosing Party (a) prior written notice of such obligation and (b) the reasonable opportunity to oppose such disclosure or obtain a protective order.

- 11.2 In addition to the provisions set forth in Section 11.1, Supplier represents, warrants and agrees that Supplier will not use any Confidential Information in any manner that would cause competitive harm or injury on Ameren Illinois or any of its customers.

ARTICLE 12: INTELLECTUAL PROPERTY INDEMNITY

- 12.1 Ameren Illinois will notify Supplier, in writing, of any claim against Ameren Illinois, its parent, Affiliates and subsidiaries, related entities, and their respective directors, officers, and employees (collectively, the "Ameren Illinois Indemnitees"), that the Services, Deliverable or the Supplier System, or the use thereof, violates or infringes an Intellectual Property Right of a third party. Upon being notified of any such claim, Supplier, at its sole cost, and subject at all times to Ameren Illinois' consent and agreement, shall fully indemnify, defend and hold harmless Ameren Illinois Indemnitees in the action, perform any negotiations for settlement or compromise of the action, and pay any and all settlements reached and costs and damages awarded in the action, together with reasonable attorneys' fees of counsel of Ameren Illinois' choosing; provided, however that this Section 12.1 shall not apply to the extent that any such action is based upon a claim that (i) Ameren Illinois Material furnished to Supplier or inserted into any Deliverable by Ameren Illinois infringes an Intellectual Property Right or (ii) modifications by Ameren Illinois of any Services or Deliverables after delivery and acceptance thereof by Ameren Illinois infringes an Intellectual Property Right if such claim would not have arisen but for such modification.

- 12.2 In case any Service, Deliverables or Supplier System (or a part thereof) in such claim or action referred to in Section 12.1 is held to constitute an infringement and its use is enjoined, Supplier will, at its own expense and at its option: (a) obtain for Ameren Illinois the right to use the infringing material, (b) modify the Deliverables or Supplier System so as to render them non-infringing and functionally equivalent, or (c) provide Ameren Illinois with functionally equivalent substitute Deliverables or Supplier System. If Supplier is unable to achieve any of (a), (b) or (c) above, then Ameren Illinois shall have the right to terminate this Agreement in accordance with the terms of this Agreement in addition to any other rights or remedies available to Ameren Illinois at law or in equity. Ameren Illinois will give Supplier prompt notice of any such claim or action, and will give Supplier the authority, information, and reasonable assistance (at Supplier's expense) necessary to defend.

ARTICLE 13: SUPPLIER'S PERFORMANCE WARRANTIES

- 13.1 Supplier represents and warrants that all Services will be performed and all Deliverables will be provided: (i) in a timely and professional manner by appropriately skilled personnel; (ii) in a reasonable manner that conforms to the standards for quality normally exercised by professional firms performing in the field of energy efficiency which are (1) generally recognized as being consistent with high levels of quality, care, performance and professionalism and (2) performing services of the same or substantially similar nature; and (iii) in compliance with the Ameren Illinois' policies and procedures identified in this Agreement or any Statement of Work and provided or made available to Supplier prior to the start of the applicable Services, any applicable law or regulations, including, without limitation, any Orders issued by the ICC, and in a manner that does not violate any such policies, law or regulation. Material changes to the Ameren Illinois policies and procedures identified in this Agreement or any Statement of Work are subject to the Change Order process defined in this Agreement. Supplier represents and warrants that any and all Deliverables created and/or delivered by Supplier under this Agreement and any Statement of Work issued hereunder (i) are original and authentic, (ii) do not infringe any Intellectual Property Right of any third party, and (iii) with respect to tangible property, shall conform to applicable specifications, drawings, and standards of quality and performance incorporated into this Agreement and any Statement of Work. Supplier further represents and warrants that Supplier has the sole, exclusive, and legal right to assign, transfer, and conveys all right, title and interest in, to and under the Deliverables to Ameren Illinois. Supplier hereby agrees to obtain representations and warranties substantially the same as those set forth in this Article 13 from all Subcontractors and Supplier hereby assigns to Ameren Illinois any and all warranties provided to Supplier by any Subcontractor. Supplier hereby agrees to execute, acknowledge and deliver from time to time any and all documents and take such other action as Ameren Illinois, in its sole discretion, believes necessary to: (i) protect, assure, register, confirm and/or otherwise vest Ameren Illinois' right, title and interest in, to and under the Deliverables; (ii) make

a record with any and all government agencies, authorities, courts, tribunals, or third parties of the fact that Ameren Illinois owns all right, title and interest in, to and under the Deliverables, and any and all goodwill associated therewith; and (iii) that Supplier has no right, title or interest, of any kind or nature, in or to the Deliverables.

- 13.2 Neither Supplier nor its Subcontractors shall offer, provide or authorize the payment of a Prohibited Expense. A "Prohibited Expense" as used herein shall include but not be limited to (a) any direct payment for alcoholic beverages under the Agreement, and (b) any payment for the marketing of the Ameren Illinois name which fails to relate to or reference either in writing, orally, or visually, Ameren Illinois' Energy Efficiency programs, products or services (collectively, "Prohibited Expenses").

ARTICLE 14: REPRESENTATIONS AND WARRANTIES OF THE PARTIES

- 14.1 Each Party, as a material inducement to the other Party's entering into this Agreement, represents and warrants to the other Party that, as of the date of this Agreement:
- (i) there are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority pending or, to the best of such Party's knowledge, threatened action or proceeding affecting such Party before any court, governmental agency or arbitrator that could reasonably be expected to materially and adversely affect the ability of such Party to perform its obligations hereunder (including its financial obligations), or which purports to affect the legality, validity or enforceability of this Agreement;
 - (ii) it is a duly organized and validly existing entity of the type described in the preamble of this Agreement and is in good standing under the laws of the jurisdiction of its formation; it has the legal right, power, and authority and is qualified to conduct its business, and to execute and deliver this Agreement and perform its obligations under this Agreement and any Statement of Work; and all regulatory and any third party authorizations or consents have been obtained or such Party will use its reasonable good faith efforts to obtain and maintain as necessary for it to perform legally its obligations under this Agreement and any Statement of Work as such obligations become due;
 - (iii) its making this Agreement is within its powers, has been duly authorized by all necessary action on its part, and does not and will not violate any provision of law or any rule, regulation, order, writ, judgment, decree, or other determination presently in effect applicable to it or its governing documents; and

- (iv) this Agreement constitutes its legal, valid, and binding act and obligation, enforceable against it in accordance with this Agreement's terms, subject to applicable bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and general equitable principles.

ARTICLE 15: INSURANCE

Supplier shall procure and maintain for the duration of the Services, insurance covering claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services by Supplier, its agents, representatives, and Subcontractors, or by anyone directly employed by any of them, or by anyone for whose acts any of them may be liable.

15.1 Minimum Insurance Coverages

- (i) Commercial General Liability insurance with respect to any Projects and Services contemplated by this Agreement, specifically including contractual liability insurance with combined single limits, per accident, of not less than \$1,000,000 for bodily injury, including death and property damage. Coverage shall include completed operations coverage for a period not less than three (3) years following completion of any Project.
- (ii) Worker's Compensation insurance with statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
- (iii) Comprehensive Auto Liability insurance which has minimum combined single limits for bodily injury and property damage of \$1,000,000 per accident. The Comprehensive Auto Liability policy shall include owned and blanket non-owned and hired coverage.
- (iv) Excess Liability or Umbrella Insurance on a following form basis providing coverage in excess of Employers' Liability, Commercial General Liability and Commercial Automobile Liability with limits of \$2,000,000 per occurrence.
- (v) Professional Liability insurance with limits of not less than \$5,000,000.
- (vi) Cyber or Network Liability insurance with limits not less than \$5,000,000 per claim and covering:
 - 1. Any act, error or omission (i) in the rendering or the failure to render technology-based Services or Deliverables, or (ii) that results in the failure of software licensed to Ameren Illinois or its Affiliate by Supplier to perform the function or serve the purpose intended;
 - 2. Breaches of security; including but not limited to coverage for consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit

file or identity monitoring or remediation services in the performance of Services or Deliverables for Ameren Illinois or its Affiliate;

3. Network security and privacy risk, including but not limited to unauthorized access, failure of security, breach of privacy perils, unintended wrongful disclosure, collection or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties;
4. Violation of federal, state or foreign security and/or privacy laws or regulations including investigative and notification costs; and
5. Financial loss resulting from a third party using any Ameren Illinois or its Affiliate's computer systems or software associated with a denial of service attack resulting from any negligent act, error or omission of Supplier.

- 15.2 All policies shall be issued by carriers having at least an A.M. Best's rating of "A-" and an A.M. Best's financial size category of "VII" or greater.

Except for Workers' Compensation, and Professional Liability/Errors and Omissions insurance, each policy shall name Ameren Corporation, its Affiliates, and subsidiaries as additional insureds on a primary and non-contributory basis and include a severability of interest provision. Supplier shall provide Company an additional insured endorsement.

Supplier shall require its insurance carriers to waive all rights of subrogation against Ameren Corporation, its affiliates and subsidiaries and their respective directors, officers, agents and employees. Supplier shall provide Company a waiver of subrogation endorsement.

All policies shall be written on an occurrence basis. Claim made policies are acceptable provided that coverage is maintained for a period of 3 years following completion of Services.

Prior to performing any Services, and upon each policy renewal, Supplier shall provide certificates of insurance and endorsements showing the required coverages with "Ameren Corporation and its subsidiaries" as the certificate holder. Ameren reserves the right to require a complete copy of any such policy of insurance. Supplier shall promptly notify Ameren of any notice received or knowledge acquired by Supplier of any cancellation of any policy issued to meet the requirements of this Section. Failure to notify Ameren shall constitute a material breach of the Contract and Ameren may prohibit Supplier from proceeding with or completing the Services until such time as Supplier has complied. All insurance notifications shall be addressed to: Ameren Corporation, Process & Performance (MC 1105), PO Box 66149, St. Louis, Missouri 63166-6149.

To the extent Supplier uses Subcontractors in the performance of the Services, Supplier shall ensure all such Subcontractors maintain insurance coverage and limits identical to those required of Supplier unless otherwise agreed to by Ameren. Supplier shall obtain Certificates of Insurance from each such Subcontractor prior to its commencement of the Service.

ARTICLE 16: INDEMNITY

- 16.1 Supplier shall defend, indemnify and hold harmless any Ameren Illinois Indemnatee from and against any and all claims, demands, losses, damages, attorneys' fees and expenses to the extent caused by or resulting from any act or omission of Supplier, its agents, employees, or any Subcontractors, including consultants, constituting:
- (i) gross negligence or willful misconduct;
 - (ii) negligence;
 - (iii) Supplier's, its agents', employees', or any Subcontractors' violation of any Order, law, Federal or State (whether statutory or common law) or any ordinance, regulation or rule of any public body, including but not limited to the ICC in connection with its or their performance under a Statement of Work; or
 - (iv) Material breach of this Agreement or any Statement of Work.

Nothing contained in this Section 16.1 shall in any way limit Ameren's right to bring an action against Supplier for breach of this Agreement or any Statement of Work.

- 16.2 Supplier shall not be obligated to indemnify Ameren Illinois against any liability, losses, claims, damages, costs and expenses to the extent such liability has been directly attributed by a Court of competent jurisdiction to have arisen solely from Ameren Illinois' negligence or willful misconduct.
- 16.3 In addition to and without limiting the indemnification provided under Section 16.1, Supplier agrees to indemnify and hold harmless any Ameren Illinois Indemnatee against all liability for any and all federal, state and local taxes, penalties and interest (including, but not limited to, any amount paid in professional fees related to such taxes, penalties and interest) with respect to:
- (i) Withholding taxes assessed in connection with the Deliverables and Services rendered under this Agreement;
 - (ii) Domestic Sales and Use Taxes (as defined in Section 41.3 below) that are assessed against Ameren Illinois or any Ameren Illinois Affiliate in

connection with the Deliverables and Services rendered under this Agreement, to the extent such taxes were not paid by Supplier;

- (iii) Domestic Sales and Use Taxes paid by Ameren Illinois or any Ameren Illinois Affiliate, to the extent such taxes were paid in reliance upon information provided by Supplier to Ameren Illinois, such Ameren Illinois Affiliate or any governmental entity, and such taxes are determined to have been paid in error because of the reliance upon information provided by Supplier, and are not otherwise recoverable by Ameren Illinois or Ameren Illinois Affiliate from the governmental entity to whom the taxes were paid in error; and
- (iv) Taxes imposed or withheld on the Deliverables, Services, or tangible goods purchased in connection therewith, hereunder as a result of Supplier's selection or use of individuals or entities located outside of the U.S. to provide such Deliverables, Services and tangible good(s) associated therewith.

16.4 Supplier's indemnification obligation is conditioned on Ameren Illinois promptly notifying Supplier of any claims. Failure by Ameren Illinois to promptly provide such notice shall not relieve Supplier of its indemnification obligation hereunder, except to the extent Supplier demonstrates that the defense of such claim was prejudiced by the failure to provide notice. Ameren Illinois shall allow Supplier to control, and shall reasonably cooperate with Supplier in the defense and any related settlement negotiation of the indemnification claims, except that Supplier shall not settle or compromise any such claim without Ameren Illinois' prior written consent, which shall not be unreasonably withheld. Ameren Illinois shall be entitled to participate in the defense of such claim, at its expense.

ARTICLE 17: SUPPLIER PERSONNEL

17.1 At Ameren Illinois' request, Supplier shall submit a list of its employees, and approved Subcontractors (and their employees) engaged in significant connection with any Project or any component thereof, which shall (i) include an experienced staff of qualified personnel to handle contract administration, planning/scheduling, and direction of all Services and Deliverables, and (ii) be subject to Ameren Illinois' approval, not to be unreasonably withheld, conditioned, or delayed. Supplier warrants that all personnel named in any Statement of Work or such list shall actually perform or supervise the work contemplated therein, in the manner described therein, until the completion, and Ameren Illinois' acceptance, of the Services performed thereunder. Supplier shall at all times enforce good discipline and order among its employees and Subcontractors and shall not employ any unfit Person or anyone not skilled in the task assigned to him or her.

ARTICLE 18: RESERVED

ARTICLE 19: REGULATION OF VISITORS, PHOTOGRAPHS AND PRESS RELEASES

- 19.1 Supplier shall not permit visitors on Ameren Illinois premises without the prior consent of Ameren Illinois.
- 19.2 Supplier may not use Ameren Illinois' name or photographs taken by the Supplier on or in the vicinity of Ameren Illinois' premises in Supplier's advertising without the prior consent of Ameren Illinois.
- 19.3 Supplier shall not make any verbal or written statement to any press or news media relative to the Work of this Agreement without obtaining prior written consent from Ameren Illinois.

ARTICLE 20: RESERVED

ARTICLE 21: RESERVED

ARTICLE 22: RESERVED

ARTICLE 23: RESERVED

ARTICLE 24: RESERVED

ARTICLE 25: RESERVED

ARTICLE 26: RESERVED

ARTICLE 27: RESERVED

ARTICLE 28: RESERVED

ARTICLE 29: RESERVED

ARTICLE 30: RESERVED

ARTICLE 31: PERMITS AND COMPLIANCE WITH LAWS; SAFETY

- 31.1 Supplier is and shall remain knowledgeable of all legal requirements relating to, and shall obtain, at its expense, all permits and licenses from governmental authorities and from private parties which are required to fulfill the obligations of the Supplier under this Agreement, including but not limited to the performance of Services or the delivery of Deliverables pursuant to this Agreement or any Statement of Work.
- 31.2 In the performance of the obligations of the Supplier under this Agreement, including but not limited to the performance of Services or the delivery of

Deliverables pursuant to this Agreement or any Statement of Work, Supplier shall comply with all applicable laws, ordinances, rules, regulations, restrictions and requirements of all governmental authorities in the provision of the Services hereunder, including, but not limited to, any Order issued by the ICC.

- 31.3 Without limiting the scope of the foregoing, Supplier certifies that all Services provided and performed by it and its Subcontractors will be in compliance with applicable federal and state laws, including but not limited to: (i) the Williams-Stagger Occupational Safety and Health Act of 1970, as amended (OSHA) and all regulations and standards promulgated by the Secretary of Labor hereunder and where Supplier has OSHA Material Safety Data Sheets, Supplier shall forward copies promptly to Ameren Illinois' environmental, safety and health departments; and (ii) all applicable unfair or deceptive trade practices acts, including, without limitation, the Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505 (2006) and the Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510 (2006).
- 31.4 Supplier will comply with all applicable safety and health rules and procedures of Ameren Illinois, as provided by Ameren Illinois.
- 31.5 Supplier will comply with all applicable environmental laws, including, without limitation, the disposal of any hazardous substances.
- 31.6 Supplier shall provide copies of any safety policies applicable to the Services provided or Deliverable delivered under this Agreement to Ameren Illinois for review and approval, which approval shall not be unreasonably withheld.
- 31.7 **Ameren Illinois is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. Moreover, these regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. These regulations require that Ameren Illinois and its contractors, vendors and suppliers take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The Parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**

ARTICLE 32: RETENTION/DISCLOSURE

- 32.1 Notwithstanding any provision to the contrary, if Ameren Illinois is required by law, including but not limited to any order of an agency or court of competent jurisdiction to retain any information, program, documentation, manual, or the like for a given time after termination of its use, Ameren Illinois shall have the right to do so and to require that Supplier do so. Moreover, nothing contained herein shall be construed to prohibit Ameren Illinois from disclosures required or requested pursuant to law, regulations, rules, or procedures of any governmental authority, including without limitation any regulatory agency or court of competent jurisdiction.

ARTICLE 33: ENGAGEMENT OF SUBCONTRACTORS AND CONSULTANTS

- 33.1 Supplier shall not delegate or subcontract any of its obligations under this Agreement, any Statement of Work or Change Order, or engage consultants, without Ameren Illinois' prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Ameren Illinois shall have the right to approve or disapprove the use of proposed Subcontractors or consultants not properly identified in the applicable Statement of Work, at its sole discretion. Subcontractors and consultants will be engaged subject to all applicable terms and conditions of this Agreement and any applicable Statement of Work. Approved Subcontractors and consultants shall bill Supplier directly for their Services, it being understood that such charges, regardless of amount, are deemed to be included in an SOW Amount under this Agreement.
- 33.2 Ameren Illinois shall have the right to approve the terms of any agreements between Supplier and its consultants or Subcontractors providing Services pursuant to this Agreement. Supplier shall provide to Ameren Illinois the forms of contracts to be entered into between Supplier or any Subcontractor, on one hand, and any Person participating in any Project, on the other, and Supplier shall provide to Ameren Illinois a fully executed copy of all such agreements. At Ameren Illinois' option, Ameren Illinois may reasonably require that any Project related contracts be entered into directly with Ameren Illinois.
- 33.3 Supplier shall oversee and supervise the Subcontractors in the performance of any aspect of a Project. In addition to any other requirements set forth in this Agreement, each subcontract shall contain provisions which:
- (i) preserve and protect the rights of Ameren Illinois under this Agreement and any Statement of Work with respect to any Project so that the subcontracting thereof will not prejudice such rights including the right for the contract to be assigned to Ameren Illinois.

- (ii) require that such Project be performed in accordance with the applicable requirements of this Agreement and any Statement of Work, including with respect to record keeping and treatment of Confidential Information.
 - (iii) require that all claims for additional cost, extensions of time, or otherwise with respect to subcontracted portions of any Project shall be submitted to Supplier (via any Subcontractor where appropriate) in sufficient time so that Supplier may comply in the manner provided in this Agreement and any Statement of Work for like claims by Supplier upon Ameren Illinois.
 - (iv) require that the Subcontractor acknowledge that Supplier is solely responsible for any obligations, Services and functions to be performed by Supplier with respect to the applicable Project, and that Subcontractor shall have no recourse against Ameren Illinois for liabilities relating to any such obligations, Services or functions.
 - (v) require that the Subcontractor acknowledge that Ameren Illinois owns all of the Intellectual Property Rights related to any of its Deliverable and such Subcontractor shall assign to Ameren Illinois any rights it has in any such Intellectual Property Rights, except as provided in Article 9 of this Agreement.
 - (vi) require that the Subcontractor will cooperate in obtaining all rights, title and interests in any Project Attributes for the benefit of Ameren Illinois with Ameren Illinois bearing any additional costs related thereto, if any.
 - (vii) prohibit the Subcontractor from charging any Prohibited Expenses.
- 33.4 Supplier shall remain solely responsible for obligations, Services and functions performed by Subcontractors and consultants to the same extent as if such obligations, Services and functions were performed by Supplier's employees and for purposes of this Agreement such work shall be deemed Services performed by Supplier for purposes of this Agreement. Supplier shall be Ameren Illinois' sole point of contact regarding the Services, including with respect to records and payment, but Ameren Illinois shall have the right to communicate with and directly inspect the records and Services of any Subcontractor upon reasonable notice in the same manner that Ameren Illinois may inspect the records and Services of Supplier as provided in this Agreement. Nothing contained herein or in any Statement of Work shall be deemed to create any obligations, contractual or otherwise, on the part of Ameren Illinois to any Person or entity other than Supplier.
- 33.5 Ameren Illinois shall have the right, in its reasonable discretion, to require Supplier to remove any Subcontractor or consultant if the Subcontractor's or consultant's performance is materially deficient, good faith doubts exist concerning the Subcontractor's or consultant's ability to render future performance, the Subcontractor or consultant has engaged in any tortuous, improper or illegal

conduct, there have been material misrepresentations by or concerning the Subcontractor or consultant or breach by Subcontractor of its subcontract or any resulting breach of this Agreement.

- 33.6 Supplier shall not disclose Ameren Illinois' Confidential Information to an Affiliate, Subcontractor or consultant unless and until such Affiliate, Subcontractor or consultant has agreed in writing to protect the confidentiality of such Confidential Information in a manner that complies with the law and is substantially equivalent to that required of Supplier under this Agreement. Proof of compliance with this provision is to be delivered to Ameren Illinois prior to the sharing of data with any Affiliate, Subcontractor or consultant.

ARTICLE 34: SUPPLIER CERTIFICATION AND VERIFICATION

- 34.1 In order to provide a safe and healthy working environment and to ensure that suppliers comply with the minimum mandatory requirements of its contract terms and conditions, Ameren Illinois institutes, from time to time, certification programs for which suppliers must successfully complete the program requirements. Upon request, Supplier will be required to meet Ameren Illinois' minimum mandatory compliance requirements set forth in such certification programs by completing a form and submitting proof of relevant compliance information, including insurance certificates, licenses, business classifications, safety experience rates, training initiatives, quality information, environmental compliance and other business data required by Ameren Illinois, as appropriate.
- 34.2 Ameren Illinois contracts with third-party verification companies to collect, verify and manage documentation relevant to such certification programs. If requested by Ameren Illinois, Supplier shall submit all compliance information, supporting documentation and fees for verification and processing to such third-party verification company.

ARTICLE 35: RESERVED

ARTICLE 36: RESERVED

ARTICLE 37: SUPPLIER DIVERSITY

- 37.1 It is Ameren Illinois' policy to ensure certified, diverse owned, (Minority, Woman, Veteran, service-disabled and/or LGBT owned) businesses have maximum opportunity to participate in the performance of contracts. In order to comply with this policy, the Supplier agrees to consider subcontracting, which will be necessary under this Agreement to certified, diverse owned, (Minority, Woman, Veteran, service-disabled and/or LGBT owned) businesses to the fullest extent consistent with the efficient performance of this Agreement. The Supplier agrees to complete a diverse supplier business plan provided by Ameren Illinois for any diverse Subcontractor engaged to perform work related to this Agreement and return the

completed plan to Ameren Illinois. Further, the Supplier agrees to notify Ameren Illinois of any new diverse Subcontractors which are added under this Agreement and to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or Ameren Illinois to assure compliance with this section. Supplier agrees to include this section in the flow-down terms of all Subcontractor agreements, and will require all Subcontractors to make good faith efforts to abide by any supplier diversity requirements which Supplier has agreed to perform under this Agreement.

ARTICLE 38: MARKET DEVELOPMENT INITIATIVE

- 38.1 The Parties acknowledge and agree that as part of the Plan, Ameren Illinois will continue to expand its Market Development Initiative ("MDI"), which will focus at least on the following objectives: (1) *Engage Underserved Customers and Communities*: deliver targeted energy efficiency education and data-driven, neighborhood-based program approaches to serve communities with a critical need to reduce energy usage; (2) *Build a Diverse Workforce*: increase the number of local and diverse participants in energy efficiency workforce and help develop the next generation of clean energy economy jobs; (3) *Support Diverse Businesses*: strengthen the partnership and support for local and diverse business enterprises, including a focus on capacity building for community-based organizations and trade allies/energy efficiency service providers.
- 38.2 Consistent with the Plan and pursuant to a Statement of Work, Supplier agrees to develop and provide, within 3 months of the Effective Date of this Agreement, a plan designed to assist Ameren Illinois with meeting the objectives of MDI approved by the ICC in the Plan and noted in Section 38.1 above (the "Market Development Action Plan"). The Market Development Action Plan must be tailored with the intent to meet the stated purposes of the MDI in the Plan, but must be in all respects compliant with and/or not in violation of applicable state and federal equal employment opportunity laws, including, but not limited to, those laws related to hiring decisions. Additional details related to Supplier's Services, Deliverables or Projects arising from or with respect to the Market Development Initiative Plan shall be set forth in such Statement of Work.

ARTICLE 39: SURVIVAL

- 39.1 The provisions of Articles 5, 8, 9, 10, 11, 12, 13, 14, 16, 19, 32, 35, 38, 39 and 40 shall survive any expiration, cancellation or termination of this Agreement.

ARTICLE 40: CYBER SECURITY

- 40.1 Supplier accepts the terms and conditions related to network access and cyber security as set forth in ATTACHMENT B and acknowledges that the terms and conditions may be modified from time to time.

ARTICLE 41. TAXES

- 41.1 Supplier will be responsible for any taxes on property it owns or leases, for any franchise or privilege tax on its business, and for any tax based on its gross or net income or gross receipts.
- 41.2 Supplier will pay for any tax on goods or services it uses to provide any Deliverables or Services, including any Domestic Sales and Use Taxes.
- 41.3 Ameren Illinois' and its Affiliates' reimbursement obligation under this Agreement shall be limited solely to that portion of the U.S. federal, state, and local sales and use taxes directly related to the Deliverables and Services, including tangible goods purchased by Supplier as required to fulfill an Initiative (hereinafter referred to as "Domestic Sales and Use Taxes"). Ameren Illinois' and its Affiliates' shall have no tax liability under this Agreement for any other taxes associated the Deliverables and Services rendered by Supplier. Any Domestic Sales and Use Taxes for which Supplier is required by law to collect and remit will be in addition to the fees payable to Supplier hereunder, and shall be separately stated on Supplier's invoice. Supplier shall be responsible for any interest and/or penalties imposed as a result of Supplier's failure to timely invoice or remit applicable Domestic Sales and Use Taxes; and if Supplier has failed to notify Ameren Illinois of said error within six (6) months after date of invoice, Supplier shall also be responsible for any resulting tax deficiency. For transactions where Ameren Illinois or its Affiliates self-remit the applicable tax, Supplier cannot seek reimbursement from Ameren Illinois in the event of an audit or other payment provided Ameren Illinois provides proof of payment to the applicable government agency.
- 41.4 The Parties will cooperate with each other to more accurately determine and minimize any Domestic Sales and Use Taxes arising out of this Agreement, including the following actions. Each Party will provide tax information or tax documents reasonably requested by the other Party. Each Party will promptly notify the other of any claim for taxes asserted by a taxing authority with jurisdiction over either Party. With respect to any claim arising out of a form or return signed by a Party to this Agreement, the signing Party may control the response to and settlement of the claim, but the other Party may participate to the extent it may be liable.