



# THE LUMBEE TRIBE OF NORTH CAROLINA

## DEPARTMENT OF ENERGY

This Agreement is made this the \_\_\_\_\_ day of August, 2018, by and between the Department of Energy of the Lumbee Tribe of North Carolina, (hereinafter, LTNC-DOE) and \_\_\_\_\_, (hereinafter, Vendor) for supplying home energy under programs administered by LTNC and the terms and conditions set forth below.

### 1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to provide for the payment of home energy bills for certified low income recipients of the Department of Energy of the Lumbee Tribe of North Carolina.

### 2. TERM OF THE AGREEMENT

This Agreement shall commence on the 1st day of October, 2018 and shall terminate on September 30, 2019. The parties may, upon mutual consent, extend or amend the Agreement. Terms of the extension or amendment must be specified in writing and signed by both the Vendor and an authorized representative of LTNC-DOE before the proposed amendment is effective.

### 3. TERMS AND CONDITIONS

#### 3.1. Definitions

3.1.1. The Term "household" means any individual or groups of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

3.1.2. "Home Energy" means electricity, oil, coal, wood, kerosene, or any other fuel used for heating or cooling a residence.

#### 3.2. Payments on Behalf of Eligible Households

3.2.1. Upon certification of an applicant for assistance, a LTNC-DOE caseworker will notify the vendor via facsimile or telephone with a pledge-for-payment that shall be paid on behalf of the certified applicant/ recipient.

3.2.2. Upon receiving a pledge-for-payment from the LTNC-DOE, the vendor agrees to accept the pledge-for-payment which shall prevent shutoff of the households heating and cooling source until said payment has been made. Vendor shall receive payment from the LTNC-DOE within thirty (30) days after receiving the pledge-for-payment.

3.2.3. Non-utility vendors whose cost of heating for tenants is included into the monthly housing cost agrees that funding received from LTNC-DOE for winter assistance shall be credited to offset the monthly housing cost on behalf of the designated household.

3.2.4. LTNC-DOE agrees to make timely payments to the supplier pursuant to paragraph 3.5 for the home energy supplied to an eligible household identified under paragraph 3.1 at the rate charged by the Vendor, but no more than the rate normally charged to a non-eligible similarly-situated household, up to the maximum amount specified for such household.

- 3.2.5. The Vendor agrees upon receiving payment from LTNC-DOE for assistance, any reimbursement or cash credit from such assistance shall be reimbursed to LTNC-DOE, including deposit reimbursement or overpayment.
- 3.2.6. The Vendor agrees that funding received from LTNC-DOE for winter assistance will be tracked separately from payments received by account holder or other service agencies.
- 3.2.7. The Vendor agrees that funding received from LTNC-DOE for winter assistance must be used by designated household on or before March 15, 2019 or shall be reimbursed to LTNC-DOE.

### **3.3. Deliveries of Home Energy to Eligible Households**

- 3.3.1. The Vendor agrees that no household receiving assistance from LTNC-DOE shall be treated differently under the applicable provision of State law or public regulatory requirements.
- 3.3.2. The supplier will not discriminate against any eligible household covered by this agreement in the supplier's terms and conditions of sale, credit, delivery or prices; including service charges, reconnecting charges and payment plan arrangements.
- 3.3.3. The Vendor will provide home energy to eligible households and charge those eligible households in the supplier's normal billing process, no more than the difference between: (a) the actual price normally charged to a non-eligible similarly situated household for the home-energy delivered, and (b) the payment to the Vendor from the energy under the terms of this Agreement.
- 3.3.4. The Vendor agrees to reconnect discontinued services and/or deliver fuel upon receipt of a pledge-for-payment from LTNC-DOE. In a situation of an emergency or in the case of a same-day disconnect, LTNC-DOE shall contact the Vendor via telephone to authorize pledge-for payment.
- 3.3.5. To protect the integrity of this program as well as Vendor, added security measures have been implemented. A list of authorized LTNC-DOE staff eligible to make a pledge-for-payment shall be submitted to the vendor to include a password for the purpose of identity verification. At the time of receiving a pledge-for-payment from LTNC-DOE the Vendor shall verify the authorized staff and password before processing. A list of authorized staff and security passwords are attached as Appendix A, which may be modified as needed in the discretion of LTNC-DOE.
- 3.3.6. If a pledge-for payment is received it shall ONLY be received from (910) 521-1707 or (910) 668-1196. Any pledges received otherwise shall be deemed as an unauthorized pledge-for-payment and LTNC-DOE will not be responsible for payment.
- 3.3.7. The Vendor shall maintain an accounting system and supporting fiscal records adequate to allow the agency to verify the amount of home energy delivered to eligible households covered by this Agreement, and the amount of the payments made for energy by all eligible households. This supplier's records will be maintained for not less than three (3) years from the date of last service provided to the household, and will be made available for inspection and copying by agency representatives upon reasonable request.

### **3.4. Enforcement of This Agreement**

- 3.4.1. Eligible households in whose behalf payments are made under this Agreement are third party beneficiaries under this Agreement.

### **3.5. Non-Performance**

3.5.1. Notwithstanding any right under State law to rescind this Agreement for nonperformance, the nonperformance of a term or condition of this Agreement shall not discharge the obligations of either party with respect to eligible households who have received home energy assistance under this Agreement.

### **3.6. Assignment**

3.6.1. Vendor, its successor and assigns, agree that the rights of eligible households that have received home energy assistance under this agreement shall remain unaffected following the assignment, merger, acquisition or any transfer of interest by the Vendor to or with any third party entity. In any agreement, contract or writing transitioning ownership interest or rights, Vendor agrees to indemnify and hold LTNC-DOE harmless in any legal proceeding, arising from acts of Vendor for which LTNC-DOE has no control, related to the provision of energy services to household.

3.6.2. Vendor agrees to ensure eligible households suffer no interruption in service due to the transition of ownership or rights from Vendor to any third-party entity. If any costs are incurred related to service interruption due to the transition of ownership, Vendor agrees that those costs will be the sole burden of Vendor, its successor or assign.

3.6.3. In the event LTNC-DOE is required to defend against any legal proceeding arising out of paragraphs 3.6.2 or 3.6.3, Vendor agrees to pay the reasonable attorney fees incurred by LTNC-DOE related to the same.

### **3.7. RELATIONSHIP OF PARTIES**

3.7.1. Any implication in this Agreement to the contrary notwithstanding, in performing its services hereunder, LTNC-DOE shall act solely as an independent contractor. Nothing in this Agreement shall be construed to establish a partnership or joint venture between LTNC-DOE and Vendor. No provision contained herein shall be construed as authorizing or empowering either party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf, or in the name of the other party in any manner, or to make any representation, warranty or commitment on behalf of the other party, except as shall be provided for herein. All activities of LTNC-DOE hereunder shall be conducted in its own name (except where LTNC-DOE's consent or participation is reasonably required, in which event Vendor shall, as the case may be, consent or participate).

### **3.8. DEFAULT; REMEDIES**

3.8.1. In the event either party shall breach any term or condition of this Agreement and shall fail to cure such breach within fifteen (15) days from the date of written notice from the non-breaching party specifying such breach, the non-breaching party may terminate this Agreement and the breaching party shall, in the event of any such termination, pay to the non-breaching party any fees or other payments due to the non-breaching party as of the date of termination, and the non-breaching party may pursue any remedy available to it at law or equity.

### **3.9. HEADINGS**

3.9.1. The headings contained in this Agreement are for convenience only and shall have no effect on the interpretation or construction of this Agreement.

**3.10. SEVERABILITY**

3.10.1. In the event any of the provisions of this Agreement shall become or be declared invalid or unenforceable, the invalid or unenforceable provision or provisions shall to that extent be deemed removed and the remaining provisions shall continue to be enforced according to their terms.

**3.11. GOVERNING LAW**

3.11.1. This Agreement shall be deemed executed in the State of North Carolina regardless of the actual place of signature or of the actual place of performance. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**3.12. Entire Agreement**

3.12.1. This Agreement shall constitute the entire agreement between the parties, and no variance or modification thereof shall be valid and enforceable unless in writing and signed by the parties hereto.

**3.13. Notices**

3.13.1. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed to have been fully given when deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, and addressed as follows:

If to Vendor at: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Vendor at: Lumbee Tribe of North Carolina  
Patrick Strickland  
Post Office Box 2709  
Pembroke, NC 28372

or any other address as may be given at any time, and from time to time, by LTNC-DOE, to Vendor, or to Vendor by LTNC-DOE, in accordance with this paragraph 3.13.1.

IN WITNESS WHEREOF, LTNC-DOE and Vendor have caused this Agreement to be executed all as of the date first above written. The undersigned affirm capacity to bind the LTNC-DOE and Vendor to the terms of this agreement.

\_\_\_\_\_  
Printed Company Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Patrick Strickland, MPA, Manager  
Department of Energy - LTNC

\_\_\_\_\_  
Date

Appendix A

User ID

User Password

1. Patrick Strickland
2. Wilma Dial
3. Ashley Locklear
4. Tiffany Hammonds
5. Francine Cummings
6. Shentilla Seals
7. Erica Locklear
8. Anita Oxendine

