

ERCOT PURCHASE ORDER TERMS AND CONDITIONS (EFFECTIVE 02.15.21)

**THESE TERMS APPLY ONLY IN THE ABSENCE OF ANY OTHER WRITTEN AGREEMENT WITH RESPECT TO THE GOODS OR SERVICES COVERED BY THE ORDER. THE TERMS ARE CONSIDERED ACCEPTED IF NOT REJECTED BY VENDOR IN WRITING WITHIN THREE (3) BUSINESS DAYS OF RECEIPT.**

**1. Termination.** Either party to this Order (each individually a "Party" and collectively the "Parties") may terminate this Order for Cause at any time by giving ten (10) days written notice and opportunity to cure. "Cause" means a Party's failure to perform, fraud, misconduct, or any material breach of this Order. Either Party may terminate this Order without Cause by providing thirty (30) days written notice to the other Party.

**2. Sale of Goods.** For the price stated in this Order ("Price"), Vendor agrees to sell, assign, and transfer to ERCOT the goods described ("Goods"), including any manufacturer's warranty associated with the Goods. For any Goods that include software, Vendor must provide a copy of the software license reasonably prior to delivery of the software. ERCOT will pay the Price for the Goods, less any amounts disputed in good faith, within thirty (30) days after receipt of the Goods or an invoice for the Goods, whichever is later. If Goods are to be shipped to ERCOT, Vendor is responsible for providing adequate insurance coverage during the shipment of the Goods.

**3. Services, Fees, and Invoices.** Any services rendered under this Order ("Services") must be performed as described in this Order. Vendor must provide ERCOT with monthly invoices detailing work performed, any achieved milestones or completed products of Services ("Deliverables"), time expended, fees as stated in this Order, and expenses. ERCOT will pay the amount stated in the invoice, less any amounts disputed in good faith, within thirty (30) days after receipt of the invoice.

**4. Out of Pocket Expenses.** Vendor's expenses are only reimbursable if they are pre-approved in writing by ERCOT, comply with the ERCOT Business Expense Reimbursement Corporate Standard, and appropriate supporting documentation is provided within sixty (60) days of the expense being incurred.

**5. Independent Contractor.** Vendor must perform all Services in accordance with reasonable instructions issued during the term of this Order by the responsible ERCOT manager. However, Vendor is and will remain at all times an independent contractor, and nothing in this Order will be deemed to create a joint venture, partnership, employment, franchise, master-servant, or agency relationship between the Parties. Nothing in this Order grants Vendor the authority to assume or create any obligation, liability, or responsibility or otherwise act on ERCOT's behalf.

**6. Conduct.** Vendor agrees to abide by the policies and procedures applicable to ERCOT independent contractors while on ERCOT premises, performing Services for ERCOT, or using ERCOT equipment or networks. ERCOT will provide copies of applicable policies to Vendor as requested.

**7. Warranty.** Vendor warrants that all Services provided in connection with this Order will be performed with due diligence and in full compliance with the highest professional standards of practice in the industry. Vendor warrants that all Services will be performed in compliance with all laws. Vendor warrants that it has all necessary licenses, permits, certifications, and qualifications to fully perform under this Order. Vendor warrants that it has good title or sufficient license to sell and transfer any Goods and Deliverables free and clear of all liens, encumbrances, liabilities, and adverse claims of every nature and description. Vendor warrants that no portion of the Goods or Deliverables infringes upon any third party's intellectual property rights. Vendor further warrants that it has no knowledge of any hidden defect in the Goods or Deliverables and believes, to the best of its knowledge, that they are fit for the purpose intended, and will not fail due to defects in materials and workmanship for a period of twenty-four (24) months following the receipt of the Goods by ERCOT, except for defects resulting from the intentional or negligent acts of ERCOT.

**8. Confidential Information.** "Confidential Information" means all information, technical data or know-how related to the business, services, or products of ERCOT, ERCOT's market participants, members, consultants, or vendors, including, without limitation, any research, products, services, developments, inventions, processes, techniques, designs, or scientific, technical, engineering, distribution, marketing, financial, merchandising, or sales information that is disclosed to Vendor, directly or indirectly, in writing, orally, or by drawings or inspection. Vendor agrees not to disclose or use the

Confidential Information other than for fulfillment of this Order. Vendor must take reasonable measures to avoid unauthorized disclosure or use of the Confidential Information. Vendor agrees to immediately notify ERCOT of any unauthorized use or disclosure of Confidential Information, and to cooperate in any reasonable way to help ERCOT regain possession of the Confidential Information and prevent further unauthorized use or disclosure. Vendor acknowledges and agrees that breach of this section may result in irreparable and continuing damage to ERCOT, for which there would be no adequate remedy at law, and that, in the event of such breach, ERCOT may be entitled to injunctive relief and/or a decree for specific performance, in addition to all such other and further relief as may be available at law, in equity, or otherwise.

**9. LIABILITY. ERCOT IS NOT LIABLE UNDER THIS ORDER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND. THE CUMULATIVE LIABILITY OF ERCOT FOR CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE RELATING TO THIS ORDER IS NOT TO EXCEED THE COMPENSATION PAID OR OWED TO VENDOR FOR GOODS AND SERVICES UNDER THIS ORDER.**

**10. INDEMNIFICATION. VENDOR WILL DEFEND, INDEMNIFY, AND HOLD ERCOT HARMLESS FROM AND AGAINST ALL CLAIMS, SUITS, LIABILITIES, ASSESSMENTS, PENALTIES, LOSSES, DEMANDS, DAMAGES, COSTS (INCLUDING COURT COSTS), ATTORNEYS' FEES, EXPENSES, OR INTEREST PAYMENTS THAT ERCOT MAY AT ANY TIME INCUR BY REASON OF ANY DEMAND, PROCEEDING, ACTION, SUIT OR CLAIM BROUGHT AGAINST ERCOT BY ANY NON-PARTY ARISING FROM OR RELATING TO AN ACTUAL OR ALLEGED (A) FAILURE BY VENDOR TO SATISFY ANY ONE OR MORE OBLIGATIONS, REPRESENTATIONS, WARRANTIES, OR COVENANTS UNDER THIS ORDER; (B) NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF THE VENDOR OR ANY ONE-OR-MORE OF ITS EMPLOYEES, OFFICERS, DIRECTORS, AFFILIATES, CONTRACTORS, LICENSEES, OR AGENTS; (C) CLAIM THAT ANY SOFTWARE OR DELIVERABLE PROVIDED BY VENDOR INFRINGES ANY UNITED STATES PATENT, TRADEMARK, OR COPYRIGHT OR IS CLAIMED TO BE A MISAPPROPRIATION OF A TRADE SECRET; OR (D) CLAIMS AND LIABILITY FOR ANY FEDERAL, STATE, AND LOCAL TAXES, WORKERS' COMPENSATION, EMPLOYMENT BENEFITS, UNEMPLOYMENT COMPENSATION, AND ANY OTHER EMPLOYMENT-RELATED OR OTHER CLAIMS BY, FOR, OR ON BEHALF OF ANY INDIVIDUAL PERFORMING SERVICES ON BEHALF OF VENDOR UNDER THIS ORDER. IN THE EVENT VENDOR FAILS TO DEFEND A CLAIM DILIGENTLY AND IN GOOD FAITH, ERCOT WILL HAVE THE RIGHT TO UNDERTAKE THE DEFENSE, COMPROMISE, OR SETTLEMENT OF THE CLAIM AT VENDOR'S EXPENSE.**

**11. Insurance.** If Vendor provides Services under this Order, Vendor must maintain for the term of this Order the following insurance coverage with insurance companies with a minimum A.M. Best Rating of A-V: (a) Fidelity Bond or Crime Policy in the amount of \$1,000,000 with third-party coverage – with ERCOT as a named beneficiary – for Vendor employees (required only if Vendor personnel will work at an ERCOT facility, or with ERCOT intellectual property, proprietary information, or Confidential Information); (b) Errors & Omissions (Professional Liability) insurance with a limit of \$1,000,000 per claim made and \$2,000,000 annual aggregate (required only if Vendor provides professional services); (c) Commercial General Liability insurance with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering bodily injury and tangible property damage claims; (d) Automobile Liability coverage for all automobiles, including rentals, driven by Vendor employees and agents in the course of providing Services with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate; and (e) Umbrella Liability insurance in the amount of \$3,000,000 per incident without any gaps in the limits of coverage. If Vendor supplies Goods under this Order, Vendor must maintain transit insurance covering the full replacement value of the Goods. Vendor must furnish to ERCOT certificates of insurance, signed by authorized representatives of the surety or insurers, of all bonds and insurance, including the coverage amounts, and timely renewal certificates. Failure to consistently maintain this fidelity bond or insurance coverage, or to timely provide ERCOT with insurance certificates, constitutes a material breach of this Order.

**12. Cyber Security.** Prior to performing Services, supplying Goods, or transferring Deliverables or Professional Materials (i.e., any software, software designs, raw experience modeling, industry data, and any generic analyses of such data, routines, user-interface conventions, interfaces to third-party products, user-interface design patterns, other development and design tools, and documentation that Vendor developed prior to the acceptance of this Order), Vendor will provide summary documentation of its cyber security program, including the standards, practices, training programs, and development

environment used to create or modify Deliverables and Professional Materials. If applicable, Vendor will document how it addresses and prevents introduction of malicious code during development and delivery of software included with Deliverables or Professional Materials. If applicable, the Vendor will document how the most critical application security weaknesses are being addressed. During or after performance of Services or transfer of Deliverables or Professional Materials, and upon Vendor identifying any breaches of its system security or potential security threats related to any Deliverables or Professional Materials, Vendor will notify ERCOT (1) within 24 hours of such breaches involving Services, Deliverables, or Professional Materials provided to ERCOT or (2) within three (3) calendar days of any other breaches of Vendor's system security. Within seven (7) calendar days of any such breach, Vendor will provide follow-up documentation to ERCOT that will include a description of the breach, potential security impact, root cause, and recommended corrective actions to be taken by ERCOT and Vendor. Vendor will continue to report to ERCOT on a schedule approved by ERCOT until a root cause analysis and forensic investigation to determine the full impact have been completed or exhausted. Vendor will transfer Deliverables only through secure channels approved in advance by ERCOT. ERCOT may require Vendor to specify how digital delivery will be validated and monitored to ensure integrity and authenticity of software and patches, and to apply encryption throughout the delivery process. All Vendor access, including Vendor-initiated remote access and automated system-to-system access, will occur only through ERCOT's security gateways and firewalls, and will adhere to ERCOT security procedures. All notifications required under this Section 12 must be sent to [SupplierNotification@ercot.com](mailto:SupplierNotification@ercot.com).

**13. Vendor's Preprinted Terms.** The terms of this Order are not to be amended, modified or altered by any conflicting preprinted terms, provisions, or conditions contained in a preprinted form submitted by Vendor, such as acceptance documents or acknowledgements. If any conflict exists between this Order and any terms and conditions on an acceptance document, acknowledgment, or other preprinted form submitted by Vendor, the terms and conditions of this Order will control.

**14. Amendment.** This Order may only be amended by a writing signed by the Parties.

**15. Entire Agreement.** This Order (including all attachments) constitutes the sole and only agreement of the Parties and supersedes any prior understandings or agreements between the Parties respecting this subject matter. If there is a conflict between these terms and conditions of the Order and any attachments, these terms and conditions will control. Anything to the contrary in this Order notwithstanding, ERCOT expressly rejects (a) any additional terms or conditions referenced in this Order and (b) any purported amendment or modification to the existing agreements between the Parties that govern the provision of the products and services referenced in this Order.

**16. Assignment.** Neither this Order nor any duties nor obligations under it are assignable by Vendor.

**17. Successors and Assigns.** Subject to the provisions regarding assignment, this Order is binding on and inures to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

**18. Governing Law.** The validity of this Order and of any of its terms or provisions, as well as the rights and duties of the Parties, is governed by the laws of the State of Texas without regard to its choice of law provisions.

**19. Legal Construction.** In the event that any one or more of the provisions contained in this Order is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability does not affect any other provisions, and the Order will be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

**20. Notice.** Any notice related to this Order must be in writing and delivered by mail or facsimile to the persons at the addresses listed in this Order.

**21. Electronic Signatures.** This Order and any amendments may be executed in counterparts through electronic transactions. A copy of this Order or an amendment with electronic signatures has the same force and effect as an original Order with inked original signatures, and any reproduction made by reliable means (e.g., photocopy, scan, facsimile) is considered an original.