



# Coldwater Board of Public Utilities Trade Ally Agreement

## Participating Vendor Agreement

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_ 20\_\_\_\_ signature date of this agreement (“Effective Date”) between Coldwater Board of Public Utilities (the “Company”), and \_\_\_\_\_ the (“Vendor”). In consideration of the mutual benefits to be derived from the Vendor’s participation in the Company’s Trade Ally Program and/or other programs which the company may, from time to time, sponsor (collectively, “Program”), and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Company and contractor agree as follows:

- Vendor \_\_\_\_\_
- Contact Person \_\_\_\_\_
- Address \_\_\_\_\_
- City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- Telephone \_\_\_\_\_ E-mail \_\_\_\_\_

Vendor’s participation in any current or future Program shall be governed by the terms of this Agreement.

### I. VENDOR WARRANTIES, REPRESENTATIONS AND COVENANTS

- (a) The Vendor, its subcontractors and agents are trained and qualified to perform and shall perform Services (“Services” herein after means all services of work, including, but not limited to, activities relating to the marketing and/or sale of equipment, performed by the Vendor or its subcontractors or agents under any existing or future Company Program) related to any Program in accordance with the requirements of such Program and the highest ethical standards and shall use the utmost professionalism and integrity when dealing with customers;
- (b) The Vendor, its subcontractors and agents in their performance hereunder shall at all times comply with all current and future, applicable laws, licensing and permitting requirements, ordinances, codes, rules, regulations and orders and perform all Services under any Program in a proper manner and in accordance with industry norms and practices and in accordance with manufacturer’s specifications and Instructions;
- (c) The Vendor, its subcontractors and agents shall obtain, pay for, possess and post all licenses and permits necessary to perform Services;
- (d) Any Services performed by the Vendor, its subcontractors or agents which violate any applicable law, licensing or permitting requirement, ordinance, code, rule, regulation or industry norm or practice shall be promptly remedied by the Vendor at no cost to the Company or the customer;
- (e) Vendor is responsible for maintaining its own place of business.
- (f) Any fee, fines, penalties or damages which result from or relate to the Vendor’s or its subcontractor’s or agent’s performance of Services or failure to perform in accordance with provisions if this Agreement will be promptly paid in full by the Vendor without liability to the Company or customer;
- (g) Vendor, its subcontractors and agents shall purchase and maintain a minimum of: (i) \$1,000,000 (one million dollars) of general commercial liability (including completed and contractual liability) insurance per occurrence, such policy shall be an Occurrence Type (verse claims-made) policy; (ii) a \$1,000,000 (one million dollar) general liability umbrella/excess policy; (iii) \$300,000 (three hundred thousand dollars) of general automobile liability insurance on any vehicles used to provide Service; and (iv) statutory worker’s Compensation insurance. Within 10 days hereof, the Vendor shall have its insurer furnish to the Company certificates of insurance evidencing the insurance coverage required above. Vendor shall maintain such required insurance coverage for at least (3) three years from the termination or expiration of this Agreement. Every contract of insurance providing the coverage required in this provision shall contain the following or equivalent clause: “no reduction, cancellation or expiration of the policy shall be effective until (30) days from the date of written notice thereof is actually received by Coldwater Board of Public Utilities.” Upon receipt of any notice of reduction, cancellation or expiration, the Vendor shall immediately notify the Company. The Company shall be named as additional insured on the policies (other than Worker’s Compensation) described above. The Company shall be promptly notified of any claims relating to the Services performed under any Program.

- (h) Vendor warrants and covenants that the Vendor biographical information set out in Appendix A is true, complete and correct.
- (i) Vendor shall work to promptly resolve all customer complaints regarding Services and take corrective actions as may be reasonable.
- (j) Vendor shall honor the terms of any warranty on the products(s) Service(s) provided to customer throughout the warrant period.
- (k) Vendor shall be fully responsible for the safekeeping of any customer property if such property is in possession or control of the Vendor, its subcontractors or agents.
- (l) Vendor is not entitled to use the company's name, logo, forms, contracts or advertisements without the Company's express written permission. Vendor is not permitted to link to company's or its affiliates' website(s). Vendor shall adhere to guidelines/procedures on the proper use of any forms, contracts, logos or advertisements supplied by the Company, if any, relating to Program offerings.
- (m) Vendor agrees that any representations or warranties extended by it, its subcontractors or agents to any customer shall be its sole responsibility.

## **II. INDEMNIFICATION**

To the fullest extent permitted by law, the Vendor agrees to indemnify, defend and hold harmless the Company and its agents, employees and affiliates against any and all liability, suits, damages claims and costs, including, but not limited to, reasonable attorney's fees, arising in whole or in part, from the actions or inactions (including, but not limited to, any breach of this Agreement) by the Vendor or its officers, agents, employees or subcontractors. Vendor's obligation to indemnify, defend and hold harmless shall survive the termination or expiration of this Agreement. In the event that the Vendor enters into an agreement with subcontractors or agents (or otherwise retains a subcontractor or agent) the agreement with each subcontractor or agent must (i) as set above, provide for indemnification defense and release of Company, its agents, employees and affiliates to the fullest extent permitted by law, and (ii) bind the subcontractor/agent to the terms and conditions of this Agreement. Even if an agent or subcontractor performs Services, the Company shall have, to the fullest extent permitted by law, full recourse against the Vendor for any subcontractor or agent breach or required indemnification, defense or release.

## **III. INDEPENDENT CONTRACTOR**

The Vendor and all of its employees, officers, subcontractors and agents shall furnish services under any Program as independent contractors and not as an employee or agent of the Company. Vendor, its subcontractors and agents have no power or authority to act, represent or bind the Company in any manner.

## **IV. TERM/TERMINATION**

This Agreement shall be effective as of the Effective Date and shall terminate on December 31, 2012. Vendor agrees that the Company shall have the sole discretion with regard to: (i) Vendor admittance into any Program and; (ii) termination of participation therein (and all associated benefits) upon providing Vendor with written notice as company may elect without further recourse by the Vendor or liability of the Company. Upon providing Vendor with notice, Company reserves the right to modify or terminate a Program or this Agreement to whatever extent it may deem appropriate at any time without further recourse by the Vendor or liability of the Company. During the term of this Agreement, Vendor shall provide to the Company satisfactory evidence that it continues to be fully licensed and insured, consistent with the terms of this Agreement. In addition, Vendor shall provide to the Company satisfactory evidence that it continues to be fully licensed and insured, consistent with the terms of this Agreement within (15) fifteen days of any request by the Company for such evidence.

## **V. OTHER PROVISIONS**

Vendor hereby authorizes the Company at any time during the term of this Agreement to obtain Vendor's complete credit histories and reviews. Without limiting the Company's rights under Section IV, the parties agree that this Agreement may only be amended by a written instrument signed by an authorized representative of the Vendor and the Company. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of Michigan. The courts of Michigan shall have exclusive jurisdiction to hear any dispute or controversy concerning or arising from this Agreement. In the event of any litigation resulting herefrom, if the Company is the prevailing party, it shall be entitled to reasonable attorney's fees and costs.

This document constitutes the entire Agreement between the Company and the Vendor concerning the subject matter hereof. Appendices A & B and any documents referenced herein are an integral part of this Agreement. This Agreement replaces any previous agreements between the Company and the Vendor with regard to any Program; provided, however, each of the party's obligations with respect to any Services/work undertaken prior to the date hereof shall remain in full force and effect.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together constitute one and the same instrument. This Agreement may be executed by facsimile signatures which the Company and Vendor agree shall be binding as original signatures.

This Agreement shall not be interpreted either more or less favorably toward any party by virtue of the fact that such party or counsel was responsible or principally responsible for the drafting of all or a portion thereof. Captions and headings are for convenience only and shall not affect the interpretation hereof.

No assignment or delegation of this Agreement shall be valid without the prior written consent of the Company and the Vendor; however the Company may assign this Agreement to any of its corporate affiliates Without Vendor's consent.

Waiver by the Company or the Vendor, in any one or more instances, of any term, condition, or provision of this Agreement shall not be considered a waiver of such provision(s) in the future or any other term, condition, or provision.

IN WITNESS WHERE OF, the parties have executed this Agreement as a contract under seal, by and through their respective duly authorized representatives, as of the effective date first above written.

**VENDOR**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

FEIN#: \_\_\_\_\_

**COLDWATER BOARD OF PUBLIC UTILITIES**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

**APPENDIX A**

List the product(s) service(s) you provide: \_\_\_\_\_

\_\_\_\_\_

How long have you been in business? \_\_\_\_\_

Check the type of customer(s) you serve:     Residential     Commercial     Both Residential & Commercial

List the type(s) of license(s) you hold applicable license number(s) and the state(s) in which you hold them:

\_\_\_\_\_

\_\_\_\_\_

Have you ever had your license revoked or suspended? \_\_\_\_\_

**APPENDIX B – Current Company Program**

1. Upon request a list of Vendors will be provided to customers who contact the Company with such request;
2. Vendor's name and telephone number may be listed on a brochure that is mailed to customers who request a listing of Vendors who provide energy efficiency or renewable energy equipment; and
3. Vendor's name and telephone number may be included in a listing of Vendors who provide energy efficiency or renewable energy equipment on the Company's website.