

## **CPS Energy Construction & Renovation Web Portal Terms of Use and Access Agreement**

This Web Portal Agreement (“**Agreement**”) is made by and between the City of San Antonio, acting by and through its City Public Service Board (“**CPS Energy**”) and any person who accepts the terms of this Agreement (“**Customer**”). The terms of this Agreement apply to Customer’s use of the CPS Energy Construction & Renovation Web Portal, including web sites, content, products, software and services (collectively, the “**Web Portal**” and excluding any services provided to Customer under any separate written agreement). This document sets out the terms of the Agreement.

This Agreement, together with any Legal Notices applicable to the Web Portal, (collectively, the “**Terms**”) form a legally binding agreement between Customer and CPS Energy. Any Legal Notices will be accessible to read either within, or through use of, the Web Portal.

Whenever there is a conflict between any Legal Notice and this Agreement, the Legal Notice shall take precedence in relation to that part of the Web Portal.

The Web Portal may include links to other web sites or services provided by unaffiliated third parties. If Customer accesses such web sites or services via the Web Portal, then use of the CPS Energy Web Portal requires Customer to accept the terms related to the other services.

### **1. Accepting the Terms**

Accessing and using the CPS Energy Web Portal shall be treated as acceptance of the Terms by Customers. Customer may not use the CPS Energy Web Portal if he/she does not accept the Terms and must discontinue the use of the Web Portal if he/she does not continue to accept the Terms.

By accessing the Web Portal, Customer represents that he/she is authorized to view the information available and/or take action via the Web Portal. Customers may not use the Web Portal and may not accept the Terms if they are not of legal age to form a binding contract with CPS Energy, or if they are persons barred from receiving access to the Web Portal under the laws of the United States or other countries. Customers are encouraged to save a local copy of this Agreement and the additional Legal Notices for their records.

### **2. Provision of the Web Portal**

Customer acknowledges and agrees that the form and substance of the Web Portal provided may change from time to time without prior notice, and that CPS Energy may stop (permanently or temporarily) providing the Web Portal (or any features within the Web Portal) to Customer at CPS Energy’s sole discretion, for any reason.

Customer acknowledges and agrees that if CPS Energy disables access to the Web Portal account, Customer may be prevented from accessing the Web Portal, account details or any

files or other content that is contained in Customer's account.

There is no service-level agreement (an "**SLA**") with the CPS Energy Web Portal. Customer acknowledges and agrees that the Web Portal may not be available from time to time due to maintenance or service or network disruptions, and by Customer's use of the Web Portal Customer agree to hold harmless the CPS Energy for any such service interruptions.

### **3. Use of the CPS Energy Web Portal**

In order to access the Web Portal, Customer may be required to provide personal information (such as identification or contact details) as part of the registration process for the Web Portal, and for the continued use of the Web Portal.

Customer agrees that any registration information provided will always be accurate, correct and up to date. Customer agrees to use the Web Portal only for purposes that are permitted by (a) the Terms, and (b) any applicable law or regulation in the relevant jurisdiction (including any laws regarding the export of data or software to and from the United States or other relevant countries).

Customer agrees not to access (or attempt to access) the Web Portal by any means other than through the interface that is provided by CPS Energy, unless provided otherwise in a separate agreement with the CPS Energy. Customer specifically agrees not to access (or attempt to access) any element of the Web Portal through any automated means (including use of scripts or web crawlers) and shall ensure that he/she complies with the instructions set out in any robots.txt file present in the root directory of the Web Portal.

Customer agrees that he/she will not engage in any activity that interferes with or disrupts the Web Portal (or the servers and networks that host the Web Portal or that are connected with any elements thereof). Unless Customer has been specifically permitted to do so in a separate agreement with the CPS Energy, Customer agrees that he/she will not reproduce, duplicate, copy, sell, trade or resell any of the elements or content of the Web Portal for any purpose. Customer agrees that he/she is solely responsible for (and that the CPS Energy has no responsibility to Customer or to any third party for) any breach of Customer's obligations under the Terms and for the consequences (including any loss or damage that the CPS Energy may suffer) of any such breach.

### **4. Passwords and Security**

Customer agrees and understands that he/she is responsible for maintaining the security and confidentiality of passwords associated with his/her account used to access the Web Portal. Accordingly, Customer agrees that he/she will be solely responsible for all activities that occur under his/her account. If Customer becomes aware of any unauthorized use of his/her account, Customer agrees to notify CPS Energy immediately.

## 5. Privacy

For information about CPS Energy's privacy practices, Customers can refer to the CPS Energy Board of Trustees Customer Information Privacy Policy (the **Privacy Policy**"), which can be found [here: https://www.cpsenergy.com/content/dam/corporate/en/Documents/Customer\\_Information\\_Privacy\\_Policy.pdf](https://www.cpsenergy.com/content/dam/corporate/en/Documents/Customer_Information_Privacy_Policy.pdf) and which may change from time to time without notice.

Customer agrees to the use of his/her data in accordance with the Privacy Policy and the Terms related to other services provided as a part of the Web Portal. Customer is encouraged to review these policies prior to using the CPS Energy Web Portal. Customer acknowledges that CPS Energy is not responsible for the privacy or security of any information that is provided to third parties via the Web Portal.

## 6. Content in the Web Portal

Customer understands that all information (such as data files, written text, publications, images) that he/she may have access to as part of, or through his/her use of, the Web Portal are the sole responsibility of the person from which such content originated. All such information is referred to below as the **"Content."**

Customer should be aware that Content presented to him/her as part of the Web Portal may be protected by intellectual property rights that are owned by providers of that Content (or by other persons or companies on their behalf). Customer may not modify, rent, lease, loan, sell, distribute or create derivative works based on this Content (either in whole or in part) unless permitted by a separate agreement.

Customer agrees that he/she is solely responsible for (and that CPS Energy has no responsibility for) any Content that Customer creates, transmits or displays while using the Web Portal, including, but not limited to, the consequences of Customer's actions (including any loss or damage that CPS Energy may suffer).

## 7. CPS Energy's Rights

Customer recognizes and agrees that CPS Energy or its licensors own certain legal right, title and interest in and to the Web Portal, including any intellectual property rights that subsist in the Web Portal (whether those rights happen to be registered or not, and wherever in the world those rights may exist). Customer further agrees that the Web Portal may contain information that is designated confidential by CPS Energy or its licensors and that Customer shall not disclose such information without CPS Energy's prior written consent.

Customer agrees that nothing in the Terms gives him/her a right to use any of CPS Energy's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features. Other than the limited license set forth in Section 8, *Customer License*, CPS Energy acknowledges and agrees that it obtains no right, title or interest from Customer (or Customer's licensors) under these Terms in or to any Content that Customer submits, posts, transmits or

displays on, or through, the Web Portal, including any intellectual property rights that subsist in that Content (whether those rights happen to be registered or not, and wherever in the world those rights may exist). Customer agrees that he/she is responsible for protecting and enforcing those rights and that the CPS Energy has no obligation to do so on Customer's behalf.

Customer agrees that he/she shall not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained within the Web Portal. Customer agrees that he/she will not use any trademark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names or logos.

## **8. Customer's License**

CPS Energy gives Customer a personal, worldwide, non-assignable and non-exclusive license to use the Web Portal. This license is for the sole purpose of enabling Customer to use and enjoy the benefit of the Web Portal, in a manner permitted by the Terms.

Customer may not (and Customer may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Web Portal or any part thereof, unless this is expressly permitted or required by law, or unless CPS Energy permits Customer to do so, in writing.

Customer may not assign (or grant a sub-license of) Customer's rights to use the Web Portal, grant a security interest in or over Customer's rights to use the Web Portal, or otherwise transfer any part of Customer's rights to use the Web Portal.

Certain software utilized by CPS Energy may be licensed by CPS Energy under the GNU General Public License or other public licenses. Nothing in this provision shall be construed as abrogating any rights of anyone to use software that has been used by CPS Energy under such public license.

## **9. Software Updates**

CPS Energy may offer proprietary software in conjunction with the Web Portal, and it is possible that such software may automatically download and install updates from time to time. These updates are designed to improve, enhance and further develop the Web Portal and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. Customer agrees to receive such updates (and permits CPS Energy or its designee to deliver these) as part of Customer's use of the Web Portal.

## **10. Terminating Use of the Web Portal**

The Terms will continue to apply until terminated by either Customer or CPS Energy as set forth below. If Customer wants to terminate this Agreement, Customer may do so by notifying CPS Energy in writing. CPS Energy may at any time, terminate this Agreement for any reason, including, but not limited to:

- (a) Customer has breached a provision of the Terms (or has acted in a manner that clearly shows that Customer does not intend, or is unable, to comply with the provisions of the Terms);
- (b) CPS Energy is required to do so by law;
- (c) any entity with whom CPS Energy offered the Web Portal to Customer has terminated its relationship with CPS Energy or ceased to offer elements of the Web Portal; or
- (d) the provision of the Web Portal by CPS Energy is, in CPS Energy's sole discretion, no longer possible.

Nothing in this section shall affect the CPS Energy's rights regarding provision of the Web Portal.

When these Terms terminate, all of the legal rights, obligations and liabilities that Customer and CPS Energy have benefited from, been subject to (or which have accrued over the duration of the contract) or which are expressed to continue indefinitely, shall not be affected by this cessation, and the provisions of paragraph 16 shall continue to apply to such rights, obligations and liabilities indefinitely.

#### **11. Exclusion of Warranties**

THE WEB PORTAL IS PROVIDED "AS IS" AND "AS AVAILABLE." CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT HIS/HER USE OF THE WEB PORTAL IS AT HIS/HER SOLE RISK. CPS ENERGY AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT:

- (a) CUSTOMER'S USE OF THE WEB PORTAL WILL MEET CUSTOMER'S REQUIREMENTS;
- (b) CUSTOMER'S USE OF THE WEB PORTAL WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR;
- (c) ANY INFORMATION OBTAINED AS A RESULT OF CUSTOMER'S USE OF THE WEB PORTAL WILL BE ACCURATE OR RELIABLE;
- (d) DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO CUSTOMER AS PART OF THE WEB PORTAL WILL BE CORRECTED;
- (e) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM CPS ENERGY OR THROUGH THE WEB PORTAL SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS; AND
- (f) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE WEB PORTAL IS AT CUSTOMER'S OWN DISCRETION AND RISK. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

CPS ENERGY FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE

IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT.

## **12. Limitation of Liability**

NOTWITHSTANDING SECTION 12 ABOVE, CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT CPS ENERGY AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY CUSTOMER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY.

THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS;

ANY LOSS OR DAMAGE THAT MAY BE INCURRED BY CUSTOMER, INCLUDING, BUT NOT LIMITED TO, LOSS OR DAMAGE AS A RESULT OF:

- (a) ANY RELIANCE PLACED BY CUSTOMER ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN CUSTOMER AND ANY ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE WEB PORTAL;
- (b) ANY CHANGES THAT CPS ENERGY MAY MAKE TO THE WEB PORTAL, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE WEB PORTAL (OR ANY FEATURES WITHIN IT);
- (c) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH CUSTOMER'S USE OF THE WEB PORTAL;
- (d) CUSTOMER'S FAILURE TO PROVIDE CPS ENERGY WITH ACCURATE ACCOUNT INFORMATION; AND
- (e) CUSTOMER'S FAILURE TO KEEP PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL.

THE LIMITATIONS ON CPS ENERGY'S LIABILITY SHALL APPLY WHETHER OR NOT CPS ENERGY HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

### **13. Indemnity**

CUSTOMER AGREES TO INDEMNIFY AND HOLD CPS ENERGY, ITS EMPLOYEES, AND LICENSORS HARMLESS FROM ANY CLAIM OR DEMAND, INCLUDING REASONABLE ATTORNEY'S FEES, MADE BY ANY THIRD PARTY DUE TO OR ARISING OUT OF CUSTOMER'S USE OF THE WEB PORTAL.

### **14. Other Content**

The Web Portal includes hyperlinks and embedded frames linked to other web sites, content and resources. CPS Energy may have no control over any web sites, content or resources that are provided by companies or persons other than CPS Energy.

Customer acknowledges and agrees that CPS Energy is not responsible for the availability of any such external sites or resources, and does not endorse any advertising, products or other materials on or available from such web sites or resources.

Customer acknowledges and agrees that CPS Energy is not liable for any loss or damage that may be incurred by Customer as a result of the availability of those external sites or resources, or as a result of any reliance on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, such web sites or resources.

### **15. Changes to the Terms**

CPS Energy may make changes to the Terms from time to time. When these changes are made, any new or revised Terms will be made available from within, or through, the Web Portal. Customer understands and agrees that by using the Web Portal after the date on which the Terms have changed, CPS Energy will treat that use as acceptance of the updated Terms.

### **16. Applicable Law**

The Terms, including this Agreement, shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions. Customer and CPS Energy agree to submit to the exclusive jurisdiction of the courts located within the county of Bexar County, Texas to resolve any legal matter arising from the Terms. Notwithstanding the foregoing, Customer agrees that CPS Energy may apply for preliminary injunctive relief (or an equivalent type of urgent legal relief) in any jurisdiction.

### **17. General Legal Terms**

The Terms constitute the whole legal agreement between Customer and CPS Energy and govern the use of the CPS Energy Web Portal (but excluding any services that the CPS Energy may provide under a separate written agreement). Customer agrees that CPS Energy may provide notices, including those regarding changes to the Terms, by email, regular mail, or postings on the Web Portal.

Customer agrees that if CPS Energy does not exercise or enforce any legal right or remedy contained in the Terms (or that CPS Energy has the benefit of under any applicable law), this will not be taken to be a formal waiver of CPS Energy's rights and that those rights or remedies will still be available to the CPS Energy.

If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be severed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.