



## TRADE ALLY RELEASE AND INDEMNITY

WHEREAS, Public Service New Mexico (“PNM”) has entered into a Trade Ally Participation Agreement with the undersigned participating trade ally (“Trade Ally”) as denoted on the reverse side of this document (the “Release and Indemnity”);

WHEREAS, Trade Ally will negotiate and enter into contracts with PNM customers (each a “Customer”) when the Customer selects the Trade Ally for purposes of a transaction between the Trade Ally and Customer, specifically including any purchase and/or installation of Equipment identified on as set forth on the PNM Program Incentive Application for an incentive payment or payments submitted by Customer to PNM as provided under the PNM Energy Efficiency Program (the “Program”);

WHEREAS, Trade Ally shall cause Customer to acknowledge and understand that PNM has no responsibility or liability for the Customer’s purchase and/or installation of Equipment, and that Customer must look solely to the Trade Ally selected for any claims or damages suffered by Customer for such purchase and/or installation of Equipment or for any failures, acts or omissions of the Trade Ally, and that the only role of PNM in the Program is to make incentive payments for qualifying installations of Equipment or other energy efficiency measures approved under the Program;

WHEREAS, it is the intent of PNM and Trade Ally that no agency, joint venture or partnership relationship between PNM and Trade Ally exists and that no such relationship will be created as a result of the sale, construction, installation and/or payment of any incentive or rebate on the Equipment or any associated materials;

NOW, THEREFORE, for valid consideration, the receipt of which is hereby acknowledged by PNM and Trade Ally:

1. The foregoing Recitals are, by this reference, expressly incorporated into this Release and Indemnity, and shall be deemed to be a substantive and integral part hereof, as if fully set forth herein.
2. Trade Ally hereby agrees to assume and hereby assumes all risk of loss associated with the Equipment, services or materials and agrees to defend, indemnify and hold harmless PNM, its parent, agents, officers, directors, employees, affiliates, shareholders and assigns (the “PNM Indemnitees”), and to release the PNM Indemnities from any and all liabilities, claims, demands, actions, expenses, judgment and causes of action whatsoever related to, arising out of, or claimed to have arisen out of, any loss, damage or injury (including death or mental or emotional injury), injury to persons or property, that may be sustained by the Trade Ally, Customer, PNM or any third party in connection with the Trade Ally’s installation, the Customer’s use or possession of the abovementioned Equipment, or as a result of any acts or omissions or negligence of the Trade Ally, whether wholly or in part, and relating in any way to the Trade Ally Participation Agreement, the Program or any Energy Efficiency Program Incentive Application or any incentive or rebate claim.



3. PNM makes no representations or warranties of any kind as to the installation or operation of the Equipment by Trade Ally. Trade Ally and PNM further acknowledge and agree that PNM shall not be liable, in contract, tort, and strict liability or otherwise, whether or not resulting from any of the foregoing or otherwise on account of any defect, whether hidden, latent or otherwise discoverable or undiscoverable respecting the Equipment, services or any materials provided by Trade Ally to Customer.
4. LIMITATION OF LIABILITY. THE SUM TOTAL LIABILITY OF PNM TO TRADE ALLY OR TO CUSTOMER WITH RESPECT TO ANYTHING DONE IN CONNECTION WITH THE TRADE ALLY PARTICIPATION AGREEMENT OR ENERGY EFFICIENCY PROGRAM INCENTIVE APPLICATION OR CLAIM FORM, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY SHALL NOT EXCEED THE AMOUNT OF THE INCENTIVE PAYMENT OR PAYMENTS SET FORTH IN THE ENERGY EFFICIENCY FOR BUSINESS INCENTIVE APPLICATION OR CLAIM FORM.
5. DISCLAIMER OF DAMAGES. EXCEPT AS STATED IN SECTION 4 OF THIS RELEASE AND INDEMNITY, PNM SHALL NOT IN ANY EVENT BE LIABLE TO TRADE ALLY OR TO CUSTOMER FOR ANY SPNMIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF CUSTOMER'S SITE SYSTEMS OR PROPERTY, COST OF CAPITAL OR CLAIMS BY CUSTOMER OR TRADE ALLY OR DAMAGE TO CUSTOMER OR TRADE ALLY'S PROPERTY OR ANY THIRD PARTY'S PROPERTY.
6. INSURANCE. Trade Ally further acknowledges and agrees that PNM will not provide any insurance coverage for either the Customer or the Trade Ally, and that the Customer and Trade Ally shall be responsible and shall agree among themselves to procure adequate insurance coverage against any and all hazards relating to the Equipment, any service or material, to protect persons and property. Any failure of Trade Ally or Customer to comply with any or all of the insurance provisions of this Release and Indemnity or any failure to secure endorsements on policies as may be necessary to carry out the terms and provisions of this Release and Indemnity, shall not be construed to limit or relieve Trade Ally from any of its obligations under this Release and Indemnity, including this Insurance article.

By signing, Trade Ally agrees to the terms and conditions of this Release and Indemnity in order to be listed on the PNM web site as a participating Trade Ally:

Trade Ally Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_