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February 20, 2020

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

Gary Widerburg  
Commission Secretary  
Public Service Commission of Utah  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, Utah 84114

Re: PacifiCorp Notice of Affiliate Transaction  
Docket No. 05-035-54

Dear Mr. Widerburg:

Pursuant to Commitment U3(2), incorporated in the Public Service Commission of Utah's *Report and Order* approving the *Acquisition of PacifiCorp by MidAmerican Energy Holdings Company*,<sup>1</sup> issued January 27, 2006, as amended March 14, 2006, and June 5, 2006, Rocky Mountain Power hereby provides notice of ordinary course affiliated interest transactions from time to time between PacifiCorp and HomeServices Relocation, LLC (HomeServices).

PacifiCorp is a wholly-owned subsidiary of Berkshire Hathaway Energy Company (BHE). HomeServices is a limited liability company, which is a wholly-owned subsidiary of HomeServices of America, Inc. HomeServices of America, Inc. is a wholly-owned subsidiary of BHE. Therefore, BHE's ownership interest in PacifiCorp and HomeServices of America, Inc. creates an affiliate interest relationship between PacifiCorp and HomeServices in some PacifiCorp jurisdictions.

BHE and HomeServices entered into a new Participation Letter for an updated Master Professional Services Contract (Contract) for Employee Relocation Services on February 11, 2020, under which BHE subsidiaries have the option to sign onto the Contract and receive the same terms and conditions as BHE. The Contract is, in essence, a renewal of the existing contractual arrangement established between the parties under the prior contract entered into in 2015. After determining the terms and conditions to be reasonable, PacifiCorp has opted to sign onto the Contract.

A copy of the Master Professional Services Contract for Employee Relocation Services is included as Attachment A. A copy of PacifiCorp's Participation Letter is included as Attachment B.

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<sup>1</sup> As of April 30, 2014, MEHC was renamed Berkshire Hathaway Energy Company

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Under the terms of the Contract, HomeServices will assist new and existing PacifiCorp employees when relocating to a new position within the Company. HomeServices will create a moving cost bid, provide movers, arrange temporary housing, provide real estate services and ensure all expenses are in line with Company policy. HomeServices will directly bill PacifiCorp for expenses incurred.

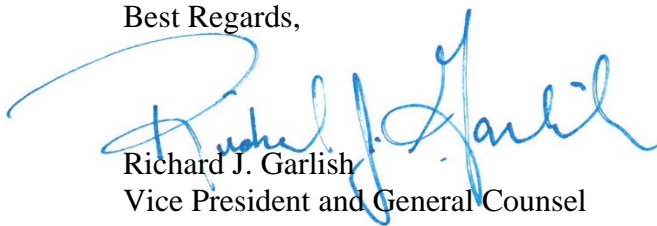
To meet staffing needs, PacifiCorp occasionally relocates existing employees and new hires. PacifiCorp offers relocation services to its eligible employees and new hires as part of total employee compensation, to offset the expense of relocating and to ensure a smooth transition to the new position. The PacifiCorp service territory is one of the largest in the United States and requires the relocation of new and existing employees from time to time to meet the needs of our customers.

A competitive bid process was utilized to determine the lowest cost vendor who could provide the services required. In order to secure the best pricing possible, PacifiCorp along with other BHE affiliates, completed an aggregated competitive tender ensuring the lowest cost provider was selected, in line with PacifiCorp's needs and expectations.

Outsourcing this function at the BHE level allows PacifiCorp to minimize expense to customers, as opposed to performing these tasks internally. Performing these functions internally would require the training and development of new talent, negotiating moving and real estate contracts and performing additional auditing services. Utilizing HomeServices for relocation services, on the other hand, provides the lowest cost to the Company, and ultimately customers. HomeServices is a full-service provider that assists employees with moving of household, sale of previous house and/or termination of lease, arranging travel and temporary housing and ensuring compliance with Company policies regarding relocation expenses. For these reasons, the Contract is reasonable and meets the public interest.

Please do not hesitate to contact me if you have any questions.

Best Regards,



Richard J. Garlish  
Vice President and General Counsel  
PacifiCorp

Enclosures

cc: Chris Parker, DPU  
Michele Beck, OCS

## **Attachment A**

**MASTER PROFESSIONAL SERVICES CONTRACT**  
**BETWEEN**  
**BERKSHIRE HATHAWAY ENERGY COMPANY**  
**AND**  
**HOMESERVICES RELOCATION, LLC**  
**FOR**  
**EMPLOYEE RELOCATION SERVICES**

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##### EXHIBIT A – SCOPE OF WORK

APPENDIX 1, SPECIAL CONDITIONS – PACIFICORP

APPENDIX 2, SPECIAL CONDITIONS – MIDAMERICAN ENERGY COMPANY

APPENDIX 3, SPECIAL CONDITIONS – NV ENERGY

##### EXHIBIT B – PRICING SCHEDULE

##### EXHIBIT C – LETTER OF CREDIT REQUIREMENTS

##### EXHIBIT D – AFFILIATES LIST AND PRINCIPAL BUSINESS ADDRESS

##### EXHIBIT E – FORM OF AFFILIATE PARTICIPATION LETTER

##### EXHIBIT F – STATUTORY FORM OF LIEN AND CLAIM RELEASE FOR CALIFORNIA WORK

**MASTER PROFESSIONAL SERVICES CONTRACT**  
**BETWEEN**  
**BERKSHIRE HATHAWAY ENERGY COMPANY**  
**AND**  
**HOMESERVICES RELOCATION, LLC**  
**FOR**  
**EMPLOYEE RELOCATION SERVICES**

**PARTIES**

The Parties to this Master Professional Services Contract (this "Master Contract") are **Berkshire Hathaway Energy Company** whose principal address is 666 Grand Avenue, P.O. Box 657, Des Moines, Iowa 50306-0657 ("Berkshire Hathaway Energy"), together with its Affiliates who elect to utilize this Master Contract and agree to be bound by the terms and conditions as provided herein (each, individually, a "Company"), and **HomeServices Relocation, LLC** (hereinafter "Consultant" or "Contractor"), whose address is 6800 France Avenue South, STE 355, Minneapolis, MN 55435-2026. With respect to this Master Contract or any individual Contract (as defined below) entered into as set forth herein, Company and Consultant are hereinafter collectively referred to as "Parties" and individually as a "Party," as the context may require. This Master Contract sets forth the general terms and conditions for each individual Contract issued hereunder. Each individual Contract shall be evidenced by and include among other Contract Documents (as defined below), a specific Purchase Order issued by Berkshire Hathaway Energy and/or any participating Affiliate. The following documents pertinent to a given transaction shall, together, constitute a separate contract ("Contract") between the applicable Company and Consultant: (i) this Master Contract; (ii) the associated Purchase Order(s) (but without regard to any standard, pre-printed terms and conditions appended thereto); (iii) the Scope of Work; (iv) Company documents, Consultant documents or other documents (if any) that the Parties explicitly agree in writing should form a part of the Contract; and (v) any exhibits referenced in any of the foregoing documents (collectively, the documents listed above in items (i) through (v) shall collectively constitute the "Contract Documents"). Each Company entity that issues a Purchase Order under this Master Contract is solely liable and responsible for the obligations of "Company" assumed with respect to the applicable Contract Documents, and no other Company entity shall have any liability or responsibility for such obligations.

**ARTICLE 1. DEFINITIONS**

As used in this Master Contract and any individual Contract entered into hereunder, the following terms have the meanings set forth below. Unless another meaning is specifically required by another Contract Document, when the following capitalized terms are used in any Contract Document, such terms shall refer to the definitions set forth herein. All exhibits listed in the Table of Contents shall form a part of this Master Contract whether or not referenced in the master terms and conditions below.

**Affiliates** shall mean any entity: (i) of which Berkshire Hathaway Energy now or hereafter owns or controls at least fifty percent (50%) or more of the ownership interest; (ii) over which Berkshire Hathaway Energy exercises management control; or (iii) listed as an affiliated company on Exhibit D. Additional Affiliates may be added to or removed from Exhibit D at any time upon Consultant's receipt of Notice from Company. Changes to Exhibit D are not required to be incorporated by a written amendment to this Master Contract. When placing an initial order for Services, or in conjunction with an initial Purchase Order, each Affiliate will execute and submit an Affiliate Participation Letter in the form of Exhibit E ("Participation Letter").

**BES (Bulk Electric System) Cyber System Information (BCSI)** shall mean information concerning CIPS Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as BCSI by Company.

**CIPS Covered Assets** shall mean any assets identified by Company as "BES assets," "BES cyber assets," "BES cyber systems," "protected cyber assets," "electronic access control or monitoring systems," "electronic access points," or, "physical access control systems," as those terms are defined in the North American Electric Reliability Corporation (NERC) Glossary of Terms. "BES" refers to the "Bulk Electric System" as defined by NERC.

**Company** shall mean, with respect to any Contract, the participating Affiliate issuing the applicable Purchase Order, or, in the

case in which a Purchase Order is issued by Berkshire Hathaway Energy, Berkshire Hathaway Energy.

**Confidential Information** shall mean: (i) proprietary information of Company; (ii) information marked or designated by Company as confidential, sensitive, or internal; (iii) BES Cyber System Information of Company; (iv) information, whether or not in written form and whether or not designated as confidential, which is known to Consultant as being treated by Company as confidential; (v) information provided to Company that Company is obligated to keep confidential (including but not limited to information that identifies an individual or customer of Company, such as customer account numbers, customer addresses, customer energy usage information, credit or bank account numbers, social security numbers, passport or driver's license numbers, whether or not such information is publicly available); and (vi) information developed by Consultant in connection with the performance of this Contract.

**Cyber Assets** shall mean programmable electronic devices, including the hardware, software, and data in those devices.

**Data** shall mean any information, formulae, algorithms, or other content that the Company or the Company's employees, agents and end users upload, create or modify using any software provided pursuant to the Contract. Data also includes user identification information and metadata which may contain Data or from which the Company's Data may be ascertainable.

**Deliverables** shall mean those items that are incidental to or otherwise delivered in connection with the performance of the Services or the fulfillment of Consultant's obligations as provided in the Contract Documents, including without limitation, as applicable, Software, work product, drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, models, samples, equipment and other materials.

**Force Majeure Event** shall mean a delay caused by any national or general strikes (but excluding strikes relating solely to the work force of Company, Consultant or a Subcontractor), fires, riots, acts of God, acts of the public enemy, floods, acts of terrorism, unavoidable transportation accidents or embargoes, or other events: (i) which are not reasonably foreseeable as of the date the Contract was executed; (ii) which are attributable to a cause beyond the control and without the fault or negligence of the Party incurring such delay; and (iii) the effects of which cannot be avoided or mitigated by the Party claiming such Force Majeure Event through the use of commercially reasonable efforts. The term Force Majeure Event does not include a delay caused by seasonal weather conditions, general economic conditions, changes in the costs of goods, or other items sufficiently in advance to ensure that the Services are timely completed in accordance with the Contract Documents.

**Material Adverse Change** shall mean, with respect to Consultant, if Consultant, in the reasonable opinion of Company, has experienced a material adverse change in Consultant's financial condition or Consultant's ability to fulfill its obligations under the Contract including, but not limited to, any such change that results in its inability to satisfy ARTICLE 9, CREDIT REQUIREMENTS or ARTICLE 10, SECURITY, including any event or circumstance that would give Company the right to terminate for cause pursuant to ARTICLE 33, TERMINATION FOR CAUSE.

**Net Replacement Costs** shall mean the "cost to cover" remedy available to Company in the event of a default by Consultant under the Contract. The Net Replacement Costs shall be calculated by: (i) subtracting the unpaid balance of the total price of the Services to be performed under the Contract from the costs incurred by Company to obtain a replacement consultant to complete the Services that Consultant was otherwise obligated to provide under the Contract (or the costs, internal or third-party, incurred by Company to complete such Services itself); and (ii) adding a sum for additional managerial, administrative, and other reasonable costs (internal and third-party) Company incurs as a result of Consultant's default.

**Notice** shall mean a formal written communication which, pursuant to the Contract, one Party must deliver to the other in order to invoke a Contract right set forth herein.

**Personnel** shall mean the employees, representatives and agents of Consultant, its Subcontractors, and any independent contractors who are employed or engaged to perform Services under the Contract Documents.

**Purchase Order** shall mean the document(s) containing the information set forth in ARTICLE 3, PURCHASE ORDERS, which is used to engage Consultant to perform Services pursuant to the terms and conditions set forth in this Master Contract.

**Scope of Work** shall mean the requirements regarding the Services and Deliverables, as described in the exhibits forming a part of the Contract Documents, and including any additional requirements that, while not specifically described in the exhibits, are implied or reasonably required to complete the Services as so described.

**Security Breach** shall mean any act or omission that compromises the confidentiality, integrity, or availability of Company's Confidential Information, Data, systems, facilities or Company's physical, technical, administrative or organizational safeguards and controls relating to the protection of Company's Confidential Information, Data, systems, and facilities.

**Security Incident** shall mean any circumstance when (i) Consultant knows or reasonably believes that the confidentiality, integrity, or availability of any Company Information has been adversely impacted, including but not limited to, incidents where Company Information has been damaged, lost, corrupted, destroyed, or accessed, acquired, modified, used, or obtained by any unauthorized person, by any person in an unauthorized manner, or for an unauthorized purpose; (ii) Consultant knows or reasonably believes that an act or omission has adversely impacted the cybersecurity of the products or services provided to Company by Consultant or the physical, technical, administrative, or organizational safeguards protecting Consultant's systems or Company's systems holding Company Information; or (iii) Consultant receives any complaint, notice, or communication which relates directly or indirectly to (A) Consultant's handling of Company Information or Consultant's compliance with the data safeguards in this Agreement or applicable law in connection with Company Information or (B) the cybersecurity of the products or services provided to Company by Consultant.

**Service(s)** shall mean any labor, skill, advice or Deliverable provided to Company pursuant to the Contract Documents.

**Software** shall mean any software, whether in object code or source code form, including all accompanying documentation, delivered by Consultant to Company under the Contract.

**Subcontractor** shall mean any entity or person (including subcontractors of any tier, laborers and materials suppliers) having an agreement with Consultant or any other Subcontractor to perform a portion of Consultant's obligations under the Contract Documents.

**Term** shall mean the period commencing upon the full execution of the Contract and continuing thereafter until the date specified in the Contract Documents, unless earlier terminated as provided herein.

**Workers' Compensation Laws** shall mean the statutory requirements of the state and/or federal regulations (e.g., FELA, USL&H, Jones Act) where the Services are to be performed.

**Work Site** shall mean the location or locations where the Services are to be performed.

## **ARTICLE 2. DESCRIPTION OF WORK**

Consultant shall perform the Services in accordance with the Contract Documents. Consultant shall be solely responsible for the means, methods, and procedures of performing the Services, except as otherwise specifically provided in the Contract Documents. Except as otherwise specifically provided in the Contract Documents, Consultant shall provide and obtain all necessary licenses, permits, permissions, utilities and support services.

## **ARTICLE 3. PURCHASE ORDERS**

Each Purchase Order will identify and/or describe: (i) the Services including any key Deliverables required by Company; (ii) the Work Site; (iii) the completion date for the Services and any key Deliverables and any other schedule or completion milestones; (iv) whether the performance of such Services will require access to CIPS Covered Assets; (v) the designated representatives for each Party with respect to the Contract; (vi) project-specific invoicing instructions; and (vii) any other project-specific terms and conditions. These project-specific items may be stated in or attached to a Purchase Order, or incorporated by reference. The terms and conditions of this Master Contract shall apply to each Purchase Order and shall form a unique Contract, as supplemented by the project-specific terms and conditions of the other Contract Documents. The Contract Documents shall, together, constitute the entire agreement between the applicable Company and the Consultant with respect to any Services and Deliverables to be furnished under the Contract. A Purchase Order will be issued through the applicable Company's procurement system and will reference this Master Contract and the applicable Affiliate Participation Letter. Within one (1) business day of receipt, Consultant shall acknowledge all Purchase Orders placed by Company and accept or reject the Purchase Order as placed by Company. Any Purchase Order that is not rejected within one (1) business day of receipt from Company will be deemed to have been accepted and deemed confirmed by Consultant. Company may also require that a mutually executed document be used in lieu of, or in addition to, a Purchase Order. As used throughout this Master Contract, the term "Purchase Order" shall be construed to include any such mutually executed document.

## **ARTICLE 4. PERIOD OF PERFORMANCE**

Unless earlier terminated as provided herein, the terms and conditions of this Master Contract shall continue in effect, for any Contract formed hereunder from May 1, 2019 to April 30, 2022, until final satisfactory completion of all Services thereunder, whether or not the Services are scheduled to be completed prior to the expiration of the foregoing date. The expiration of the foregoing date shall not impact the Parties' respective rights or obligations with respect to any Services authorized prior to expiration. Neither the completion of the Services nor any earlier termination of this Master Contract shall impact any warranties, indemnities, insurance requirements, confidentiality obligations, termination obligations or other obligations which by their own



terms are intended to survive the completion of the Services, all of which shall continue in full force and effect after the termination or expiration of the Contract.

The Contract Documents shall specify a completion date for the Services and/or Deliverables, and may also specify critical interim schedule milestones that must be met by Consultant. Consultant shall proceed in accordance with such schedule requirements, and shall comply (as applicable) with the detailed schedule of Services and/or Deliverables included in (or developed in accordance with) the Contract Documents. Time and schedule requirements included within the Contract Documents are of the essence. By entering a Contract, Consultant confirms that the time and schedule stipulated in the Contract Documents is reasonable for performance of the Services. Unless Consultant's later performance is excused by the terms of the Contract Documents, Company shall have all of the rights and remedies available at law and in equity with respect to late performance. Consultant shall provide Notice to Company immediately once Consultant becomes aware that it will not be able to complete the Services or furnish applicable Deliverables pursuant to the schedule stipulated by Contract Documents.

#### **ARTICLE 5. CONSIDERATION AND PAYMENT**

As full consideration for the satisfactory performance of Consultant's obligations under the Contract, Company will pay Consultant in accordance with the agreed pricing terms included in the applicable Contract Documents. Company will pay Consultant all undisputed amounts within sixty (60) days of receipt and approval of properly submitted invoice(s). Invoices shall be submitted, and payments shall be made, on a monthly basis or as otherwise set forth in the Contract Documents. In the absence of such payment schedules, invoices shall be submitted, and payments shall be made, for work satisfactorily completed by Consultant during the invoicing period. Consultant shall submit with each invoice such detail of Services performed and other supporting documents as required by Company to demonstrate completion of the invoiced Services.

All invoices shall include separate line item charges for each employee's name and skill classification responsible for Services under said invoice, hours worked on the project (billable hours), hourly rate and a subtotal cost by skill classification. Consultant shall not bill Company for a higher skill classification than is required for the Services. Consultant shall furnish reasonable back-up detail and documentation as requested by Company supporting each invoice line item charge. In order to comply with applicable regulatory requirements, Company may require cost and invoicing detail to be broken out in a specific manner. Consultant shall comply with all such invoicing requirements, as indicated in the Contract Documents, or as otherwise reasonably requested by Company.

All invoices shall reference the applicable Contract number. Consultant shall identify and clearly set forth on the invoice any discount for early payment. To the extent that Consultant must resubmit any invoice for failing to comply with the Company's invoicing requirements, any offer of a discount for early payment shall remain valid until such time as Company has received a proper invoice for payment. The total amount of consideration payable for the Services will be specified in the Contract Documents.

It is understood and agreed that each Affiliate participating in this Master Contract is individually and solely responsible for the payment and other obligations it assumes under any individual Contract. Neither Berkshire Hathaway Energy nor any other Affiliate shall have any obligations or liabilities, contractually or otherwise, for the payment obligations incurred by any other Affiliate(s) (or Berkshire Hathaway Energy, as the case may be) under a Contract issued under this Master Contract.

All invoices shall be addressed to the Affiliate that has entered a Contract (or Berkshire Hathaway Energy, if Berkshire Hathaway Energy has entered into a Contract) at the address specified in the applicable Contract Documents. Additional Affiliates, which may elect to participate in and under this Master Contract after the effective date hereof, shall notify Consultant of the proper billing address for forwarding Consultant invoices.

Company may offset any such payment to reflect amounts owing from Consultant to Company or its Affiliates pursuant to this Master Contract or any other agreement between the Parties or otherwise. In addition, Company may withhold all payments otherwise due Consultant until such time as Consultant has provided any Performance Security required by the Contract Documents. If required by Company, the final payment shall not become due until Consultant has furnished Company a final release from all claims and demands arising out the Services in a form acceptable to Company.

Upon request by Company, Consultant shall also provide interim lien and claim releases executed by Consultant, and interim and/or final lien and claim releases executed by Subcontractors through the date of each invoice submitted.

For Services to be performed in California, any lien and claim release provided by Consultant shall be in the form attached as Exhibit F.

## **ARTICLE 6. TAXES**

The consideration stated in the Contract Documents will include all taxes arising out of Consultant's performance hereunder, including without limitation state and local sales and use taxes, federal taxes, value-added taxes, import and customs duties, payroll taxes, income taxes and other taxes, fees and assessments relating to the performance of the Services. It is the Consultant's responsibility to be familiar with all applicable taxes and to comply with all laws, ordinances, regulations and other requirements related thereto. Consultant shall timely administer and pay all taxes and timely furnish to the appropriate taxing authorities all required information and reports in connection with such taxes. To the extent that Company is defined to be the final consumer with respect to any Contract (or portion thereof) under applicable state tax laws, Consultant shall state the portion of the Contract price that is attributable to the resulting taxes in a separate, itemized and easily identifiable manner on the Consultant invoice or application for payment. Consultant shall also provide to Company such additional information reasonably requested by Company to confirm that the correct amount of such sales and use taxes, and other applicable taxes, will be paid in connection with the Contract.

## **ARTICLE 7. TRAVEL AND OTHER EXPENSES**

If required for the performance of the Services, and to the extent travel expenses are not otherwise included in the consideration to be paid Consultant pursuant to the Contract Documents, Company pre-approved expenses for travel and other expenses, including but not limited to Subcontractor expenses incurred by Consultant shall be reimbursed at Consultant's cost, without mark-up or any other surcharge, to the extent that such expenses are supported by original receipts or invoices. Such expenses will be invoiced as separate line items on any applicable invoice and shall include detailed supporting receipts that validate and support such expenses.

## **ARTICLE 8. ACCOUNTING AND AUDITING**

Consultant shall keep accurate, detailed and complete accounting records as may be necessary for substantiation of the Contract requirements, and all charges incurred or billed. The method for maintaining documentation shall be satisfactory to Company and in accordance with generally accepted accounting principles. Except as provided below, Company, or its audit representatives, shall have the right at any reasonable time or times to examine, audit, and copy the records, vouchers, and other source documents which relate to any claim for compensation. Such documents shall be available for examination, audit and reproduction for three (3) years after the completion or termination of the applicable Contract. The provisions of this Article do not apply to the substantiation of the pricing set forth in a fixed-price Contract; however, they do apply to termination charges, change orders, escalation, claims, amendments or other charges under any such Contracts that are determined on a basis other than fixed price.

Consultant shall assist Company with preparing necessary audit material and will allow Company to review any work papers prepared by independent auditors as allowed by professional standards.

Audit findings by Company's representative will be considered to be final and conclusive for the period audited. Any over collections shall be returned to Company within thirty (30) days from date of Notice of overcharge.

## **ARTICLE 9. CREDIT REQUIREMENTS**

Consultant shall meet the requirements of either clause (i) or clause (ii) below: (i) Consultant maintains a senior unsecured debt rating from Standard & Poor's of BBB- or better; or (ii) if Consultant does not maintain a satisfactory debt rating, Consultant meets ALL of the following credit standards: a) tangible net worth ten (10) times the projected maximum liability of Consultant under the applicable Contract; b) no change in the condition of its earnings, net worth, or working capital over the last twenty-four (24) months, which would reasonably be anticipated to impair Consultant's ability to meet its obligations under the applicable Contract; and c) Consultant is not in default under any of its other agreements and is current on all of its financial obligations.

If requested by Company, Consultant shall within thirty (30) days provide Company with copies of its most recent annual and quarterly financial statements prepared in accordance with generally accepted accounting principles.

## **ARTICLE 10. SECURITY**

In the event Consultant is unable to satisfy the credit requirements set forth in ARTICLE 9, CREDIT REQUIREMENTS at any time during the performance of the Services, or if Consultant experiences a Material Adverse Change at any time during such performance, then Consultant shall provide Company with security against defaults by Consultant under the Contract in such form and amount as may be reasonably required by Company ("Performance Security"), and pursuant to such additional agreements or instruments as may be reasonably required by Company, including but not limited to letters of credit, parent or

third-party guaranties, escrow accounts, or other forms of security satisfactory to Company. Company may at any time, at its own discretion or pursuant to a request by Consultant, recalculate the amount of Performance Security required pursuant to this Article, in which case Company shall increase or decrease the existing amount of Performance Security, as appropriate. At no time shall the amount of Performance Security to which Company is entitled pursuant to this Article be less than Company's Net Replacement Costs. In addition, notwithstanding Consultant's ability to satisfy ARTICLE 9, CREDIT REQUIREMENTS, Company may require a specific form and amount of Performance Security with respect to any Contract and the pricing for such Performance Security shall be included within the pricing specified in the Contract Documents.

The terms of any letter of credit required by Company shall conform to the attached Exhibit C, as well as the requirements of the Contract and shall be issued by a bank acceptable to Company. The letter of credit shall provide for payment to Company of the letter of credit stated amount if Consultant defaults under the terms of the Contract. Company shall have the right to call the entire amount of the letter of credit if Consultant has not renewed the letter of credit thirty (30) days prior to its expiration.

Consultant's expenses of complying with additional Performance Security obligations as set forth in this Article shall be borne by Consultant.

#### **ARTICLE 11. WITHHOLDING PAYMENT**

Company may, without limiting any other rights or remedies Company may have, withhold from payment amounts which reflect the reasonable cost to repair or replace non-conforming or defective Services or the value of any claim which Company has against Consultant under the Contract. Company may also retain from payment sufficient funds to discharge any delinquent accounts of Consultant for which liens on Company's property have been or may be filed, and Company may at any time pay therefrom for Consultant's account such amounts as are, in the reasonable opinion of Company, due thereon, including any sums due under any federal or state law.

#### **ARTICLE 12. DESIGNATED REPRESENTATIVES AND NOTICES**

Prior to commencement of the Services, each Party shall designate a representative authorized to act on its behalf, shall advise the other Party in writing of the name, address, and telephone number of such designated representative, and shall inform the other Party of any subsequent change in such designation. All communications to Company and Consultant relating to the Contract shall be communicated through such designated representatives.

Any Notice required to be delivered under the terms of this Master Contract shall be delivered to the representative of the other Party as designated below. In addition to providing Notice to Berkshire Hathaway Energy, Consultant shall provide the participating Affiliate about which the Notice pertains, a copy of the same addressed to the representative as set forth on Exhibit D. Additional Affiliates, which may elect to participate in and under this Master Contract after the effective date hereof, shall notify Consultant of the proper representative and address for forwarding Notices required hereunder. All Notices shall either be: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. The Parties' addresses for purposes of Notice shall be as set forth below and for Affiliates, as listed on Exhibit D:

If to Company:

Berkshire Hathaway Energy Company

Manor House, Station Road

New Penshaw, Houghton le Spring

DH4 7LA, United Kingdom

Attn: Sarah Kendrick

Email: skendrick@berkshirehathawayenergyco.com

Telephone: +44 (0)191 3877101

If to Consultant:

HomeServices Relocation, LLC

6800 France Ave South, STE 335

Minneapolis, MN 55435

Attn: John Mullarky

E-mail: JohnMullarky@homeservices.com

Telephone: 1-952-925-5858

Either Party may change the name or address of the designated recipient of Notices by delivery of a Notice of such change as provided for in this Article.

Requested changes to Supplier's banking information may take up to 60 days to process. Except upon approval of Company's Chief Financial Officer or equivalent, Company shall continue to use Supplier's previous banking information. Company shall not be liable for late fees or interest on any late or missed payments due to Supplier's requested changes that could not be reasonably verified by Company. Changes to Supplier information will be confirmed by Company with the following Supplier staff:

**Supplier Treasurer**

Name: Mary-Grace Ellington

Title: Accounting Manager

Address: 110 Oakwood Dr, STE220

Winston-Salem, NC 27103

Telephone: 336.760.8302

Supplier website: <https://www.homeservicesrelocation.com/>

**Supplier Senior Manager**

Name: John Mullarky

Title: V.P.

Address: 6800 France Ave South,  
STE355

Minneapolis, MN 55435

Telephone: 952.928.5856

**Supplier Senior Manager**

Name: Steven John

Title: CEO

Address: 6800 France Ave. South, STE 355

Minneapolis, MN 55435

Telephone: 952.928.5855

**ARTICLE 13. EXAMINATION OF WORK AND PROGRESS REPORTS**

Consultant shall submit periodic progress reports as requested by Company. Company, its agents or representatives may visit Consultant's office at any reasonable time to determine the status of ongoing Services required by the Contract Documents.

All Deliverables in progress will be subject to examination at any reasonable time or times by Company, which shall have the right to reject unsatisfactory Services. Neither examination of any Deliverables nor the lack of same nor acceptance of the Services by Company nor payment therefor shall relieve Consultant from any of its obligations under the Contract Documents.

**ARTICLE 14. PROFESSIONAL RESPONSIBILITY**

Consultant shall perform the Services in accordance with the Contract Documents and using the standards of care, skill, and diligence normally provided by a professional in the performance of similar Services on behalf of customers in the same industry or business as Company, and shall comply with all laws, codes and standards applicable to the Services.

In the event of Consultant's failure to do so, Consultant shall, upon Notice by Company, promptly reperform the Services and correct the defect at Consultant's sole cost. Consultant's obligation to correct and reperform its Services shall be in addition to, and not in lieu of, any other right that Company may have.

**ARTICLE 15. CHANGES TO THE CONTRACT**

Company may at any time in writing direct changes and/or additions within the general scope of the Contract, direct the omission of or variation in Services, or alter the schedule. If any such direction results in a material change in the amount or character of the Services, an equitable adjustment in the price and/or other such provisions of the Contract Documents as may be affected shall be made and the Contract and/or any relevant Contract Documents shall be modified in writing accordingly. Any claim by Consultant for an adjustment under this Article shall be processed in accordance with the provisions of ARTICLE 30, CLAIM NOTICE AND RESOLUTION PROCEDURE.

No change shall be binding upon Company until a change order is executed by an authorized representative of Company which expressly states that it constitutes a change order to the Contract. THE ISSUANCE OF INFORMATION, ADVICE, APPROVALS, OR INSTRUCTIONS BY ANYONE OTHER THAN THE AUTHORIZED COMPANY REPRESENTATIVE SHALL NOT CONSTITUTE AN AUTHORIZED CHANGE ORDER PURSUANT TO THIS ARTICLE.

Any changes in Services shall apply only to the specific Contract pursuant to which the Services are being performed. No changes to the terms of this Master Contract shall be binding on Berkshire Hathaway Energy or any other Affiliate unless agreed to in writing by an authorized representative of Berkshire Hathaway Energy, which writing expressly states that it is an amendment to this Master Contract.

**ARTICLE 16. INSURANCE**

Without limiting any liabilities or any other obligations of Consultant, Consultant shall, prior to commencing Services, secure at its own expense and continuously maintain with insurance companies in good standing, acceptable to Berkshire Hathaway

Energy and having an A.M. Best Insurance Reports rating of A-:VII or better such insurance as will protect Consultant from liability and claims for injuries and damages which may arise out of or result from Consultant's performance and operations under the Contract and for which Consultant may be legally liable, whether such performance and operations are by Consultant or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Consultant shall insure the risks associated with the Services and the Contract with minimum coverage and limits as set forth below:

Workers' Compensation. Consultant shall comply with all applicable workers' compensation laws and shall furnish proof thereof satisfactory to Company prior to commencing Services. If Services are to be performed in Washington or Wyoming, Consultant will participate in the appropriate state fund(s) to cover all eligible employees and provide a stop gap (employer's liability) endorsement. Coverage should also provide applicable federal regulations (including, without limitation, FELA, USL&H and the Jones Act).

Employers' Liability. Consultant shall maintain employers' liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

Commercial General Liability. Consultant shall maintain commercial general liability insurance on the most recently approved ISO policy form, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate (on a per location and/or per job basis) and shall include the following coverage:

- a. Premises and operations coverage
- b. Independent contractor's coverage
- c. Contractual liability
- d. Products and completed operations coverage, maintained for at least 2 years for post-completion losses
- e. Broad form property damage liability
- f. Personal and advertising injury liability, with the contractual exclusion removed
- g. Sudden and accidental pollution liability, as applicable

Business Automobile Liability. Consultant shall maintain business automobile liability insurance on the most recently approved ISO policy form, or its equivalent, with a minimum single limit of \$1,000,000 each accident for bodily injury and property damage including sudden and accidental pollution liability, with respect to Consultant's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Services.

Network Security & Privacy Liability. If the Work or Services under the Contract involves the rendering of IT services including, but not limited to: software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connections to systems, technology or network(s); or if Consultant in any way collects, obtains, maintains or in any way accesses or uses Confidential Information, then Consultant, and its Subcontractors shall maintain Network Security & Privacy Liability coverage, including Professional Errors & Omissions, throughout the term of this Contract and for a period of two (2) years thereafter, with a minimum required limit of \$5,000,000 Each Claim.

Professional Liability. Consultant shall maintain professional liability insurance covering damages arising out of negligent acts, errors, or omissions committed by Consultant in the performance of this Contract, with a liability limit of not less than \$1,000,000 each claim. Consultant shall maintain this policy for a minimum of two (2) years after completion of the Services or shall arrange for a two (2) year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of Services under the Master Contract and caused by any error, omission for which the Consultant is held liable.

Umbrella or Excess Liability. Consultant shall maintain umbrella or excess liability insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable on a following form basis to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. Consultant shall provide Notice to Company, if at any time the full umbrella limit required under the Contract is not available, and will purchase additional limits, if requested by Company.

Berkshire Hathaway Energy and its Affiliates do not represent that the insurance coverage specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of Consultant, and Consultant shall be solely responsible for any deficiencies thereof.

Except for workers' compensation and professional liability insurance, the policies required herein shall include provisions or

endorsements naming Berkshire Hathaway Energy, its Affiliates, divisions, subsidiary companies, co-lessees, co-venturers, joint owners and the officers, directors, agents, employees, servants and insurers of the same as additional insureds or loss payees, as applicable to specific insurance coverage. In the event additional Affiliates elect to participate in and under this Master Contract after the effective date hereof, Consultant shall provide Berkshire Hathaway Energy and all its participating Affiliates updated certificates of insurance evidencing that it has included such newly participating Affiliates as additional insureds in each of the Consultant's insurance policies. The additional insured endorsement shall be ISO Form CG 20 10 and ISO Form CG 20 37, or their equivalents.

To the extent of Consultant's negligent acts or omissions, all policies required by the Contract shall include: (i) provisions that such insurance is primary insurance with respect to the interests of Berkshire Hathaway Energy and its Affiliates and that any other insurance maintained by Berkshire Hathaway Energy and its Affiliates (including self-insurance) is excess and not contributory insurance with the insurance required hereunder; and (ii) provisions that the policy contain a cross liability or severability of interest clause or endorsement in the commercial general liability and automobile liability coverage. Consultant shall provide Notice to Berkshire Hathaway Energy and all its participating Affiliates immediately upon receipt of notice of any policy cancellation or reduction of policy limits for any reason and shall provide proof of full replacement coverage prior to the effective date of cancellation. Unless prohibited by applicable law, all required insurance policies (except professional liability) shall contain provisions that the insurer will have no right of recovery or subrogation against Berkshire Hathaway Energy, its parent, divisions, Affiliates, subsidiary companies, co-lessees, or co-venturers, joint owners, agents, directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all of the above-referenced entities.

A certificate of insurance shall be furnished to Berkshire Hathaway Energy and all participating Affiliates confirming the issuance of such insurance prior to commencement of any Services by Consultant. Should a loss arise during the Term of the Contract that may give rise to a claim against Consultant and/or Berkshire Hathaway Energy or its Affiliates as additional insureds, Consultant shall deliver to Berkshire Hathaway Energy and its participating Affiliates (or cause to be delivered to Company) certified copies of such insurance policies. Consultant shall not cancel or reduce limits of liability without (i) ten (10) calendar days prior written Notice to Company if canceled for nonpayment of premium; or (ii) thirty (30) calendar days prior written Notice to Company if canceled for any other reason. Lack of notification shall be considered a material breach of this Contract.

Consultant shall require Subcontractors who perform Services at the Work Site to carry liability insurance (auto, commercial general liability and excess) and workers' compensation/employer's liability insurance commensurate with their respective scopes of work. Consultant shall remain responsible for any claims, lawsuits, losses and expenses (including defense costs) that exceed any of its Subcontractors' insurance limits and for uninsured claims or losses.

#### **ARTICLE 17. INDEMNIFICATION**

Consultant specifically and expressly agrees to indemnify, defend, and hold harmless Company, Berkshire Hathaway Energy, and all its Affiliates, and their respective officers, directors, employees, joint owners and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of the acts, errors or omissions of Consultant, its employees, agents, representatives or Personnel of any tier, their employees, agents or representatives in the performance or nonperformance of Consultant's obligations under the Contract or in any way related to the Contract. The indemnity obligations under this Article shall include without limitation:

- a. Loss of or damage to any property of Company, Consultant or any third party;
- b. Bodily injury to, or death of any person(s), including without limitation employees of Company, or of Consultant or its Personnel of any tier; and
- c. Claims arising out of or related to workers' compensation, unemployment compensation, or similar such laws or obligations applicable to employees of Consultant or its Personnel of any tier.

If any claim, legal action or suit arising from the Services is instituted by any person or entity against an Indemnitee as a result of an action for which Consultant has agreed to indemnify Company under this Article, then Consultant will assume the defense of that claim, legal action or suit, upon being notified to do so by Company and will pay any judgment or settlement rendered in such action or suit. It is understood and agreed by Consultant that if an Indemnitee is named a defendant in any such claim, legal action or suit and Consultant fails or neglects to assume the defense thereof after having been notified to do so, Company may compromise and settle or defend the claim, legal action or suit and Consultant is bound to reimburse Company for the amount expended by Company in paying any judgment or settlement, together with all reasonable attorneys' fees and court costs, incurred by Company by reason of

its defense or settlement of such legal action or suit. Any judgment or amount expended by Company in compromising or settling such legal action or suit shall be conclusive as determining the amount for which Consultant is liable to reimburse Company.

Consultant's indemnity obligations under this Article shall not extend to any liability caused by the negligence of any of the Indemnitees. In claims, legal actions or suits against any of the Indemnitees by or on behalf of an employee, agent or representative of Consultant or an employee, agent or representative of any Subcontractor, Consultant's indemnification obligations under this Article shall not be limited by a limitation on amount or types of damages, compensation or benefits payable by Consultant or a Subcontractor under workers' compensation acts, disability acts or other employee benefit acts. Without limiting the foregoing, and to the extent applicable, Consultant specifically and expressly waives any immunity under Industrial Insurance, Title 51, RCW, and Workers' Compensation Law, Chapter 656, ORS, and acknowledges that this waiver was mutually negotiated by the Parties herein.

Consultant's indemnity obligations owing to Indemnitees under this Article are not limited by any applicable insurance coverage identified in ARTICLE 16, INSURANCE.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraphs in this Article.

#### **ARTICLE 18. CHANGES IN PERSONNEL**

Prior to: (i) changing or replacing any "key" Personnel, as identified in the Scope of Work; or (ii) changing any classification, grade or rate of any Personnel performing Services under the Contract, Consultant shall provide Notice to Company of the proposed replacement/change before executing such replacement/change, and obtain Company's prior written approval for such replacement/change. Any replacement Personnel shall have the experience and capabilities equivalent to or better than the person replaced. If Consultant replaces or changes the classification, grade or rate of any person for performance of the Services described in the Contract Documents, without the express approval of the Company, then Consultant shall bear all costs associated with any and all such replacements and changes, and said costs shall not be reimbursable by Company.

#### **ARTICLE 19. CONSULTANT'S PERSONNEL; DRUGS, ALCOHOL AND FIREARMS**

Consultant shall employ in the performance of the Services only persons qualified for the same. Consultant shall at all times enforce strict discipline and good order among its employees and all Personnel of any tier. Consultant shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicating liquor upon the Work Site under the Contract, or upon any of the grounds occupied, controlled, or used by Consultant in the performance of the Services. Consultant shall immediately remove from the performance of Services, whenever requested by Company, any person considered by Company to be incompetent, insubordinate, careless, disorderly, in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicating liquor, and such person shall not again be employed in the performance of the Services herein without the prior written consent of Company.

#### **ARTICLE 20. FOREIGN CORPORATIONS**

If Consultant is a corporation organized under laws of a state other than those of the applicable Work Site, Consultant shall furnish Company with a certified copy of its permit to transact business in such state prior to commencing Services under the Contract.

#### **ARTICLE 21. SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY**

Consultant shall have in place and ensure compliance with a substance abuse/drug and alcohol policy that complies with all applicable federal, state and/or local statutes and regulations. Consultant represents and warrants that Consultant and all Personnel engaged in performing Services hereunder are in compliance with Consultant's substance abuse/drug and alcohol policy. During the term of the Contract, Consultant shall keep accurate and detailed documentation of its drug policy and all Personnel drug tests, which it shall submit to Company upon request. Consultant shall designate one person to be responsible for compliance with the requirements of this Article and all reporting and inquiries shall be made to a duly authorized representative of Company in a timely manner.

#### **ARTICLE 22. DEPARTMENT OF TRANSPORTATION**

Consultant shall ensure Department of Transportation compliance, including but not limited to valid driver's license, equipment inspections, hours of service and all appropriate documentation for any Personnel who may drive while performing Services under the Contract.

## **ARTICLE 23. BUSINESS ETHICS**

Consultant, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Consultant's obligations under the Contract. In conjunction with its performance of the Services, Consultant and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, and the Company Code of Business Conduct. Without limiting the generality of the foregoing, Consultant specifically represents and warrants that neither Consultant nor any Subcontractor employees, officers, representatives or other agents of Consultant have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Company or Consultant in connection with the Services to be performed hereunder. Consultant shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with the Contract and to verify Consultant's compliance with this Article. Company shall be permitted to audit such records as reasonably necessary to confirm Consultant's compliance with this Article. Consultant shall immediately provide Notice to Company of any facts, circumstances or allegations that constitute or might constitute a breach of this Article and shall cooperate with Company's subsequent investigation of such matters. Consultant shall indemnify, defend and hold Company harmless from all fines, penalties, expenses or other losses sustained by Company as a result of Consultant's breach of this Article. The Parties specifically acknowledge that Consultant's failure to comply with the requirements of this Article shall constitute a condition of default under the Contract.

## **ARTICLE 24. REVIEW OF DELIVERABLES**

Review by Company of any Deliverables submitted by Consultant shall not relieve Consultant of its responsibility to comply with all requirements of the Contract Documents. Notwithstanding any such review by Company, Consultant shall remain responsible for the accuracy of the Deliverables and for ensuring that any other materials fabricated from such Deliverables conform to the Contract Documents.

## **ARTICLE 25. SAFETY AND SITE REGULATIONS; PROTECTION OF PRE-EXISTING FACILITIES; CLEANUP**

Consultant shall be solely responsible for being aware of and initiating, maintaining and supervising compliance with all safety laws, regulations, precautions, and programs in connection with the performance of the Contract. Consultant shall also make itself aware of and adhere to all applicable Company Work Site regulations including, without limitation, environmental protection, loss control, dust control, safety, and security.

Consultant and its Personnel of any tier shall maintain accurate and current safety records consistent with industry practice during the performance of Services under the Contract. Further, Consultant and its Personnel of any tier shall immediately, and in no event more than twenty-four (24) hours, provide Notice to Company of all cases of death or injury to Consultant or Personnel or any other third parties during or related to the performance of Services under the Contract. Consultant shall provide Notice to the Company, which notification shall include, but is not limited to, notice of all vehicle accidents, electrical contacts, electrical flashes, and OSHA recordable incidents. Within forty-eight (48) hours of any safety incident reported to Company, Consultant shall provide Company with a preliminary accident investigation report detailing the facts of the incident, any known root cause, and action steps being taken by Consultant to further investigate the incident and mitigate future occurrences.

Consultant shall immediately notify, and in no event more than twenty-four (24) hours, Company and provide a copy of any safety citation issued by any governmental authority.

Consultant shall protect existing equipment and facilities, and avoid interference with Company's operations.

Consultant shall not remove or alter any part of the existing structures, equipment or facilities without the prior knowledge and consent of Company.

Consultant shall keep the Work Site, including storage areas used by it, free from accumulation of waste materials or rubbish arising out of the Services, and prior to completion of the Services, shall remove and properly dispose of any such rubbish from and about the Work Site, as well as remove all tools and equipment not property of Company. Upon completion of the Services, Consultant shall leave the Work Site in a condition satisfactory to Company. In the event of Consultant's failure within a reasonable time to comply with any of the foregoing, Company may, after written Notice to Consultant of such failure, perform the cleanup and removal at the expense of Consultant.



## **ARTICLE 26. PROGRESS MEETINGS**

Company will conduct weekly, or at other regular intervals as agreed by both Parties, meetings with Consultant, and Consultant shall participate in the same, to discuss the performance of the Services.

## **ARTICLE 27. COOPERATION WITH OTHERS**

Consultant shall fully cooperate and coordinate with Company employees and other contractors who may be awarded other work. Consultant shall not commit or permit any act which will interfere with the performance of work by Company employees or other contractors.

## **ARTICLE 28. LIENS**

Consultant shall: (i) indemnify, defend, and hold harmless Company from all laborers,' materialmen's and mechanics' liens or other claims made or filed against Company or upon the Work Site or other Company property on account of any Services performed or Deliverables furnished by Subcontractors of any tier in connection with the Services; and (ii) keep the Work Site and said property free and clear of all liens or claims arising from the performance of any Services covered by the Contract by Consultant or its Subcontractors of any tier.

If any lien arising out of the Contract is filed before or after Services is completed, Consultant, within ten (10) days after receiving from Company Notice of such lien, shall obtain release of or otherwise satisfy such lien. If Consultant fails to do so within such period of time, Company may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse Company for all costs incurred and expenditures made by Company in obtaining such release or satisfaction. If any non-payment claim is made directly against Company arising out of non-payment to any Subcontractor (including any liens or claims based on the failure or alleged failure to maintain a payment bond), Consultant shall assume the defense of such claim within ten (10) days after receiving Notice of such claim from Company. If Consultant fails to do so, Consultant shall upon demand reimburse Company for all costs incurred and expenditures made by Company to satisfy such claim.

Consultant's obligation to indemnify, defend and hold harmless Company from liens and claims shall not in any way be rendered unenforceable, or altered, amended, eliminated or otherwise conditioned by any laws and regulations related to processing such liens. Company shall have no obligation to deliver a copy of any notice of claim or right to a lien to Consultant or any other person or entity.

## **ARTICLE 29. CONFLICTS, ERRORS, OMISSIONS, OR DISCREPANCIES IN CONTRACT DOCUMENTS**

Consultant shall advise Company in writing of all conflicts, errors, omissions, or discrepancies among the various Contract Documents immediately upon discovery and prior to Consultant's performing the affected Services. If Consultant performs any Services knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to Company, Consultant shall be responsible for all necessary corrective work and shall bear all costs for correction. Anything mentioned in the Scope of Work and not shown on the drawings, or shown on the drawings and not mentioned in the Scope of Work, shall be considered as if shown or mentioned in both.

## **ARTICLE 30. CLAIM NOTICE AND RESOLUTION PROCEDURE**

In the event Consultant has a claim or request for a time extension, additional compensation, any other adjustment of the Contract terms, or any dispute arising under the Contract (hereinafter "Claim"), Consultant shall provide Company with Notice of such Claim within five (5) business days following the occurrence of the event giving rise to the Claim. Consultant's failure to give Notice as required will constitute a waiver of all of Consultant's rights with respect to the Claim.

As soon as practicable after Claim notification, Consultant shall submit the Claim to Company with all supporting information and documentation. Consultant shall also respond promptly to all Company inquiries about the Claim and its basis.

Any Claim that is not disposed of by mutual agreement between the Parties shall be decided by Company, which shall provide a written decision to Consultant. Such decision shall be final unless Consultant, within thirty (30) days after such receipt of Company's decision, provides to Company a written protest, stating clearly and in detail the basis thereof. Consultant's failure to protest Company's decision within that time period shall constitute a waiver by Consultant of its right to dispute the decision. Even if a Claim arises, Consultant shall continue its performance of the Services under the terms of the Contract.

## **ARTICLE 31. SUSPENSION OF WORK**

Company may, by Notice, direct Consultant to suspend performance of any or all of the Services under the Contract for a specified period of time. Upon receipt of such Notice to suspend the Services, Consultant shall: (i) discontinue Services; (ii)

place no further orders or subcontracts; (iii) suspend all orders and subcontracts; (iv) protect and maintain the Deliverables; and (v) otherwise mitigate Company's costs and liabilities for those portions of the Services so suspended. Company shall pay Consultant an equitable amount for incremental costs incurred by Consultant as a result of the suspension; provided, however, that if the suspension is due to Consultant's failure to comply with the Contract, no such payment shall be made. Upon any reinstatement of the Services by Company, the time for completion of the Services will be extended for a period equal to the time lost by reason of the suspension.

#### **ARTICLE 32. TERMINATION FOR CONVENIENCE**

Company may terminate the Contract in whole or in part at any time without cause prior to its completion by sending to Consultant Notice of such termination. Upon such termination, Company shall pay to Consultant, in full satisfaction and discharge of all liabilities and obligations owed Consultant, for all Services satisfactorily performed by Consultant as of the date of termination. Company shall not be liable to Consultant or any of its Subcontractors for anticipated profits or overhead based upon Services not yet performed as of the date of termination.

#### **ARTICLE 33. TERMINATION FOR CAUSE**

33.1 For purposes of this Contract, a default by Consultant shall be the occurrence of any of the following:

- a. A breach by Consultant of any of its material obligations under the Contract, if such breach continues uncured for a period of seven (7) days after receipt of Notice from Company, unless Company agrees, in writing, to grant Consultant an extension of such seven (7) day period for a period of time to be determined at Company's sole discretion. In such circumstance, Company shall prescribe the new cure period in writing. For purposes of the Contract, a default by Consultant shall be deemed to include, without limitation, Consultant's refusal or neglect to supply sufficient and properly skilled Personnel, materials or Deliverables of the proper quality or quantity, or Equipment necessary to perform the Work described in the Contract properly, or Consultant's failure in any respect to prosecute the Work described in the Contract or any part thereof with promptness, diligence and in accordance with all of the material provisions hereof;
- b. Consultant fails in any material respect to comply with any laws, ordinances or regulations pertaining to safety or environmental compliance;
- c. A determination that any representation, statement or warranty made by Consultant in this Contract or any other statement, report or document which Consultant is required to furnish to Company, was false or misleading in any material respect;
- d. The occurrence of any of the following: (i) the filing by or against Consultant of a proceeding under any bankruptcy or similar law, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (ii) the making by Consultant of any assignment for the benefit of creditors; (iii) the filing by or against Consultant for a proceeding for dissolution or liquidation, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (iv) the appointment of or the application for the appointment of a receiver, trustee or custodian for any material part of Consultant's assets unless such appointment is revoked or dismissed within thirty (30) calendar days from the date thereof; (v) the attempt by Consultant to make any adjustment, settlement or extension of its debts with its creditors generally; (vi) the insolvency of Consultant; or (vii) the filing or recording of a notice of lien or the issuance or the obtaining of a levy of execution upon or against a material portion of Consultant's assets, unless such lien or levy of execution is dissolved within thirty (30) calendar days from the date thereof; or
- e. A Material Adverse Change has occurred with respect to Consultant and Consultant fails to provide such performance assurances as are reasonably requested by Company, including without limitation the posting of Default Security pursuant to ARTICLE 10. SECURITY.

33.2 Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled upon written Notice to Consultant, and without Notice to Consultant's sureties and without limiting any of Company's other rights or remedies, to terminate this Contract or to terminate Consultant's right to proceed with that portion of the Work affected by any such default and collect the Net Replacement Costs incurred to complete the Work.

33.3 Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled to seek performance by any guarantor of Consultant's obligations hereunder or draw upon any Default Security provided for in this Contract.

- 33.4 Upon receipt of any such written Notice of termination of the entire Contract or of any right to proceed with any portion of the Work following the applicable process described in this Article, Consultant shall, at its expense, for that portion of the Work affected by any such termination:
- Assist Company in making an inventory of all Equipment in storage at Consultant's facility, en route to Consultant's facility, in storage or manufacture elsewhere, en route to Company and on order from the suppliers;
  - Assess the status of any Deliverables still due and preserve any Work performed; and
  - To the extent that they are assignable, assign to Company any and all subcontracts and equipment rental agreements as designated in writing by Company.
- 33.5 In the event of such termination, Company may, for the purpose of completing the Work or enforcing these provisions, take possession of all Equipment, tools, appliances, documentation, software source media, flow charts, documents and other Deliverables at the Company's Work Site belonging to or under the control of Consultant, and may use them or may finish the Work by whatever method it may deem expedient including: (i) Company may hire a replacement consultant or consultants to complete the remaining Work that Consultant was otherwise obligated to complete under the Contract using such form of agreement as Company may deem advisable; or (ii) Company may itself provide any labor or materials to complete the Work. Consultant shall cooperate with and assist Company in attempting to acquire from Consultant's Subcontractors the right to take possession of and use any and all proprietary materials in the event of such termination. All proprietary materials of Consultant or Subcontractors shall remain subject to the provisions contained herein, and Company shall not have any broader rights to use or disclose such proprietary materials as a result of such termination. Any software embodying any of Consultant's proprietary materials shall also be subject to the provisions herein. In the event of such a termination, Consultant shall not be entitled to receive any further payment until the Work is completed, and such amounts may be offset against Company's Net Replacement Costs.
- 33.6 All rights and remedies provided in this Article are cumulative, and are not exclusive of any other rights or remedies that may be available, whether provided by law, equity, statute, in any other agreement between the Parties or otherwise. Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled to pursue any and all other rights and remedies, including without limitation damages, that Company may have against Consultant under this Contract or at law or in equity (provided, however that Company shall not be entitled to collect any damages at law attributable to late delivery, performance or any other item for which this Contract specifically provides liquidated damages as an exclusive remedy).

#### ARTICLE 34. DELAYS

**Force Majeure.** Neither Party shall be liable for delays caused by a Force Majeure Event; provided, however, that both Parties agree to seek to mitigate the potential impact of any such delay. Any delay attributable to a Force Majeure Event shall not be the basis for a request for additional compensation. In the event of any such delay, the required completion date may be extended for a reasonable period not exceeding the time actually lost by reason of the Force Majeure Event.

**Company-Caused Delay.** If Consultant is actually delayed in its performance of the Work by the actions or omissions of Company (excluding the Company's good faith exercise of rights and remedies provided under the Contract), or by changes ordered with respect to the Work, and if Consultant is able to prove that it has used all reasonable means to avoid or minimize the effects of the delay, then, as Consultant's sole remedy, Consultant's guaranteed completion dates shall be equitably adjusted to reflect the impacts of such Company-caused delays. No adjustment under this Article shall be made for any delay to the extent that it is caused or contributed to by Consultant or performance would have otherwise been delayed by any other cause, including the fault or negligence of Consultant. Company may determine whether Consultant has met its burden described in this Article either before or after the completion deadline. If before the completion deadline, Company determines Consultant has met its burden as described in this Article, then Company may issue a written change order to extend the schedule. If after the completion deadline, Company determines Consultant has met its burden described in this Article, then Company may extend the completion deadline and thereby relieve Consultant of the obligation to pay liquidated damages.

**Consultant-Caused Delay.** Any Services not performed or Deliverables that are not delivered in accordance with and within the time specified in the Contract Documents may constitute a default to the extent set forth in the terms and conditions of the Contract, and only to the extent that the delay is in no way related to either a Force Majeure Event or Company-caused delay.

**Request For Time Extension.** Any request for time extension or additional compensation shall be made in accordance with ARTICLE 30, CLAIM NOTICE AND RESOLUTION PROCEDURE.

## **ARTICLE 35. COMPLIANCE WITH LAWS**

Consultant shall at all times comply with all laws, statutes, regulations, rules, executive orders, ordinances, codes, and standards applicable to Consultant's performance of the Services including, without limitation, those governing health and safety, wages, hours, employment of minors, desegregation and employment discrimination, as each may be applicable to the Services performed hereunder, and based on total anticipated dollar value of this Contract. Consultant further confirms that its employees and the employees of all Subcontractors employed under the Contract may legally work in the United States.

Without limiting the generality of the foregoing, Consultant and any Subcontractors shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and Subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Consultant and any Subcontractors shall also abide by the requirements of Executive Order 11246, as amended, to develop and maintain a written affirmative action program (AAP) and Executive Orders 11625 and 13170 (utilization of disadvantaged business enterprises) and the Small Business Act. To the extent applicable, the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.

Consultant shall indemnify, defend and hold harmless Berkshire Hathaway Energy, Company, its directors, officers, employees and agents from all losses, costs and damages by reason of any violation thereof and from any liability, including without limitation fines, penalties and other costs arising out of Consultant's failure to so comply.

## **ARTICLE 36. FEDERAL SECURITY REGISTRY**

Consultant warrants that neither Consultant nor any of its Personnel are on the United States federal government's list of suspected terrorists or suspected terrorist organizations.

## **ARTICLE 37. INDEPENDENT CONTRACTOR**

Consultant shall perform the Services as an independent contractor, at its sole risk, and shall be solely responsible for the direction and control of all Personnel. Consultant is to determine the manner and method by which the Services shall be performed by it to conform to the Contract Documents. Company's general rights to inspect the Deliverables and enforce the Contract shall not make, or be construed to make, such Personnel the agents or employees of Company.

## **ARTICLE 38. RELEASE OF INFORMATION – ADVERTISING AND PROMOTION**

Consultant shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning the Contract and/or the Services, or any part thereof, except as required by law. Neither the names of Company, nor the Work Site shall be used in any advertising or other promotional context by Consultant.

## **ARTICLE 39. CONFIDENTIAL INFORMATION; NONDISCLOSURE**

**BES Cyber System Information.** Confidential Information of Company labeled as BCSI shall be protected consistent with the following requirements: (a) BCSI shall be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it; (b) each person who works with protected BCSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it; (c) reasonable steps shall be taken to minimize the risks of access to BCSI by unauthorized personnel (when not in use, BCSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where security is provided); (d) documents or material containing BCSI may be reproduced to the minimum extent necessary, consistent with the need to carry out the Work, provided that the reproduced material is marked and protected in the same manner as the original material; (e) material containing BCSI should be disposed of through secured shredding receptacles or other secured document destruction methods; (f) BCSI shall be transmitted only by the following means: (i) hand delivery; (ii) United States first class, express, certified or registered mail, bonded courier; (iii) secure electronic means with NIST- or ISO-compliant encryption; and (g) documents or material containing BCSI shall be returned to Company or certified destroyed upon completion of the Work.

**Nondisclosure.** Consultant agrees that it will not disclose Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without the express prior written consent of Company.

**Nonuse.** Consultant further agrees that it will not use Confidential Information except as may be necessary to perform the Services called for by the Contract.

**Protection.** Confidential Information will be made available by Consultant to its employees only on a “need to know” basis and only after notifying such employees of the confidential nature of the information and after having obligated them to the nonuse and nondisclosure obligations of the Contract. Consultant agrees to take all reasonable precautions to protect the confidentiality of Confidential Information and, upon request by Company, to return to Company any documents which contain or reflect such Confidential Information.

**Federal Defend Trade Secrets Act.** The Federal Defend Trade Secrets Act of 2016 provides immunity from civil or criminal liability for any employee or contractor who discloses a trade secret “in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney” where the disclosure by the employee or contractor is “solely for the purpose of reporting or investigating a suspected violation of law” or “is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.” 18 U.S.C. § 1833(b). Nothing in this Contract is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b).

Unless waived in writing by Company, Consultant shall require all Personnel of any tier, to adhere to these confidential information and nondisclosure terms.

#### **ARTICLE 40. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT**

Except to the extent consisting of Consultant’s Pre-Existing Property (as defined below), the Deliverables prepared or developed hereunder, or other documents or information provided to Company, by Consultant or its employees or agents, or Subcontractors or their employees or agents, shall become the physical property of Company when prepared and, to the extent subject to protection under copyright laws, shall constitute “work made for hire” and shall become the intellectual property of Company, without regard to any markings that may denote a confidential or proprietary interest of Consultant in the said items.

To the extent the Deliverables incorporate pre-existing intellectual property of Consultant or of any third party (“Pre-Existing Property”), Consultant hereby grants Company a perpetual, fully paid, transferable right to use, copy and modify such Pre-Existing Property for the purpose of Company’s operation, administration, maintenance, modification, improvement and replacement of the Company’s assets the fullest extent necessary to accomplish those purposes. Such license includes the right of Company to share Pre-Existing Property with Company’s contractors, agent, officers, directors, employees, joint owners, affiliates and consultants for the foregoing purpose, without regard to any markings that may denote a confidential or proprietary interest in the said items. Consultant hereby represents, warrants and covenants that it holds all requisite rights and third party consents necessary to grant the foregoing license without infringing the rights of any third party.

Consultant shall deliver all Deliverables, together with any documents or information furnished to Consultant and its employees or agents by Company hereunder, upon Company’s request and, in any event, upon termination or final acceptance of the Services. Promptly upon Company’s request, Consultant shall provide all tools and information (including without limitation applicable passwords and authorization codes) necessary to ensure Company receives the full benefit of the Deliverables.

#### **ARTICLE 41. CYBER SECURITY**

##### **41.1 SCOPE OF THIS ARTICLE**

This Article applies to Consultant and its Personnel and Subcontractors that provide hardware, software, or services to the Company that may impact the confidentiality, integrity, or availability of the Company’s networks, systems, software, Data, or Confidential Information for the term of the Contract.

##### **41.2 CYBER SECURITY CONTROLS**

- a. Consultant shall have and maintain security controls to protect the Company’s networks, systems, software, Confidential Information, and Data that are no less rigorous than the latest published version of ISO/IEC 27001 – *Information Security Management Systems–Requirements*, and ISO/IEC 27002 – *Code of Practice for International Security Management*
- b. Consultant agrees to disclose to the Company known security vulnerabilities in hardware, software, and services provided under the Contract in a timely manner.
- c. Consultant warrants that the hardware, software, and patches provided under the Contract, will not contain malicious code or any unwanted or unexpected features. Consultant agrees to provide a method to verify the integrity and authenticity of all software and patches provided by the Consultant.

- d. Consultant shall follow all applicable Company requirements for Consultant-initiated interactive remote access and system-to-system remote access with Consultant. To the extent Consultant's Personnel will have interactive remote access to Company's networks, systems or applications, Consultant's Personnel will use multi-factor authentication provided by the Company. Authentication tokens and passwords must not be shared. Upon either (i) Personnel termination actions or (ii) changes in the status of Personnel which removes their need for remote access, Consultant shall report such termination or change in status to the Company's Service Desk by telephone and email as soon as practicable and no later than close of the same business day. In the case of Sensitive Personnel and/or involuntary termination, notification must be immediate. In all other cases, notification must be within one business day.

#### **41.3 OVERSIGHT OF COMPLIANCE**

As evidence of compliance, Consultant shall either:

- a. Provide annually to the Company a Statement on Standards for Attestation Engagements (SSAE) Service Organization Control (SOC) 2 Type II audit covering the scope of the contract; or,
- b. Provide annually to the Company a copy of ISO 27001 certification covering the scope of the contract; or,
- c. Provide annually to the Company a third-party audit covering the security controls relevant to hardware, software, or services provided under this contract. Audit results and Consultant's plan to correct any negative findings must also be made available to the Company; or,
- d. Allow Company to conduct an assessment, audit, examination, or review of Consultant's security controls to confirm Consultant's adherence to the terms of this Article, as well as any applicable laws, regulations, and industry standards, not more than once per year or upon notification of any Security Incident or complaint regarding Consultant's privacy and security practices. Company may elect to obtain the services of a mutually-agreeable third party to conduct this assessment, audit, examination, or review on behalf of Company. Company shall give Consultant no less than thirty (30) calendar days' notice of its intent to conduct such assessment, audit, examination, or review. As part of this assessment, audit, examination, or review, Company may review all controls in Consultant's physical and/or technical environment in relation to all Confidential Information being handled and/or hardware, software, or services being provided pursuant to this Contract. Consultant shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, application software, and systems relevant to the provision of hardware, software, or services under the Contract.

#### **41.4 SECURITY INCIDENT PROCEDURES, EQUITABLE RELIEF**

In the event of a Consultant, or subcontractor Security Incident affecting the Company, the Company's networks, systems, software, Data, or the Company's Confidential Information,

- a. Consultant shall:
  - (i) notify the Company of the Security Incident as soon as practicable, but no later than 48 hours after Consultant becomes aware of it, by telephone and email; and
  - (ii) provide the Company with the name and contact information for any Personnel who shall serve as Consultant's primary security contact and shall be available to assist the Company with Security Incident management, response, and recovery associated with the Security Incident.
- b. Immediately following Consultant's notification to the Company of a Security Incident, the Parties shall coordinate with each other to investigate such Security Incident. Consultant agrees to coordinate with Company in Company's handling of the matter, including: (i) assisting with any investigation and (ii) making available all relevant records and other materials required to comply with applicable law, regulation, industry standards, or otherwise reasonably required by Company.
- c. Consultant shall use best efforts to immediately remedy any Security Incident and prevent any further or recurrent Security Incident at Consultant's expense in accordance with applicable privacy laws, regulations, and standards. Consultant shall reimburse Company for actual reasonable costs incurred by Company in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation pursuant to this section.
- d. Consultant shall fully cooperate at its own expense with Company in any litigation or other formal action deemed reasonably necessary by Company to protect its rights relating to the use, disclosure, protection, and maintenance of its Confidential Information and Data.
- e. Consultant acknowledges that any breach of Consultant's obligations set forth in this Article may cause Company

substantial irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, Company is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Company may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other available remedies at law or in equity, subject to any express exclusions or limitations in the Contract to the contrary.

#### **41.5 OBLIGATIONS ON TERMINATION AND TERMINATION ASSISTANCE**

In addition to any other obligations that arise on termination or expiration of this Contract, the Parties agree that, on any expiration or termination of the Contract, upon completion of the delivery of the products and services to be provided under this Contract, or at any time upon Company's request, regardless of the circumstance:

- a. Consultant shall immediately surrender to Company all access cards, security passes, passwords and other such devices granting access to any Work Site or to Company networks or computer systems; and
  - (i) Consultant shall return any Data that is in its care, custody or control to Company in the format requested by Company and Consultant shall, after receiving Company's written confirmation that it can read the Data provided by Consultant, permanently delete any copies of the Data in Consultant's care, custody or control.
  - (ii) Consultant will return to Company all hardware and removable media provided by Company that contains Company Information. Company Information in such returned hardware and removable media may not be removed or altered in any way. The hardware should be physically sealed and returned via a bonded courier or as otherwise directed by Company. If the hardware or removable media containing Company Information is owned by Consultant or a third-party, a written statement detailing the destruction method used and the data sets involved, the date of destruction and the entity or individual who performed the destruction will be sent to a designated Company security representative within fifteen (15) calendar days after completion of the delivery of the products and services to be provided under this Contract, or at any time upon Company's request. Consultant's destruction or erasure of Company Information pursuant to this Article must be in compliance with NIST or ISO Standards.

Prior to the expected expiration or termination of a Contract Document by either Party for any reason, or prior to the expected expiration or termination of this Contract for any reason, including the default of the terms of a Contract Document or a default under this Contract, Consultant agrees to provide Company with the reasonable assistance services requested by Company. These services will include, at a minimum, converting data, providing parallel services until Company has transitioned to a new system, providing on-site technical support, cooperating with Company or its designated vendor in developing required interfaces, and such other assistance services as shall be necessary or appropriate to facilitate, without material or extended interruption to the Services, the orderly transition of the Services to Company or its new provider of services. The Parties agree that assistance services may extend beyond the Term as reasonably required by Company.

#### **41.3 PROHIBITED VENDORS**

Consultant may not use the services or products of any company identified by the US Government and/or regulatory authorities as a security threat in the provision of Work or Services to Company, either directly or via subcontractors. The current list of prohibited vendors includes Da Jiang Innovations (DJI), AO Kaspersky Lab, ZTE, and Huawei. If Consultant fails to abide by this requirement, Company will provide Consultant with notice and a 30 day opportunity to cure. Continued failure to abide by this requirement will be considered a material breach of this Contract.

#### **ARTICLE 42. PATENT AND COPYRIGHT INDEMNITY**

Consultant shall indemnify, defend, and hold harmless Company, its directors, officers, employees, joint owners, and agents against and from all claims, losses, costs, suits, judgments, damages, and expenses, including attorneys' fees, of any kind or nature whatsoever on account of infringement of any patent, copyrighted or uncopyrighted work, including claims thereof pertaining to or arising from Consultant's performance under the Contract. If notified promptly in writing and given reasonable authority, information and assistance, and contingent upon Company not taking any position adverse to Consultant in connection with such claim, Consultant shall defend, or may settle at its expense, any suit or proceeding against Company so far as based on a claimed infringement which would result in a breach of this warranty, and Consultant shall pay all damages and costs awarded therein against Company due to such breach.

In case any Service or Deliverable, or any combination thereof, is in such suit held to constitute such an infringement and the use of said Service or Deliverable is enjoined, Consultant shall, at its expense and through mutual agreement between Company and Consultant, either procure for Company the right to continue using said Service or Deliverable, replace same with a non-infringing Service or Deliverable, or modify same so it becomes non-infringing.

#### **ARTICLE 43. ASSIGNMENT**

Consultant shall not assign the Contract or any part hereof, or any rights or responsibilities hereunder without the prior written consent of Company, and any attempted assignment in violation hereof shall be void.

#### **ARTICLE 44. SUBCONTRACTS**

Consultant shall not subcontract any or all of the Services without prior written consent of Company. Consultant shall be fully liable and responsible for the acts or omissions of any Subcontractors of any tier and of all persons employed by them, shall maintain complete control over all such Subcontractors, and neither the consent by Company, nor anything contained herein, shall be deemed to create any contractual relation between a Subcontractor of any tier and Company.

#### **ARTICLE 45. NON-EXCLUSIVE RIGHTS**

Nothing in the Contract is to be construed as granting to Consultant an exclusive right to provide any or all of the Services anticipated herein. The use of Consultant's services is completely discretionary with Company. The Contract shall not be construed in any way to impose a duty upon Company to use Consultant.

#### **ARTICLE 46. NONWAIVER**

The failure of Company to insist upon or enforce strict performance by Consultant of any of the terms of the Contract, or to exercise any rights herein shall not be construed as a waiver or relinquishment to any extent of Company's right to enforce such terms or rights on any future occasion.

#### **ARTICLE 47. SEVERABILITY**

Any provision of the Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability and shall not invalidate the remaining provisions of the Contract.

#### **ARTICLE 48. APPLICABLE LAW AND VENUE**

In the event of any matter or dispute arising out of or related to a Contract, it is agreed between the Parties that such Contract shall be interpreted in accordance with the substantive and procedural laws (including statute of limitations provisions) of the jurisdiction of the principal business address of the applicable Company. With respect to Affiliates, this shall mean the principal business address of the Affiliate as identified in Exhibit D. The laws of such jurisdiction will govern the interpretation, validity and effect of this Contract without regard to the place of execution, place of performance thereof, or any conflicts of law provisions. Any litigation between the Parties arising out of or relating to the Contract will be conducted exclusively in appropriate courts of such jurisdiction, and Consultant consents to jurisdiction by such courts.

TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THE CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

WITH REGARD TO ANY CONTRACT GOVERNED BY CALIFORNIA LAW, THE FOLLOWING JURY TRIAL WAIVER AND ARBITRATION PROVISION APPLIES. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. IF A WAIVER OF JURY TRIAL IS DEEMED BY ANY COURT OF COMPETENT JURISDICTION TO NOT BE ENFORCEABLE FOR ANY REASON, THEN TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO AGREE TO BINDING ARBITRATION. SUCH ARBITRATION SHALL BE IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA). NOTWITHSTANDING ANY AAA RULES AND PROCEDURES, OR ANY OTHER PROVISION OF ANY STATE OR FEDERAL LAWS, THE PARTIES AGREE THAT THE ARBITRATORS SHALL NOT CONSIDER OR AWARD PUNITIVE DAMAGES AS A REMEDY. UPON THE COMPANY'S REQUEST, AAA SHALL PROVIDE THE PARTIES A LIST OF ARBITRATORS EACH OF WHOM HAVE EXPERIENCE AND EXPERTISE WITH RESPECT TO CONSTRUCTION. UPON EACH OF THE PARTIES' RECEIPT OF SUCH LISTS, EACH PARTY SHALL HAVE TEN (10) DAYS TO SELECT AN ARBITRATOR. THE TWO SELECTED ARBITRATORS SHALL THEN SELECT A THIRD ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE DATE THE INITIAL TWO ARBITRATORS WERE SELECTED AND THE MATTER SUBJECT TO ARBITRATION SHALL BE ARBITRATED AND A DECISION OF THE ARBITRATORS ISSUED WITHIN SIXTY (60) DAYS AFTER



THE SELECTION OF THE THIRD ARBITRATOR.

**ARTICLE 49. ENTIRE CONTRACT; DOCUMENTS INCORPORATED BY REFERENCE**

The Contract, including all Contract Documents, shall in each case constitute the complete agreement between the Parties.

In the event of a conflict between (i) this Master Contract, and (ii) any other terms and conditions contained in any other Contract Documents, this Master Contract shall take precedence and control, unless the Parties have explicitly expressed a contrary intent in one of the other Contract Documents.

Company assumes no responsibility for any understanding or representation made by any of its employees, officers or agents during or prior to the negotiations and execution of a given Contract, unless such understanding or representation is expressly stated in the Contract.

**ARTICLE 50. EXECUTION AND EFFECTIVE DATE**

This Master Contract has been executed by duly authorized representatives of the Parties and shall be effective as of date of execution by the Company.

**CONSULTANT:**

HomeServices Relocation, LLC

By: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

John Mullarky

(Type or Print)

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

V.P.

07 May 2019

(Date Executed)

**COMPANY:**

Berkshire Hathaway Energy Company

By: \_\_\_\_\_

GGMATTHEWS

(Signature)

Name: \_\_\_\_\_

GGMATTHEWS

(Type or Print)

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

VP CPO

MAY 7 2019

(Date Executed)

## **Attachment B**

**Exhibit E**  
**2019 Berkshire Hathaway Energy Company**  
**Affiliate Participation Letter**

TO: HomeServices Relocation, LLC

This letter confirms the intent of PacifiCorp to participate in and utilize the contract documents of the HomeServices Relocation, LLC contract (the “Contract”) between Berkshire Hathaway Energy Company and HomeServices Relocation, LLC that became effective May 1, 2019. We have reviewed the terms and conditions of the Contract in detail and agree to abide by them. It is understood and agreed that each Affiliate participating in this Contract is solely responsible and liable for its own purchases and payment to the appropriate entity for products or services provided to that Affiliate. Berkshire Hathaway Energy Company and the other Affiliate companies shall have no liability for payment or other obligations, contractual or otherwise, incurred by the specific Affiliate.

Further, we agree and acknowledge that the terms, conditions, and applicable appendices or exhibits set forth in the Contract will apply to HomeServices Relocation, LLC and PacifiCorp. As a participating majority-owned Affiliate, in return for HomeServices Relocation, LLC’s commitments, it is our intention to purchase material, equipment, or work in accordance with the Contract. It is understood and agreed that material, equipment, or work will be provided in accordance with this Contract.

All invoices for material, equipment, or work for PacifiCorp shall be addressed as follows:

Affiliate Name PacifiCorp  
Attn: Accounts Payable  
Address: PO Box 3040  
Portland, OR 97298-3040

Sincerely, PacifiCorp

By Gary Hoogeveen Digitally signed by Gary Hoogeveen  
Date: 2020.02.11 13:52:40 -07'00'

Printed Gary Hoogeveen

Title: President, Rocky Mountain Power

**CERTIFICATE OF SERVICE**

Docket No. 05-035-54

I hereby certify that on February 20, 2020, a true and correct copy of the foregoing was served by electronic mail to the following:

**Utah Office of Consumer Services**

Michele Beck            [mbeck@utah.gov](mailto:mbeck@utah.gov)

**Division of Public Utilities**

Chris Parker            [chrisparker@utah.gov](mailto:chrisparker@utah.gov)

A handwritten signature in black ink, appearing to read 'Mary Penfield', is written over a horizontal line.

Mary Penfield  
Adviser, Regulatory Operations