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| NPRR Number | 313 | NPRR Title | Updating the Term Resource Plan to Current Operating Plan/Availability Plan (formerly “Updating the Term Resource Plan to Current Operating Plan”) |
|  | |  | |
| Date | | June 22, 2011 | |
|  | |  | |
| Submitter’s Information | | | |
| Name | | Mandy Bauld | |
| E-mail Address | | [abauld@ercot.com](mailto:ogenove@ercot.com) | |
| Company | | ERCOT | |
| Phone Number | | 512-248-6455 | |
| Cell Number | |  | |
| Market Segment | | N/A | |

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| --- |
| Comments |

During review of the 5/19/11PRS Report for purpose of Impact Analysis development, ERCOT identified an issue in using the Current Operating Plan (COP) to capture the Availability Plan. Qualified Scheduling Entities (QSEs) are required to update the Availability Plan no later than 60 minutes after the event that causes a change in availability status. However, the COP values for a given hour cannot be modified after the end of the Adjustment Period for that hour.

ERCOT is unable to provide an Impact Analysis based on the 5/19/11 PRS Report due to the associated timing issues and technical challenges it poses. Therefore, to eliminate the timing issues associated with adding the Black Start capability flag, and as an alternative solution to removing the specification that the Availability Plan be provided in the COP, ERCOT proposes that a new submission type be created. Based on this alternative solution, the cost associated to provide a new market submission for the Availability Plan is between $65,000 to $70,000.

ERCOT comments also included modifications to the Availability Plan definition.

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| Proposed Protocol Language Revision |

## 2.1 DEFINITIONS

Availability Plan

An hourly representation of availability of Reliability Must-Run (RMR) Units or Synchronous Condenser Units, or an hourly representation of the capability of Black Start Resources as submitted to ERCOT by 0600 in the Day-Ahead by QSEs representing RMR Units, Synchronous Condenser Units or Black Start Resources.

3.14.3 Emergency Interruptible Load Service (EILS)

(1) ERCOT shall procure EILS for EILS Contract Periods. The standing EILS Contract Periods are as follows:

(a) June through September;

(b) October through January; and

(c) February through May.

(2) ERCOT may restructure EILS Contract Periods in order to facilitate additional Load participation in EILS. ERCOT shall provide Notice of any changes to the standing EILS Contract Periods no less than 90 days prior to the start date of that EILS Contract Period.

(3) ERCOT will solicit offers to provide EILS prior to each EILS Contract Period. ERCOT may procure additional EILS at any time.

(4) EILS offers may be submitted to ERCOT only by QSEs capable of receiving Verbal Dispatch Instructions (VDIs) on behalf of represented EILS Loads. A QSE may submit offers on behalf of multiple EILS Loads for any EILS Contract Period.

(5) ERCOT shall solicit EILS offers. QSEs on behalf of EILS Load may submit offers for one or more EILS Time Periods within an EILS Contract Period. An EILS offer is specific to an EILS Time Period. In submitting an offer, a QSE and the EILS Load are committing to provide EILS for that EILS Time Period if selected.

(6) The minimum amount of EILS that may be offered in an offer to ERCOT is one megawatt (MW). EILS Loads may be aggregated to reach the one MW offer requirement.

(7) An offer to provide EILS shall include:

(a) The name of the QSE representing the EILS Load;

(b) The name of the Entity supplying the EILS Loads;

(c) A description of the Load(s) that will provide EILS if selected, including name(s) and Electric Service Identifier(s) (ESI ID(s));

(d) The EILS Time Period for which the offer is submitted;

(e) A dollars per MW price for the capacity offer unless the offer is for EILS Self-Provision;

(f) The quantity of capacity for which the offer price is effective;

(g) For EILS Loads assigned to the alternate baseline, the maximum base Load, in MW, defined as the maximum level of Load at which the EILS Load may operate throughout the Sustained Response Period in an EILS deployment event;

(h) For EILS Loads that are not metered by a dedicated ESI ID in a competitive choice area of the ERCOT Region, including those situated in territories served by Non-Opt-In Entities (NOIEs) or within Private Use Networks, the most recently available 12 months of Interval Data Recorder (IDR) data in a format specified by ERCOT;

(i) QSEs opting for EILS Self-Provision must provide ERCOT with the maximum amount of capacity they plan to provide through this option before ERCOT begins to accept EILS offers;

(j) A QSE opting for EILS Self-Provision may also offer separate capacity into EILS in the form of a priced offer in the same manner as any other QSE; and

(k) Affirmation that the capacity being offered into EILS is not capacity that is separately obligated to provide demand response during any of the same hours, and receiving a separate reservation payment for such obligation, occurring in the contracted EILS Time Period. For any Loads found to be dually committed, ERCOT shall treat their Load as zero for that Contract Period and may prohibit their participation in the next EILS Contract Period following the discovery.

(8) QSEs may self-provide EILS. Self-providing QSEs must adhere to the following steps for offering EILS in an EILS Contract Period:

(a) A QSE electing to self-provide part or all of its EILS obligation for an EILS Contract Period shall provide ERCOT with the following, while adhering to a schedule published by ERCOT:

(i) The maximum MW of capacity it is willing to offer through EILS Self-Provision, per EILS Time Period; and

(ii) A Proxy Load Ratio Share (LRS) specific to the EILS Time Period. “Proxy LRS” shall be a number between zero and one and determined by the self-providing QSE to represent its estimate of its final LRS to be used in EILS Settlement.

(b) EILS Self-Provision Capacity Upper Limit is defined as the maximum level of self-provided EILS MW capacity for which a QSE may receive credit at Settlement. A proxy version of the EILS Self-Provision Capacity Upper Limit may be used during the procurement phase to afford self-providing QSEs the opportunity to reduce their EILS Self-Provision MW offers, if the total of their original EILS Self-Provision MW offer is projected to exceed their obligation based on their LRS, as defined in Section 6.6.11.2, EILS Capacity Charge. After receiving EILS Self-Provision information, ERCOT will award offers for additional MWs of EILS capacity such that the sum of the following does not exceed 1,000 MW:

(i) EILS capacity awarded through EILS competitive offers; and

(ii) EILS capacity awarded through EILS Self-Provision offers, where for each self-providing QSE the self-provided capacity offer is the lesser of the amount offered or the QSE’s proxy EILS Self-Provision Capacity Upper Limit.

(c) The calculations used to determine a QSE’s proxy EILS Self-Provision Capacity Upper Limit for the EILS procurement phase are the same as those used to determine the actual EILS Self-Provision Capacity Upper Limit for Settlement, as described in Section 6.6.11.1, EILS Capacity Payments, except that:

(i) Offered EILS capacity will be substituted for delivered EILS capacity; and

(ii) A QSE’s Proxy LRS will be substituted for its actual LRS; and

(iii) The total of a QSE’s self-provision offers will be the lower of the offered total or 1,000 MW times the QSE’s proxy load ratio share; and

(iv) The total EILS capacity offered by QSEs through competitive offers will be no higher than 1,000 MW minus the total of all QSEs’ self-provision offers determined in item (8)(c)(iii) above.

(d) ERCOT shall compute and provide QSEs offering EILS Self-Provision their proxy EILS Self-Provision Capacity Upper Limit. A QSE may then reduce any or all of its self-provision offers such that its revised total EILS Self-Provision capacity is greater than or equal to its proxy EILS Self-Provision Capacity Upper Limit provided by ERCOT.

(e) A QSE with reduced EILS Self-Provision capacity may reduce the commitment(s) of specific EILS Loads by providing Notification to ERCOT. Such Notification must be received by ERCOT within two Business Days following ERCOT’s Notification to the QSE of its reduced obligation.

(f) If a QSE reduces its EILS commitment according to these procedures, it will not be obligated to pay EILS charges so long as the amount of its delivered EILS Self-Provision capacity remains equal to or greater than its final LRS of the total EILS capacity delivered through offers and EILS Self-Provision, as described in paragraph (2) of Section 6.6.11.2.

(9) ERCOT shall not procure more than $50,000,000 of EILS in any 12 month period beginning on February 1st and ending on January 31st (“EILS Cap”). ERCOT may determine cost limits for each EILS Contract Period in order to ensure that the EILS Cap is not exceeded. In order to minimize the cost of EILS, ERCOT may reject any offer it determines to be unreasonable or outside the parameters of an acceptable offer. ERCOT shall establish a written process for determining the cost limits for each EILS Contract Period and for the reasonableness of offers.

(10) ERCOT shall reduce the EILS Cap by the value of the amount of EILS Self-Provision. ERCOT shall value EILS Self-Provision at the weighted average cost per MW of the EILS delivered multiplied by the total MW of EILS Self-Provision during each relevant EILS Time Period and EILS Contract Period.

(11) The maximum amount of EILS for which ERCOT may contract in an EILS Contract Period is 1,000 MW for each EILS Time Period.

(12) ERCOT shall evaluate each offer to determine the actual capacity an EILS Load is capable of providing and may limit any award to that EILS Load based on the results of the evaluation.

(13) ERCOT shall select EILS Loads for each EILS Time Period to serve during an EILS Contract Period based upon least cost offer per MW of capacity offered based upon the payment as offered for selected EILS Loads; provided that ERCOT may consider geographic location and its effect on zonal or local congestion in selecting EILS Load. ERCOT may prorate awards when there are more MWs available at a given price than ERCOT can procure, if acceptable to the offering QSE. An EILS offer may declare a minimum amount of MW that the EILS Load is willing to provide and, if proration would result in an award below that amount, the offer will be excluded from the EILS procured.

(14) QSEs representing selected EILS Loads, except for Load designated for EILS Self-Provision, will be entitled to payment as offered, subject to adjustment, pursuant to these Protocols. Deployment of EILS Loads will not result in additional payments other than any payment received through Real-Time Energy Imbalance.

(15) QSEs representing EILS Loads selected to provide EILS shall execute a Standard Form EILS Agreement, as provided in Section 22, Attachment G, Standard Form Emergency Interruptible Load Service (EILS) Agreement, for each committed EILS Time Period and EILS Contract Period.

(16) An EILS Load shall be subject to a maximum of two Dispatch Instructions per EILS Contract Period. Additionally, an EILS Load shall be subject to a maximum of eight hours of Dispatch Instructions per EILS Contract Period, unless an EILS deployment is still in effect when the eighth hour lapses (in which case the EILS Load must follow the Dispatch Instruction until ERCOT releases the EILS Load).

(17) Unless ERCOT has received a notice of unavailability in a format prescribed by ERCOT, ERCOT shall assume that such a contracted EILS Load is fully available for receiving Dispatch Instructions.

(18) EILS Loads shall meet the following technical requirements:

(a) Each EILS Load must have an ESI ID or other unique service identifier, as defined by ERCOT. Each individual EILS Load must have an installed IDR or equivalent, subject to ERCOT approval, dedicated to the Load providing EILS. ERCOT shall analyze 15-minute interval meter data for each EILS Load for purposes of offer analysis, availability and performance measurement. EILS Loads behind a NOIE meter point shall arrange, preferably with the NOIE TSP, to provide ERCOT with 15-minute interval meter data subject to ERCOT’s specifications and approval. EILS Loads behind a Private Use Network’s Settlement Meter point shall provide ERCOT 15-minute interval meter data subject to ERCOT’s specifications and approval. Notwithstanding the aforementioned, ERCOT may accept offers or self-provision offers from QSEs representing non-IDR metered aggregated EILS Loads if the QSE submits and ERCOT approves a statistically valid alternative to universal IDR metering for measurement and verification consistent with industry best practices. ERCOT shall publish guidelines and schedules for submittal of such alternatives.

(b) An EILS Load must be capable of reducing its Load by its contracted capacity relevant to its assigned baseline methodology within ten minutes of an ERCOT Dispatch Instruction to its QSE and must be able to maintain such reduced capacity level for the entire period of the Dispatch Instruction and shall not return to normal operations until released to do so by ERCOT.

(c) Any QSE representing an EILS Load must be capable of communicating with its EILS Loads within the prescribed time constraints for deployment of EILS.

(d) QSEs are responsible for communicating material changes in the availability status of their EILS Loads to ERCOT, irrespective of whether the change in availability is scheduled with ERCOT as described in paragraph (5) of Section 8.1.3.1, Performance Criteria for EILS Loads.

(e) EILS Loads deployed for EILS must be able to return to their contracted operating level for providing EILS for any committed hours within ten hours following a release Dispatch Instruction.

(f) EILS Loads and their QSEs are subject to qualification based on ERCOT’s evaluation of their historic meter data and, if applicable, their historic performance in providing other comparable ERCOT services. EILS Loads and their QSEs are subject to performance and testing requirements as described in Section 8.1.3, Emergency Interruptible Load Service (EILS) Performance and Testing.

(g) EILS Loads are not subject to the modeling, telemetry and Current Operating Plan (COP) requirements of other Resources.

(19) The contracted capacity of EILS Loads may not be used to provide Ancillary Services during the contracted EILS Time Period of the contracted EILS Contract Period. Nothing herein shall be construed to limit passive (voluntary) Load response, provided the EILS performance requirements as described in Section 8.1.3.1 are met.

(20) ERCOT will review the effectiveness and benefits of EILS every 12 months from the start of the program and report its findings to TAC.

(21) Within ten days of the announcement of awards for EILS for an upcoming EILS Contract Period, ERCOT shall post on the MIS Public Area the number of MW procured per EILS Time Period, the number of EILS Loads selected, and the projected total cost of EILS for that EILS Contract Period.

(22) The EILS obligation of QSEs representing EILS loads, for the QSE’s portfolio, is to meet the requirements specified in Section 8.1.3.3.1, Performance Criteria for EILS QSEs.

4.3 QSE Activities and Responsibilities in the Day-Ahead

(1) During the Day-Ahead, a QSE:

(a) Must submit its Current Operating Plan (COP) and update its COP as required in Section 3.9, Current Operating Plan (COP);

(b) May submit Three-Part Supply Offers, Day-Ahead Market (DAM) Energy-Only Offers, DAM Energy Bids, Energy Trades, Self-Schedules, Capacity Trades, Direct Current (DC) Tie Schedules, Ancillary Service Offers, Ancillary Service Trades, Self-Arranged Ancillary Service Quantities, Point-to-Point (PTP) Obligation Bids, and Congestion Revenue Right (CRR) Offers as specified in this Section; and

(2) By 0600 in the Day-Ahead, each QSE representing Reliability Must-Run (RMR) Units, or Black Start Resources shall submit their Availability Plan to ERCOT indicating availability of RMR Units, and Black Start Resources for the Operating Day, and any other information that ERCOT may need to evaluate use of the units as set forth in the applicable Agreements and this Section.

**Section 22**

**Attachment D: Standard Form Black Start Agreement**

Standard Form Black Start Agreement

Between

(Name of Participant)

and

Electric Reliability Council of Texas, Inc.

This Black Start Agreement (“Agreement”), effective as of \_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between [insert Participant’s name], a [insert business entity type and state] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

Recitals

WHEREAS:

A. Participant is a Resource Entity as defined in the ERCOT Protocols, and Participant intends to provide Black Start Service (BSS);

B. ERCOT is the Independent Organization certified under the Public Utility Regulatory Act, Tex. Util. Code Ann. § 39.151 (Vernon 1998 & Supp. 2007) (PURA) for the ERCOT Region; and

C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the “Parties”) hereby agree as follows:

Section 1. Resource-Specific Terms.

A. Start Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

B. Black Start Resource.

(1) Description of Black Start Resource [including location, number of generators, metering scheme, etc.]:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as described in more detail on Exhibit 1.

(2) Nameplate Capacity in MW: \_\_\_\_\_

(3) Delivery Point: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(4) Revenue Meter Location (use Resource IDs): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

C. Price:

Hourly Standby Price: $\_\_\_\_\_\_\_\_ per hour

D. Notice. All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or Federal Express delivery. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

If to ERCOT:

Electric Reliability Council of Texas, Inc.

7620 Metro Center Drive

Austin, Texas 78744-1654

Tel No. (512) 225-7000

If to Participant:

[insert information]

Section 2. Definitions.

A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.

B. “ERCOT Protocols” shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

A. Term.

(1) This Agreement is effective beginning on the Effective Date.

(2) The full term (“Full Term”) of this Agreement begins on the Start Date and continues for a period of two years.

B. Termination by Participant. Participant may, at its option, terminate this Agreement immediately upon the failure of ERCOT to continue to be certified by the Public Utility Commission of Texas (PUCT) as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151.

C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

(1) Participant is duly organized, validly existing, and in good standing under the laws of the jurisdiction under which it is organized, and is authorized to do business in Texas;

(2) Participant has full power and authority to enter into this Agreement and perform all of Participant’s obligations, representations, warranties, and covenants under this Agreement;

(3) Participant’s past, present, and future agreements or Participant’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant’s obligations under this Agreement;

(4) The execution, delivery, and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;

(5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the 24 months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;

(6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability, and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;

(7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits, and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations, or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;

(10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and

(11) Participant acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.

B. ERCOT represents, warrants, and covenants that:

(1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;

(2) ERCOT is duly organized, validly existing, and in good standing under the laws of Texas, and is authorized to do business in Texas;

(3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT’s obligations, representations, warranties and covenants under this Agreement;

(4) ERCOT’s past, present and future agreements or ERCOT’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT’s obligations under this Agreement;

(5) The execution, delivery, and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;

(6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and

(9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on ERCOT’s performance of its obligations under this Agreement.

Section 5. Participant Obligations.

A. Participant shall comply with, and be bound by, all ERCOT Protocols as they pertain to operation of a Black Start Resource by a Resource Entity.

B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a “public utility” under the Federal Power Act, 16 U.S.C. § 824(e)(2005), or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission (FERC).

Section 6. ERCOT Obligations.

A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.

B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant if Participant is not a “public utility” under the Federal Power Act, or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the FERC. If ERCOT receives any notice similar to that described in Section 5.B from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. Black Start Decertification.

If a Black Start Resource does not remain certified, or if it is in default as described in Section 10.A(2)(e) during the term of this Agreement, then the Hourly Standby Fee is reduced to zero for the remainder of the Full Term, and Participant shall refund to ERCOT any amounts paid by ERCOT under this Agreement during the Full Term.

Section 8. Operation.

A. Black Start Resource Maintenance. Before the start of the contract year, Participant shall furnish ERCOT with its proposed schedule for Planned Outages for inspection, repair, maintenance, and overhaul of the Black Start Resource for the contract year. Participant will promptly advise ERCOT of any later changes to the schedule. The specific times for Planned Outages of the Black Start Resource must be approved by ERCOT. Such approval may be withheld if necessary to assure reliability of the ERCOT System. ERCOT shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the ERCOT System is not materially affected by those changes. In all cases, ERCOT must find a time for Participant to perform maintenance in a reasonable timeframe as defined by Good Utility Practice.

B. Planning Data.

Participant shall timely report to ERCOT those items and conditions necessary for ERCOT’s internal planning and compliance with ERCOT’s guidelines in effect from time to time. The information supplied must include, without limitation, the following:

(1) Availability Plan for each hour of the next day submitted by 6:00 a.m. of the preceding day; and

(2) Revised Availability Plan reflecting changes in hourly availability of Black Start Capacity status as indicated in a revised as soon as reasonably practical, but in no event later than 60 minutes after the event that caused the change.

C. Delivery.

(1) ERCOT shall notify Participant, through its Qualified Scheduling Entity (QSE) or Transmission Service Provider (TSP), when the Black Start Resource must black start. It is, however the responsibility of the Participant to initiate the start-up process of Black Start Resources in preparation for system restoration.

(2) If the ERCOT Transmission Grid at the Black Start Resource becomes deenergized and if Participant cannot communicate with either ERCOT or the Transmission Service Provider (TSP) and/or Distribution Service Provider (DSP) serving the Black Start Resource, then Participant shall follow the procedures specified for the Black Start Resource under ERCOT’s Black Start plan in the Operating Guides, but Participant shall not commence delivering electric energy into the ERCOT System without specific instructions to do so from either ERCOT or the TSP and/or DSP serving the Black Start Resource.

Section 9. Payment.

A. For the transfer of any funds under this Agreement directly between ERCOT and Participant and pursuant to the Settlement procedures for Ancillary Services described in the ERCOT Protocols, the following shall apply:

(1) Participant appoints ERCOT to act as its agent with respect to such funds transferred and authorizes ERCOT to exercise such powers and perform such duties as described in this Agreement or the ERCOT Protocols, together with such powers or duties as are reasonably incidental thereto.

(2) ERCOT shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the ERCOT Protocols.

B. Hourly Standby Fee Payments. ERCOT shall pay Participant the Hourly Standby Fee as described below, except as specified otherwise in Section 7 above.

(1) Availability

(a) “Available” means, with respect to a given hour, that Participant has declared, in its Availability Plan, that the Black Start Resource is able to start without a connection to the ERCOT Transmission Grid.

(b) The Black Start Resource is not Available if:

(i) the Black Start Resource utilizes a power pool outside of ERCOT to start and the transmission path(s) between the Resource and the other power pool is not available due to an outage; or

(ii) the Black Start Resource utilizes a power pool outside of ERCOT to start but fails to maintain a firm standby supply contract for that power pool; or

(iii) the Black Start Resource has failed a black start test, as described in the ERCOT Protocols or Operating Guides and has not passed a subsequent black start test; or

(iv) the Black Start Resource has failed to start when required under this Agreement, and it has not passed a subsequent black start test.

(c) ERCOT shall use the Black Start Resource’s Availability Plan as the source of black start availability information.

(2) “Black Start Service Hourly Rolling Equivalent Availability Factor (BSSHREAF)” means, with respect to a given hour, the quotient (expressed as a percentage) of (a) the number of hours, including the given hour and the immediately preceding 4,379 hours, in which the Black Start Resource was Available, divided by (b) 4,380; provided that, to the extent that 4,379 hours have not elapsed since the Start Date (the difference between 4,379 and the hours that have elapsed being referred to herein as the “Assumed Hours”), the Black Start Resource shall be deemed, for purposes of this calculation, to be Available for the Assumed Hour. A Force Majeure Event is treated the same as any other cause for unavailability for the purposes of calculating BSSHREAF.

(3) “Hourly Standby Fee” means, with respect to a given hour, the result determined from the following table:

|  |  |
| --- | --- |
| Black Start Service Hourly Rolling Availability Factor (BSSHREAF) | Hourly Standby Fee |
| If BSSHREAF is more than or equal to 85% | Hourly Standby Price ($) |
| If BSSHREAF is less than 85% but more than 35% | Hourly Standby Price \* [100%-(85%-BSSHREAF) \* 2] ($) |
| If BSSHREAF is equal to or less than 35% | Zero |

Section 10. Default.

A. Event of Default.

(1) Failure to make payment or transfer funds as provided in the ERCOT Protocols shall constitute a material breach and shall constitute an event of default ("Default") unless cured within three Business Days after delivery by the non-breaching Party of written notice of the failure to the breaching Party. Provided further that if such a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three times within a rolling 12-month period, the fourth such breach shall constitute a Default by the breaching Party.

(2) For any material breach other than a failure to make payment or transfer funds, the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:

(a) Except as excused under subsection (4) or (5) below, a material breach, other than a failure to make payment or transfer funds, of this Agreement by Participant, including any material failure by Participant to comply with the ERCOT Protocols, unless cured within 14 Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three Business Days to cure such material breach after delivery by ERCOT of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three times within a rolling 12-month period, the fourth such breach shall constitute a Default.

(b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceeding, that is dismissed within 90 days thereafter.

(c) The Black Start Resource’s operation is abandoned without an intent to return it to operation during the Full Term; or

(d) At any time, the Black Start Service Hourly Rolling Equivalent Availability Factor (BSSHREAF) is equal to or less than 50%.

(e) An Available Black Start Resource fails to perform successfully as required during a Partial Blackout or Blackout.

(3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a failure to make payment or transfer funds, shall constitute a Default by ERCOT unless cured within 14 Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three times within a rolling 12-month period, the fourth such breach shall constitute a Default.

(4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within 14 calendar days, prompt written notice is provided by the breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within three Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.

(5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

(1) ERCOT’s Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 12, Dispute Resolution, of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.

(2) Participant’s Remedies for Default.

(a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 12, Dispute Resolution, of this Agreement, in the event of a Default by ERCOT, Participant’s remedies shall be limited to:

(i) Immediate termination of this Agreement upon written notice to ERCOT,

(ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols, and

(iii) Specific performance.

(b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant’s sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.

(c) If as a final result of any dispute resolution ERCOT, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the result that refunds are owed by Participant to ERCOT, as the settlement agent, such Market Participant(s) may request ERCOT to allow such Market Participant(s) to proceed directly against Participant, in lieu of receiving full payment from ERCOT. In the event of such request, ERCOT, in its sole discretion, may agree to assign to such Market Participant(s) ERCOT’s rights to seek refunds from Participant, and Participant shall be deemed to have consented to such assignment. This subsection (c) survives termination of this Agreement.

(3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.

C. Force Majeure.

(1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (followed by written notice) as soon as reasonably practicable, but not later than 14 days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.

(2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 10.A(5) above is still effective.

D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party’s performance or non-performance of this Agreement.

Section 11. Limitation of Damages and Liability and Indemnification.

A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.

C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with Section 13.A, Choice of Law and Venue, of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).

Section 12. Dispute Resolution.

A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.

B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys’ fees, court costs, and its share of any mediation or arbitration fees.

Section 13. Miscellaneous.

A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).

B. Assignment.

(1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):

(a) Where any such assignment or transfer is to an Affiliate of the Party; or

(b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or

(c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notices of Default, and an opportunity for the Financing Person to cure Defaults.

(2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party’s obligations be enlarged, in whole or in part, by reason thereof.

C. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 10.B and the Financing Persons in subsection 13.B(1)(c), (1) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (2) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and (3) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (1) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (2) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party’s covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.

E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties’ intentions with respect thereto.

F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within 14 days, either Party shall have the right to terminate this Agreement on three days’ written notice.

G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties’ final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.

H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.

I. ERCOT’s Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and for reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any such information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

J. Participant’s Right to Audit ERCOT. Participant’s right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.

K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.

L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.

M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party, except as provided in Section 9.A.

N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:

(1) The singular includes the plural, and the plural includes the singular.

(2) The present tense includes the future tense, and the future tense includes the present tense.

(3) Words importing any gender include the other gender.

(4) The word “shall” denotes a duty.

(5) The word “must” denotes a condition precedent or subsequent.

(6) The word “may” denotes a privilege or discretionary power.

(7) The phrase “may not” denotes a prohibition.

(8) References to statutes, tariffs, regulations, or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations, or ERCOT Protocols referred to.

(9) References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form.

(10) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”

(11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.

(12) References to articles, Sections (or subdivisions of Sections), exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.

(13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.

(14) References to persons or Entities include their respective successors and permitted assigns and, for governmental Entities, Entities succeeding to their respective functions and capacities.

(15) References to time are to Central Prevailing Time (CPT).

O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED, AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Electric Reliability Council of Texas, Inc.:

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Participant:

USE OPTION 1 IF PARTICIPANT IS A CORPORATION

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

USE OPTION 2 IF PARTICIPANT IS A LIMITED PARTNERSHIP

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

as General Partner for [Participant]

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

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

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Market Participant Name:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Market Participant DUNS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Section 22**

**Attachment F: Standard Form Synchronous Condenser Agreement**

Standard Form Synchronous Condenser Agreement

Between

(Participant)

And

Electric Reliability Council of Texas, Inc.

This Synchronous Condenser Agreement (“Agreement”), effective as of \_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between [insert Participant’s name], a [insert business entity type and state] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

Recitals

WHEREAS:

A. Participant is Resource Entity as defined in the ERCOT Protocols, and Participant intends to supply synchronous condenser service;

B. ERCOT is the Independent Organization certified under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.151 (Vernon 1998 & Supp. 2007) (PURA) for the ERCOT Region; and

C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the “Parties”) hereby agree as follows:

Section 1. Unit-Specific Terms.

A. Start Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_1, 20\_\_\_\_\_.

B. Synchronous Condenser Unit: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Term of Service: [check one]

🞎 Annual

🞎 Minimum Agreement Period

C. Description of Synchronous Condenser Unit [*including location, significant operational characteristics, etc.*]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as described in more detail on Exhibit 1.

D. Capacity in MVA: \_\_\_\_\_

E. Delivery Point: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

F. Operational Limitations (check and describe all that apply):

🞎 Maximum annual hours of operation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

🞎 Maximum annual starts: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

🞎 Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

G. Prices:

(1) Hourly Operation Prices

$ \_\_\_\_\_\_ Per Operating Hour in which the Synchronous Condenser Unit was instructed to operate and did operate during at least part of the hour.

(2) Hourly Standby Price: $\_\_\_\_\_

(3) Unexcused Misconduct Amount: $10,000 per unexcused Misconduct Event

H. Notice. All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or Federal Express delivery. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

If to ERCOT:

Electric Reliability Council of Texas, Inc.

7620 Metro Center Drive

Austin, Texas 78744-1654

Tel No. (512) 225-7000

Attn: ERCOT Legal Department

If to Participant:

[insert information]

Section 2. Definitions.

A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.

B. “ERCOT Protocols” shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

A. Term.

(1) This Agreement is effective beginning on the Effective Date.

(2) The term (“Term”) of this Agreement is a period of \_\_\_\_\_\_ months; provided however, ERCOT, at its sole discretion, may terminate this Agreement prior to the end of the Term by giving 90 days’ advance written notice.

(3) Any Term that extends beyond one calendar year requires ERCOT Board approval.

B. Termination by Participant. Participant may, at its option, immediately terminate this Agreement upon the failure of ERCOT to continue to be certified by the Public Utility Commission of Texas (PUCT) as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151.

C. Termination by Mutual Agreement. This Agreement may be terminated upon written agreement of both parties at a time specified by such agreement; provided that Participant may still recover Eligible Costs (in accordance with the Hourly Standby Price) and Incentive Factor payments already accrued prior to termination pursuant to this Section.

D. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

(1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized, and is authorized to do business in Texas;

(2) Participant has full power and authority to enter into this Agreement and perform all of Participant’s obligations, representations, warranties, and covenants under this Agreement;

(3) Participant’s past, present and future agreements or Participant’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant’s obligations under this Agreement;

(4) The execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;

(5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the 24 months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;

(6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability, and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement; Participant is a successor in interest or any Affiliates of Participant;

(7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;

(10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and

(11) Participant acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the Term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.

B. ERCOT represents, warrants, and covenants that:

(1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;

(2) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;

(3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT’s obligations, representations, warranties, and covenants under this Agreement;

(4) ERCOT’s past, present and future agreements or ERCOT’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT’s obligations under this Agreement;

(5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;

(6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and

(9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the Term of this Agreement. For purposes of this Section, “materially affecting performance,” means resulting in a materially adverse effect on ERCOT’s performance of its obligations under this Agreement.

Section 5. Participant Obligations.

A. Participant shall comply with, and be bound by, all ERCOT Protocols as they pertain to provision of synchronous condenser service by a Resource Entity.

B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a “public utility” under the Federal Power Act, 16 U.S.C. § 824(e)(2005), or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission (FERC).

Section 6. ERCOT Obligations.

A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.

B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a “public utility” under the Federal Power Act, or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the FERC. If ERCOT receives any notice similar to that described in Section 5.B from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. Intentionally Omitted

Section 8. Operation.

A. Synchronous Condenser Unit Maintenance. Before the start of each contract Term, Participant shall furnish ERCOT with its proposed schedule for Planned Outages for inspection, repair, maintenance, and overhaul of the Synchronous Condenser Unit for the contract Term. Participant will promptly advise ERCOT of any later changes to the schedule. The specific times for Planned Outages of the Synchronous Condenser Unit must be approved or rejected by ERCOT within 30 days after submission by a Participant. Requested Outages shall only be rejected if necessary to assure reliability of the ERCOT System. ERCOT shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the ERCOT System is not materially affected by those changes. In all cases, ERCOT must find a time for Participant to perform maintenance in a reasonable timeframe as defined by Good Utility Practice.

B. Planning Data. Participant shall timely report to ERCOT those items and conditions necessary for ERCOT’s internal planning and compliance with ERCOT’s guidelines in effect from time to time. The information supplied must include, without limitation, the following:

(1) Availability Plan for each hour of the next day submitted by 06:00 a.m. of the preceding day;

(2) Revised Availability Plan reflecting changes in hourly availability of Synchronous Condenser Unit status as soon as reasonably practical, but in no event later than 60 minutes after the event that caused the change; and

(3) Status of Synchronous Condenser Unit with respect to environmental limitations, if any.

ERCOT shall timely report to Participant the status of the Synchronous Condenser Unit with respect to Operational Limitations.

C. Delivery.

(1) ERCOT shall notify Participant, through its Qualified Scheduling Entity (QSE), of the hours and levels of generation, if any, that the Synchronous Condenser Unit is to operate. This information is called the “Delivery Plan.” ERCOT shall not notify Participant to operate at levels above those stated in the Availability Plan, and ERCOT shall not notify Participant to operate the Synchronous Condenser Unit in a way that would violate the limitations on operation set out in Section 1, Unit Specific Terms, above.

(2) Participant shall produce and deliver Volt-Amperes reactive (VArs) from the Synchronous Condenser Unit to the Delivery Point at the levels specified in the Delivery Plan.

(3) ERCOT may Dispatch the Synchronous Condenser Unit only as described in the ERCOT Protocols. ERCOT may not Dispatch the Synchronous Condenser Unit if compliance with the Dispatch would cause the Synchronous Condenser Unit to exceed the Operational Limitations, if any, set forth in Section 1 above or at levels greater than are shown in the Availability Plan. Notwithstanding the foregoing, Participant retains the responsibility for operating the Synchronous Condenser Unit in accordance with limits provided by applicable law.

Section 9. Payment.

A. For the transfer of any funds under this Agreement directly between ERCOT and Participant and pursuant to the Settlement procedures for Ancillary Services described in the ERCOT Protocols, the following shall apply:

(1) Participant appoints ERCOT to act as its agent with respect to such funds transferred and authorizes ERCOT to exercise such powers and perform such duties as described in this Agreement or the ERCOT Protocols, together with such powers or duties as are reasonably incidental thereto.

(2) ERCOT shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the ERCOT Protocols.

B. Hourly Operation Payments for the Synchronous Condenser Unit. ERCOT shall pay Participant, through Participant’s QSE, for all hours or partial hours that the Synchronous Condenser Unit was connected to the ERCOT Transmission Grid due to an instruction from ERCOT. The payment for each hour or partial hour will be the Synchronous Condenser Unit Hourly Operation Price.

C. Hourly Standby Price Payments for a Synchronous Condenser Unit.

(1) “Available” means, with respect to a given hour, that Participant has declared, in its Availability Plan, that the Synchronous Condenser Unit is able to synchronize to the ERCOT Transmission Grid, provided that the Synchronous Condenser Unit is not Available if it has failed a synchronous condenser test or has failed to synchronize to the ERCOT Transmission Grid when required to do so under this Agreement, and it has not since passed a subsequent synchronous condenser test.

(2) “Hourly Rolling Equivalent Availability Factor (EAF)” means, with respect to a given hour, the quotient (expressed as a percentage) of (a) the number of hours, including the given hour and the immediately preceding 4,379 hours, in which the Synchronous Condenser Unit was Available, divided by (b) 4,380; provided that, to the extent that 4,379 hours have not elapsed since the Start Date (the difference between 4,379 and the hours that have elapsed being referred to herein as the “Assumed Hours”), the Synchronous Condenser Unit shall be deemed, for purposes of this calculation, to be Available for that Assumed Hour. A Force Majeure Event is treated the same as any other cause for unavailability for the purposes of calculating Hourly Rolling EAF.

(3) “Hourly Standby Fee” means, with respect to a given hour, the result determined from the following table:

|  |  |
| --- | --- |
| Hourly Rolling EAF | Hourly Standby Fee |
| If Hourly Rolling EAF is more than or equal to 85% | Hourly Standby Price ($) |
| If Hourly Rolling EAF is less than 85% but more than 35% | Hourly Standby Price \* [100%-(85%-Hourly Rolling EAF) \* 2] ($) |
| If Hourly Rolling EAF is equal to or less than 35% | Zero |

D. ERCOT shall pay Participant for each successful Instructed Start at the Start Price. “Instructed Start” is the start of the operation of the Synchronous Condenser Unit at ERCOT’s request.

E. Performance-Related Payment Adjustments.

(1) For a Synchronous Condenser Unit, a “Misconduct Event” means any hour or hours during which Participant is requested to, but does not, synchronize the Synchronous Condenser Unit to the ERCOT Transmission Grid during any hour in which the Synchronous Condenser Unit is shown Available in the Availability Plan.

(2) Each day that a Misconduct Event continues after Participant receives written notice from ERCOT of the Misconduct Event is a separate Misconduct Event. Misconduct Event is measured on a daily basis.

(3) Participant is excused from the Misconduct Event payment reduction arising from any Misconduct Event that is (a) not due to intentionally incomplete, inaccurate, or dishonest reporting to ERCOT by Participant of the availability of the Synchronous Condenser Unit, or (b) caused by a failure of the ERCOT Transmission Grid.

(4) If a Misconduct Event is not excused, then to reflect this lower-than-expected quality of firmness, ERCOT’s payments to Participant are reduced by the Unexcused Misconduct Amount.

(5) ERCOT shall inform Participant in writing of its determination if a Misconduct Event is unexcused.

(6) ERCOT may offset any amounts due by Participant to ERCOT under this Section 9.E against any amounts due by ERCOT to Participant under this Agreement.

Section 10. Default.

A. Event of Default.

(1) Failure to make payment or transfer funds as provided in the ERCOT Protocols shall constitute a material breach and shall constitute an event of default (“Default”) unless cured within three Business Days after delivery by the non-breaching Party of written notice of the failure to the breaching Party. Provided further that if such a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three times within a rolling 12-month period, the fourth such breach shall constitute a Default by the breaching Party.

(2) For any material breach other than a failure to make payment or transfer funds, the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:

(a) Except as excused under subsection (4) or (5) below, a material breach, other than a failure to make payment or transfer funds, of this Agreement by Participant, including any material failure by Participant to comply with the ERCOT Protocols, unless cured within 14 Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three Business Days to cure such material breach after delivery by ERCOT of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three times within a rolling 12-month period, the fourth such breach shall constitute a Default.

(b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceeding, that is dismissed within 90 days thereafter.

(c) The Synchronous Condenser Unit’s operation is abandoned without intent to return it to operation during the Term;

(d) At any time, the Hourly Rolling EAF is equal to or less than 50%; or

(e) Three or more unexcused Misconduct Events occur during a contract Term.

(3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a failure to make payment or transfer funds, shall constitute a Default by ERCOT unless cured within 14 Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three times within a rolling 12-month period, the fourth such breach shall constitute a Default.

(4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within 14 calendar days, prompt written notice is provided by the breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within three Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.

(5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

(1) ERCOT’s Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 12, Dispute Resolution, of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.

(2) Participant’s Remedies for Default.

(a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 12, Dispute Resolution, of this Agreement, in the event of a Default by ERCOT, Participant’s remedies shall be limited to:

(i) Immediate termination of this Agreement upon written notice to ERCOT,

(ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols, and

(iii) Specific performance.

(b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant’s sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.

(c) If as a final result of any dispute resolution ERCOT, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the result that refunds are owed by Participant to ERCOT, as the settlement agent, such Market Participant(s) may request ERCOT to allow such Market Participant(s) to proceed directly against Participant, in lieu of receiving full payment from ERCOT. In the event of such request, ERCOT, in its sole discretion, may agree to assign to such Market Participant(s) ERCOT’s rights to seek refunds from Participant, and Participant shall be deemed to have consented to such assignment. This subsection (c) survives termination of this Agreement.

(3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.

C. Force Majeure.

(1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (followed by written notice) as soon as reasonably practicable, but not later than 14 days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure Event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.

(2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 10.A(5) above is still effective.

D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party’s performance or non-performance of this Agreement.

Section 11. Limitation of Damages and Liability and Indemnification.

A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any limitation of liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.

C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with Section 13.A, Choice of Law and Venue, of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).

Section 12. Dispute Resolution.

A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.

B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys’ fees, court costs, and its share of any mediation or arbitration fees.

Section 13. Miscellaneous.

A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).

B. Assignment.

(1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):

(a) Where any such assignment or transfer is to an Affiliate of the Party; or

(b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or

(c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notices of Default, and an opportunity for the Financing Person to cure Defaults.

(2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party’s obligations be enlarged, in whole or in part, by reason thereof.

C. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 10.B and the Financing Persons in subsection 13.B(1)(c), (1) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (2) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (3) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (1) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (2) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party’s covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.

E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties’ intentions with respect thereto.

F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within 14 days, either Party shall have the right to terminate this Agreement on three days’ written notice.

G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties’ final and mutual understanding with respect to its subject matter. It replaces and supersedes any Prior Agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.

H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.

I. ERCOT’s Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

J. Participant’s Right to Audit ERCOT. Participant’s right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.

K. Further Assurances. Each Party agrees that during the Term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.

L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.

M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as provided in Section 9.A.

N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:

(1) The singular includes the plural, and the plural includes the singular.

(2) The present tense includes the future tense, and the future tense includes the present tense.

(3) Words importing any gender include the other gender.

(4) The word “shall” denotes a duty.

(5) The word “must” denotes a condition precedent or subsequent.

(6) The word “may” denotes a privilege or discretionary power.

(7) The phrase “may not” denotes a prohibition.

(8) References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.

(9) References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form.

(10) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”

(11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.

(12) References to articles, Sections (or subdivisions of Sections), exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.

(13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.

(14) References to persons or entities include their respective successors and permitted assigns and, for governmental Entities, Entities succeeding to their respective functions and capacities.

(15) References to time are to Central Prevailing Time (CPT).

O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Electric Reliability Council of Texas, Inc.:

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Participant:

USE OPTION 1 IF PARTICIPANT IS A CORPORATION

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

USE OPTION 2 IF PARTICIPANT IS A LIMITED PARTNERSHIP

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

as General Partner for [Participant]

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

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

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Market Participant Name:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Market Participant DUNS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ERCOT Nodal Protocols**

**Section 22**

**Attachment B: Standard Form Reliability Must-Run Agreement**

**December 1, 2010**

##### Standard Form Reliability Must-Run Agreement

Between

(Participant)

and

Electric Reliability Council of Texas, Inc.

This Reliability Must-Run Agreement (“Agreement”), effective as of \_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between [insert Participant’s name], a [insert business entity type and state] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

Recitals

WHEREAS:

1. Participant is a Resource Entity as defined in the ERCOT Protocols, and Participant intends to supply Reliability Must-Run Service;
2. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and
3. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

#### Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the “Parties”) hereby agree as follows:

Section 1. Unit-Specific Terms.

1. Start Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.
2. Stop Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.
3. RMR Unit:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

D. Description of RMR Unit [*including location, name of Resource, etc.]:* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as described in more detail on Exhibit 1. Exhibit 1 should include any significant maintenance and operational information needed for ERCOT to comply with these Protocols. If Unit is a combined-cycle Generation Resource, indicate the Unit’s operational capability for each power train as envisioned to supply RMR service as specified in the ERCOT Protocols in effect on the Effective Date.

F. RMR Unit Information

(1) RMR Capacity: \_\_\_\_\_ MW.

(2) Power factor lagging

(a) \_\_\_\_\_ P.F. (at generator main leads); and

(b) \_\_\_\_\_ P.F. (at high side of main power transformer)

(3) Power factor leading

(a) \_\_\_\_\_ P.F. (at generator main leads); and

(b) \_\_\_\_\_ P.F. (at high side of main power transformer)

(4) Target Availability

G. Delivery Point: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

H. Revenue Meter Location (Use Resource IDs): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I. Operational and Environmental Limitations (check and describe all that apply):

(1) Operational

🞎 Maximum annual hours of operation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

🞎 Maximum annual MWh: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

🞎 Maximum annual starts: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

🞎 Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(2) Environmental

🞎 Maximum annual NOx emissions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

🞎 Maximum annual SO2 emissions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

🞎 Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If applicable, upon ERCOT’s request, Participant shall make reasonable efforts to secure additional credits or allowances to allow additional operation of the RMR Unit if ERCOT’s planned use will exceed any of the Environmental Limitations set forth above. Participant shall provide ERCOT with advance notice of the cost of these credits prior to making the purchase. The value of any additional credits acquired at ERCOT’s request shall be considered Eligible Costs.

J. Inputs for Payments for RMR Unit:

1. Estimated Start Up Fuel:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ MMBtu per start.

(a) Warm Start: \_\_\_\_

(b) Cold Start: \_\_\_\_\_

1. Estimated Fuel Adder
2. I/O Curve (MMBtu per MW per hour), attached as Exhibit 2.
3. Estimated Standby Cost: $\_\_\_\_\_\_\_\_ per hour.
4. Incentive Factor Percentage: \_\_\_\_\_\_% of Eligible Costs.

K. Notice. All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three days after being deposited in the U.S. mail, first-class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or Federal Express delivery. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

**If to ERCOT**:

Electric Reliability Council of Texas, Inc.

7620 Metro Center Drive

Austin, Texas 78744-1654

Tel No. (512) 225-7000

Attn: ERCOT Legal Department

If to Participant:

[insert information]

Section 2. Definitions.

A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.

B. “ERCOT Protocols” shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining prices, payments, and other economic rights of the Parties, the ERCOT Protocols in effect on the Effective Date govern this Agreement. For the purposes of determining all other responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

1. Term.

(1) This Agreement is effective beginning on the Effective Date.

(2) The “Term” of this Agreement begins at 0000 on the Start Date and ends at 2400 on the Stop Date. ERCOT, at its sole discretion, may terminate this Agreement before the end of the Term by giving 90 days’ advance written notice to the Participant.

(3) Any Term longer than one (1) year requires ERCOT Board approval.

1. Extension by ERCOT. ERCOT may, at its sole discretion, extend this Agreement for a period up to ninety (90) days, even if ERCOT has previously provided notice to Participant of future termination of the Agreement, by providing at least thirty (30) days advance written notice to Participant of the extension.
2. Termination by Participant. Participant may, at its option, immediately terminate this Agreement upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151.
3. Termination by Mutual Agreement. This Agreement may be terminated upon written agreement of both parties at a time specified by such agreement; provided that Participant may still recover Eligible Costs (Standby Price) and Incentive Factor payments already accrued prior to termination pursuant to this section.
4. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4. Representations, Warranties, and Covenants.

1. Participant represents, warrants, and covenants that:

(1) Participant is duly organized, validly existing, and in good standing under the laws of the jurisdiction under which it is organized, and is authorized to do business in Texas;

(2) Participant has full power and authority to enter into this Agreement and perform all of Participant’s obligations, representations, warranties, and covenants under this Agreement;

(3) Participant’s past, present, and future agreements or Participant’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant’s obligations under this Agreement;

(4) The execution, delivery, and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;

(5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the 24 months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;

(6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability, and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;

(7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;

(10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and

(11) Participant acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the Term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.

1. ERCOT represents, warrants, and covenants that:

(1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;

(2) ERCOT is duly organized, validly existing, and in good standing under the laws of Texas, and is authorized to do business in Texas;

(3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT’s obligations, representations, warranties, and covenants under this Agreement;

(4) ERCOT’s past, present, and future agreements or ERCOT’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT’s obligations under this Agreement;

(5) The execution, delivery, and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;

(6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and

(9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the Term of this Agreement. For purposes of this Section, “materially affecting performance,” means resulting in a materially adverse effect on ERCOT’s performance of its obligations under this Agreement.

Section 5. Participant Obligations.

1. Participant shall comply with, and be bound by, all ERCOT Protocols as they pertain to provision of Reliability Must-Run Service by a Resource Entity.
2. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a “public utility” under the Federal Power Act or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.

Section 6. ERCOT Obligations.

1. ERCOT shall comply with, and be bound by,all ERCOT Protocols.
2. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a “public utility” under the Federal Power Act, or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5.B from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. Capacity Tests for RMR Units.

1. Capacity Tests.

(1) A “Capacity Test” is a one-hour performance test of the RMR Unit by Participant. The capacity as shown by a Capacity Test is called “Tested Capacity” and is determined by the applicable net meter readings during the Capacity Test.

(2) ERCOT may require that a Capacity Test be run at ERCOT’s discretion at any time when the RMR Unit is on line, but ERCOT may not require more than four Capacity Tests in a contract Term. ERCOT must give Participant at least two (2) hours advance notice, after the RMR Unit is on line, of a Capacity Test required by ERCOT, unless Participant agrees to less than two (2) hours. Participant may perform as many Capacity Tests as it desires, but Participant may not perform a Capacity Test without the prior approval of ERCOT, which approval ERCOT may not unreasonably withhold or delay. The Parties will reasonably cooperate to coordinate a Capacity Test. ERCOT has the right to reasonable advance notice of, and to have personnel present during, a Capacity Test.

1. Test Report. ERCOT shall give the Capacity Test results in writing (the “Capacity Test Report”) to Participant within twenty-four (24) hours after the test is run.
2. Effect of Test.

(1) A determination of Tested Capacity is effective as of the beginning of the hour in which the Capacity Test is started. For all hours in which Tested Capacity is less than the RMR Capacity specified in Section 1.F(1)(a) above, then the Incentive Factor Percentage may be reduced as specified in the ERCOT Protocols applicable to RMR Service in effect on the Effective Date.

Section 8. Operation.

1. RMR Unit Maintenance. Before the start of each contract Term, Participant shall furnish ERCOT with its proposed schedule for Planned Outages for inspection, repair, maintenance, and overhaul of the RMR Unit for the contract Term. Participant will promptly advise ERCOT of any later changes to the schedule. The specific times for Planned Outages of the RMR Unit must be approved or rejected by ERCOT within thirty (30) days after submission by a Participant. Requested outages may be rejected only if necessary to assure reliability of the ERCOT System. ERCOT shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the ERCOT System is not materially affected by those changes. In all cases, ERCOT must find a time for Participant to perform maintenance in a reasonable timeframe.
2. Planning Data.

(1) Participant shall timely report to ERCOT those items and conditions necessary for ERCOT’s internal planning and compliance with ERCOT’s guidelines in effect from time to time. The information supplied must include, without limitation, the following:

1. Availability Plan for each hour of the next Operating Day submitted by 0600 a.m. of the preceding day;
2. Revised Availability Plan reflecting changes in the hourly availability of the RMR Unit as soon as reasonably practical, but in no event later than 60 minutes after the event that caused the change; and
3. Status of the RMR Unit with respect to Environmental Limitations listed in Section 1.I above, if any. If any of the specified Environmental Limitations will be exceeded by ERCOT’s planned or actual use of the RMR Unit Participant shall provide ERCOT with as much advance written notice as is reasonably possible.

(2) ERCOT and Participant shall timely coordinate with each other on the status of the RMR Unit with respect to Operational Limitations.

1. Delivery.

(1) ERCOT shall notify Participant, through its QSE, of the hours and levels of generation, if any, that the RMR Unit is to operate. This information is called the “Delivery Plan.” ERCOT may not notify Participant to operate at levels above those stated in the Availability Plan, and ERCOT may not notify Participant to operate the Unit in a manner that would violate the limitations on operation set out in Section 1 above.

(2) Participant shall produce and deliver electrical energy from the RMR Unit to the Delivery Point at the levels specified in the Delivery Plan.

(3) ERCOT may not dispatch the Unit if compliance with the dispatch would cause the Unit to exceed the Operational and Environmental Limitations, if any, set forth in Section 1.I above or at levels greater than are shown in the Availability Plan. Notwithstanding the foregoing, Participant retains the responsibility for operating the Unit under limits provided by applicable law.

(4) *The following section is only applicable if the RMR Unit is subject to Environmental Limitations identified in Section 1.I(2)*. Participant may, upon reasonable advance written notice to ERCOT, shut down the RMR Unit for the remaining Term of this Agreement if (a) the shutdown is necessary in Participant’s reasonable judgment to comply with Participant’s legal obligation to stay within the Environmental Limitations, (b) ERCOT’s use of the RMR Unit has caused the RMR Unit to exceed, or will immediately cause the RMR Unit to exceed, the Environmental Limitations specified herein for the entire remainder of the Term of the Agreement and (c)(*i*) Participant has been unsuccessful in its reasonable attempts procuring additional credits or allowances to allowed continued operation of the RMR Unit or (*ii*) ERCOT has not requested that Participant attempt to procure additional credits or allowances. Participant may, upon reasonable advance written notice to ERCOT, temporarily suspend operation of the RMR Unit at any time, and from time to time, if the refusal is necessary in Participant’s reasonable judgment to comply with Participant’s legal obligation to stay within the Environmental Limitations specified herein. For purposes of determining Actual Availability, the RMR Unit shall be considered to be available at full capacity in any hours in which the RMR Unit is unavailable because Participant has exercised its rights to shut down or suspend operation under this section.

Section 9. Payment.

A. For the transfer of any funds under this Agreement directly between ERCOT and Participant and pursuant to the Settlement procedures for Ancillary Service described in the ERCOT Protocols, the following shall apply:

1. Participant appoints ERCOT to act as its agent with respect to such funds transferred and authorizes ERCOT to exercise such powers and perform such duties as described in this Agreement or the ERCOT Protocols, together with such powers or duties as are reasonably incidental thereto.
2. ERCOT shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the ERCOT Protocols.
3. Payments for an RMR Unit. ERCOT shall pay Participant for the RMR Service provided under this Agreement as specified in the ERCOT Protocols applicable to RMR Service, as those ERCOT Protocols are in effect on the Effective Date.

C. Unexcused Misconduct Events.

1. For a RMR Unit, a “Misconduct Event” means any hour or hours during which Participant is requested to, but does not, deliver to ERCOT Energy at a level of at least 98% on each hour (on a kilowatt-hour/hour basis) of the level shown in the Availability Plan.
2. For a Synchronous Condenser Unit, a “Misconduct Event” means any hour or hours during which Participant is requested to, but does not, synchronize the Unit to the ERCOT Transmission Grid during any hour in which the Unit is shown in the Availability Plan.
3. Each day that a Misconduct Event continues after Participant receives written notice from ERCOT of the Misconduct Event is a separate Misconduct Event. Misconduct Event is measured on a daily basis.
4. Participant is excused from the Misconduct Event payment reduction arising from any Misconduct Event that is (a) not due to intentionally incomplete, inaccurate, or dishonest reporting to ERCOT by Participant of the availability of the Unit, or (b) caused by a failure of the ERCOT Transmission Grid.
5. If a Misconduct Event is not excused, then to reflect this lower-than-expected quality of firmness, ERCOT’s payments to Participant are reduced as specified in the ERCOT Protocols in effect on the Effective Date.
6. ERCOT shall inform Participant in writing of its determination if a Misconduct Event is unexcused.

(7) ERCOT may offset any amounts due by Participant to ERCOT under this Section 9.D against any amounts due by ERCOT to Participant under this Agreement.

Section 10. Default.

A. Event of Default.

(1) Failure to make payment or transfer funds as provided in the ERCOT Protocols shall constitute a material breach and shall constitute an event of default (“Default”) unless cured within three (3) Business Days after delivery by the non-breaching Party of written notice of the failure to the breaching Party. Provided further that if such a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling 12-month period, the fourth such breach shall constitute a Default by the breaching Party.

(2) For any material breach other than a failure to make payment or transfer funds, the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:

(a) Except as excused under subsection (4) or (5) below, a material breach, other than a failure to make payment or transfer funds, of this Agreement by Participant, including any material failure by Participant to comply with the ERCOT Protocols, unless cured within fourteen (14) Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by ERCOT of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling 12month period, the fourth such breach shall constitute a Default.

(b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings, that is dismissed within 90 days thereafter.

(c) The RMR Unit’s operation is abandoned without intent to return it to operation during the Term;

(d) At any time, the Actual Availability is equal to or less than 50%; or

(e) Three or more unexcused Misconduct Events occur during a contract Term.

(3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a failure to make payment or transfer funds, shall constitute a Default by ERCOT unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling 12 month period, the fourth such breach shall constitute a Default.

(4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within 14 calendar days, prompt written notice is provided by the breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within 3 Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.

(5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

1. ERCOT’s Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 12: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.
2. Participant’s Remedies for Default.

(a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 12: Dispute Resolution of this Agreement, in the event of a Default by ERCOT, Participant’s remedies shall be limited to:

(i) Immediate termination of this Agreement upon written notice to ERCOT,

(ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols, and

(iii) Specific performance.

(b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, described in Section 4.B, Participant’s sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.

(c) If as a final result of any dispute resolution ERCOT, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the result that refunds are owed by Participant to ERCOT, as the settlement agent, such Market Participant(s) may request ERCOT to allow such Market Participant to proceed directly against Participant, in lieu of receiving full payment from ERCOT. In the event of such request, ERCOT, in its sole discretion, may agree to assign to such Market Participant ERCOT’s rights to seek refunds from Participant, and Participant shall be deemed to have consented to such assignment. This subsection (c) survives termination of this Agreement.

1. A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.
2. Force Majeure.

(1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure Event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.

(2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 10.A(5) is still effective.

1. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party’s performance or non-performance of this Agreement.

Section 11. Limitation of Damages and Liability and Indemnification.

1. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT Neither Party is liable to the other for any special, indirect, PUNITIVE, or consequential damages or injury that may occur, in whole or in part, as a result of A DEFAULT UNDER THIS AGREEMENT, a tort, or any other cause, whether or not a Party had knowledge of the circumstances that resulted in the special, indirect, PUNITIVE, or consequential damages OR INJURY, or could have foreseen that such damages OR INJURY would occur.
2. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.
3. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).

Section 12. Dispute Resolution.

1. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.
2. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys’ fees, court costs, and its share of any mediation or arbitration fees.

Section 13. Miscellaneous.

1. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of *forum non-conveniens*, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).
2. Assignment.

(1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):

(a) Where any such assignment or transfer is to an Affiliate of the Party; or

(b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its Facilities; or

(c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notices of Default, and an opportunity for the Financing Person to cure Defaults.

(2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party’s obligations be enlarged, in whole or in part, by reason thereof.

1. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 10.B and the Financing Persons in Section 13.B(3), (1) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (2) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (3) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.
2. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (1) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (2) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party’s covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.
3. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties’ intentions with respect thereto.
4. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.
5. Entire Agreement. Any Exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties’ final and mutual understanding with respect to its subject matter. It replaces and supersedes any Prior Agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
6. **Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.**
7. ERCOT’s Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment, or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment, or computation made under this Agreement. If any such examination reveals any inaccuracy in any information, statement, charge, payment, or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.
8. Participant’s Right to Audit ERCOT. Participant’s right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.
9. Further Assurances. Each Party agrees that during the Term of this Agreement it will take such actions, provide such documents, do such things, and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
10. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority, and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.
11. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as provided in Section 9.A.
12. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:
    * 1. The singular includes the plural, and the plural includes the singular.
13. The present tense includes the future tense, and the future tense includes the present tense.
14. Words importing any gender include the other gender.
15. The word “shall” denotes a duty.
16. The word “must” denotes a condition precedent or subsequent.
17. The word “may” denotes a privilege or discretionary power.
18. The phrase “may not” denotes a prohibition.
19. References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.
20. References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
21. The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”
22. Any reference to a day, week, month or year is to a calendar day, week, month, or year unless otherwise indicated.
23. References to Articles, Sections (or subdivisions of Sections), Exhibits, annexes, or schedules are to this Agreement, unless expressly stated otherwise.
24. Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.
25. References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.
26. References to time are to Central Prevailing Time.
27. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED, AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

*Electric Reliability Council of Texas, Inc.:*

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Participant:*

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_