



**Date:** December 6, 2016  
**To:** Board of Directors  
**From:** Clifton Karnei, Finance and Audit (F&A) Committee Chairman  
**Subject:** Modifications to Guarantee Agreement, Letter of Credit and Surety Bond Standard Forms

**Issue for the ERCOT Board of Directors**

**ERCOT Board of Directors Meeting Date:** December 13, 2016

**Item No.:** 10.2

**Issue:** Whether the ERCOT Board of Directors (Board) should approve revisions to the standard forms of Letter of Credit, Market Participant Guarantee Agreements and Surety Bond as recommended by the F&A Committee, to be effective January 1, 2017.

**Background/History:**

**Means of Financial Security and Board Approval Requirement for Standard Form Revisions Pursuant to Protocol Section 16.11.3**

Pursuant to Protocol Section 16.11.3, *Alternative Means of Satisfying ERCOT Creditworthiness Requirements*, if a Counter-Party is required to provide Financial Security, then it may do so through one or more of the following means: (1) guarantee; (2) an unconditional, irrevocable letter of credit; (3) surety bond; and (4) cash. Items (1) - (3) must be given using standard forms, the content of which must be approved by the Board.

**Recent History**

Nodal Protocol Revision Request (NPRR) 773, *Broadening Scope of Acceptable Letter of Credit Issuers*, which is expected to be approved by the Board at its meeting on December 13, 2016 with an effective date of January 1, 2017, necessitates changes to the ERCOT letter of credit standard form to comport to the language of the NPRR. Specifically, NPRR773 allows ERCOT to accept letters of credit from acceptable non-bank financial institutions.

In connection with this change, ERCOT staff and Market Participants took the opportunity to review the other Financial Security standard forms. These were also reviewed by ERCOT external counsel. After receiving recommendations from external counsel, proposed revisions to the standard forms were presented by ERCOT staff and reviewed and discussed by the Credit Work Group (CWG) at several meetings starting in July 2016. At its November 16, 2016 meeting, CWG unanimously endorsed revisions to the standard forms as reflected in the following Attachments hereto:

- **Attachment A:** Letter of Credit
- **Attachment B:** Guaranty Agreement – General
- **Attachment C:** Guaranty Agreement – Third Party
- **Attachment D:** Foreign Guaranty Agreement – General



- Attachment E: Foreign Guaranty Agreement – Third Party
- Attachment F: Surety Bond

The following is a summary of the proposed primary changes to each of the standard forms.

#### Proposed Primary Changes to the Standard Form Letter of Credit

- Allows non-bank financial institutions to execute an ERCOT letter of credit in accordance with NPRR773.
- Standardizes required verbiage for Issuer termination/non-renewal statement.
- Correction to clarify that demand for payment cannot exceed the remaining balance if the letter of credit is not renewed or if the letter of credit is terminated.
- Beneficiary must provide written notice to waive any rights under the letter of credit.
- As recommended by external counsel, letters of credit are governed by ISP (International Standby Practice) rather than UCP (Uniform Customs and Practices for Documentary Credits).

#### Proposed Primary Changes to the Standard Form Market Participant Guarantee Agreements (General and Third Party)

- Guarantor waives notice of acceptance of the guarantee.
- ERCOT authorized to exercise right of set off against Guarantor.
- Provisions affecting consideration documented.
- Scope of enforceability extended to cover invalidity of Protocols and related documents.
- Requires corporate seal or attestation of the validity of signature.

#### Proposed Primary Changes to the Standard Form Foreign Market Participant Guarantee Agreements (General and Third Party)

- Guarantor waives notice of acceptance of the guarantee.
- ERCOT authorized to exercise right of set off against Guarantor.
- Provisions affecting consideration documented.
- Scope of enforceability extended to cover invalidity of Protocols and related documents.
- Requires corporate seal or attestation of the validity of signature.
- Includes Guarantor waiver of immunity.
- Payments to ERCOT may not be adjusted for foreign taxes, etc.

#### Proposed Primary Changes to the Standard Form Surety Bond

- If Surety intends to terminate a surety bond and the Principal fails to provide acceptable replacement security, the Surety is required to deliver cash collateral to ERCOT for any difference.

**Key Factors Influencing Issue:**

- The Board is required to approve revisions to the Financial Security standard forms pursuant to Protocol Section 16.11.3.
- CWG unanimously voted to endorse the proposed revisions to the Financial Security standard forms as reflected in Attachments A - F.
- Although the current Board-approved versions of the Financial Security standard forms are adequate, the revisions reflected in Attachments A - F are recommended by CWG and ERCOT staff to (1) provide Market Participants additional flexibility in obtaining Financial Security without weakening ERCOT's position and (2) strengthen ERCOT's collateral position through the standard form terms and conditions.

**Conclusion/Recommendation:**

The F&A Committee is expected to review the proposed revised versions of the Financial Security standard forms at its meeting on December 12, 2016, and is expected to recommend that the Board approve the proposed revised versions of the Financial Security standard forms, as reflected in Attachments A - F, to be effective January 1, 2017.



**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**  
**BOARD OF DIRECTORS RESOLUTION**

WHEREAS, after due consideration of the alternatives, the Finance and Audit (F&A) Committee has considered and recommended that the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) approve revisions to the standard forms of the Letter of Credit, Market Participant Guarantee Agreements for US company Guarantors and Foreign company Guarantors, and Surety Bond as reflected in Attachments A - F hereto, effective January 1, 2017; and

WHEREAS, after due consideration of the alternatives, the Board deems it desirable and in the best interest of ERCOT to approve the revisions to the standard forms of the Letter of Credit, Market Participant Guarantee Agreements for US company Guarantors and Foreign company Guarantors, and Surety Bond as reflected in Attachments A - F hereto, effective January 1, 2017, as recommended by the F&A Committee;

THEREFORE, BE IT RESOLVED, that the Letter of Credit, which is attached hereto as Attachment A, is hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form letter of credit in accordance with the ERCOT Protocols, effective January 1, 2017.

RESOLVED FURTHER, that the Market Participant Guarantee Agreement (General Use Version), which is attached hereto as Attachment B, is hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form guarantee agreement for qualified US company Guarantors in accordance with the ERCOT Protocols, effective January 1, 2017.

RESOLVED FURTHER, that the Market Participant Guarantee Agreement (3<sup>rd</sup> Party Version), which is attached hereto as Attachment C, is hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form guarantee agreement for qualified US company Guarantors in accordance with the ERCOT Protocols, effective January 1, 2017.

RESOLVED FURTHER, that the Foreign Market Participant Guarantee Agreement (General Use Version), which is attached hereto as Attachment D, is hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form guarantee agreement for qualified Foreign company Guarantors in accordance with the ERCOT Protocols, effective January 1, 2017.

RESOLVED FURTHER, that the Foreign Market Participant Guarantee Agreement (3<sup>rd</sup> Party Version), which is attached hereto as Attachment E, is hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form guarantee agreement for qualified Foreign company Guarantors in accordance with the ERCOT Protocols, effective January 1, 2017.



RESOLVED FURTHER, that the Surety Bond, which is attached hereto as Attachment F, is hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form surety bond in accordance with the ERCOT Protocols, effective January 1, 2017.

**CORPORATE SECRETARY'S CERTIFICATE**

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its December 13, 2016 meeting, the ERCOT Board passed a motion approving the above Resolution by \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of December, 2016.

\_\_\_\_\_  
Vickie G. Leady  
Assistant Corporate Secretary

**IRREVOCABLE AND UNCONDITIONAL  
STANDBY LETTER OF CREDIT**

**Irrevocable and Unconditional Standby  
Letter of Credit No.**

**“Market Participant Applicant”:**

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Address]

**“Amount”:** \_\_\_\_\_ U.S. Dollars

**“Date of Issuance”:** \_\_\_\_\_

**“Expiration of Initial Term (subject to automatic extension and renewal as provided herein)”:**

\_\_\_\_\_

**“Market Participant Applicant”:**

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Address]

**“Issuing Bank Issuer”:**

[Name] \_\_\_\_\_

[Address] \_\_\_\_\_

[Phone] \_\_\_\_\_

[Fax] \_\_\_\_\_

**“Beneficiary”:**

Electric Reliability Council of Texas, Inc. (“ERCOT”)  
Attn: Credit  
7620 Metro Center Drive  
Austin, Texas 78744  
Facsimile No. (512) 225-7020

To Beneficiary:

~~The~~At the request of and on behalf of Market Participant Applicant, the undersigned ~~Issuing Bank Issuer~~ hereby establishes and issues in your favor, effective immediately, an Irrevocable and

Unconditional Standby Letter of Credit No. \_\_\_\_\_ (“**Letter of Credit**”) in the amount of \_\_\_\_\_ U.S. Dollars.

This Letter of Credit is available for payment upon your demand at sight presented at our counters by hand delivery of courier located at: \_\_\_\_\_, ~~upon demand~~ to the attention of \_\_\_\_\_ ~~by telephone at~~ \_\_\_\_\_, or upon demand by fax at \_\_\_\_\_ and against presentation to us ~~(a) at sight at our counters, or (b) by fax~~ of the following: (i) your written demand for payment containing the text of Exhibit I attached hereto, and (ii) your statement containing the text of Exhibit II, Exhibit IV, Exhibit V, or Exhibit VI attached hereto. If presentation is made by facsimile, original documents will be delivered to us at the address stated above.

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the Amount specified above. Partial drawings shall reduce the Amount thereafter available for drawing under this Letter of Credit.

Upon presentation to us in conformity with the foregoing, we will, not later than the close of business on our next local banking day after presentation, but without any other delay whatsoever, irrevocably and without reserve or condition issue payment instructions to the Federal Reserve wire transfer system in proper form to transfer to the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you ~~in Austin, Texas~~ up to the Amount of this Letter of Credit.

~~We agree that if, on the expiration or termination date of this Letter of Credit, our office specified above is not open for business for any reason whatsoever (including without limitation an event under Article 36 of the UCP (Force Majeure)), this Letter of Credit will be duly honored if the specified documents are presented by you within thirty (30) full banking days after such office is reopened for business.~~

Payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Market Participant Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely an effective written order issued, other than at our instance, by a court of competent jurisdiction which order is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Market Participant Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. We agree that we will not take any action to cause the issuance of an order described in clause (a) of the preceding sentence.

We further agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this Letter of Credit and that if such demand(s) and document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s) and this Letter of Credit.

Except as stated herein, payment is not subject to any condition or qualification. The only documents required to be presented for payment are Exhibit I and one of the following: Exhibit II, Exhibit IV, Exhibit V, or Exhibit VI. Our obligation under this Letter of Credit shall be our individual obligation and in no way is contingent upon reimbursement with respect thereto.

The stated Amount of this Letter of Credit may be increased or decreased by an amendment to this Letter of Credit in the form of Exhibit III- executed by you and us. This Letter of Credit may not otherwise be amended or modified without your written agreement. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and the Market Participant Applicant or any other person relating to this Letter of Credit, whether now or hereafter existing.

We hereby ~~engage with you~~ agree, warrant, and represent that your demand(s) for payment in conformity with the terms of this Letter of Credit will be duly honored as set forth above. All fees, charges, and/or other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of and paid by the Market Participant Applicant. All of the rights of ERCOT Beneficiary set forth herein shall inure to the benefit of ERCOT's Beneficiary's successors and assigns. In this connection, in the event of a drawing made by a party other than ERCOT Beneficiary, such drawing must be accompanied by the following signed certification:

The undersigned does hereby certify that \_\_\_\_\_ [drawer/Drawer] is the successor by operation of law to ERCOT, a beneficiary named in \_\_\_\_\_ [Name of Issuing Bank/Issuer] Letter of Credit No. \_\_\_\_\_ and we attach herewith copies of official documents proving our legal status as successor.

\_\_\_\_\_  
[Name and Title]

The initial term of this Letter of Credit shall be one year from the Date of Issuance. It is a condition of this Letter of Credit that it shall be automatically extended ~~and renewed~~ without amendment for one (1) additional calendar year after the initial term, or one (1) additional calendar year after any ~~renewal/extended~~ term, unless at least sixty (60) days prior to the ~~end/expiration~~ of the initial term or sixty (60) days prior to the ~~end/expiration~~ of ~~the renewal/any extended~~ term we notify ERCOT Beneficiary by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that the facsimile was actually received) or overnight courier to the address/facsimile number for ERCOT Beneficiary set forth above that we elect not to ~~consider/extend~~ this Letter of Credit ~~extended-which notice shall contain the following statement:~~

\_\_\_\_\_ [Name of Issuer] hereby notifies you that Irrevocable and renewed Unconditional Standby Letter of Credit No. \_\_\_\_\_ ("Letter of Credit") in the remaining amount of \_\_\_\_\_ U.S. Dollars dated \_\_\_\_\_ issued by \_\_\_\_\_ [Name of Issuer] in your favor for any such period. the account of \_\_\_\_\_ [Name of Market Participant Applicant] will not be extended and will expire on \_\_\_\_\_.

In the event that we timely ~~notify/send notice to~~ you in writing that we elect not to ~~renew/extend~~ this Letter of Credit, you may at any time within the thirty (30) days before the ~~end of the initial term or within thirty (30) days before the end of the renewal term/expiration date~~ demand payment of the ~~entire Amount/remaining balance~~ of this Letter of Credit upon presentation of (a) your written demand for payment containing the text of Exhibit I attached hereto, and (b) your statement containing the text of Exhibit IV attached hereto. The demand rights in this paragraph are in addition to any other rights under this Letter of Credit.



It is a condition of this Letter of Credit that we shall maintain a corporate debt rating not less than that required by the ERCOT Protocols. In the event that we do not maintain the minimum corporate debt rating required by the ERCOT Protocols, you may demand payment of the ~~entire Amount~~ remaining balance of this Letter of Credit upon presentation of (a) your written demand for payment containing the text of Exhibit I attached hereto, and (b) your statement containing the text of Exhibit V attached hereto. The demand rights in this paragraph are in addition to any other rights under this Letter of Credit.

This Letter of Credit may be terminated by us on sixty (60) days written notice by sending ERCOT Beneficiary notification by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that the facsimile was actually received) or courier to the address/facsimile number for ERCOT Beneficiary set forth above that we elect to terminate this Letter of Credit which notice shall contain the following statement:

\_\_\_\_\_ [Name of Issuing Bank Issuer] hereby notifies you that Irrevocable and Unconditional Standby Letter of Credit No. \_\_\_\_\_ ("**Letter of Credit**") in the remaining amount of \_\_\_\_\_ U.S. Dollars dated \_\_\_\_\_ issued by \_\_\_\_\_ [Name of Issuing Bank Issuer] in your favor for the account of \_\_\_\_\_ [Name of Market Participant Applicant] will terminate sixty (60) days following ~~your receipt of our sending~~ this Notice of Termination.

In the event that we ~~notify~~ send notice to you in writing that we elect to terminate this Letter of Credit, you may at any time within the thirty (30) days before the termination date demand payment of the ~~entire Amount of remaining balance under~~ this Letter of Credit upon presentation of (a) your written demand for payment containing the text of Exhibit I attached hereto, and (b) your statement containing the text of Exhibit VI attached hereto. The demand rights in this paragraph are in addition to any other rights under this Letter of Credit.

Notwithstanding our ability to terminate this Letter of Credit on the terms set forth above, this Letter of Credit is otherwise irrevocable and unconditional.

This Letter of Credit may not be assigned or transferred by us.

The Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless the Beneficiary shall have signed a written waiver. No such waiver, unless expressly so stated therein, shall be effective as to any transaction that occurs subsequent to the date of the waiver, nor as to any continuance of a breach after the waiver.

We agree that if, on the expiration or termination date of this Letter of Credit, our counters specified above are not open for business for any reason whatsoever (including without limitation an event under Rule 3.14 of the ISP), drawings under this Letter of Credit will be duly honored if the specified complying documents are presented by you within thirty (30) full banking days after such counters are reopened for business.

Except so far as otherwise stated herein, this Letter of Credit shall be subject to and governed by the "~~Uniform Customs and International Standby Practices for Documentary Credits,~~" UCP 600 Publication No. 590 of the International Chamber of Commerce, 2007 Revision (the "UCP including any amendments, modifications or revisions thereof (the "ISP")), in effect on the date of issuance of this Letter of Credit. This Letter of Credit shall also be governed by the laws of the State of Texas to the extent that the terms of the UCPISP are not applicable; provided that, in the event of any conflict between the UCPISP and Texas law,

the UCPISP shall control. To the extent the terms of this Letter of Credit are inconsistent with the provisions of the UCPISP and/or Texas law, the terms of this Letter of Credit shall govern.

Yours faithfully,

~~ISSUING BANK~~  
ISSUER

\_\_\_\_\_  
(Name of ~~Issuing Bank~~ Issuer)

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

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

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

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

**EXHIBIT I**

**DEMAND FOR PAYMENT**

Re: Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated: \_\_\_\_\_, \_\_\_\_\_

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$\_\_\_\_\_ by deposit to our account no. \_\_\_\_\_ at \_\_\_\_\_ [Name of ~~Issuing Bank~~ Issuer]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Standby Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_ in the amount of \$\_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_ as the Market Participant Applicant.

Wiring instructions for our account are as follows:

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

DATED: \_\_\_\_\_, \_\_\_\_\_.

Electric Reliability Council of Texas, Inc.

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

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

**EXHIBIT II**

**STATEMENT OF AMOUNT DUE**

Re: Irrevocable and Unconditional Standby Letter of Credit  
No. \_\_\_\_\_ Dated: \_\_\_\_\_, \_\_\_\_\_

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit No. \_\_\_\_\_ dated  
\_\_\_\_\_, \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ established by you in our favor for the account of  
\_\_\_\_\_.

We hereby certify to you that \$ \_\_\_\_\_ is due and owing to us by the Market  
Participant Applicant, under and in accordance with the ERCOT Protocols.

DATED: \_\_\_\_\_, \_\_\_\_\_.

Electric Reliability Council of Texas, Inc.

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

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

**EXHIBIT III**  
**AMENDMENT**

Re: Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_

Dated: \_\_\_\_\_

Beneficiary:

Market Participant Applicant:

Electric Reliability Council of Texas, Inc. (ERCOT)  
7620 Metro Center Drive  
Austin, Texas 78744  
Attn: Credit

[Name and Address]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Standby Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (*strike two*) the stated amount by \$ \_\_\_\_\_ to a new stated amount of \$ \_\_\_\_\_. All other terms and conditions of the Irrevocable and Unconditional Letter of Credit remain unchanged.

This amendment is effective only when accepted by ~~ERCOT~~Beneficiary, which acceptance may only be valid by a signature of an authorized representative.

Dated: \_\_\_\_\_

Yours faithfully,

\_\_\_\_\_  
[Name of ~~Issuing Bank~~Issuer]

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

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

ACCEPTED:

Electric Reliability Council of Texas, Inc.

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

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

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

**EXHIBIT IV**

**STATEMENT REGARDING ISSUER'S NONRENEWAL**

Re: Irrevocable and Unconditional Standby Letter of Credit  
No. \_\_\_\_\_ Dated: \_\_\_\_\_, \_\_\_\_\_

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit No. \_\_\_\_\_ dated  
\_\_\_\_\_, \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ established by you in our favor for the account of  
\_\_\_\_\_.

We hereby certify to you that **ERCOT Beneficiary** has not received an extension or replacement of  
said Letter of Credit and/or other acceptable replacement collateral from Market Participant Applicant in  
accordance with the ERCOT Protocols.

DATED: \_\_\_\_\_, \_\_\_\_\_.

Electric Reliability Council of Texas, Inc.

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

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

**EXHIBIT V**

**STATEMENT REGARDING ISSUER RATING**

Re: Irrevocable and Unconditional Standby Letter of Credit  
No. \_\_\_\_\_ Dated: \_\_\_\_\_, \_\_\_\_\_

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_.

We hereby certify to you that ~~Issuing Bank~~ the Issuer has not maintained a corporate debt rating required by the ERCOT Protocols and Market Participant Applicant has failed to replace the Letter of Credit in a manner acceptable to ERCOT Beneficiary and/or provide other acceptable replacement collateral from Market Participant Applicant in accordance with the ERCOT Protocols.

DATED: \_\_\_\_\_, \_\_\_\_\_.

Electric Reliability Council of Texas, Inc.

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

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

**EXHIBIT VI**

**STATEMENT REGARDING TERMINATION**

Re: Irrevocable and Unconditional Standby Letter of Credit  
No. \_\_\_\_\_ Dated: \_\_\_\_\_, \_\_\_\_\_

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_ in the amount of \$\_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_.

We hereby certify to you that ERCOTBeneficiary received notice that the Letter of Credit will be terminated. We further certify that Market Participant Applicant has failed to replace the Letter of Credit in a manner acceptable to ERCOTBeneficiary and/or provide ERCOTBeneficiary with other acceptable replacement collateral in accordance with the ERCOT Protocols.

DATED: \_\_\_\_\_, \_\_\_\_\_.

Electric Reliability Council of Texas, Inc.

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

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





**MARKET PARTICIPANT GUARANTEE AGREEMENT**

This MARKET PARTICIPANT GUARANTEE AGREEMENT (this “Guarantee”) is made by the undersigned entity (together with its permitted successors and assigns, the “Guarantor”) in favor of ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. (together with its successors and assigns, “ERCOT”). The Guarantor and ERCOT shall be referred to herein collectively as “Parties”.

**Recitals**

A. ERCOT has entered into a Standard Form Market Participant Agreement (hereinafter the “Agreement” as the same may be modified through the procedure set forth in the ERCOT Protocols) with the Market Participant identified on the signature page hereof (together with its permitted successors and permitted assigns, the “Participant”).

B. Pursuant to the Agreement and the related ERCOT Protocols (as such term is defined in the Agreement), ERCOT may extend credit to Participant from time to time.

C. It is expressly agreed and understood by and among Participant, ERCOT and Guarantor that: (1) the execution and delivery to ERCOT of this Guarantee is a condition precedent to ERCOT entering into the Agreement, the continuation of transactions with Participant pursuant to the Agreement and the extension of credit to Participant pursuant to the Agreement and the related ERCOT Protocols, (2) ERCOT has relied, and will continue to rely, upon this Guarantee and the terms and representations herein in entering into transactions as contemplated by the Agreement and the related ERCOT Protocols, and (3) ERCOT would not enter into the Agreement, or otherwise enter into or continue transactions with Participant, without this Guarantee.

D. The value of the consideration and benefit received and to be received by Guarantor, directly or indirectly, as a result of ERCOT entering into the Agreement and Guarantor executing and delivering this Guarantee, is reasonably worth at least as much as the liability and obligation of Guarantor hereunder, and the extension of credit to Participant pursuant to the Agreement has or may reasonably be expected to benefit the Guarantor directly or indirectly.

E. In connection with the foregoing, Guarantor desires to guarantee to ERCOT the prompt and full payment of the Obligations (as defined below) upon the terms and conditions contained in this Guarantee.

F. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement and/or ERCOT Protocols.

**Agreements**

**Section 1.** In consideration of credit heretofore or hereafter granted by ERCOT to Participant pursuant to the Agreement ~~and/or~~ the related ERCOT Protocols, Guarantor hereby unconditionally, absolutely and, subject to the ~~express~~ provisions of ~~Sections~~Section 9 and 20 hereof, irrevocably guarantees to ERCOT, as a primary obligor and not as a surety, the ~~punctual~~prompt and complete payment in full when due (subject to any grace period applicable to the Obligations (as defined below)), whether on a scheduled date, by lapse of time, by acceleration of maturity, or otherwise, any and all of the Obligations. As used in this Guarantee, the term “Obligations” means, collectively:

(a) any and all indebtedness, liabilities and sums of money now or hereafter due and owing by Participant to ERCOT pursuant to, or arising under, the Agreement, the

ERCOT Protocols or any of the ERCOT market and operating guides, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time by ERCOT;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys' fees) now or hereafter due and owing by Participant pursuant to the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Participant, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Participant to ERCOT in order to maintain the Agreement and the ability to conduct business with ERCOT notwithstanding the continuing right of Participant to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the ERCOT Protocols; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Participant to ERCOT described in clauses (a) through (c) of this sentence.

For purposes of this Guarantee, the term “***Debtor Relief Laws***” shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

**Section 2.** Notwithstanding the foregoing, the maximum amount of the Obligations for which Guarantor shall be liable personally hereunder shall not exceed the sum of the following from time to time: (a) the then-applicable Credit Support Amount (as defined below); plus (b) interest in respect of the Obligations (to the extent permitted by applicable state law, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides) for periods after the date on which written demand is made for payment hereunder by ERCOT; plus (c) Expenses (as defined below).

For purposes of this Guarantee, the term “***Credit Support Amount***” shall mean the amount designated as such on the signature page to this Guarantee as the same may be increased or decreased by written agreement between the Guarantor and ERCOT.

**Section 3.** Guarantor is liable for the full payment of the Obligations, subject to the express limitations provided in Section 2, as a primary obligor. This is ~~an unconditional, absolute, and~~ continuing guarantee of payment and not of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay the Obligations in full without assistance or support from Participant or any other person. Guarantor agrees that if all or any part of the Obligations shall not be punctually paid when due, whether on the scheduled payment date, by lapse of time, by acceleration of maturity or otherwise, Guarantor shall pay, at or before 5:00 P.M. Central Prevailing Time on the ~~second~~first Business Day (as such term is defined in the ERCOT Protocols) immediately following the issuance of written demand by ERCOT to Guarantor, the amount due on the Obligations to ERCOT in accordance with the terms hereof. ERCOT may, but shall have no obligation to, make such demand(s) at any time coincident with or after the time for payment of all

or part of the Obligations, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not relieve, limit or discharge Guarantor in any respect of its obligations under this Guarantee. Guarantor hereby waives any condition or requirement with respect to any such demand under this Guarantee, and Guarantor agrees that Guarantor's obligations hereunder are absolute and immediate without requirement of presentment, protest, notice of protest, notice of nonpayment, notice of intent to accelerate, notice of acceleration or any other notice whatsoever (all of which are expressly waived), except as may expressly be required hereunder.

**Section 4.** If Guarantor is or becomes liable for any indebtedness or obligations owing by Participant to ERCOT other than through this Guarantee, the liability of Guarantor for such other indebtedness shall not in any manner be impaired or affected hereby or the limits contained herein, and the rights of ERCOT hereunder shall be cumulative of any and all other rights that ERCOT may have against Guarantor. If Participant is or becomes indebted to ERCOT for any indebtedness other than the Obligations, any payment received or recovery realized upon any such other indebtedness of Participant to ERCOT may be applied, in ERCOT's sole discretion, to indebtedness of Participant to ERCOT other than the Obligations, except to the extent paid by the Guarantor specifically in respect of the Obligations or as otherwise required by Law or written agreement of ERCOT to be applied to the Obligations. This Guarantee is independent of, and shall not be limited by, any other guaranty or collateral posted by or on behalf of Guarantor, in each instance whether now existing or hereafter given. Further, Guarantor's liability under this Guarantee is in addition to any and all other liability Guarantor may have in any other capacity, including, without limitation, its capacity as a general partner or managing member of Participant.

**Section 5.** Except as otherwise set forth in this Guarantee, Guarantor hereby expressly waives the following:

(a) ~~(a)~~ notice of acceptance of this Guarantee;

(b) any right to terminate this Guarantee with respect to the Obligations except as set forth in Section 9 below;

(bc) any right to receive notice of any renewal, extension, modification, supplement or other change in the terms of the Agreement or the ERCOT Protocols;

(ed) any right relating to the timing, manner or conduct of ERCOT's enforcement of rights against Participant's assets or any collateral from time to time pledged by, or on behalf of, Participant to secure the Obligations;

(de) if Guarantor and Participant (or any other person) have each pledged assets to secure the Obligations, any right to require ERCOT to proceed first against collateral pledged by Participant (or any other person) before proceeding against collateral pledged by Guarantor;

(ef) any claim for lack of consideration, any claim for setoff-, and/or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and/or fraud;

(fg) promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, acceptance or notice of

acceptance of this Guarantee, presentment, protest, notice of protest, notice of dishonor, notice of the incurring by Participant of additional indebtedness, notice of any suit or other action by ERCOT against Participant or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Obligations and this Guarantee;

(~~gh~~) any and all rights to which it may be entitled by virtue of the laws of the State of Texas governing suretyship and guarantees, including, without limitation, any rights under Rule 31, Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies Code and Chapter 34 of the Texas Business and Commerce Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times;

(~~hi~~) any defense due to the Guarantor's failure to review the activities of Participant or any changes in the Agreement, the ERCOT Protocols or the related ERCOT market and operating guides (it being acknowledged and agreed that Guarantor bears all responsibility for monitoring the activities of the Participant in the ERCOT markets); and

(~~ij~~) any and all other demands and notices to Guarantor or Participant, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this Section constitute legal or equitable grounds for relieving or discharging Guarantor in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

In furtherance of the foregoing, Guarantor agrees that (i) it is not necessary for ERCOT, in order to enforce Guarantor's payment hereunder, first to proceed against Participant or resort to any collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to ERCOT with respect to the Obligations, and (ii) the Agreement, the ERCOT Protocols, and any collateral, security or obligations of any other guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Guarantor.

**Section 6.** The ~~obligations~~liability of Guarantor hereunder ~~are~~is absolute and unconditional irrespective of: the following:

(a) the invalidity or unenforceability of the Agreement, the ERCOT Protocols, and/or any related documents;

~~(b)~~ any change in the terms of the Agreement or the ERCOT Protocols;

(~~c~~) the bankruptcy or insolvency of, or the effect of application of any Debtor Relief Laws to, the Participant;

(~~ed~~) any claim for lack of consideration, any claim for setoff, and/or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and/or fraud;

(~~de~~) any substitution, release or exchange of any other guaranty of or security for any of the Obligations;

(ef) the existence or terms of any other agreements between Guarantor and any party, including Participant; and

(fg) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Guarantee that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances (except as otherwise set forth in this Guarantee).

**Section 7.** All rights of Guarantor to proceed against Participant in respect of payment hereunder, by subrogation or otherwise:

(a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations; and

(b) Guarantor may not exercise any rights it may acquire by way of subrogation under this Guarantee, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid. Subject to the subordination herein provided, with respect to any payments made by Guarantor to ERCOT under this Guarantee, Guarantor may succeed to any rights of Participant under the Agreement and the ERCOT Protocols. Guarantor does not waive or release any rights of subrogation, reimbursement or contribution which Guarantor may have after full and final payment of the then due and unpaid Obligations.

**Section 8.** All remedies, rights, powers and privileges granted to ERCOT pursuant to this Guarantee are cumulative, and not exclusive of any remedies provided by law. ERCOT may enforce this Guarantee from time to time, in whole or in part, as deemed necessary by ERCOT. The exercise of any or all such rights by ERCOT shall not reduce, limit, impair, discharge, terminate, or otherwise affect the liability of Guarantor. No failure or delay by ERCOT in exercising any remedy, right, power or privilege pursuant to this Guarantee shall operate as a waiver, and any such remedy, right, power or privilege may be exercised by ERCOT at any time, in whole or in part. No partial exercise of any such rights shall preclude further exercise or the exercise of any other remedy, right, power or privilege. No notice or demand by ERCOT upon Guarantor or any other guarantor of the Obligations shall preclude ERCOT from taking further action without notice or demand. ERCOT is further authorized to exercise any right of set off against Guarantor.

**Section 9.** The term of this Guarantee shall be for a period of one (1) year, commencing on the date set forth below and expiring one (1) year later.

(a) Notwithstanding the foregoing, this Guarantee shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, unless at least sixty (60) days prior to the expiration date the Guarantor sends written notice to ERCOT stating that Guarantor elects not to renew or extend this Guarantee;

(b) Notwithstanding the foregoing, this Guarantee may be terminated by Guarantor at any time by:

(i) a written notification of termination given by Guarantor to ERCOT, or

(ii) posting, or causing to be posted, in respect of the Obligations of Participant, a letter of credit in an amount and form determined by ERCOT in accordance with the ERCOT Protocols (the "Substitute Collateral").

Termination pursuant to Section 9(b)(i) shall be effective thirty (30) days after the receipt by ERCOT of such written notification of termination. Termination pursuant to Section 9(b)(ii) shall be effective upon ERCOT's confirmation of receipt of the Substitute Collateral;

(c) If Guarantor elects not to renew or extend this Guarantee in accordance with Section 9(a) or Guarantor terminates this Guarantee in accordance with Section 9(b), Guarantor shall remain liable for any Obligations hereunder arising before the effective date of nonrenewal, non-extension, or termination. Guarantor expressly agrees and acknowledges that this Guarantee applies ~~to~~ and is enforceable against all Obligations arising or committed to prior to the effective date of the termination of this Guarantee, whether by nonrenewal, non-extension, or termination; and

(d) Notwithstanding any other provision in this Guarantee, this Guarantee shall continue in effect or shall automatically be reinstated if at any time payment, or any part thereof, made by Participant or Guarantor to ERCOT during the term of this Guarantee with respect to any of the Obligations is rescinded or set aside for any reason, or must otherwise be repaid by ERCOT as a result of application of any Debtor Relief Laws or otherwise.

**Section 10.** Guarantor hereby represents and warrants to ERCOT, which representations shall be deemed repeated continually during the term hereof, that:

(a) this Guarantee is duly authorized and valid, and is binding upon and enforceable against Guarantor (subject, in each instance, to the effect of applicable Debtor Relief Laws) and the person executing this Guarantee on behalf of the Guarantor has full power and authority to bind the Guarantor to this Guarantee without any further authorization, approval, order, and/or consent being required;

(b) the execution and delivery of, and the performance by Guarantor of its obligations under this Guarantee do not contravene or conflict with (i) any provision of the Guarantor's organizational, constituent or governing documents, or (ii) any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder;

(c) Guarantor (i) is duly organized, validly existing, and in good standing under the laws of the state of its organization and (ii) has full power and authority to enter into, and to perform its obligations under, this Guarantee;

(d) there is no litigation pending or, to the knowledge of Guarantor, threatened, before or by any tribunal against or affecting Guarantor which seeks to limit, prevent, enjoin or delay the Guarantor's performance of its obligations under this Guarantee, except as may be disclosed by the Guarantor to ERCOT or in the Guarantor's filing with the Securities and Exchange Commission;

(e) no bankruptcy or insolvency proceedings are pending or, to the best of Guarantor's knowledge, contemplated by or against Guarantor under any Debtor Relief Laws;

(f) ***NEITHER ERCOT NOR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT HAS MADE ANY REPRESENTATION, WARRANTY OR STATEMENT TO GUARANTOR IN ORDER TO INDUCE GUARANTOR TO EXECUTE THIS GUARANTEE, AND GUARANTOR HEREBY EXPRESSLY WAIVES ANY CLAIM OF FRAUDULENT INDUCEMENT TO EXECUTE THIS GUARANTEE AND FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF ERCOT OR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT IN WAIVING SUCH A CLAIM;***

(g) any and all balance sheets, net worth statements, and other financial information with respect to Guarantor which have heretofore been given to ERCOT by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof;

(h) to the best of its knowledge, Guarantor is not in default under any agreements or contracts which may adversely affect Guarantor's ability to fulfill its obligations under this Guarantee;

(i) any indebtedness of Participant to Guarantor now or hereafter existing is hereby subordinated to the payment of the Obligations. As long as Participant is not in default on payment of the Obligations, Participant may make payments to Guarantor on any subordinated indebtedness in the ordinary course of business. After default by Participant on payment of the Obligations, any payments by Participant to Guarantor on account of such subordinated indebtedness shall be collected and received by Guarantor in trust for ERCOT and shall be paid over to ERCOT on account of the Obligations without impairing or releasing the obligations of Guarantor hereunder; and

(j) Guarantor has, independently and without reliance upon ERCOT, and based upon such documents and information as Guarantor has deemed appropriate, made its own analysis and decision to enter into this Guarantee.

**Section 11.** Guarantor hereby further covenants and agrees to ERCOT that:

(a) Guarantor will keep itself fully apprised of Participant's financial and business condition, and Guarantor shall be responsible, to the extent deemed necessary or advisable by Guarantor, for obtaining for itself information regarding Participant, the Agreement, the ERCOT Protocols and the ERCOT market and operating guides, and Guarantor acknowledges and agrees that ERCOT shall have no duty at any time to notify Guarantor of any information which ERCOT may have or acquire concerning Participant or to investigate or inform Guarantor of the financial or business condition or affairs of Participant or any change therein;

(b) Guarantor will provide ERCOT with any and all financial information required to be submitted under ERCOT's credit policy or the ERCOT Protocols and other financial information reasonably requested by ERCOT concerning or relating to

Guarantor's financial condition within twenty (20) days after such written request by ERCOT. Other financial information may include, at a minimum: a balance sheet; an income and expense statement; a statement showing contingent liabilities; detailed cash flow statements; and any supporting schedules or documentation which ERCOT may require and is acceptable to ERCOT. The financial information provided shall be in accordance with generally accepted accounting principles; and

(c) Guarantor's representations, warranties, covenants, waivers and agreements set forth in this Guarantee are a material inducement to ERCOT to enter into the Agreement and extend credit to Participant and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Participant, Guarantor, any other person, or any security for all or any part of the Obligations.

**Section 12.** This Guarantee is executed and delivered as an incident to a transaction(s) negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the Laws of the State of Texas, ~~other than the~~ without regard to conflicts of laws principles ~~thereof~~. Guarantor, for itself and its successors and assigns, hereby irrevocably (i) submits to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) waives, to the fullest extent permitted by Law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Guarantee brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, and (iii) agrees that any legal action or proceeding against Guarantor arising out of or in connection with this Guarantee may be brought in any one of the foregoing courts. Guarantor hereby agrees that service of process upon Guarantor may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of ERCOT to serve process in any other manner permitted by law or shall limit the right of ERCOT to bring any action or proceeding against Guarantor or with respect to any of Guarantor's property in courts in other jurisdictions. Any action or proceeding by Guarantor against ERCOT shall be brought only in a court located in Travis County, Texas. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Guarantor acknowledges that these waivers are a material inducement to ERCOT's agreement to enter into the Agreement, that ERCOT has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in Section 12 are irrevocable on the part of both ERCOT and Guarantor and may not be modified without the agreement of both ERCOT and Guarantor in writing as required pursuant to Section 23 below; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Guarantee.

**Section 13.** If any provision or any part of any provision of this Guarantee or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Guarantee nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other persons or circumstances, as the case may be, rather shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

**Section 14.** From time to time, at the reasonable request of ERCOT, Guarantor will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the contents of this Guarantee; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such



further assurances as may be necessary, desirable, or proper, in ERCOT's opinion, (i) to carry out more effectively the purposes of this Guarantee and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Guarantee for the benefit of ERCOT, including reaffirmation of the obligations hereunder from time to time upon the renewal hereof and the applicability of any changes in the Credit Support Amount.

**Section 15.** Time is of the essence in this Guarantee with respect to all of Guarantor's obligations hereunder.

**Section 16.** The recitals and introductory paragraphs hereof are a part hereof, form a basis for this Guarantee and shall be considered *prima facie* evidence of the facts and documents referred to therein.

**Section 17.** The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections or Subsections or any provisions hereof. Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Guarantee. As such, the terms of this Guarantee shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Guarantee or any amendments, modifications, or exhibits.

**Section 18.** All sums payable under this Guarantee shall be by wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. All payments shall be remitted to ERCOT's bank account as designated by written notice to Guarantor, whether through demand for payment or otherwise.

**Section 19.** EACH OF GUARANTOR AND ERCOT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTEE OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY ERCOT OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ERCOT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTEE. IT IS AGREED AND UNDERSTOOD BY EACH OF GUARANTOR AND ERCOT THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND ERCOT, AND EACH OF GUARANTOR AND ERCOT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF GUARANTOR AND ERCOT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE

REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**Section 20.** Guarantor agrees to pay to ERCOT, upon demand, all reasonable out-of-pocket costs and expenses, including, without limitation, reasonable third-party attorneys' fees, that may be incurred by ERCOT in attempting to ~~cause~~enforce satisfaction of Guarantor's liability under this Guarantee ("Expenses").

**Section 21.** All notices or other communications hereunder shall be made by hand delivery, by next day delivery service or by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that facsimile was received) to the addresses for ERCOT and Guarantor set forth on the signature page of this Guarantee. For purposes of giving any required notices hereunder, the addresses, telephone numbers, and facsimile numbers of the Parties are as set forth on the signature page of this Guarantee.

**Section 22.** This Guarantee shall bind the successors and assigns of Guarantor and shall inure to the benefit of ERCOT, its successors and assigns pursuant to the terms of the Agreement.

(a) ERCOT shall be permitted to assign its rights and delegate its obligations under this Guarantee, in whole or in part, without the consent of Guarantor or Participant.

(b) The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without the prior written consent of ERCOT. Any purported assignment or delegation absent ERCOT'S written consent is void.

(c) Subject to the written consent of ERCOT in its sole discretion, Guarantor may assign and delegate all of the Guarantor's rights and obligations hereunder to a partnership, corporation, trust or other entity that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise. Upon Guarantor's receipt of ERCOT's written consent and the execution by assignee of any and all documents required by ERCOT, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. If ERCOT does not consent to the assignment (which, for the avoidance of doubt, shall not constitute a default under this Guarantee), ERCOT shall provide written notice to Guarantor that it does not consent to the assignment and upon receipt of such written notice, Guarantor shall be permitted to terminate the Guarantee in accordance with Section 9(b).

**Section 23.** No modification of this Guarantee or waiver shall be valid unless in writing and signed by ERCOT and Guarantor and then only to the extent specifically set forth in such writing.

**Section 24.** This Guarantee represents the final agreement between Guarantor and ERCOT with respect to the matters set forth herein. This Guarantee supersedes and terminates any prior guarantee to ERCOT by Guarantor on behalf of Participant.

*<signature page follows>*



Participant: \_\_\_\_\_  
[Name of Participant]

a \_\_\_\_\_  
[Type of entity/jurisdiction of organization]

Effective Date of Standard Form Market Participant Agreement: \_\_\_\_\_, 20\_\_.

**“CREDIT SUPPORT AMOUNT”** is \$ \_\_\_\_\_

EXECUTED by GUARANTOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

\_\_\_\_\_  
[Name of Guarantor]

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

a \_\_\_\_\_  
[Type of entity/jurisdiction of organization]

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Guaranty must be stamped with Corporate seal or must be accompanied by a signed secretary’s certificate attesting to the validity of the signature and the authorization of the person signing the guaranty]

ACCEPTED by ERCOT this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

Address: 7620 Metro Center Drive  
Austin, Texas 78744  
[For notice and payment]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: 512.225.7020

## MARKET PARTICIPANT GUARANTEE AGREEMENT

This MARKET PARTICIPANT GUARANTEE AGREEMENT (this “Guarantee”) is made by the undersigned entity (together with its permitted successors and assigns, the “Guarantor”) in favor of ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. (together with its successors and assigns, “ERCOT”). The Guarantor and ERCOT shall be referred to herein collectively as “Parties”.

### Recitals

A. ERCOT has entered into a Standard Form Market Participant Agreement (hereinafter the “Agreement” as the same may be modified through the procedure set forth in the ERCOT Protocols) with the Market Participant identified on the signature page hereof (together with its permitted successors and permitted assigns, the “Participant”).

B. Pursuant to the Agreement and the related ERCOT Protocols (as such term is defined in the Agreement), ERCOT may extend credit to Participant from time to time.

C. It is expressly agreed and understood by and among Participant, ERCOT and Guarantor that: (1) the execution and delivery to ERCOT of this Guarantee is a condition precedent to ERCOT entering into the Agreement, the continuation of transactions with Participant pursuant to the Agreement and the extension of credit to Participant pursuant to the Agreement and the related ERCOT Protocols, (2) ERCOT has relied, and will continue to rely, upon this Guarantee and the terms and representations herein in entering into transactions as contemplated by the Agreement and the related ERCOT Protocols, and (3) ERCOT would not enter into the Agreement, or otherwise enter into or continue transactions with Participant, without this Guarantee.

D. Pursuant to that certain INSERT TITLE OF AGREEMENT (“Reimbursement Agreement”), Guarantor has contracted with Participant for the express purpose of providing this Guarantee for the benefit of ERCOT. The value of the consideration and benefit received and to be received by Guarantor, directly or indirectly, as a result of ERCOT entering into the Agreement and Guarantor executing and delivering this Guarantee, is reasonably worth at least as much as the liability and obligation of Guarantor hereunder, and the extension of credit to Participant pursuant to the Agreement has or may reasonably be expected to benefit the Guarantor directly or indirectly.

E. In connection with the foregoing, Guarantor desires to guarantee to ERCOT the prompt and full payment of the Obligations (as defined below) upon the terms and conditions contained in this Guarantee.

F. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement and/or ERCOT Protocols.

### Agreements

**Section 1.** In consideration of credit heretofore or hereafter granted by ERCOT to Participant pursuant to the Agreement and/or the related ERCOT Protocols, Guarantor hereby unconditionally, absolutely and, subject to the ~~express~~ provisions of ~~Sections Section 9 and 20 hereof~~, irrevocably guarantees to ERCOT, as a primary obligor and not as a surety, the ~~punctual~~ prompt and complete payment in full when due (subject to any grace period applicable to the Obligations (as defined below)), whether on a scheduled date, by lapse of time, by acceleration of maturity, or otherwise, any and all of the Obligations. As used in this Guarantee, the term “Obligations” means, collectively:

(a) any and all indebtedness, liabilities and sums of money now or hereafter due and owing by Participant to ERCOT pursuant to, or arising under, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time by ERCOT;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys' fees) now or hereafter due and owing by Participant pursuant to the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Participant, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Participant to ERCOT in order to maintain the Agreement and the ability to conduct business with ERCOT notwithstanding the continuing right of Participant to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the ERCOT Protocols; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Participant to ERCOT described in clauses (a) through (c) of this sentence.

For purposes of this Guarantee, the term "**Debtor Relief Laws**" shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

**Section 2.** Notwithstanding the foregoing, the maximum amount of the Obligations for which Guarantor shall be liable personally hereunder shall not exceed the sum of the following from time to time: (a) the then-applicable Credit Support Amount (as defined below); plus (b) interest in respect of the Obligations (to the extent permitted by applicable state law, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides) for periods after the date on which written demand is made for payment hereunder by ERCOT; plus (c) Expenses (as defined below).

For purposes of this Guarantee, the term "**Credit Support Amount**" shall mean the amount designated as such on the signature page to this Guarantee as the same may be increased or decreased by written agreement between the Guarantor and ERCOT.

**Section 3.** Guarantor is liable for the full payment of the Obligations, subject to the express limitations provided in Section 2, as a primary obligor. This is **an unconditional, absolute, and** continuing guarantee of payment and not of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay the Obligations in full without assistance or support from Participant or any other person. Guarantor agrees that if all or any part of the Obligations shall not be punctually paid when due, whether on the scheduled payment date, by lapse of time, by acceleration of maturity or otherwise, Guarantor shall pay, at or before 5:00 P.M. Central Prevailing Time on the ~~second~~**first** Business Day (as such term is defined in the ERCOT Protocols) immediately following the issuance of written demand by ERCOT to

Guarantor, the amount due on the Obligations to ERCOT in accordance with the terms hereof. ERCOT may, but shall have no obligation to, make such demand(s) at any time coincident with or after the time for payment of all or part of the Obligations, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not relieve, limit or discharge Guarantor in any respect of its obligations under this Guarantee. Guarantor hereby waives any condition or requirement with respect to any such demand under this Guarantee, and Guarantor agrees that Guarantor's obligations hereunder are absolute and immediate without requirement of presentment, protest, notice of protest, notice of nonpayment, notice of intent to accelerate, notice of acceleration or any other notice whatsoever (all of which are expressly waived), except as may expressly be required hereunder.

**Section 4.** If Guarantor is or becomes liable for any indebtedness or obligations owing by Participant to ERCOT other than through this Guarantee, the liability of Guarantor for such other indebtedness shall not in any manner be impaired or affected hereby or the limits contained herein, and the rights of ERCOT hereunder shall be cumulative of any and all other rights that ERCOT may have against Guarantor. If Participant is or becomes indebted to ERCOT for any indebtedness other than the Obligations, any payment received or recovery realized upon any such other indebtedness of Participant to ERCOT may be applied, in ERCOT's sole discretion, to indebtedness of Participant to ERCOT other than the Obligations, except to the extent paid by the Guarantor specifically in respect of the Obligations or as otherwise required by Law or written agreement of ERCOT to be applied to the Obligations. This Guarantee is independent of, and shall not be limited by, any other guaranty or collateral posted by or on behalf of Guarantor, in each instance whether now existing or hereafter given. Further, Guarantor's liability under this Guarantee is in addition to any and all other liability Guarantor may have in any other capacity, including, without limitation, its capacity as a general partner or managing member of Participant.

**Section 5.** Except as otherwise set forth in this Guarantee, Guarantor hereby expressly waives the following:

~~(a)~~ notice of acceptance of this Guarantee;

~~(b)~~ any right to terminate this Guarantee with respect to the Obligations except as set forth in Section 9 below;

~~(c)~~ any right to receive notice of any renewal, extension, modification, supplement or other change in the terms of the Agreement or the ERCOT Protocols;

~~(d)~~ any right relating to the timing, manner or conduct of ERCOT's enforcement of rights against Participant's assets or any collateral from time to time pledged by, or on behalf of, Participant to secure the Obligations;

~~(e)~~ if Guarantor and Participant (or any other person) have each pledged assets to secure the Obligations, any right to require ERCOT to proceed first against collateral pledged by Participant (or any other person) before proceeding against collateral pledged by Guarantor;

~~(f)~~ any claim for lack of consideration, any claim for setoff, and/or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and or fraud;

(~~fg~~) promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, acceptance or notice of acceptance of this Guarantee, presentment, protest, notice of protest, notice of dishonor, notice of the incurring by Participant of additional indebtedness, notice of any suit or other action by ERCOT against Participant or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Obligations and this Guarantee;

(~~gh~~) any and all rights to which it may be entitled by virtue of the laws of the State of Texas governing suretyship and guarantees, including, without limitation, any rights under Rule 31, Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies Code and Chapter 34 of the Texas Business and Commerce Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times;

(~~hi~~) any defense due to the Guarantor's failure to review the activities of Participant or any changes in the Agreement, the ERCOT Protocols or the related ERCOT market and operating guides (it being acknowledged and agreed that Guarantor bears all responsibility for monitoring the activities of the Participant in the ERCOT markets)-); and

(~~ij~~) any and all other demands and notices to Guarantor or Participant, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this Section constitute legal or equitable grounds for relieving or discharging Guarantor in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

In furtherance of the foregoing, Guarantor agrees that (i) it is not necessary for ERCOT, in order to enforce Guarantor's payment hereunder, first to proceed against Participant or resort to any collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to ERCOT with respect to the Obligations and (ii) the Agreement, the ERCOT Protocols, and any collateral, security or obligations of any other guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Guarantor.

**Section 6.** The ~~obligations~~liability of Guarantor hereunder ~~are~~is absolute and unconditional irrespective of the following:

(a) the invalidity or unenforceability of the Agreement, the ERCOT Protocols, and/or any related documents;

~~(b)~~ any change in the terms of the Agreement or the ERCOT Protocols;

(c) the bankruptcy or insolvency of, or the effect of application of any Debtor Relief Laws to, the Participant;

(~~ed~~) any claim for lack of consideration, any claim for setoff-, and/or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and or fraud;



(~~de~~) any substitution, release or exchange of any other guaranty of or security for any of the Obligations;

(~~ef~~) the existence or terms of any other agreements between Guarantor and any party, including Participant; and

(~~fg~~) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Guarantee that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances (except as otherwise set forth in this Guarantee).

**Section 7.** All rights of Guarantor to proceed against Participant in respect of payment hereunder, by subrogation or otherwise:

(a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations; and

(b) Guarantor may not exercise any rights it may acquire by way of subrogation under this Guarantee, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid. Subject to the subordination herein provided, with respect to any payments made by Guarantor to ERCOT under this Guarantee, Guarantor may succeed to any rights of Participant under the Agreement and the ERCOT Protocols. Guarantor does not waive or release any rights of subrogation, reimbursement or contribution which Guarantor may have after full and final payment of the then due and unpaid Obligations.

**Section 8.** All remedies, rights, powers and privileges granted to ERCOT pursuant to this Guarantee are cumulative, and not exclusive of any remedies provided by law. ERCOT may enforce this Guarantee from time to time, in whole or in part, as deemed necessary by ERCOT. The exercise of any or all such rights by ERCOT shall not reduce, limit, impair, discharge, terminate, or otherwise affect the liability of Guarantor. No failure or delay by ERCOT in exercising any remedy, right, power or privilege pursuant to this Guarantee shall operate as a waiver, and any such remedy, right, power or privilege may be exercised by ERCOT at any time, in whole or in part. No partial exercise of any such rights shall preclude further exercise or the exercise of any other remedy, right, power or privilege. No notice or demand by ERCOT upon Guarantor or any other guarantor of the Obligations shall preclude ERCOT from taking further action without notice or demand. ERCOT is further authorized to exercise any right of set off against Guarantor.

**Section 9.** The term of this Guarantee shall be for a period of one (1) year, commencing on the date set forth below and expiring one (1) year later.

(a) Notwithstanding the foregoing, this Guarantee shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, unless at least sixty (60) days prior to the expiration date the Guarantor sends written notice to ERCOT stating that Guarantor elects not to renew or extend this Guarantee;

(b) Notwithstanding the foregoing, this Guarantee may be terminated by Guarantor at any time by:

(i) a written notification of termination given by Guarantor to ERCOT, or

(ii) posting, or causing to be posted, in respect of the Obligations of Participant, a letter of credit in an amount and form determined by ERCOT in accordance with the ERCOT Protocols (the “Substitute Collateral”).

Termination pursuant to Section 9(b)(i) shall be effective thirty (30) days after the receipt by ERCOT of such written notification of termination. Termination pursuant to Section 9(b)(ii) shall be effective upon ERCOT’s confirmation of receipt of the Substitute Collateral;

(c) If Guarantor elects not to renew or extend this Guarantee in accordance with Section 9(a) or Guarantor terminates this Guarantee in accordance with Section 9(b), Guarantor shall remain liable for any Obligations hereunder arising before the effective date of nonrenewal, non-extension, or termination. Guarantor expressly agrees and acknowledges that this Guarantee applies ~~to~~ and is enforceable against all Obligations arising or committed to prior to the effective date of the termination of this Guarantee, whether by nonrenewal, non-extension, or termination; and

(d) Notwithstanding any other provision in this Guarantee, this Guarantee shall ~~automatically~~ continue in effect or shall automatically be reinstated if at any time payment, or any part thereof, made by Participant or Guarantor to ERCOT during the term of this Guarantee with respect to any of the Obligations is rescinded or set aside for any reason, or must otherwise be repaid by ERCOT as a result of application of any Debtor Relief Laws or otherwise.

**Section 10.** Guarantor hereby represents and warrants to ERCOT, which representations shall be deemed repeated continually during the term hereof that:

(a) this Guarantee is duly authorized and valid, and is binding upon and enforceable against Guarantor (subject, in each instance, to the effect of applicable Debtor Relief Laws) and the person executing this Guarantee on behalf of the Guarantor has full power and authority to bind the Guarantor to this Guarantee without any further authorization, approval, order, and/or consent being required;

(b) the execution and delivery of, and the performance by Guarantor of its obligations under this Guarantee do not contravene or conflict with (i) any provision of the Guarantor’s organizational, constituent or governing documents, or (ii) any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder;

(c) Guarantor (i) is duly organized, validly existing, and in good standing under the laws of the state of its organization and (ii) has full power and authority to enter into, and to perform its obligations under, this Guarantee;

(d) there is no litigation pending or, to the knowledge of Guarantor, threatened, before or by any tribunal against or affecting Guarantor which seeks to limit, prevent, enjoin or delay the Guarantor’s performance of its obligations under this

Guarantee, except as may be disclosed by the Guarantor to ERCOT or in the Guarantor's filing with the Securities and Exchange Commission;

(e) no bankruptcy or insolvency proceedings are pending or, to the best of Guarantor's knowledge, contemplated by or against Guarantor under any Debtor Relief Laws;

(f) ***NEITHER ERCOT NOR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT HAS MADE ANY REPRESENTATION, WARRANTY OR STATEMENT TO GUARANTOR IN ORDER TO INDUCE GUARANTOR TO EXECUTE THIS GUARANTEE, AND GUARANTOR HEREBY EXPRESSLY WAIVES ANY CLAIM OF FRAUDULENT INDUCEMENT TO EXECUTE THIS GUARANTEE AND FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF ERCOT OR ANY AFFILIATE-~~OF ERCOT~~, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT IN WAIVING SUCH A CLAIM;***

(g) any and all balance sheets, net worth statements, and other financial information with respect to Guarantor which have heretofore been given to ERCOT by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof;

(h) to the best of its knowledge, Guarantor is not in default under any agreements or contracts which may adversely affect Guarantor's ability to fulfill its obligations under this Guarantee;

(i) any indebtedness of Participant to Guarantor now or hereafter existing is hereby subordinated to the payment of the Obligations. As long as Participant is not in default on payment of the Obligations, Participant may make payments to Guarantor on any subordinated indebtedness in the ordinary course of business. After default by Participant on payment of the Obligations, any payments by Participant to Guarantor on account of such subordinated indebtedness shall be collected and received by Guarantor in trust for ERCOT and shall be paid over to ERCOT on account of the Obligations without impairing or releasing the obligations of Guarantor hereunder; and

(j) Guarantor has, independently and without reliance upon ERCOT, and based upon such documents and information as Guarantor has deemed appropriate, made its own analysis and decision to enter into this Guarantee.

**Section 11.** Guarantor hereby further covenants and agrees to ERCOT that:

(a) Guarantor will keep itself fully apprised of Participant's financial and business condition, and Guarantor shall be responsible, to the extent deemed necessary or advisable by Guarantor, for obtaining for itself information regarding Participant, the Agreement, the ERCOT Protocols and the ERCOT market and operating guides, and Guarantor acknowledges and agrees that ERCOT shall have no duty at any time to notify Guarantor of any information which ERCOT may have or acquire concerning Participant or to investigate or inform Guarantor of the financial or business condition or affairs of Participant or any change therein;

(b) Guarantor will provide ERCOT with any and all financial information required to be submitted under ERCOT's credit policy or the ERCOT Protocols and other financial information reasonably requested by ERCOT concerning or relating to Guarantor's financial condition within twenty (20) days after such written request by ERCOT. Other financial information may include, at a minimum: a balance sheet; an income and expense statement; a statement showing contingent liabilities; detailed cash flow statements; and any supporting schedules or documentation which ERCOT may require and is acceptable to ERCOT. The financial information provided shall be in accordance with generally accepted accounting principles; and

(c) Guarantor's representations, warranties, covenants, waivers and agreements set forth in this Guarantee are a material inducement to ERCOT to enter into the Agreement and extend credit to Participant and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Participant, Guarantor, any other person, or any security for all or any part of the Obligations.

**Section 12.** This Guarantee is executed and delivered as an incident to a transaction(s) negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the ~~Laws~~ laws of the State of Texas, ~~other than the~~without regard to conflicts of laws principles ~~thereof~~. Guarantor, for itself and its successors and assigns, hereby irrevocably (i) submits to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) waives, to the fullest extent permitted by Law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Guarantee brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, and (iii) agrees that any legal action or proceeding against Guarantor arising out of or in connection with this Guarantee may be brought in any one of the foregoing courts. Guarantor hereby agrees that service of process upon Guarantor may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of ERCOT to serve process in any other manner permitted by law or shall limit the right of ERCOT to bring any action or proceeding against Guarantor or with respect to any of Guarantor's property in courts in other jurisdictions. Any action or proceeding by Guarantor against ERCOT shall be brought only in a court located in Travis County, Texas. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Guarantor acknowledges that these waivers are a material inducement to ERCOT's agreement to enter into the Agreement, that ERCOT has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in Section 12 are irrevocable on the part of both ERCOT and Guarantor and may not be modified without the agreement of both ERCOT and Guarantor in writing as required pursuant to Section 23 below; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Guarantee.

**Section 13.** If any provision or any part of any provision of this Guarantee or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Guarantee nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other persons or circumstances, as the case may be, rather shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

**Section 14.** From time to time, at the reasonable request of ERCOT, Guarantor will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the

contents of this Guarantee; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in ERCOT's opinion, (i) to carry out more effectively the purposes of this Guarantee and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Guarantee for the benefit of ERCOT, including reaffirmation of the obligations hereunder from time to time upon the renewal hereof and the applicability of any changes in the Credit Support Amount.

**Section 15.** Time is of the essence in this Guarantee with respect to all of Guarantor's obligations hereunder.

**Section 16.** The recitals and introductory paragraphs hereof are a part hereof, form a basis for this Guarantee and shall be considered *prima facie* evidence of the facts and documents referred to therein.

**Section 17.** The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections or Subsections or any provisions hereof. Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Guarantee. As such, the terms of this Guarantee shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Guarantee or any amendments, modifications, or exhibits.

**Section 18.** All sums payable under this Guarantee shall be by wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. All payments shall be remitted to ERCOT's bank account as designated by written notice to Guarantor, whether through demand for payment or otherwise.

**Section 19.** EACH OF GUARANTOR AND ERCOT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTEE OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY ERCOT OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ERCOT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTEE. IT IS AGREED AND UNDERSTOOD BY EACH OF GUARANTOR AND ERCOT THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND ERCOT, AND EACH OF GUARANTOR AND ERCOT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF GUARANTOR AND ERCOT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS

WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**Section 20.** Guarantor agrees to pay to ERCOT, upon demand, all reasonable out-of-pocket costs and expenses, including, without limitation, reasonable third-party attorneys' fees, that may be incurred by ERCOT in attempting to ~~cause~~enforce satisfaction of Guarantor's liability under this Guarantee ("Expenses").

**Section 21.** All notices or other communications hereunder shall be made by hand delivery, by next day delivery service or by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that facsimile was received) to the addresses for ERCOT and Guarantor set forth on the signature page of this Guarantee. For purposes of giving any required notices hereunder, the addresses, telephone numbers, and facsimile numbers of the Parties are as set forth on the signature page of this Guarantee.

**Section 22.** This Guarantee shall bind the successors and assigns of Guarantor and shall inure to the benefit of ERCOT, its successors and assigns pursuant to the terms of the Agreement.

(a) ERCOT shall be permitted to assign its rights and delegate its obligations under this Guarantee, in whole or in part, without the consent of Guarantor or Participant.

(b) The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without the prior written consent of ERCOT. Any purported assignment or delegation absent ERCOT's written consent is void.

(c) Subject to the written consent of ERCOT in its sole discretion, Guarantor may assign and delegate all of the Guarantor's rights and obligations hereunder in to a partnership, corporation, trust or other entity that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise. Upon Guarantor's receipt of ERCOT's written consent and the execution by assignee of any and all documents required by ERCOT, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. If ERCOT does not consent to the assignment (which, for the avoidance of doubt, shall not constitute a default under this Guarantee), ERCOT shall provide written notice to Guarantor that it does not consent to the assignment and upon receipt of such written notice, Guarantor shall be permitted to terminate the Guarantee in accordance with Section 9(b).

**Section 23.** No modification of this Guarantee or waiver shall be valid unless in writing and signed by ERCOT and Guarantor and then only to the extent specifically set forth in such writing.

**Section 24.** This Guarantee represents the final agreement between Guarantor and ERCOT with respect to the matters set forth herein. This Guarantee supersedes and terminates any prior guarantee to ERCOT by Guarantor on behalf of Participant.

*<signature page follows>*



Participant: \_\_\_\_\_  
[Name of Participant]

a \_\_\_\_\_  
[Type of entity/jurisdiction of organization]

Effective Date of Standard Form Market Participant Agreement: \_\_\_\_\_, 20\_\_.

**“CREDIT SUPPORT AMOUNT”** is \$ \_\_\_\_\_

EXECUTED by GUARANTOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

\_\_\_\_\_  
[Name of Guarantor]

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

a \_\_\_\_\_  
[Type of entity/jurisdiction of organization]

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Guaranty must be stamped with Corporate seal or must be accompanied by a signed secretary’s certificate attesting to the validity of the signature and the authorization of the person signing the guaranty]

ACCEPTED by ERCOT this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

Address: 7620 Metro Center Drive  
Austin, Texas 78744  
[For notice and payment]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: 512.225.7020

\_\_\_\_\_





## FOREIGN MARKET PARTICIPANT GUARANTEE AGREEMENT

This FOREIGN MARKET PARTICIPANT GUARANTEE AGREEMENT (this “Guarantee”) is made by the undersigned entity (together with its permitted successors and assigns, the “Guarantor”) in favor of ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. (together with its successors and assigns, “ERCOT”). The Guarantor and ERCOT shall be referred to herein collectively as “Parties”.

### Recitals

A. ERCOT has entered into a Standard Form Market Participant Agreement (hereinafter the “Agreement” as the same may be modified through the procedure set forth in the ERCOT Protocols,) with the Market Participant identified on the signature page hereof (together with its permitted successors and permitted assigns, the “Participant”).

B. Pursuant to the Agreement and the related ERCOT Protocols (as such term is defined in the Agreement), ERCOT may extend credit to Participant from time to time.

C. It is expressly agreed and understood by and among Participant, ERCOT and Guarantor that: (1) the execution and delivery to ERCOT of this Guarantee is a condition precedent to ERCOT entering into the Agreement, the continuation of transactions with Participant pursuant to the Agreement and the extension of credit to Participant pursuant to the Agreement and the related ERCOT Protocols, (2) ERCOT has relied, and will continue to rely, upon this Guarantee and the terms and representations herein in entering into transactions as contemplated by the Agreement and the related ERCOT Protocols, and (3) ERCOT would not enter into the Agreement, or otherwise enter into or continue transactions with Participant, without this Guarantee.

D. The value of the consideration and benefit received and to be received by Guarantor, directly or indirectly, as a result of ERCOT entering into the Agreement and Guarantor executing and delivering this Guarantee, is reasonably worth at least as much as the liability and obligation of Guarantor hereunder, and the extension of credit to Participant pursuant to the Agreement has or may reasonably be expected to benefit the Guarantor directly or indirectly.

E. In connection with the foregoing, Guarantor desires to guarantee to ERCOT the prompt and full payment of the Obligations (as defined below) upon the terms and conditions contained in this Guarantee.

F. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement and/or ERCOT Protocols.

### Agreements

**Section 1.** In consideration of credit heretofore or hereafter granted by ERCOT to Participant pursuant to the Agreement and/or the related ERCOT Protocols, Guarantor hereby unconditionally, absolutely and, subject to the ~~express~~ provisions of ~~Sections~~Section 9 and 20 hereof, irrevocably guarantees to ERCOT, as a primary obligor and not as a surety, the ~~prompt~~prompt and complete payment in full when due (subject to any grace period applicable to the Obligations (as defined below)), whether on a scheduled date, by lapse of time, by acceleration of maturity, or otherwise any and all of the Obligations. As used in this Guarantee, the term “Obligations” means, collectively:

(a) any and all indebtedness, liabilities and sums of money now or hereafter due and owing by Participant to ERCOT pursuant to, or arising under, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time by ERCOT;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys' fees) now or hereafter due and owing by Participant pursuant to the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Participant, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Participant to ERCOT in order to maintain the Agreement and the ability to conduct business with ERCOT notwithstanding the continuing right of Participant to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the ERCOT Protocols; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Participant to ERCOT described in clauses (a) through (c) of this sentence.

For purposes of this Guarantee, the term "*Debtor Relief Laws*" shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

**Section 2.** Notwithstanding the foregoing, the maximum amount of the Obligations for which Guarantor shall be liable personally hereunder shall not exceed the sum of the following from time to time: (a) the then-applicable Credit Support Amount (as defined below); plus (b) interest in respect of the Obligations (to the extent permitted by applicable state law, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides) for periods after the date on which written demand is made for payment hereunder by ERCOT; plus (c) Expenses (as defined below).

For purposes of this Guarantee, the term "*Credit Support Amount*" shall mean the amount designated as such on the signature page to this Guarantee as the same may be increased or decreased by written agreement between the Guarantor and ERCOT.

**Section 3.** Guarantor is liable for the full payment of the Obligations, subject to the express limitations provided in Section 2, as a primary obligor. This is an unconditional, absolute, and continuing guarantee of payment and not of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay the Obligations in full without assistance or support from Participant or any other person. Guarantor agrees that if all or any part of the Obligations shall not be punctually paid when due, whether on the scheduled payment date, by lapse of time, by acceleration of maturity or otherwise, Guarantor shall pay-, at or before 5:00 P.M. Central Prevailing Time on the secondfirst Business Day (as such term is defined in the ERCOT Protocols) immediately following the issuance of written demand by ERCOT to

Guarantor, the amount due on the Obligations to ERCOT in accordance with the terms hereof. ERCOT may, but shall have no obligation to, make such demand(s) at any time coincident with or after the time for payment of all or part of the Obligations, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not relieve, limit or discharge Guarantor in any respect of its obligations under this Guarantee. Guarantor hereby waives any condition or requirement with respect to any such demand under this Guarantee, and Guarantor agrees that Guarantor's obligations hereunder are absolute and immediate without requirement of presentment, protest, notice of protest, notice of nonpayment, notice of intent to accelerate, notice of acceleration or any other notice whatsoever (all of which are expressly waived), except as may expressly be required hereunder.

**Section 4.** If Guarantor is or becomes liable for any indebtedness or obligations owing by Participant to ERCOT other than through this Guarantee, the liability of Guarantor for such other indebtedness shall not in any manner be impaired or affected hereby or the limits contained herein, and the rights of ERCOT hereunder shall be cumulative of any and all other rights that ERCOT may have against Guarantor. If Participant is or becomes indebted to ERCOT for any indebtedness other than the Obligations, any payment received or recovery realized upon any such other indebtedness of Participant to ERCOT may be applied, in ERCOT's sole discretion, to indebtedness of Participant to ERCOT other than the Obligations, except to the extent paid by the Guarantor specifically in respect of the Obligations or as otherwise required by Law or written agreement of ERCOT to be applied to the Obligations. This Guarantee is independent of, and shall not be limited by, any other guaranty or collateral posted by or on behalf of Guarantor, in each instance whether now existing or hereafter given. Further, Guarantor's liability under this Guarantee is in addition to any and all other liability Guarantor may have in any other capacity, including, without limitation, its capacity as a general partner or managing member of Participant.

**Section 5.** Except as otherwise set forth in this Guarantee~~2~~, Guarantor hereby expressly waives the following:

~~(a) notice of acceptance of this Guarantee~~

(b) any right to terminate this Guarantee with respect to the Obligations except -as set forth in Section 9 below;

~~(b)~~ (c) any right to receive notice of any renewal, extension modification, supplement or other change in the terms of the Agreement or the ERCOT Protocols;

~~(e)~~ (d) any right relating to the timing, manner or conduct of ERCOT's enforcement of rights against Participant's assets or any collateral from time to time pledged by, or on behalf of, Participant to secure the Obligations;

~~(e)~~ (d) if Guarantor and Participant (or any other person) have each pledged assets to secure the Obligations, any right to require ERCOT to proceed first against collateral pledged by Participant (or any other person) before proceeding against collateral pledged by Guarantor;

(e) any claim for lack of consideration, and claim for setoff~~-, and/or~~ any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and/or fraud;

(fg) promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, acceptance or notice of acceptance of this Guarantee, presentment, protest, notice of protest, notice of dishonor, notice of the incurring by Participant of additional indebtedness, notice of any suit or other action by ERCOT against Participant or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Obligations and this Guarantee;

(gh) any and all rights to which it may be entitled by virtue of the laws of the State of Texas governing suretyship and guarantees, including, without limitation, any rights under Rule 31, Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies Code and Chapter 34 of the Texas Business and Commerce Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times;

(hi) any defense due to the Guarantor's failure to review the activities of Participant or any changes in the Agreement, the ERCOT Protocols or the related ERCOT market and operating guides (it being acknowledged and agreed that Guarantor bears all responsibility for monitoring the activities of the Participant in the ERCOT markets); and

(i) any and all other demands and notices to Guarantor or Participant, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this Section constitute legal or equitable grounds for relieving or discharging Guarantor in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

In furtherance of the foregoing, Guarantor agrees that (i) it is not necessary for ERCOT, in order to enforce Guarantor's payment hereunder, first to proceed against Participant or resort to any collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to ERCOT with respect to the Obligations and (ii) the Agreement, the ERCOT Protocols, and any collateral, security or obligations of any other guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Guarantor.

**Section 6.** The ~~obligations~~liability of Guarantor hereunder ~~are~~is absolute and unconditional irrespective of: the following:

(a) the invalidity or unenforceability of the Agreement~~-,~~ the ERCOT Protocols, and/or any related documents;

~~(b)~~ any change in the terms of the Agreement or the ERCOT Protocols;

(c) the bankruptcy or insolvency of, or the effect of application of any Debtor Relief Laws to, the Participant;

(d) any claim for lack of consideration, and claim for setoff~~-, and/or~~ any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and/or fraud;

(~~de~~) any substitution, release or exchange of any other guaranty of or security for any of the Obligations;

(~~ef~~) the existence or terms of any other agreements between Guarantor and any party, including Participant; and

(~~fg~~) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Guarantee that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances (except as otherwise set forth in this Guarantee).

**Section 7.** All rights of Guarantor to proceed against Participant in respect of payment hereunder, by subrogation or otherwise:

(a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations; and

(b) Guarantor may not exercise any rights it may acquire by way of subrogation under this Guarantee, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid. Subject to the subordination herein provided, with respect to any payments made by Guarantor to ERCOT under this Guarantee, Guarantor may succeed to any rights of Participant under the Agreement and the ERCOT Protocols. Guarantor does not waive or release any rights of subrogation, reimbursement or contribution which Guarantor may have after full and final payment of the then due and unpaid Obligations.

**Section 8.** All remedies, rights, powers and privileges granted to ERCOT pursuant to this Guarantee are cumulative, and not exclusive of any remedies provided by law. ERCOT may enforce this Guarantee from time to time, in whole or in part, as deemed necessary by ERCOT. The exercise of any or all such rights by ERCOT shall not reduce, limit, impair, discharge, terminate, or otherwise affect the liability of Guarantor. No failure or delay by ERCOT in exercising any remedy, right, power or privilege pursuant to this Guarantee shall operate as a waiver, and any such remedy, right, power or privilege may be exercised by ERCOT at any time, in whole or in part. No partial exercise of any such rights shall preclude further exercise or the exercise of any other remedy, right, power or privilege. No notice or demand by ERCOT upon Guarantor or any other guarantor of the Obligations shall preclude ERCOT from taking further action without notice or demand. ERCOT is further authorized to exercise any right of set off against Guarantor.

**Section 9.** The term of this Guarantee shall be for a period of one (1) year, commencing on the date set forth below and expiring one (1) year later.

(a) Notwithstanding the foregoing, this Guarantee shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, unless at least sixty (60) days prior to the expiration date the Guarantor sends written notice to ERCOT stating that Guarantor elects not to renew or extend this Guarantee;

(b) Notwithstanding the foregoing, this Guarantee may be terminated by Guarantor at any time by:

\_\_\_\_\_ (i) \_\_\_\_\_ a written notification of termination given by Guarantor to ERCOT-, or

\_\_\_\_\_ (ii) \_\_\_\_\_ posting, or causing to be posted, in respect of the Obligations of Participant, a letter of credit in an amount and form determined by ERCOT in accordance with the ERCOT Protocols (the “Substitute Collateral”).

Termination pursuant to Section 9(b)(i) shall be effective thirty (30) days after the receipt by ERCOT of such written notification of termination. Termination pursuant to Section 9(b)(ii) shall be effective upon ERCOT’s confirmation of receipt of the Substitute Collateral;

(c) If Guarantor elects not to renew or extend this Guarantee in accordance with Section 9(a) or Guarantor terminates this Guarantee in accordance with Section 9(b), Guarantor shall remain liable for any Obligations hereunder arising before the effective date of nonrenewal, non-extension, or termination. Guarantor expressly agrees and acknowledges that this Guarantee applies ~~to~~ and is enforceable against all Obligations arising or committed to prior to the effective date of the termination of this Guarantee, whether ~~by nonrenewal~~ by nonrenewal, non-extension, or termination; and

(d) Notwithstanding any other provision in this Guarantee, this Guarantee shall continue in effect or shall automatically be reinstated if at any time payment, or any part thereof, made by Participant or Guarantor to ERCOT during the term of this Guarantee with respect to any of the Obligations is rescinded or set aside for any reason, or must otherwise be repaid by ERCOT as a result of application of any Debtor Relief Laws or otherwise.

**Section 10.** Guarantor hereby represents and warrants to ERCOT, which representations shall be deemed repeated continually during the term hereof that:

(a) this Guarantee is duly authorized and valid, and is binding upon and enforceable against Guarantor (subject, in each instance, to the effect of applicable Debtor Relief Laws) and the person executing this Guarantee on behalf of the Guarantor has full power and ~~authority to bind the Guarantor to this Guarantee~~ without any further authorization, approval, order, and/or consent being required;

(b) the execution and delivery of, and the performance by Guarantor of its obligations under this Guarantee do not contravene or conflict with (i) any provision of the Guarantor’s organizational, constituent or governing documents, or (ii) any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder;

(c) Guarantor (i) is duly organized, validly existing, and in good standing under the laws of the state of its organization and (ii) has full power and authority to enter into, and to perform its obligations under, this Guarantee;

(d) there is no litigation pending or, to the knowledge of Guarantor, threatened, before or by any tribunal against or affecting Guarantor which seeks to limit,

prevent, enjoin or delay the Guarantor's performance of its obligations under this Guarantee, except as may be disclosed by the Guarantor to ERCOT or in the Guarantor's filing with the Securities and Exchange Commission;

(e) no bankruptcy or insolvency proceedings are pending or, to the best of Guarantor's knowledge, contemplated by or against Guarantor under any Debtor Relief Laws;

(f) ***NEITHER ERCOT NOR ANY AFFILIATE, EMPLOYEE AGENT, OR REPRESENTATIVE OF ERCOT HAS MADE ANY REPRESENTATION, WARRANTY OR STATEMENT TO GUARANTOR IN ORDER TO INDUCE GUARANTOR TO EXECUTE THIS GUARANTEE, AND GUARANTOR HEREBY EXPRESSLY WAIVES ANY CLAIM OF FRAUDULENT INDUCEMENT TO EXECUTE THIS GUARANTEE AND FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF ERCOT OR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT IN WAIVING SUCH A CLAIM;***

(g) any and all balance sheets, net worth statements, and other financial information with respect to Guarantor which have heretofore been given to ERCOT by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof;

(h) to the best of its knowledge, Guarantor is not in default under any agreements or contracts which may adversely affect Guarantor's ability to fulfill its obligations under this Guarantee;

(i) any indebtedness of Participant to Guarantor now or hereafter existing is hereby subordinated to the payment of the Obligations. As long as Participant is not in default on payment of the Obligations, Participant may make payments to Guarantor on any subordinated indebtedness in the ordinary course of business. After default by Participant on payment of the Obligations, any payments by Participant to Guarantor on account of such subordinated indebtedness shall be collected and received by Guarantor in trust for ERCOT and shall be paid over to ERCOT on account of the Obligations without impairing or releasing the obligations of Guarantor hereunder; ~~and~~

(j) Guarantor has, independently and without reliance upon ERCOT, and based upon such documents and information as Guarantor has deemed appropriate, made its own analysis and decision to enter into this Guarantee; ~~and~~

(k) Guarantor is subject to civil and commercial law with respect to its obligation under this Guaranty, has no immunity, sovereign or otherwise, from any suit or proceeding, the jurisdiction of any court, recoupment, setoff, or legal process (and hereby waives any defense of immunity to the extent available to Guarantor), this Guarantee is in proper legal form for enforcement against Guarantor, no filing, recording or notarization of any kind is required for enforcement of this Guarantee, no tax or other charge not already paid must be paid on or as a condition to enforceability of this Guaranty, and there are no taxes imposed by the country in which Guarantor is organized or has its principal business office on or by virtue of Guarantor's execution or delivery of this Guarantee other than payable by Guarantor and which have already been paid.

**Section 11.** Guarantor hereby further covenants and agrees to ERCOT that:

(a) Guarantor will keep itself fully apprised of Participant's financial and business condition, and Guarantor shall be responsible, to the extent deemed necessary or advisable by Guarantor, for obtaining for itself information regarding Participant, the Agreement, the ERCOT Protocols and the ERCOT market and operating guides, and Guarantor acknowledges and agrees that ERCOT shall have no duty at any time to notify Guarantor of any information which ERCOT may have or acquire concerning Participant or to investigate or inform Guarantor of the financial or business condition or affairs of Participant or any change therein;

(b) Guarantor will provide ERCOT with any and all financial information required to be submitted under ERCOT's credit policy or the ERCOT Protocols and other financial information reasonably requested by ERCOT concerning or relating to Guarantor's financial condition within twenty (20) days after such written request by ERCOT. Other financial information may include, at a minimum: a balance sheet; an income and expense statement; a statement showing contingent liabilities; detailed cash flow statements; and any supporting schedules or documentation which ERCOT may require and is acceptable to ERCOT. The financial information provided shall be in accordance with generally accepted accounting principles; and

(c) Guarantor's representations, warranties, covenants, waivers and agreements set forth in this Guarantee are a material inducement to ERCOT to enter into the Agreement and extend credit to Participant and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Participant, Guarantor, any other person, or any security for all or any part of the Obligations.

**Section 12.** This Guarantee is executed and delivered as an incident to a transaction(s) negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the Laws of the State of Texas, ~~other than the~~ without regard to conflicts of laws principles ~~thereof~~.

Guarantor, for itself and its successors and assigns, hereby irrevocably agrees:

(a) (i) to submit to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) to waive, to the fullest extent permitted by Law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Guarantee brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, and (iii) that any legal action or proceeding against Guarantor arising out of or in connection with this Guarantee may be brought in any one of the foregoing courts. Guarantor hereby agrees that service of process upon Guarantor may be made by certified or registered mail, return receipt requested, at its address specified herein, or at the address of its Process Agent (as defined ~~in~~ Section 25 hereof below). Nothing herein shall affect the right of ERCOT to serve process in any other manner permitted by law or shall limit the right of ERCOT to bring any action or proceeding against Guarantor or with respect to any of Guarantor's property in courts in other jurisdictions. Any action or proceeding by Guarantor against ERCOT shall be brought only in a court located in Travis County,



Texas. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Guarantor acknowledges that these waivers are a material inducement to ERCOT's agreement to enter into the Agreement, that ERCOT has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in ~~Section 12~~this section are irrevocable on the part of both ERCOT and Guarantor and may not be modified without the agreement of both ERCOT and Guarantor in writing ~~as required pursuant to Section 23 below~~; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Guarantee; or, alternatively,

(b) to resolve any dispute relating in any manner to this Guarantee through binding arbitration. Arbitration proceedings shall be conducted pursuant to the International Arbitration Rules of the American Arbitration Association ~~(“AAA”)~~ in effect at the time the dispute first arises, by one (1) or three (3) arbitrator(s) appointed in accordance with such Rules within ten (10) calendar days of submission of the dispute. The number of arbitrators forming the arbitral panel shall be mutually agreed upon by the parties, but if they cannot agree, then the AAA shall determine same. The arbitration shall be held in such city as is agreed upon by the parties, but if they cannot agree, then such arbitration shall be held in Austin, State of Texas, United States of America. The arbitration shall be conducted simultaneously in English and in the primary language of Guarantor. The English version of this Guarantee shall be the controlling document in the arbitration proceeding. The procedural laws of the civil district courts of the State of Texas, U.S.A. shall govern the arbitral proceeding regardless of the situs of the arbitration. The arbitral panel shall set a limited time period and establish procedures designed to reduce the cost and time for discovery, while allowing the parties an adequate opportunity, in the discretion of the arbitral panel, to discover relevant information from opposing parties about the subject matter of the dispute. The arbitral panel shall award actual damages to the prevailing party, but may not award any special, indirect, punitive or consequential damages nor reasonable attorneys' fees and arbitration costs to either party. The arbitral award shall fully and finally settle the dispute. Recognition and enforcement of the arbitral award shall be governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Judgment upon the award may be entered in any court in any country, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the law of such jurisdiction may require or allow. Each party shall bear its own costs and fees, including, but not limited to its share of any arbitration fees, unless otherwise ordered by the arbitrator(s).

**BY AGREEING TO BINDING ARBITRATION, EACH OF THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM. FURTHERMORE, WITHOUT INTENDING IN ANY WAY TO LIMIT THIS AGREEMENT TO ARBITRATE, TO THE EXTENT ANY CLAIM IS NOT ARBITRATED, EACH OF THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF SUCH CLAIM. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS GUARANTEE.**

**Section 13.** If any provision or any part of any provision of this Guarantee or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Guarantee nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other persons or circumstances, as the case may be, rather shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

**Section 14.** From time to time, at the reasonable request of ERCOT, Guarantor will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the contents of this Guarantee; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in ERCOT's opinion, (i) to carry out more effectively the purposes of this Guarantee and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Guarantee for the benefit of ERCOT, including reaffirmation of the obligations hereunder from time to time upon the renewal hereof and the applicability of any changes in the Credit Support Amount.

**Section 15.** Time is of the essence in this Guarantee with respect to all of Guarantor's obligations hereunder.

**Section 16.** The recitals and introductory paragraphs hereof are a part hereof, form a basis for this Guarantee and shall be considered *prima facie* evidence of the facts and documents referred to therein.

**Section 17.** The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections or Subsections or any provisions hereof. Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Guarantee. As such, the terms of this Guarantee shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Guarantee or any amendments, modifications, or exhibits.

**Section 18.** Each of Guarantor and ERCOT hereby agrees that:

(a) All sums payable under this Guarantee shall be by wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. All payments shall be remitted to ERCOT's bank account in the United States as designated by written notice to Guarantor, whether through demand for payment or otherwise.

~~(b)~~ All payments to ERCOT by Guarantor shall be free and clear of, and without deduction or withholding for or on account of any present or future income, stamp or other taxes or levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any governmental authority (collectively the "Taxes"). If any Taxes are required to be withheld from any amounts payable by Guarantor under this Guarantee, the amounts payable shall be increased to the extent necessary to provide the full amount (after payment of all Taxes) owing by Guarantor under this Guaranty.

(c) All references in this Guarantee to sums denominated in dollars or with the symbol “\$” refer to the lawful currency of the United States of America. If, for the purposes of obtaining or enforcing judgment against Guarantor in any court in any jurisdiction in connection with this Guarantee, it becomes necessary to convert into any other currency (such other currency being referred to as the “Judgment Currency”) an amount due in any currency (“Obligation Currency”) other than the Judgment Currency under this Guarantee, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of the State of Texas or in the courts of any other jurisdiction that would give effect to such conversion being made on such date, or, the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this paragraph being hereinafter referred to as the “Judgment Conversion Date”). If, in the case of any proceeding in the court of any jurisdiction referred to in the preceding sentence, there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, Guarantor shall pay such additional amount (if any and in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. The term “rate of exchange” in this paragraph means the spot rate of exchange at which ERCOT would, on the relevant date at or about 12:00 noon, be prepared to sell the Obligation Currency against the Judgment Currency.

**Section 19.** EACH OF GUARANTOR AND ERCOT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTEE OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY ERCOT OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ERCOT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTEE. IT IS AGREED AND UNDERSTOOD BY EACH OF GUARANTOR AND ERCOT THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND ERCOT, AND EACH OF GUARANTOR AND ERCOT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF GUARANTOR AND ERCOT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**Section 20.** Guarantor agrees to pay to ERCOT, upon demand, all reasonable out-of-pocket costs and expenses, including, without limitation, reasonable third-party attorneys' fees, that may be incurred by ERCOT in attempting to ~~cause~~enforce satisfaction of Guarantor's liability under this Guarantee ("Expenses").

**Section 21.** All notices or other communications hereunder shall be made by hand delivery, by next day delivery service or by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that facsimile was received) to the addresses for ERCOT and Guarantor set forth on the signature page of this Guarantee. For purposes of giving any required notices hereunder, the addresses, telephone numbers, and facsimile numbers of the Parties are ~~as~~ set forth on the signature page of this Guarantee. Such information regarding a party may be changed by such party by written notice to the other party. In addition, Guarantor shall maintain, at all times, a registered agent in Texas (the "Process Agent"). Guarantor hereby irrevocably appoints its Process Agent as its true and lawful agent and attorney-in-fact in its name, place and stead to accept such service of any and all writs, processes and summonses. Guarantor further agrees that the failure of its Process Agent to give any notice of any such service of process to Guarantor shall not impair or affect the validity of such service or of any judgment based thereon. Guarantor consents and agrees that such service shall constitute in every respect, valid and effective service. Guarantor's Process Agent in Texas is set forth on the signature page of this Guarantee, and Guarantor shall provide ERCOT with written notification of any change of its Process Agent or the address thereof.

**Section 22.** This Guarantee shall bind the successors and assigns of Guarantor and shall inure to the benefit of ERCOT, its successors and assigns pursuant to the terms of the Agreement.

(a) ERCOT shall be permitted to assign its rights and delegate its obligations under this Guarantee, in whole or in part, without the consent of Guarantor or Participant.

(b) The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without the prior written consent of ERCOT. Any purported assignment or delegation absent ERCOT's written consent is void.

(c) Subject to the written consent of ERCOT in its sole discretion, Guarantor may assign and delegate all of the Guarantor's rights and obligations hereunder to a partnership, corporation, trust or other entity that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise. Upon ~~Guarantor's~~Guarantor's receipt of ERCOT's written consent and the execution by assignee of any and all documents required by ERCOT, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. If ERCOT does not consent to the assignment (which, for the avoidance of doubt, shall not constitute a default under this Guarantee), ERCOT shall provide written notice to Guarantor that it does not consent to the assignment and upon receipt of such written notice, Guarantor shall be permitted to terminate the Guarantee in accordance with Section 9(b).

**Section 23.** No modification of this Guarantee or waiver shall be valid unless in writing and signed by ERCOT and Guarantor and then only to the extent specifically set forth in such writing.

**Section 24.** ~~Section 24.~~ This Guarantee represents the final agreement between Guarantor and ERCOT with respect to the matters set forth herein. This Guarantee supersedes and terminates any prior guarantee to ERCOT by Guarantor on behalf of Participant.

*<signature page follows>*

Participant: \_\_\_\_\_  
\_\_\_\_\_ [Name of Participant]  
a \_\_\_\_\_  
[Type of entity/jurisdiction of organization]

Effective Date of Standard Form Market Participant Agreement: \_\_\_\_\_, 20\_\_<sup>“</sup>\_\_\_\_\_.

**“CREDIT SUPPORT AMOUNT”** is \$ \_\_\_\_\_

EXECUTED by GUARANTOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

\_\_\_\_\_  
[Name of Guarantor]  
a \_\_\_\_\_  
[Type of entity/jurisdiction of organization]

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

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Guarantor’s “Process Agent” in Texas:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

ACCEPTED by ERCOT this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

Address: 7620 Metro Center Drive  
Austin, Texas 78744  
[For notice and payment]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: 512.225.7020

\_\_\_\_\_

[Guarantor's signature on this Guaranty must comply with any form requirement or custom in Guarantor's country for a signature to bind Guarantor, including sealing or notarization if so required or customary, and must be accompanied by a signed secretary's or other appropriate officer or manager certificate attesting to the validity of the signature and the authorization of the person signing this Guaranty]



**FOREIGN MARKET PARTICIPANT GUARANTEE AGREEMENT**

This FOREIGN MARKET PARTICIPANT GUARANTEE AGREEMENT (this “Guarantee”) is made by the undersigned entity (together with its permitted successors and assigns, the “Guarantor”) in favor of ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. (together with its successors and assigns, “ERCOT”). The Guarantor and ERCOT shall be referred to herein collectively as “Parties”.

**Recitals**

A. ERCOT has entered into a Standard Form Market Participant Agreement (hereinafter the “Agreement”) as the same may be modified through the procedure set forth in the ERCOT Protocols) with the Market Participant identified on the signature page hereof (together with its permitted successors and permitted assigns, the “Participant”).

B. Pursuant to the Agreement and the related ERCOT Protocols (as such term is defined in the Agreement), ERCOT may extend credit to Participant from time to time.

C. It is expressly agreed and understood by and among Participant, ERCOT and Guarantor that: (1) the execution and delivery to ERCOT of this Guarantee is a condition precedent to ERCOT entering into the Agreement, the continuation of transactions with Participant pursuant to the Agreement and the extension of credit to Participant pursuant to the Agreement and the related ERCOT Protocols, (2) ERCOT has relied, and will continue to rely, upon this Guarantee and the terms and representations herein in entering into transactions as contemplated by the Agreement and the related ERCOT Protocols, and (3) ERCOT would not enter into the Agreement, or otherwise enter into or continue transactions with Participant, without this Guarantee.

D. Pursuant to that certain INSERT TITLE OF AGREEMENT (“Reimbursement Agreement”), Guarantor has contracted with Participant for the express purpose of providing this Guarantee for the benefit of ERCOT. The value of the consideration and benefit received and to be received by Guarantor, directly or indirectly, as a result of ERCOT entering into the Agreement and Guarantor executing and delivering this Guarantee, is reasonably worth at least as much as the liability and obligation of Guarantor hereunder, and the extension of credit to Participant pursuant to the Agreement has or may reasonably be expected to benefit the Guarantor directly or indirectly.

E. In connection with the foregoing, Guarantor desires to guarantee to ERCOT the prompt and full payment of the Obligations (as defined below) upon the terms and conditions contained in this Guarantee.

F. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement and/or ERCOT Protocols.

**Agreements**

**Section 1.** In consideration of credit heretofore or hereafter granted by ERCOT to Participant pursuant to the Agreement and/or the related ERCOT Protocols, Guarantor hereby unconditionally, absolutely and, subject to the ~~express~~ provisions of ~~Sections~~Section 9 and 20 hereof, irrevocably guarantees to ERCOT, as a primary obligor and not as a surety, the ~~punctual~~prompt and complete payment in full when due (subject to any grace period applicable to the Obligations (as defined below)), whether on a scheduled date, by lapse of time, by acceleration of maturity, or otherwise any and all of the Obligations. As used in this Guarantee, the term “Obligations” means, collectively:



(a) any and all indebtedness, liabilities and sums of money now or hereafter due and owing by Participant to ERCOT pursuant to, or arising under, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time by ERCOT;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys' fees) now or hereafter due and owing by Participant pursuant to the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Participant, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Participant to ERCOT in order to maintain the Agreement and the ability to conduct business with ERCOT notwithstanding the continuing right of Participant to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the ERCOT Protocols; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Participant to ERCOT described in clauses (a) through (c) of this sentence.

For purposes of this Guarantee, the term “***Debtor Relief Laws***” shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

**Section 2.** Notwithstanding the foregoing, the maximum amount of the Obligations for which Guarantor shall be liable personally hereunder shall not exceed the sum of the following from time to time: (a) the then-applicable Credit Support Amount (as defined below); plus (b) interest in respect of the Obligations (to the extent permitted by applicable state law, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides) for periods after the date on which written demand is made for payment hereunder by ERCOT; plus (c) Expenses (as defined below).

For purposes of this Guarantee, the term “***Credit Support Amount***” shall mean the amount designated as such on the signature page to this Guarantee as the same may be increased or decreased by written agreement between the Guarantor and ERCOT.

**Section 3.** Guarantor is liable for the full payment of the Obligations, subject to the express limitations provided in Section 2, as a primary obligor. This is **an unconditional, absolute, and** continuing guarantee of payment and not of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay the Obligations in full without assistance or support from Participant or any other person. Guarantor agrees that if all or any part of the Obligations shall not be punctually paid when due, whether on the scheduled payment date, by lapse of time, by acceleration of maturity or otherwise, Guarantor shall pay-, at or before 5:00 P.M. Central Prevailing Time on the ~~second~~**first** Business Day (as such term is defined in the ERCOT Protocols) immediately following the issuance of written demand by ERCOT to

Guarantor, the amount due on the Obligations to ERCOT in accordance with the terms hereof. ERCOT may, but shall have no obligation to, make such demand(s) at any time coincident with or after the time for payment of all or part of the Obligations, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not relieve, limit or discharge Guarantor in any respect of its obligations under this Guarantee. Guarantor hereby waives any condition or requirement with respect to any such demand under this Guarantee, and Guarantor agrees that Guarantor's obligations hereunder are absolute and immediate without requirement of presentment, protest, notice of protest, notice of nonpayment, notice of intent to accelerate, notice of acceleration or any other notice whatsoever (all of which are expressly waived), except as may expressly be required hereunder.

**Section 4.** If Guarantor is or becomes liable for any indebtedness or obligations owing by Participant to ERCOT other than through this Guarantee, the liability of Guarantor for such other indebtedness shall not in any manner be impaired or affected hereby or the limits contained herein, and the rights of ERCOT hereunder shall be cumulative of any and all other rights that ERCOT may have against Guarantor. If Participant is or becomes indebted to ERCOT for any indebtedness other than the Obligations, any payment received or recovery realized upon any such other indebtedness of Participant to ERCOT may be applied, in ERCOT's sole discretion, to indebtedness of Participant to ERCOT other than the Obligations, except to the extent paid by the Guarantor specifically in respect of the Obligations or as otherwise required by Law or written agreement of ERCOT to be applied to the Obligations. This Guarantee is independent of, and shall not be limited by, any other guaranty or collateral posted by or on behalf of Guarantor, in each instance whether now existing or hereafter given. Further, Guarantor's liability under this Guarantee is in addition to any and all other liability Guarantor may have in any other capacity, including, without limitation, its capacity as a general partner or managing member of Participant.

**Section 5.** Except as otherwise set forth in this Guarantee, Guarantor hereby expressly waives the following:

~~(a)~~(a) notice of acceptance of this Guarantee

(b) any right to terminate this Guarantee with respect to the Obligations except as set forth in Section 9 below;

~~(c)~~ any right to receive notice of any renewal, extension, modification, supplement or other change in the terms of the Agreement or the ERCOT Protocols;

~~(d)~~ any right relating to the timing, manner or conduct of ERCOT's enforcement of rights against Participant's assets or any collateral from time to time pledged by, or on behalf of, Participant to secure the Obligations;

~~(e)~~ if Guarantor and Participant (or any other person) have each pledged assets to secure the Obligations, any right to require ERCOT to proceed first against collateral pledged by Participant (or any other person) before proceeding against collateral pledged by Guarantor;

~~(f)~~ any claim for lack of consideration, and claim for setoff-, and/or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and/or fraud;

(~~fg~~) promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, acceptance or notice of acceptance of this Guarantee, presentment, protest, notice of protest, notice of dishonor, notice of the incurring by Participant of additional indebtedness, notice of any suit or other action by ERCOT against Participant or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Obligations and this Guarantee;

(~~gh~~) any and all rights to which it may be entitled by virtue of the laws of the State of Texas governing suretyship and guarantees, including, without limitation, any rights under Rule 31, Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies Code and Chapter 34 of the Texas Business and Commerce Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times;

(~~hi~~) any defense due to the Guarantor's failure to review the activities of Participant or any changes in the Agreement, the ERCOT Protocols or the related ERCOT market and operating guides (it being acknowledged and agreed that Guarantor bears all responsibility for monitoring the activities of the Participant in the ERCOT markets~~)-~~); and

(~~ij~~) any and all other demands and notices to Guarantor or Participant, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this Section constitute legal or equitable grounds for relieving or discharging Guarantor in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

In furtherance of the foregoing, Guarantor agrees that (i) it is not necessary for ERCOT, in order to enforce Guarantor's payment hereunder, first to proceed against Participant or resort to any collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to ERCOT with respect to the Obligations and (ii) the Agreement, the ERCOT Protocols, and any collateral, security or obligations of any other guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Guarantor.

**Section 6.** The ~~obligations~~liability of Guarantor hereunder ~~are~~is absolute and unconditional irrespective of the following:

(a) the invalidity or unenforceability of the Agreement, the ERCOT Protocols, and/or any related documents;

~~(b)~~ (b) any change in the terms of the Agreement or the ERCOT Protocols;

(c) the bankruptcy or insolvency of, or the effect of application of any Debtor Relief Laws to, the Participant;

(ed) any claim for lack of consideration, and claim for setoff-, and/or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and/or fraud;

(~~de~~) any substitution, release or exchange of any other guaranty of or security for any of the Obligations;

(~~ef~~) the existence or terms of any other agreements between Guarantor and any party, including Participant; and

(~~fg~~) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Guarantee that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances (except as otherwise set forth in this Guarantee).

**Section 7.** All rights of Guarantor to proceed against Participant in respect of payment hereunder, by subrogation or otherwise:

(a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations; and

(b) Guarantor may not exercise any rights it may acquire by way of subrogation under this Guarantee, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid. Subject to the subordination herein provided, with respect to any payments made by Guarantor to ERCOT under this Guarantee, Guarantor may succeed to any rights of Participant under the Agreement and the ERCOT Protocols. Guarantor does not waive or release any rights of subrogation, reimbursement or contribution which Guarantor may have after full and final payment of the then due and unpaid Obligations.

**Section 8.** All remedies, rights, powers and privileges granted to ERCOT pursuant to this Guarantee are cumulative, and not exclusive of any remedies provided by law. ERCOT may enforce this Guarantee from time to time, in whole or in part, as deemed necessary by ERCOT. The exercise of any or all such rights by ERCOT shall not reduce, limit, impair, discharge, terminate, or otherwise affect the liability of Guarantor. No failure or delay by ERCOT in exercising any remedy, right, power or privilege pursuant to this Guarantee shall operate as a waiver, and any such remedy, right, power or privilege may be exercised by ERCOT at any time, in whole or in part. No partial exercise of any such rights shall preclude further exercise or the exercise of any other remedy, right, power or privilege. No notice or demand by ERCOT upon Guarantor or any other guarantor of the Obligations shall preclude ERCOT from taking further action without notice or demand. ERCOT is further authorized to exercise any right of set off against Guarantor.

**Section 9.** The term of this Guarantee shall be for a period of one (1) year, commencing on the date set forth below and expiring one (1) year later.

(a) Notwithstanding the foregoing, this Guarantee shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, unless at least sixty (60) days prior to the expiration date the Guarantor sends written notice to ERCOT stating that Guarantor elects not to renew or extend this Guarantee;

(b) Notwithstanding the foregoing, this Guarantee may be terminated by Guarantor at any time by:

(i) a written notification of termination given by Guarantor to ERCOT, or

(ii) posting, or causing to be posted, in respect of the Obligations of Participant, a letter of credit in an amount and form determined by ERCOT in accordance with the ERCOT Protocols (the “Substitute Collateral”).

Termination pursuant to Section 9(b)(i) shall be effective thirty (30) days after the receipt by ERCOT of such written notification of termination. Termination pursuant to Section 9(b)(ii) shall be effective upon ERCOT’s confirmation of receipt of the Substitute Collateral;

(c) If Guarantor elects not to renew or extend this Guarantee in accordance with Section 9(a) or Guarantor terminates this Guarantee in accordance with Section 9(b), Guarantor shall remain liable for any Obligations hereunder arising before the effective date of nonrenewal, non-extension, or termination. Guarantor expressly agrees and acknowledges that this Guarantee applies ~~and is enforceable against~~ all Obligations arising or committed to prior to the effective date of the termination of this Guarantee, whether by nonrenewal, non-extension, or termination; and

(d) Notwithstanding any other provision in this Guarantee, this Guarantee shall continue in effect or shall automatically be reinstated if at any time payment, or any part thereof, made by Participant or Guarantor to ERCOT during the term of this Guarantee with respect to any of the Obligations is rescinded or set aside for any reason, or must otherwise be repaid by ERCOT as a result of application of any Debtor Relief Laws or otherwise.

**Section 10.** Guarantor hereby represents and warrants to ERCOT, which representations shall be deemed repeated continually during the term hereof that:

(a) this Guarantee is duly authorized and valid, and is binding upon and enforceable against Guarantor (subject, in each instance, to the effect of applicable Debtor Relief Laws) and the person executing this Guarantee on behalf of the Guarantor has full power and authority to bind the Guarantor to this Guarantee without any further authorization, approval, order, and/or consent being required;

(b) the execution and delivery of, and the performance by Guarantor of its obligations under this Guarantee do not contravene or conflict with (i) any provision of the Guarantor’s organizational, constituent or governing documents, or (ii) any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder;

(c) Guarantor (i) is duly organized, validly existing, and in good standing under the laws of the state of its organization and (ii) has full power and authority to enter into, and to perform its obligations under, this Guarantee;

(d) there is no litigation pending or, to the knowledge of Guarantor, threatened, before or by any tribunal against or affecting Guarantor which seeks to limit, prevent, enjoin or delay the Guarantor's performance of its obligations under this Guarantee, except as may be disclosed by the Guarantor to ERCOT or in the Guarantor's filing with the Securities and Exchange Commission;

(e) no bankruptcy or insolvency proceedings are pending or, to the best of Guarantor's knowledge, contemplated by or against Guarantor under any Debtor Relief Laws;

**(f) NEITHER ERCOT NOR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT HAS MADE ANY REPRESENTATION, WARRANTY OR STATEMENT TO GUARANTOR IN ORDER TO INDUCE GUARANTOR TO EXECUTE THIS GUARANTEE, AND GUARANTOR HEREBY EXPRESSLY WAIVES ANY CLAIM OF FRAUDULENT INDUCEMENT TO EXECUTE THIS GUARANTEE AND FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF ERCOT OR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT IN WAIVING SUCH A CLAIM;**

(g) any and all balance sheets, net worth statements, and other financial information with respect to Guarantor which have heretofore been given to ERCOT by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof;

(h) to the best of its knowledge, Guarantor is not in default under any agreements or contracts which may adversely affect Guarantor's ability to fulfill its obligations under this Guarantee;

(i) any indebtedness of Participant to Guarantor now or hereafter existing is hereby subordinated to the payment of the Obligations. As long as Participant is not in default on payment of the Obligations, Participant may make payments to Guarantor on any subordinated indebtedness in the ordinary course of business. After default by Participant on payment of the Obligations, any payments by Participant to Guarantor on account of such subordinated indebtedness shall be collected and received by Guarantor in trust for ERCOT and shall be paid over to ERCOT on account of the Obligations without impairing or releasing the obligations of Guarantor hereunder; ~~and~~

(j) Guarantor has, independently and without reliance upon ERCOT, and based upon such documents and information as Guarantor has deemed appropriate, made its own analysis and decision to enter into this Guarantee;

(k) Guarantor is subject to civil and commercial law with respect to its obligation under this Guaranty, has no immunity, sovereign or otherwise, from any suit or proceeding, the jurisdiction of any court, recoupment, setoff, or legal process (and hereby waives any defense of immunity to the extent available to Guarantor), this Guarantee is in proper legal form for enforcement against Guarantor, no filing, recording or notarization of any kind is required for enforcement of this Guarantee, no tax or other charge not already paid must be paid on or as a condition to enforceability of this Guaranty, and there are no taxes imposed by the country in which Guarantor is organized or has its

principal business office on or by virtue of Guarantor's execution or delivery of this Guarantee other than payable by Guarantor and which have already been paid.

**Section 11.** Guarantor hereby further covenants and agrees to ERCOT that:

(a) Guarantor will keep itself fully apprised of Participant's financial and business condition, and Guarantor shall be responsible, to the extent deemed necessary or advisable by Guarantor, for obtaining for itself information regarding Participant, the Agreement, the ERCOT Protocols and the ERCOT market and operating guides, and Guarantor acknowledges and agrees that ERCOT shall have no duty at any time to notify Guarantor of any information which ERCOT may have or acquire concerning Participant or to investigate or inform Guarantor of the financial or business condition or affairs of Participant or any change therein;

(b) Guarantor will provide ERCOT with any and all financial information required to be submitted under ERCOT's credit policy or the ERCOT Protocols and other financial information reasonably requested by ERCOT concerning or relating to Guarantor's financial condition within twenty (20) days after such written request by ERCOT. Other financial information may include, at a minimum: a balance sheet; an income and expense statement; a statement showing contingent liabilities; detailed cash flow statements; and any supporting schedules or documentation which ERCOT may require and is acceptable to ERCOT. The financial information provided shall be in accordance with generally accepted accounting principles; and

(c) Guarantor's representations, warranties, covenants, waivers and agreements set forth in this Guarantee are a material inducement to ERCOT to enter into the Agreement and extend credit to Participant and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Participant, Guarantor, any other person, or any security for all or any part of the Obligations.

**Section 12.** This Guarantee is executed and delivered as an incident to a transaction(s) negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the Laws of the State of Texas, ~~other than the~~ without regard to conflicts of laws principles ~~thereof~~.

Guarantor, for itself and its successors and assigns, hereby irrevocably agrees:

(a) (i) to submit to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) to waive, to the fullest extent permitted by Law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Guarantee brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, and (iii) that any legal action or proceeding against Guarantor arising out of or in connection with this Guarantee may be brought in any one of the foregoing courts. Guarantor hereby agrees that service of process upon Guarantor may be made by certified or registered mail, return receipt requested, at its address specified herein, or at the address of its Process Agent (as defined ~~in Section 25 hereof~~ below). Nothing herein shall affect the right of ERCOT to serve process in any other manner permitted by law or shall limit the right of ERCOT to

bring any action or proceeding against Guarantor or with respect to any of Guarantor's property in courts in other jurisdictions. Any action or proceeding by Guarantor against ERCOT shall be brought only in a court located in Travis County, Texas. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Guarantor acknowledges that these waivers are a material inducement to ERCOT's agreement to enter into the Agreement, that ERCOT has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in ~~Section 12~~this section are irrevocable on the part of both ERCOT and Guarantor and may not be modified without the agreement of both ERCOT and Guarantor in writing ~~as required pursuant to Section 23 below~~; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Guarantee; or, alternatively,

(b) to resolve any dispute relating in any manner to this Guarantee through binding arbitration. Arbitration proceedings shall be conducted pursuant to the International Arbitration Rules of the American Arbitration Association ~~(("AAA"))~~ in effect at the time the dispute first arises, by one (1) or three (3) arbitrator(s) appointed in accordance with such Rules within ten (10) calendar days of submission of the dispute. The number of arbitrators forming the arbitral panel shall be mutually agreed upon by the parties, but if they cannot agree, then the AAA shall determine same. The arbitration shall be held in such city as is agreed upon by the parties, but if they cannot agree, then such arbitration shall be held in Austin, State of Texas, United States of America. The arbitration shall be conducted simultaneously in English and in the primary language of Guarantor. The English version of this Guarantee shall be the controlling document in the arbitration proceeding. The procedural laws of the civil district courts of the State of Texas, U.S.A. shall govern the arbitral proceeding regardless of the situs of the arbitration. The arbitral panel shall set a limited time period and establish procedures designed to reduce the cost and time for discovery, while allowing the parties an adequate opportunity, in the discretion of the arbitral panel, to discover relevant information from opposing parties about the subject matter of the dispute. The arbitral panel shall award actual damages to the prevailing party, but may not award any special, indirect, punitive or consequential damages nor reasonable attorneys' fees and arbitration costs to either party. The arbitral award shall fully and finally settle the dispute. Recognition and enforcement of the arbitral award shall be governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Judgment upon the award may be entered in any court in any country, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the law of such jurisdiction may require or allow. Each party shall bear its own costs and fees, including, but not limited to its share of any arbitration fees, unless otherwise ordered by the arbitrator(s).

**BY AGREEING TO BINDING ARBITRATION, EACH OF THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM. FURTHERMORE, WITHOUT INTENDING IN ANY WAY TO LIMIT THIS AGREEMENT TO ARBITRATE, TO THE EXTENT ANY CLAIM IS NOT ARBITRATED, EACH OF THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT IT MAY HAVE**



**TO A TRIAL BY JURY IN RESPECT OF SUCH CLAIM. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS GUARANTEE.**

**Section 13.** If any provision or any part of any provision of this Guarantee or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Guarantee nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other persons or circumstances, as the case may be, rather shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

**Section 14.** From time to time, at the reasonable request of ERCOT, Guarantor will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the contents of this Guarantee; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in ERCOT's opinion, (i) to carry out more effectively the purposes of this Guarantee and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Guarantee for the benefit of ERCOT, including reaffirmation of the obligations hereunder from time to time upon the renewal hereof and the applicability of any changes in the Credit Support Amount.

**Section 15.** Time is of the essence in this Guarantee with respect to all of Guarantor's obligations hereunder.

**Section 16.** The recitals and introductory paragraphs hereof are a part hereof, form a basis for this Guarantee and shall be considered *prima facie* evidence of the facts and documents referred to therein.

**Section 17.** The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections or Subsections or any provisions hereof. Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Guarantee. As such, the terms of this Guarantee shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Guarantee or any amendments, modifications, or exhibits.

**Section 18.** Each of Guarantor and ERCOT hereby agrees that:

(a) All sums payable under this Guarantee shall be by wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. All payments shall be remitted to ERCOT's bank account in the United States as designated by written notice to Guarantor, whether through demand for payment or otherwise.

~~(b)~~ All payments to ERCOT by Guarantor shall be free and clear of, and without deduction or withholding for or on account of any present or future income, stamp or other taxes or levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any governmental authority (collectively the "Taxes"). If any Taxes are required to be withheld from any amounts payable by Guarantor under this Guarantee, the amounts payable shall be increased to the

extent necessary to provide the full amount (after payment of all Taxes) owing by Guarantor under this Guaranty.

(c) All references in this Guarantee to sums denominated in dollars or with the symbol “\$” refer to the lawful currency of the United States of America. If, for the purposes of obtaining or enforcing judgment against Guarantor in any court in any jurisdiction in connection with this Guarantee, it becomes necessary to convert into any other currency (such other currency being referred to as the “**Judgment Currency**”) an amount due in any currency (“**Obligation Currency**”) other than the Judgment Currency under this Guarantee, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of the State of Texas or in the courts of any other jurisdiction that would give effect to such conversion being made on such date, or, the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this paragraph being hereinafter referred to as the “**Judgment Conversion Date**”). If, in the case of any proceeding in the court of any jurisdiction referred to in the preceding sentence, there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, Guarantor shall pay such additional amount (if any and in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. The term “rate of exchange” in this paragraph means the spot rate of exchange at which ERCOT would, on the relevant date at or about 12:00 noon, be prepared to sell the Obligation Currency against the Judgment Currency.

**Section 19.** EACH OF GUARANTOR AND ERCOT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTEE OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY ERCOT OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ERCOT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTEE. IT IS AGREED AND UNDERSTOOD BY EACH OF GUARANTOR AND ERCOT THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND ERCOT, AND EACH OF GUARANTOR AND ERCOT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF GUARANTOR AND ERCOT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS

WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**Section 20.** Guarantor agrees to pay to ERCOT, upon demand, all reasonable out-of-pocket costs and expenses, including, without limitation, reasonable third-party ~~attorneys'~~attorneys' fees, that may be incurred by ERCOT in attempting to ~~cause~~enforce satisfaction of ~~Guarantor's~~Guarantor's liability under this Guarantee ("Expenses").

**Section 21.** All notices or other communications hereunder shall be made by hand delivery, by next day delivery service or by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that facsimile was received) to the addresses for ERCOT and Guarantor set forth on the signature page of this Guarantee. For purposes of giving any required notices hereunder, the addresses, telephone numbers, and facsimile numbers of the Parties are set forth on the signature page of this Guarantee. Such information regarding a party may be changed by such party by written notice to the other party. In addition, Guarantor shall maintain, at all times, a registered agent in Texas (the "Process Agent"). Guarantor hereby irrevocably appoints its Process Agent as its true and lawful agent and attorney-in-fact in its name, place and stead to accept such service of any and all writs, processes and summonses. Guarantor further agrees that the failure of its Process Agent to give any notice of any such service of process to Guarantor shall not impair or affect the validity of such service or of any judgment based thereon. Guarantor consents and agrees that such service shall constitute in every respect, valid and effective service. Guarantor's Process Agent in Texas is set forth on the signature page of this Guarantee, and Guarantor shall provide ERCOT with written notification of any change of its Process Agent or the address thereof.

**Section 22.** This Guarantee shall bind the successors and assigns of Guarantor and shall inure to the benefit of ERCOT, its successors and assigns pursuant to the terms of the Agreement.

(a) ERCOT shall be permitted to assign its rights and delegate its obligations under this Guarantee, in whole or in part, without the consent of Guarantor or Participant.

(b) The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without the prior written consent of ERCOT ~~---~~. Any purported assignment or delegation absent ERCOT's written consent is void~~-~~.

(c) Subject to the written consent of ERCOT in its sole discretion, Guarantor may assign and delegate all of the Guarantor's rights and obligations hereunder to a partnership, corporation, trust or other entity that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise~~-~~. Upon Guarantor's receipt of ERCOT's written consent and the execution by assignee of any and all documents required by ERCOT, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. If ERCOT does not consent to the assignment (which, for the avoidance of doubt, shall not constitute a default under this Guarantee), ERCOT shall provide written notice to Guarantor that it does not consent to the assignment and upon receipt of such written notice, Guarantor shall be permitted to terminate the Guarantee in accordance with Section 9(b).

**Section 23.** No modification of this Guarantee or waiver shall be valid unless in writing and signed by ERCOT and Guarantor and then only to the extent specifically set forth in such writing.

**Section 24.** This Guarantee represents the final agreement between Guarantor and ERCOT with respect to the matters set forth herein. This Guarantee supersedes and terminates any prior guarantee to ERCOT by Guarantor on behalf of Participant.

*<signature page follows>*

Participant: \_\_\_\_\_  
[Name of Participant]  
a \_\_\_\_\_  
[Type of entity/jurisdiction of organization]

Effective Date of Standard Form Market Participant Agreement: \_\_\_\_\_, ~~20020~~ \_\_\_\_\_.

**“CREDIT SUPPORT AMOUNT”** is: \$ \_\_\_\_\_ \$

EXECUTED by GUARANTOR this \_\_\_\_\_ day of \_\_\_\_\_, ~~200, 20~~ \_\_\_\_\_ :

\_\_\_\_\_  
[Name of Guarantor] Address: \_\_\_\_\_  
a \_\_\_\_\_  
[Type of entity/jurisdiction of organization] Telephone: \_\_\_\_\_

By: \_\_\_\_\_ Facsimile: \_\_\_\_\_  
Email \_\_\_\_\_ Address: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Guarantor’s “Process Agent” in Texas:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

ACCEPTED by ERCOT this \_\_\_\_\_ day of \_\_\_\_\_, ~~20020~~ \_\_\_\_\_ :

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. Address: 7620 Metro Center Drive  
Austin, Texas 78744  
[For notice and payment]

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Title: \_\_\_\_\_ Facsimile: 512.225.7020

[Guarantor's signature on this Guaranty must comply with any form requirement or custom in Guarantor's country for a signature to bind Guarantor, including sealing or notarization if so required or customary, and must be accompanied by a signed secretary's or other appropriate officer or manager certificate attesting to the validity of the signature and the authorization of the person signing this Guaranty]

**Surety Bond No.** \_\_\_\_\_

**SURETY BOND**

KNOW ALL PERSONS BY THESE PRESENTS that we, *[Insert Name of Market Participant Here]* \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_, as Principal (the "Principal"), and *[Insert Name of Surety Here]* \_\_\_\_\_, a \_\_\_\_\_, organized under the laws of the State of \_\_\_\_\_, as surety (the "Surety"), are held and firmly bound unto the ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., a Texas nonprofit corporation ("ERCOT" or "Obligee"), in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in lawful money of the United States of America (the "Amount") well and truly to be paid to the Obligee, and we bind ourselves, our permitted successors, and permitted assigns, jointly and severally, firmly by the terms set forth in this Surety Bond (the "Surety Bond" or "Bond").

WHEREAS, pursuant to, and subject to the terms of, that certain Standard Form Market Participant Agreement (the "Standard Form Agreement" or "Agreement" as the same may be amended, supplemented, or modified from time to time) between the Principal (sometimes referred to herein as the "Market Participant" or "Counter-Party") and ERCOT, the Market Participant has agreed to terms and conditions of the ERCOT Protocols (as such term is defined in the Standard Form Agreement), as they may be amended, supplemented or modified from time to time (the "ERCOT Protocols");

WHEREAS, pursuant to the ERCOT Protocols, a Market Participant that does not meet certain credit worthiness requirements is required to provide other forms of credit support;

WHEREAS, the Principal does not meet ERCOT's credit worthiness requirements and has agreed to provide this Bond as credit support (in addition to any other forms of credit support provided to ERCOT); and

WHEREAS, Surety, an insurer authorized to do business in the State of Texas, has agreed to execute and deliver this Bond as inducement for ERCOT to enter into the Standard Form Agreement with  
Principal;

WHEREAS, it is expressly agreed and understood by and among Principal, ERCOT and Surety that: (1) the execution and delivery to ERCOT of this Bond is a condition precedent to ERCOT entering into the Standard Form Agreement, a condition precedent to the continuation of transactions with Principal pursuant to the Standard Form Agreement, and a condition precedent to the extension of credit to Principal pursuant to the Standard Form Agreement and the ERCOT Protocols, (2) ERCOT has relied, and will continue to rely, upon this Bond and the terms and representations set forth herein in entering into transactions contemplated by the Standard Form Agreement and the ERCOT Protocols, and (3) ERCOT would not enter into the Standard Form Agreement, or otherwise enter into or continue transactions with Principal, without this Bond.

NOW THEREFORE, in consideration of the premises and mutual covenants contained in this Bond and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Principal and Surety agrees as follows:

**Section 1. Definitions.** Each capitalized term used herein and not otherwise defined in this Bond shall have the meaning assigned to it in the Standard Form Agreement or ERCOT Protocols.

## Section 2. The Bond.

2.01 The Bond. Surety hereby unconditionally, absolutely, and irrevocably guarantees to ERCOT and its successors and assigns the full punctual payment and performance by the Principal of all of the Principal's payment obligations to ERCOT under the Standard Form Agreement and/or ERCOT Protocols (the "Obligations" or "Obligation".") in an aggregate amount that is not greater than Amount of this Bond. As used in this Surety Bond, the term Obligations or Obligation means, collectively, the following:

(a) any and all indebtedness, liabilities and sums of money now or hereafter due and owing by Principal to ERCOT pursuant to, or arising under, the Standard Form Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time by ERCOT;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys' fees) now or hereafter due and owing by Principal pursuant to the Standard Form Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Principal, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Principal to ERCOT in order to maintain the Standard Form Agreement and the ability to conduct business with ERCOT notwithstanding the continuing right of Principal to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the ERCOT Protocols; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Principal to ERCOT described in clauses (a) through (c) above.

For purposes of this Bond, the term "Debtor Relief Laws" shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

2.02 Obligations Unconditional. The ~~obligations~~Obligations (including, without limitation, the Bond) of the Surety under Section 2.01 of this Bond are a guarantee for payment not of collection, and are absolute and unconditional irrespective of (i) the value, genuineness, validity, regularity or enforceability of the Standard Form Agreement, (ii) any substitution, release or exchange of any other guaranty of or security for any of the Obligations, (iii) the existence or terms of any other agreements between Surety and any party, including the Principal, and, (iv) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety, it being the intent of this Section 2.02 that the ~~obligations~~Obligations of the Surety under this Bond shall be absolute and unconditional under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not



alter or impair the liability of Surety under this Bond (which shall remain absolute and unconditional as described above):

(a) if at any time or from time to time, without notice to Surety, the Standard Form Agreement, the ERCOT Protocols, or the Principal's Obligations thereunder are amended, increased, supplemented, or modified; or

(b) if at any time or from time to time, without notice to Surety, the time for any performance of, or compliance with, any of the Obligations shall be extended, renewed, modified or supplemented, or such performance or compliance shall be waived.

2.03 Payment. Surety is responsible for and shall pay to ERCOT all or any portion of the Obligations, in an aggregate amount that is not greater than Amount of this Bond, and shall make any and all required payments, on or before 5:00 p.m., local time in Austin, Texas, on the ~~second (2<sup>nd</sup>)~~ first (1<sup>st</sup>) Business Day after receiving notice from ERCOT that the Principal has failed to meet any of the Obligations or a breach or default has occurred under the Standard Form Agreement. Business Day means any day other than a Saturday, Sunday or a day on which banks in Austin, Texas, are authorized or required by law to close.

A demand for payment by the Obligee shall be presented to the Surety in the form of a Demand for Payment similar to that shown in Exhibit A to this Bond. No other documents and/or information whatsoever is required to effectuate payment on this Bond by Surety other than the demand for payment in form similar to that set forth in Exhibit A to this Bond. The demand rights in this paragraph are in addition to any other rights under this Bond.

It is a condition of this Bond that Surety shall maintain a corporate debt rating not less than that required by the ERCOT Protocols as of the Date of Issuance of this Bond. In the event that Surety does not maintain the minimum corporate debt rating required by the ERCOT Protocols, ERCOT may demand payment up to the entire Amount of this Bond upon presentation of a demand for payment similar to that shown in Exhibit B to this Bond. No other documents and/or information whatsoever is required to effectuate payment on this Bond by Surety other than the demand for payment in form similar to that set forth in Exhibit B to this Bond. The demand rights in this paragraph are in addition to any other rights under this Bond.

ERCOT may, but shall have no obligation to, make demand for payment under this Bond at any time coincident with or after the time for payment of all or part of the Obligations or an event of default or breach, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations, or an event of default or breach. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not relieve, limit or discharge Surety in any respect of its ~~obligations~~ Obligations under this Bond.

Funds may be demanded by ERCOT under this Bond, from time to time, in one or more demands or draws, in amounts not exceeding in the aggregate the Amount specified above. Partial demands are permitted and shall reduce the Amount thereafter available for demand under this Bond.

All sums payable due by Surety under this Bond shall be by wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal

tender for the payment of public and private debts. All payments shall be remitted to ERCOT's account as designated by written notice to Surety.

2.04 Reinstatement. The ~~obligations~~Obligations (including, without limitation, the Bond) of Surety under this Section 2 shall be automatically reinstated if and to the extent that, for any reason, any payment or performance by or on behalf of the Principal in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any bankruptcy, reorganization, receivership, insolvency or other debtor-relief proceeding, and Surety agrees that it will indemnify ERCOT on demand for all reasonable costs and expenses (including, without limitation, attorneys' fees) incurred by ERCOT in connection with such rescission or restoration, including, without limitation, any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

2.05 Subrogation. Surety hereby agrees that until the payment and satisfaction in full of all Obligations, it shall not exercise any right or remedy arising by reason of any performance by it of its obligations in Section 2.01 of this Bond, whether by subrogation or otherwise, against the Principal or any other surety of any of the Obligations.

2.06 Remedies.

(a) Surety agrees that, as between Surety and ERCOT, the Obligations may be declared to be forthwith due and payable as provided in the Standard Form Agreement or the ERCOT Protocols for purposes of Section 2.01 of this Bond notwithstanding any stay, injunction or other prohibition preventing such declaration (or such Obligation from becoming automatically due and payable) as against the Principal and that, in the event of such declaration (or such Obligations being deemed to have become automatically due and payable), such Obligations (whether or not due and payable by the Principal) shall forthwith become due and payable by Surety for purposes of such Section 2.01.

(b) Without limitation on the rights, remedies, powers and privileges of ERCOT under Section 2, if any breach or default shall occur under the Standard Form Agreement or ERCOT Protocols, the Obligations shall forthwith become due and payable by Surety for purposes of Section 2.01.

2.07 Term, Surety Nonrenewal, and ERCOT ~~and~~ Termination. This Bond shall be effective upon the Date of Issuance set forth below. The term of this Bond shall be for a period of one (1) year, commencing on the Date of Issuance and expiring one (1) year later.

Notwithstanding the foregoing, this Bond shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, unless at least sixty (60) days prior to the expiration date the Surety sends written notice to ERCOT stating that Surety elects not to renew and extend this Bond. If Surety notifies ERCOT in writing that Surety elects to terminate this Bond and Principal fails to provide an acceptable form of replacement security to ERCOT at least thirty (30) days prior to the termination of this Bond, Surety shall, upon demand, without any notice other than such demand, and without any further action by ERCOT deliver cash collateral to ERCOT not later than the next business day in the amount of the full remaining value of this Bond as security for Principal's Obligations. Cash collateral provided to ERCOT by Surety and not applied by ERCOT to satisfy unpaid Obligations shall be returned to Surety at such time as: (i) Principal provides adequate replacement security to ERCOT or (ii) Principal ceases to be an ERCOT customer and all amounts owed by Principal

to ERCOT are paid in full, including amounts owed as a result of true-ups or other corrections to previous settlements.

Notwithstanding the foregoing, ERCOT shall have the immediate right, but not the obligation, to terminate this Bond upon written notice to Surety and Principal (a) if any of the representations and warranties of the Surety contained in Section 4 are no longer true and correct, or (b) upon the Surety's failure to promptly deliver any information requested pursuant to Section 5.

2.08 Surety Continuing Liability. If Surety elects not to renew this Bond or ERCOT terminates this Bond, Surety agrees and acknowledges that it shall remain liable for any Obligations arising before the effective date of Surety's nonrenewal or ERCOT's termination of this Bond. Surety agrees and acknowledges that this Bond applies to all Obligations arising or committed to prior to the effective date of Surety's ~~the~~ nonrenewal or ERCOT's termination ~~Bond~~.

**Section 3. Acknowledgements, Waivers and Consents.** In full recognition and in furtherance of the foregoing, the Surety agrees that:

3.01 Without affecting the enforceability or effectiveness of this Bond in accordance with its terms and without affecting, limiting, reducing, discharging or terminating the liability of the Surety, or the rights, remedies, powers and privileges of the Obligees under this Bond, the Obligees may, at any time and from time to time and without notice or demand of any kind or nature whatsoever to Surety:

(a) amend, supplement, modify, extend, renew, waive, accelerate or otherwise change the time for payment or performance of, or the terms of, all or any part of the Principal's Obligations (including without limitation any increase or decrease in the rate or rates of interest);

(b) amend, supplement, modify, extend, renew, waive or otherwise change, or enter into or give, any agreement, security document, guarantee, approval, consent or other instrument relating to all or any part of the Principal's Obligations;

(c) accept or enter into new or additional agreements, security documents, guarantees (including without limitation letters of credit) or other instruments in addition to, in exchange for or relative to the Standard Form Agreement or any document now or in the future evidencing or serving as collateral provided by the Principal in accordance with the ERCOT Protocols;

(d) accept or receive partial payments or performance on the defaulting Principal's Obligations (whether as a result of the exercise of any right, remedy, power or privilege or otherwise);

(e) accept, receive and hold any additional collateral for all or any part of the defaulting Principal's Obligations;

(f) release, reconvey, terminate, waive, abandon, allow to lapse or expire, fail to perfect, subordinate, exchange, substitute, transfer, foreclose upon or enforce any collateral, security documents or guarantees (including without limitation letters of credit) for or relative to all or any part of the defaulting Principal's Obligations;

(g) apply any collateral or the proceeds of any Principal-specific collateral or other collateral to all or any part of the defaulting Principal's Obligations in such manner and extent as the Obligee may in its discretion determine;

(h) release any Entity from any personal liability with respect to all or any part of the defaulting Principal's Obligations;

(i) settle, compromise, release, liquidate or enforce upon such terms and in such manner as the Obligee may determine or as applicable law may dictate all or any part of the defaulting Principal's Obligations or any collateral on or guarantee of (including without limitation any letter of credit issued with respect to) all or any part of such Principal's Obligations;

(j) consent to the merger or consolidation of, the sale of substantial assets by, or other restructuring or termination of the corporate existence of the defaulting Principal; and

(k) enter into such other transactions or business dealings with the defaulting Principal (or any of its affiliates) or any other guarantor or Surety of all or any part of such Principal's Obligations as the Obligee may desire.

3.02 The enforceability and effectiveness of this Bond and the liability of the Surety, and the rights, remedies, powers and privileges of the Obligee, under this Bond shall not be affected, limited, reduced, discharged or terminated, and the Surety hereby expressly waives to the fullest extent permitted by law any defense now or in the future arising, by reason of:

(a) the illegality, invalidity or unenforceability of all or any part of the defaulting Principal's Obligations, any Standard Form Agreement, such Principal's Principal-specific collateral or any agreement, security document, guarantee or other instrument relative to all or any part of the defaulting Principal's Obligations;

(b) any disability or other defense (including, without limitation, the defense of force majeure force majeure, breach of contract, breach of warranty, and fraud) with respect to all or any part of the Principal's Obligations or any of their guarantors;

(c) any defense due to the Surety's failure to review the activities of Principal or any changes in the Standard Form Agreement, the ERCOT Protocols or the related ERCOT market and operating guides (it being acknowledged and agreed that Surety bears all responsibility for monitoring the activities of the Principal);

(d) the cessation, for any cause whatsoever, of the liability of the Principal or any guarantor of all or any part of the Principal's Obligations (other than, subject to Section 2.03, Reinstatement, by reason of the full payment and performance of all Obligations of the Principal);

(e) any failure of the Obligee to exhaust any cash collateral for all or any part of the Obligations, to pursue or exhaust any right, remedy, power or privilege it may have against Principal, any other guarantor of all or any part of the Obligations (including without limitation any issuer of any letter of credit), or any other Entity or to take any action

whatsoever to mitigate or reduce the Surety's liability under this Bond, the Obligee is not under any obligation to take any such action notwithstanding the fact that all or any part of such Principal's Obligations may be due and payable and that such Principal may be in default of its Obligations;

(f) any failure of the Obligee to comply with applicable laws in connection with the disposition of any cash collateral for all or any part of the defaulting Principal's Obligations;

(g) any act or omission of the Obligee or any other Entity that directly or indirectly results in or aids the discharge or release of all or any part of the defaulting Principal's Obligations or any security or guarantee (including without limitation any letter of credit) for all or any part of such Obligations by operation of law or otherwise;

(h) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal's obligation;

(i) any and all rights to which Surety may be entitled by virtue of the laws of the State of Texas (or any other state) governing suretyship and guarantees, including, without limitation, any rights under Rule 31 of the Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies Code, or Chapter 34 of the Texas Business and Commerce Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times;

(j) the possibility that the Obligations of the defaulting Principal to the Obligee may at any time and from time to time exceed the aggregate liability of the Surety under this Bond;

(k) any counterclaim, set-off (including as permitted by 11 U.S.C. § 362) or other claim which the defaulting Principal has or alleges to have with respect to all or any part of its Obligations;

(l) any action or inaction of the Obligee in any bankruptcy or other proceeding with respect to any Entity, including Principal;

(m) the avoidance of any lien in favor of the Obligee for any reason;

(n) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Entity, including any discharge of, or bar or stay against collecting, all or any part of the defaulting Principal's Obligations (or any interest on all or any part of the defaulting Principal's Obligations) in or as a result of any such proceeding;

(o) Principal's breach of any obligation owed to Surety, whether by contract or otherwise, including, without limitation, Principal's failure to pay any premiums due Surety;

(p) any action taken by the Obligee that is authorized in this Bond or by any other provision of any Standard Form Agreement or any omission to take any such action;

(q) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, including by reason of existing law and any future judicial decisions or legislation or of any provisions of the laws of any other jurisdiction; or

(r) any and all other demands and notices to Surety or Principal, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this section constitute legal or equitable grounds for relieving or discharging Surety in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

In furtherance of the foregoing, Surety agrees that (i) it is not necessary for ERCOT, in order to enforce Surety's payment ~~obligations~~Obligations hereunder, first to proceed against Principal or resort to any other collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to ERCOT with respect to the Obligations, and (ii) the Standard Form Agreement, the ERCOT Protocols, and any collateral, security or obligations of any guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Surety and without in any way affecting the Obligations of Surety under this Bond.

3.03 The Surety expressly waives, for the benefit of the Obligee, all rights to set-off amounts due by the Obligee to the Principal, all counterclaims, and all promptness, diligence, presentment, protest, notice of protest, notice of dishonor, notice of nonpayment or nonperformance, notice of any default, demand of payment, notice of intent to accelerate, notice of acceleration, and all other notices of any kind or nature whatsoever with respect to the Principal's Obligations, and all notices of acceptance of this Bond or of the existence, creation, incurring or assumption of new or additional Obligations.

3.04 Nothing in this Bond will, or will be construed or applied to, modify the Principal's Obligations under the Standard Form Agreement or the ERCOT Protocols.

3.05 Principal shall pay all costs and fees for this Bond. The Principal's failure to pay any such costs and fees shall not be grounds for termination of this Bond. All rights of Surety to proceed against Principal in respect of payment hereunder, by subrogation or otherwise:

(a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations; and

(b) Surety may not exercise any rights it may acquire by way of subrogation under this Bond, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid.

**Section 4. Representations and Warranties.** Surety represents and warrants to ERCOT that it is authorized to engage in the Surety business in Texas and:

4.01 Credit Rating. As of the Date of Issuance and for so long as this Bond shall remain in effect, the Surety has, and expects to continue to satisfy and maintain, a minimum corporate ~~debt~~ credit rating of \_\_\_\_\_“A-” with S&P, “A-” with Fitch, or ~~better~~“A3” with Moody’s or as otherwise required under the ERCOT Protocols. Surety shall notify Obligees immediately if its credit rating is decreased.

4.02 Corporate Existence. The Surety (a) is a corporation duly organized and validly existing under the laws of the jurisdiction of its incorporation, (b) has all requisite corporate power and authority necessary to own its assets and carry on its business as now being or as proposed to be conducted, and (c) is qualified to do business in Texas and all jurisdictions in which the nature of the business conducted but it makes such qualification necessary and where failure to so qualify would have a material adverse effect on the consolidated financial condition, operations, business or prospects, taken as a whole, of Surety and its subsidiaries.

4.03 Litigation. There are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority, or agency, now pending or (to the best knowledge of Surety) threatened against Surety or any of its subsidiaries that, if adversely determined, could (either individually or in the aggregate) have a material adverse effect on the consolidated financial condition, operations, business or prospects, taken as a whole, of Surety and its subsidiaries.

4.04 No Breach. Neither the execution and delivery of this Bond, nor consummation of the transactions contemplated in this Bond, nor compliance with the terms and provisions of this Bond, will conflict with, result in a breach of, or require any consent under, the charter or by-laws of Surety, any applicable law or regulation, any order, writ, injunction or decree of any court or governmental authority or agency, any agreement or instrument to which Surety or any of its subsidiaries is a party or by which any of them is bound or to which any of them is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon of the revenues or assets of Surety or any of its subsidiaries pursuant to the terms of any such agreement or instrument.

4.05 Corporate Action. Surety has all necessary corporate power and authority to execute, deliver and perform its ~~obligations~~Obligations under this Bond; the execution, delivery and performance by Surety of this Bond has been duly authorized by all necessary corporate action on its part; this Bond is binding upon and enforceable against Surety; the person executing this Bond on behalf of the Surety has full power and authority to bind the Surety to this Bond; and this Bond has been duly and validly executed and delivered by Surety and constitutes ~~its~~a legal, valid and binding obligation of Surety, enforceable in accordance with its terms.

4.06 Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency including, but not limited to, the Texas Commissioner of Insurance, or any securities exchange, are necessary for the execution, delivery or performance by Surety of this Bond or for the validity or enforceability of this Bond. In this regard, Surety warrants and represents that it has all necessary authorizations, approvals, and consents of all governmental or regulatory authorities or agencies including, but not limited to, the Texas Commissioner of Insurance, or any securities exchange, for the execution, delivery and performance by Surety of this Bond.

4.07 No Defaults. To the best of its knowledge Surety is not in default or breach under any agreements or contracts which may adversely affect Surety’s ability to fulfill its ~~obligations~~Obligations under this Bond. Furthermore, Surety is not aware of any fact that would adversely affect Surety’s ability to perform its Obligations under this Bond.

4.08 Independent Review. Surety has, independently and without reliance upon ERCOT, and based upon such documents and information as Surety has deemed appropriate, made its own analysis and decision to enter into this Bond.

4.09 No Duty by ERCOT to Advise Surety ~~of~~about Principal. Surety will keep itself fully apprised of Principal's financial and business condition, and Surety shall be solely responsible, to the extent deemed necessary or advisable by Surety, for obtaining for itself information regarding Principal, the Standard Form Agreement, the ERCOT Protocols and the ERCOT market and operating guides, and Surety acknowledges and agrees that ERCOT shall have no duty at any time to notify Surety of any information which ERCOT may have or acquire concerning Principal or to investigate or inform Surety of the financial or business condition or affairs of Principal or any change therein.

4.10 No Reliance on ERCOT. NEITHER ERCOT NOR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT HAS MADE ANY REPRESENTATION, WARRANTY OR STATEMENT TO SURETY IN ORDER TO INDUCE SURETY TO EXECUTE THIS BOND, AND SURETY HEREBY EXPRESSLY WAIVES ANY CLAIM OF MISREPRESENTATION OR FRAUDULENT INDUCEMENT TO EXECUTE THIS BOND AND FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF ERCOT OR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT IN WAIVING SUCH A CLAIM.

Surety's representations, warranties, covenants, waivers and agreements set forth in this Bond are a material inducement to ERCOT to enter into the Standard Form Agreement and extend credit to Principal and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Principal, Surety, any other person, or any security for all or any part of the Obligations.

**Section 5. Delivery of Information.** Surety shall deliver to ERCOT:

~~5.01~~ (a) promptly after Surety knows or has reason to believe that any breach or default by it under this Bond or by the Principal under the Standard Form Agreement or ERCOT Protocols has occurred, a notice of such breach or default describing the same in reasonable detail and, together with such notice or as soon thereafter as possible, a description of the action that Surety has taken or proposes to take with respect thereto;

~~5.02~~ (b) promptly after Surety knows or has reason to believe, but no later than the next Business Day, that the representations or warranties of the Surety contained in this Bond are no longer true and correct; and

~~5.03~~ (c) from time to time, such other information regarding the financial condition, operations, or business of Surety or the Principal as ERCOT may reasonably request.

**Section 6. Miscellaneous.**

6.01 Dispute Resolution. Except as otherwise set forth herein, Surety acknowledges and agrees that any dispute under this Bond shall be resolved in accordance with the Alternative Dispute Resolution Provisions set forth in Section 20 of the ERCOT Protocols as it may be amended, supplemented or modified from time to time (references to the Market Participant in such Section 20 shall be deemed to be references to Surety).



6.02 No Waiver. No failure on the part of ERCOT to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy under this Bond shall operate as a waiver thereof, nor shall any single or partial exercise by ERCOT of any right, power or remedy under this Bond preclude any other or further exercise thereof or the exercise of any other rights, power or remedy. The remedies in this Bond are cumulative and are not exclusive of any remedies provided by law.

6.03 Notices. All notices, requests, consents and demands under this Bond shall be in writing and telecopied to the intended recipient as set forth below or at such other address as shall be designated by Surety or ERCOT, as appropriate. Except as otherwise provided in this Bond, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

Notice to ERCOT: Electric Reliability Council of Texas, Inc.  
7620 Metro Center Blvd.  
Austin, Texas 78744  
Attention: Finance  
Telecopier: (512) 225-7820

Notice to Surety: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telecopier: \_\_\_\_\_

6.04 Costs and Expenses. Surety agrees to pay all of ERCOT's costs and expenses (including, without limitation, reasonable attorneys' fees) which may be incurred in connection with the collection or enforcement of the Obligations or any part of them or any term of this Bond, including all such costs and expenses incurred by ERCOT in any legal action, reference or dispute resolution proceeding. The recovery of such costs and expenses incurred by ERCOT in connection with the enforcement of this Bond against Surety shall be in addition to Surety's ~~obligation~~Obligations under Section 2.01.

6.05 Amendments and Waivers. This Bond represents the entire agreement between Surety and ERCOT and supercedes all prior agreements. There are no oral agreements. The terms of this Bond may be waived, altered or amended only by an instrument in writing duly executed by Surety and ERCOT. Any waiver or consent given shall be effective only in the specific instance and for the specific purpose for which it was given. Any such amendment or waiver shall be binding upon ERCOT, each holder of any of the ~~guaranteed~~Obligations and Surety.

6.06 Successors and Assigns. This bond shall be binding upon and inure to the benefit of the respective successors and assigns of Surety, ERCOT and each subsequent holder of any of the ~~guaranteed~~ObligationObligations; provided, however, that Surety shall not be permitted to assign or transfer its rights and Obligations under this Bond without the prior written consent of ERCOT. ERCOT shall be permitted to assign its rights and remedies hereunder, in whole or in part, to with the consent of Principal or Surety.

6.07 Captions. The captions and section headings appearing in this Bond are included solely for convenience of reference and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of any provisions hereof. Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Bond.

As such, the terms of this Bond shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Bond or any amendments, modifications, or exhibits.

6.08 Governing Law and Venue. This Bond is executed and delivered as an incident to a transaction(s) negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the Laws of the State of Texas, ~~other than the conflicts~~ without regard to conflict of laws principles ~~thereof~~. Surety, for itself and its successors and assigns, hereby irrevocably (i) submits to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) waives, to the fullest extent permitted by Law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Bond brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, and (iii) agrees that any legal action or proceeding against Surety arising out of or in connection with this Bond may be brought in any one of the foregoing courts. Surety hereby agrees that service of process upon Surety may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of ERCOT to serve process in any other manner permitted by law or shall limit the right of ERCOT to bring any action or proceeding against Surety or with respect to any of Surety's property in courts in other jurisdictions. Any action or proceeding by Surety against ERCOT shall be brought only in a court located in Travis County, Texas. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Surety acknowledges that these waivers are a material inducement to ERCOT's agreement to ~~enter into the Agreement~~ accept this Bond, that ERCOT has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this section are irrevocable on the part of both Surety and ERCOT and may not be modified without the agreement of both Surety and ERCOT in writing; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Bond.

6.09 Severability. If any provision or any part of any provision of this Bond or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Bond nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Bond, or the applicability of such provision to other persons or circumstances, as the case may be, rather shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

6.10 Correction Documents. From time to time, at the reasonable request of ERCOT, Surety will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the contents of this Bond; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in ERCOT's opinion, (i) to carry out more effectively the purposes of this Bond and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Bond for the benefit of ERCOT.

6.11 Waiver of Jury Trial. **EACH OF SURETY AND ERCOT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR**

COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS BOND OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY ERCOT OR SURETY, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ERCOT OR SURETY, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS BOND. IT IS AGREED AND UNDERSTOOD BY EACH OF SURETY AND ERCOT THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS BOND. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY SURETY AND ERCOT, AND EACH OF SURETY AND ERCOT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF SURETY AND ERCOT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS BOND AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

*[Signature Page Follows]*

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the “Date of Issuance<sup>22</sup>”).

**PRINCIPAL:**

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SURETY:**

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AGREED:**

Electric Reliability Council of Texas, Inc. ("ERCOT" or "Obligee")

By: \_\_\_\_\_ (Seal)

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

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

**EXHIBIT A**

(Form of Demand for Payment)

(Date)

(Address of Surety)

RE: Surety Bond Number \_\_\_\_\_  
Demand for Payment

**Gentlemen:**

To the above named Surety:

This letter constitutes a Demand for Payment as defined in the Surety Bond. A breach or event of default has occurred under the Standard Form Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, as referenced in the Surety bond. The amount of unpaid Obligations as of the date hereof is \_\_\_\_\_. Please pay such amount in accordance with the following instructions:

*[Insert Wiring Instructions]*

Electric Reliability Council of Texas, Inc.

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

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

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

**EXHIBIT B**

(Form of Demand for Payment)

(Date)

(Address of Surety)

RE: Surety Bond Number \_\_\_\_\_  
Demand for Payment

**Gentlemen:**  
To the above named Surety:

This letter constitutes a Demand for Payment as defined in the Surety Bond.

The Surety has not maintained a corporate debt rating required by the ERCOT Protocols and Principal has failed to replace the Bond in a manner acceptable to ERCOT or provide replacement collateral acceptable to ERCOT in accordance with the ERCOT Protocols.

The amount of unpaid Obligations as of the date hereof is \_\_\_\_\_. Please pay such amount in accordance with the following instructions:

*[Insert Wiring Instructions]*

Electric Reliability Council of Texas, Inc.

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

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

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