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| NPRR Number | [1312](https://www.ercot.com/mktrules/issues/NPRR1312) | NPRR Title | Revisions to the Standard Form Agreement (SFA) |
| Date of Decision | | January 14, 2026 | |
| Action | | Tabled | |
| Timeline | | Normal | |
| Proposed Effective Date | | To be determined | |
| Priority and Rank Assigned | | To be determined | |
| Nodal Protocol Sections Requiring Revision | | 1.1, Summary of the ERCOT Protocols Document  1.7, Rules of Construction  1.8, Notice (new)  1.10, Right to Audit (new)  2.1, Definitions  16.2.6.1, Designation as an Emergency Qualified Scheduling Entity or Virtual Qualified Scheduling Entity  16.20, Default Under an Agreement Between ERCOT and a Market Participant and Remedies for Default (new)  16.20.1, Default by a Market Participant and ERCOT’s Remedies (new)  16.20.2, Default by ERCOT and Market Participant’s Remedies (new)  16.21, Force Majeure Event (new)  16.3, Registration of Load Serving Entities  20.1, Applicability  20.6, Mediation Procedures  22A, Standard Form Market Participant Agreement  22B, Standard Form Reliability Must-Run Agreement  22D, Standard Form Black Start Agreement  23E, Notice of Change of Information | |
| Related Documents Requiring Revision/Related Revision Requests | | None | |
| Revision Description | | This Nodal Protocol Revision Request (NPRR) amends the Standard Form Market Participant Agreement (“SFA”) for several reasons (see Justification for Revision below) and transfers certain sections of the SFA to the Protocols. Specifically, this NPRR:   * Clarifies the definition of the ERCOT Protocols; * Establishes a new section regarding Notice, and modernizes the Notice language; * Transfers Breach and Default language from the SFA to the Protocols; * Amends the definition of a Force Majeure Event; * Amends sections in the SFA to conform with the Texas Supreme Court’s rulings *in CPS Energy v. ERCOT*; and * Amends the Standard Form Black Start Agreement and Standard Form Must Run Agreement to algin with revisions to the SFA by eliminating any duplicative language. | |
| Reason for Revision | | [Strategic Plan](https://www.ercot.com/files/docs/2023/08/25/ERCOT-Strategic-Plan-2024-2028.pdf) Objective 1 – Be an industry leader for grid reliability and resilience  [Strategic Plan](https://www.ercot.com/files/docs/2023/08/25/ERCOT-Strategic-Plan-2024-2028.pdf) Objective 2 - Enhance the ERCOT region’s economic competitiveness with respect to trends in wholesale power rates and retail electricity prices to consumers  [Strategic Plan](https://www.ercot.com/files/docs/2023/08/25/ERCOT-Strategic-Plan-2024-2028.pdf) Objective 3 - Advance ERCOT, Inc. as an independent leading industry expert and an employer of choice by fostering innovation, investing in our people, and emphasizing the importance of our mission  General system and/or process improvement(s)  Regulatory requirements  ERCOT Board/PUCT Directive  *(please select ONLY ONE – if more than one apply, please select the ONE that is most relevant)* | |
| Justification of Reason for Revision and Market Impacts | | Many sections of the SFA more appropriately belong in the Protocols. Moving these provisions from the SFA to the Protocols will enable revision of those sections without having to require all Market Participants to re-execute their SFAs. Additionally, ERCOT has identified the need to update or revise certain provisions, such as notice, to reflect changing technological trends, such as the increasing commonality of e-mail notice and the shift away from notice by fax.  Revisions to the SFA are also needed to reflect the Texas Supreme Court’s determination in *CPS Energy v. ERCOT* that ERCOT is an arm of government that has sovereign immunity and is subject to the Public Utility Commission of Texas’ (PUCT’s) exclusive jurisdiction. Following this ruling, ERCOT has a more limited scope of liability, and the courts are not an appropriate forum for certain claims against ERCOT. ERCOT has proposed revisions here that reflect this new reality. | |
| PRS Decision | | On 1/14/26, PRS voted unanimously to table NPRR1312. All Market Segments participated in the vote. | |
| Summary of PRS Discussion | | On 1/14/26, ERCOT Staff provided an overview of NPRR1312 and noted that a workshop is scheduled for January 28, 2026. | |

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| **Opinions** | |
| **Credit Review** | To be determined |
| **Independent Market Monitor Opinion** | To be determined |
| **ERCOT Opinion** | To be determined |
| **ERCOT Market Impact Statement** | To be determined |

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| Sponsor | |
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| Company | ERCOT |
| Phone Number | 512-275-7447 |
| Cell Number |  |
| Market Segment | Not Applicable |

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| **Market Rules Staff Contact** | |
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| Market Rules Notes |

Please note that the following NPRR(s) also propose(s) revisions to the following section(s):

* NPRR1302, Addition of a Market Participant Service Portal within the MIS Certified Area and Revision of Forms
  + Section 23, Form E

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| Proposed Protocol Language Revision |

1.1 Summary of the ERCOT Protocols Document

(1) The Electric Reliability Council of Texas (ERCOT) Nodal Protocols (ERCOT Protocols or the Protocols) means the document adopted by ERCOT and approved by the Public Utility Commission of Texas (PUCT) in accordance with the Public Utility Regulatory Act (PURA), Tex. Util. Code Ann. § 39.151, including any attachments or exhibits referenced in these Protocols, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. To determine responsibilities at a given time, the version of the ERCOT Protocols in effect at the time of the performance or non-performance of an action governs with respect to that action. These Protocols are intended to implement ERCOT’s functions as the Independent Organization for the ERCOT Region as certified by the PUCT and as the Program Administrator appointed by the PUCT that is responsible for carrying out the administrative responsibilities related to the Renewable Energy Credit (REC) Program as set forth in subsection (h) of P.U.C. Subst. R. 25.173, Renewable Energy Credit Program. Market Participants, the Independent Market Monitor (IMM), and ERCOT shall abide by these Protocols.

(2) The ERCOT Board may adopt polices, guidelines, procedures, forms, and applications for the implementation of and operation under, these Protocols and to comply with applicable rules, laws, and orders of a Governmental Authority. A policy, guideline, procedure, form, or application described above is an “Other Binding Document.” Other Binding Documents do not include ERCOT’s internal administrative procedures, documents and processes necessary to fulfill its role as the Independent Organization or as a registered Entity with the North American Electric Reliability Corporation (NERC).

(3) ERCOT shall post the Other Binding Documents List and all Other Binding Documents to a part of the ERCOT website reserved for posting Other Binding Documents. A TAC designated subcommittee shall review the Other Binding Documents List at least every four years, and modifications to the Other Binding Documents List shall be reviewed and considered by the TAC designated subcommittee and by TAC at its next scheduled meeting.

(4) Any revision of an Other Binding Document must follow the revision process set forth in that Other Binding Document. If an Other Binding Document does not specify a revision process, the Other Binding Document shall be subject to the procedures in Section 21, Revision Request Process, and shall be treated as if it were a Protocol for purposes of the revision process.

(5) To the extent that Other Binding Documents are not in conflict with these Protocols or with an Agreement to which it is a party, each Market Participant, the IMM, and ERCOT shall abide by the Other Binding Documents. Taken together, these Protocols and the Other Binding Documents constitute all of the “scheduling, operating, planning, reliability, and Settlement policies, rules, guidelines, and procedures established by the independent System Operator in ERCOT,” as that phrase is used in subsection (j) of PURA, Tex. Util. Code Ann. § 39.151, Essential Organizations, that bind Market Participants.

(6) Except as provided below, if the provisions in any attachment to these Protocols or in any of the Other Binding Documents conflict with the provisions of Section 1, Overview, through Section 21, and Section 24, Retail Point to Point Communications, through Section 27, Securitization Uplift Charges, then the provisions of Section 1 through Section 21, and Section 24 through Section 27 prevail to the extent of the inconsistency. If any provision of any Agreement conflicts with any provision of the Protocols, the Agreement prevails to the extent of the conflict. Any Agreement provision that deviates from the standard form for that Agreement in Section 22, Attachments, must expressly state that the Agreement provision deviates from the standard form in Section 22. Agreement provisions that deviate from the Protocols are effective only upon approval by the ERCOT Board on a showing of good cause.

(7) These Protocols are not intended to govern the direct relationships between or among Market Participants except as expressly provided in these Protocols. ERCOT is not responsible for any relationship between or among Market Participants to which ERCOT is not a party.

1.7 Rules of Construction

(1) Capitalized terms and acronyms used in the Protocols have the meanings set out in Section 2, Definitions and Acronyms, of these Protocols or the meanings expressly set out in another Section of the Protocols. If a capitalized term or acronym is defined in both Section 2, and another Section of these Protocols, then the definition in that other Section controls the meaning of that term or acronym in that Section, but the definition in Section 2, controls in all other Sections of the Protocols; and

(2) In these Protocols, unless the context clearly otherwise requires:

(a) The singular includes the plural and vice versa;

(b) The present tense includes the future tense, and the future tense includes the present tense;

(c) Words importing any gender include the other gender;

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

(e) The word “shall” denotes a duty;

(f) The word “will” denotes a duty, unless the context denotes otherwise;

(g) The word “must” denotes a condition precedent or subsequent;

(h) The word “may” denotes a privilege or discretionary power;

(i) The phrase “may not” denotes a prohibition;

(j) Reference to a Section, Attachment, Exhibit, or Protocol means a Section, Attachment, Exhibit, or provision of these Protocols;

(k) References to any statutes, regulations, tariffs, or these Protocols are deemed references to such statute, regulation, tariff, or Protocol as it may be amended, replaced, or restated from time to time;

(l) Unless expressly stated otherwise, references to agreements and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent that the amendments and other modifications are not prohibited by these Protocols;

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

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

(o) Any reference to a day, week, month, or year is to a calendar day, week, month, or year unless otherwise noted; and

(p) Any reference to time is to Central Prevailing Time; the 24-hour clock is used unless otherwise noted.

(q) Any reference to dollars is U.S. currency dollars unless otherwise noted.

(r) All Settlement calculations are in dollars (USD), unless otherwise noted.

(s) Any reference to energy is electrical energy, unless otherwise noted.

(3) Nothing in these Protocols may be construed to grant any jurisdiction or authority to NERC or FERC that they do not otherwise have.

1.8 Notice

(1) These provisions apply to giving Notice under the Protocols:

(a) Where these Protocols require an Entity to provide, send, or deliver Notice, or to notify another Entity, such Notice shall be in writing unless otherwise specified. Where these Protocols do not specify the method by which written Notice should be sent, then the Notice may be sent by:

(i) Hand-delivery:

(ii) Electronic mail;

(iii) Overnight delivery service (e.g., Federal Express, DHL or similar service) that requires a signed receipt;

(iv) The Messaging System, Market Notice, or other electronic means provided for by these Protocols; or

(v) U.S. Mail, first class postage prepaid, registered (or certified) mail, return receipt requested, properly addressed.

(b) Notice by facsimile, electronic mail, the Messaging System, Market Notice, or other electronic means provided for by these Protocols is considered received when sent unless transmitted after 5:00 p.m. local time of the recipient or on a non-Business Day, in which case it is considered received one Business Day after it was sent.

(c) Notice by overnight delivery service that requires a signed receipt is considered received on the day that it was received.

(d) Notice by U.S. Mail is considered received three days after the date it was deposited in the U.S. Mail, first class postage prepaid, registered (or certified) mail, return receipt requested, properly addressed.

(e) If ERCOT is providing Notice to a Market Participant as required by the Protocols, then such Notice shall be provided to the Market Participant’s Authorized Representative and backup Authorized Representative, in addition to any other person who is required to receive Notice under the Protocols. If ERCOT is providing Notice to a Market Participant regarding a breach or Default under an Agreement, then such Notice is only required to be provided to the Market Participant’s contact for Notice listed in Section 22, Attachment A, Standard Form Market Participant Agreement. If a Market Participant is providing Notice to ERCOT as required by the Protocols or as provided under an Agreement, then such Notice shall be provided to ERCOT’s contact for Notice listed in Section 22, Attachment A.

(f) When the Protocols require a Notice to be in writing, sending it by electronic mail, the Messaging System, Market Notice, or other electronic means satisfies the requirement that the Notice be in writing.

1.10 Right to Audit

(1) A Market Participant shall keep detailed records for a period of three years for all activities giving rise to any information, statement, charge, payment, or computation delivered to ERCOT under the Protocols or pursuant to an Agreement. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right, during Business Hours and upon reasonable Notice and for reasonable cause, to examine the records of a Market Participant as necessary to verify the accuracy of any such information, statement, charge, payment, or computation made pursuant to the Protocols or any Agreement. If such examination reveals any inaccuracy in such information, statement, charge, payment, or computation, the necessary adjustments shall be promptly made to correct it and, if necessary, to correct the procedures used to support its ongoing accuracy.

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## 2.1 DEFINITIONS

Default

An event, including an uncured Material Breach, as more particularly defined in the Protocols or any Agreements, that gives rise to certain remedies under the Protocols or an Agreement.

Force Majeure Event

Any event beyond the reasonable control of, and that occurs without the fault or negligence of, an Entity whose failure to perform was proximately caused by the occurrence of such event. Examples of such a Force Majeure Event may include the following, subject to the limitations of the above sentence: an act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, hurricane, tornado, lightning strike, flood, explosion, breakage or accident to machinery or equipment, or a curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities. Notwithstanding the foregoing, a Force Majeure Event does not include any action taken by the Public Utility Commission of Texas (PUCT) or ERCOT, nor does it include wholesale prices whether or not resulting from a Force Majeure Event, nor any event caused in whole or in part by a failure to follow Good Utility Practice, or to satisfy requirements under applicable law or the Protocols regarding weatherization or physical resiliency.

Market Participant

An Entity, other than ERCOT, that has executed a Standard Form Market Participant  
Agreement (Section 22, Attachment A, Standard Form Market Participant Agreement) and is registered with ERCOT under one or more of the following categories:

(a) Load Serving Entity (LSE);

(b) Qualified Scheduling Entity (QSE);

(c) Transmission and/or Distribution Service Provider (TDSP);

(d) Congestion Revenue Right (CRR) Account Holder;

(e) Resource Entity;

(f) Independent Market Information System Registered Entity (IMRE); and

(g) Renewable Energy Credit (REC) Account Holder.

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| ***[NPRR857: Replace the above definition “Market Participant” with the following upon system implementation and satisfying the following conditions: (1) Southern Cross provides ERCOT with funds to cover the entire estimated cost of the project; and (2) Southern Cross has signed an interconnection agreement with a TSP and the TSP gives ERCOT written notice that Southern Cross has provided it with: (a) Notice to proceed with the construction of the interconnection; and (b) The financial security required to fund the interconnection facilities:]***  **Market Participant**  An Entity, other than ERCOT, that has executed a Standard Form Market Participant Agreement (Section 22, Attachment A, Standard Form Market Participant Agreement) and is registered with ERCOT under one or more of the following categories:  (a) Load Serving Entity (LSE);  (b) Qualified Scheduling Entity (QSE);  (c) Transmission and/or Distribution Service Provider (TDSP);  (d) Direct Current Tie Operator (DCTO);  (e) Congestion Revenue Right (CRR) Account Holder;  (f) Resource Entity;  (g) Independent Market Information System Registered Entity (IMRE); and  (h) Renewable Energy Credit (REC) Account Holder. |

**Material Breach**

A breach of an obligation under the Protocols, Other Binding Documents or an Agreement that may result in a Default. A Material Breach, includes, but is not limited to, one of the following categories:

**Payment Breach**

Failure by a Market Participant to pay, when due, any payment or Financial Security obligation owed to ERCOT (or its designee, if applicable) under the Protocols, Other Binding Documents, or any Agreement with ERCOT.

**QSE Affiliation Breach**

Failure by a Market Participant to designate or maintain an association with a QSE, if required by the Protocols.

**Other Material Breach**

Any material failure by a Market Participant or ERCOT to comply with the Protocols, Other Binding Documents, or any Agreement.

16.2.6.1 Designation as an Emergency Qualified Scheduling Entity or Virtual Qualified Scheduling Entity

(1) A “Virtual QSE” is defined as an LSE or Resource Entity that has not qualified and been designated as an Emergency QSE, but has been designated by ERCOT to temporarily perform the responsibilities of a QSE.

(2) If a QSE has given Notice of its intent to terminate its relationship with an LSE or Resource Entity, that LSE or Resource Entity, must, by noon on the fourth Business Day after the termination notice date, either:

(a) Designate a new QSE with such relationship to take effect on the Termination Date, or earlier if allowed by ERCOT; or

(b) Satisfy all necessary creditworthiness requirements for QSEs as described in Section 16.2, Registration and Qualification of Qualified Scheduling Entities, and operate as an Emergency QSE as described below.

(3) If ERCOT has given Notice of an LSE’s or Resource Entity’s QSE’s termination or suspension, that LSE or Resource Entity will be designated as a Virtual QSE for up to two Bank Business Days, during which time it must either:

(a) Designate and begin operations with a new QSE; or

(b) Satisfy all necessary creditworthiness requirements for QSEs as described in Section 16.2, and operate as an Emergency QSE as described below. As provided in paragraph (2) of Section 16.2.5, Suspended or Terminated Qualified Scheduling Entity – Notification to LSEs and Resource Entities Represented, this option does not apply to an LSE or Resource Entity represented by a terminated or suspended QSE that is the same Entity as the terminated or suspended QSE.

(4) If an LSE or Resource Entity meets the creditworthiness requirements, the LSE or Resource Entity may be designated as an Emergency QSE except as provided in paragraph (2) of Section 16.2.5 and may, upon the Termination Date, be issued Digital Certificates and given access to the Market Information System (MIS) as determined by ERCOT.

(5) If the LSE fails to meet the requirements of one of the above options in the timeframe set forth above, it shall constitute a QSE Affiliation Breach under the LSE’s Standard Form Market Participant Agreement. If the LSE fails to cure the QSE Affiliation Breach within the cure period set forth in Section 16, Registration and Qualification of Market Participants, and the LSE serves Load, ERCOT shall, after notice as specified in Retail Market Guide Section 7.11, Transition Process, initiate a Mass Transition of the LSE’s Electronic Service Identifiers (ESI IDs) pursuant to Section 15.1.3, Transition Process.

(6) If a Resource Entity fails to meet the requirements of one of the options set forth in paragraph (2) or (3) above within the requisite timeframe, it shall constitute a QSE Affiliation Breach under the Resource Entity’s Standard Form Market Participant Agreement, provided that ERCOT may allow the Resource Entity additional time, as determined by ERCOT staff, to meet the requirements.

(7) For any Operating Day in which an LSE or Resource Entity is not either represented by a QSE or qualified as an Emergency QSE, ERCOT may designate the LSE or Resource Entity as a Virtual QSE. ERCOT may issue Digital Certificates to the Virtual QSE for access to the capabilities of the MIS. A Virtual QSE shall be liable for any and all charges associated with Initial, Final and True-Up Settlements as well as any Resettlements applying to dates during which the Virtual QSE represented ESI IDs or otherwise incurred charges pursuant to these Protocols, along with any and all costs incurred by ERCOT in collecting such amounts.

(8) ERCOT shall maintain a referral list of qualified QSEs on the ERCOT website who request to be listed as providing QSE services on short notice. The list shall include the QSE’s name, contact information and whether they are qualified to represent Load and/or Resources and/or provide Ancillary Services. ERCOT shall not be obligated to verify the abilities of any QSE so listed. ERCOT shall require all QSEs listed to confirm their inclusion on the referral list no later than the start of each calendar year.

**16.20 Default Under an Agreement Between ERCOT and a Market Participant and Remedies for Default**

(1) This section shall apply to an event of Default under an Agreement between ERCOT and a Market Participant except where the Protocols provide for different procedures to be used to resolve a specific type of dispute.

**16.20.1 Default by a Market Participant and ERCOT’s Remedies**

(1) A Default under an Agreement occurs when:

(a) ERCOT notifies a Market Participant that the Market Participant has committed a Payment Breach, and the Market Participant fails to cure the breach within one Bank Business Day of receiving such Notice;

(b) ERCOT notifies a Market Participant that the Market Participant has committed a QSE Affiliation Breach, and the Market Participant fails to cure the breach within one Bank Business Day of receiving such Notice;

(c) ERCOT notifies a Market Participant that the Market Participant has committed an Other Material Breach, and the Market Participant fails to cure the breach within 14 Business Days of receiving such Notice;

(d) A Market Participant commits a fourth Material Breach after committing a Material Breach more than three times within a 12-month period, regardless of whether the Market Participant has cured any of the three prior breaches within the allotted time after the Market Participant receives notice of the prior Material Breaches.

(2) An Other Material Breach shall not result in a Default if a Market Participant cannot reasonably cure the breach within 14 Business Days, and the Market Participant:

(a) Promptly provides ERCOT with written Notice of the reasons why the breach cannot be reasonably cured within 14 Business Days;

(b) Begins reasonable efforts to cure the breach within three Business Days after receiving ERCOT’s Notice of the breach; and

(c) Prosecutes the curative efforts with reasonable diligence until the efforts are completed.

(3) Bankruptcy by a Market Participant shall constitute an event of Default, except for the filing of a petition in involuntary bankruptcy or similar involuntary proceedings that is dismissed within 90 days thereafter.

(4) In the event of a Default by a Market Participant, ERCOT may pursue any remedies that ERCOT has under the Protocols, at law or in equity. In the event of a Default by a Market Participant, if the Protocols do not specify a remedy for a particular Default, ERCOT may, at its option and upon Notice to the Market Participant, immediately terminate the Market Participant’s registration and Standard Form Market Participant Agreement (Section 22, Attachment A, Standard Form Market Participant Agreement). If ERCOT terminates a Market Participant’s Standard Form Market Participant Agreement, then all other Agreements that were entered into under the Protocols are automatically terminated. Termination is effective when the Market Participant receives ERCOT’s notice of termination.

(a) In the event of a Market Participant’s bankruptcy, the Market Participant waives any right to challenge ERCOT’s right to set off amounts that ERCOT owes to the Market Participant by the amount of any sums owed by the Market Participant to ERCOT, including any amounts owed pursuant to the operation of the Protocols.

(5) This Section does not affect ERCOT’s right to suspend or terminate a Market Participant’s registration or access to ERCOT systems as may otherwise be permitted in the Protocols or other applicable law.

**16.20.2 Default by ERCOT and Market Participant’s Remedies**

(1) A Default by ERCOT under an Agreement occurs when ERCOT commits an Other Material Breach, other than a breach of an obligation to make a payment to a Market Participant, and ERCOT fails to cure such breach within 14 Business Days after ERCOT receives notice of such breach from an affected Market Participant.

(2) An Other Material Breach under this section shall not result in a Default if ERCOT cannot reasonably cure the breach within 14 Business Days, and ERCOT:

(a) Promptly provides an affected Market Participant with written Notice of the reasons why the breach cannot be reasonably cured within 14 Business Days;

(b) Begins work or other efforts to cure the breach within three Business Days after ERCOT receives Notice of the breach from an affected Market Participant; and

(c) Prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.

(3) A Settlement dispute is not a Material Breach or subject to the Default procedures in the Protocols but instead is governed by procedures in the Protocols relating to Settlement and billing disputes and the Alternative Dispute Resolution (ADR) process in Section 20, Alternative Dispute Resolution Procedure and Procedure for Return of Settlement Funds. ERCOT’s resolution of an ADR is appealable to the PUCT under P.U.C Proc. R. 22.251, Review of Electric Reliability Council of Texas (ERCOT) Conduct.

(4) Unless otherwise specified in the Protocols and subject to Section 20, in the event of a Default by ERCOT, a Market Participant’s remedies shall be limited to:

(a) Termination of the Standard Form Market Participant Agreement (Section 22, Attachment A, Standard Form Market Participant Agreement) upon notice to ERCOT; and

(b) Seeking relief from the PUCT under P.U.C Proc. R. 22.251.

(5) Notwithstanding the foregoing, in the event of a Default arising from a Material Breach by ERCOT of any of its representations, warranties, or covenants in the Standard Form Market Participant Agreement, a Market Participant’s sole remedy shall be termination of the Standard Form Market Participant Agreement upon notice to ERCOT.

**16.21 Force Majeure**

(1) If, due to a Force Majeure Event, ERCOT or a Market Participant is in Material Breach, other than a Payment Breach, with respect to an obligation under a written Agreement, then such breach shall not result in a Default, except as otherwise provided by the Protocols, if the breaching Entity complies with the following requirements:

(a) The breaching Entity shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach;

(b) The breaching Entity shall notify the other Entity as soon as reasonably practicable, but not later than 14 calendar days after the breaching Entity becomes aware of the Force Majeure Event; and

(c) The breaching Entity shall provide notice to the other Entity, as soon as reasonably practicable, when the Force Majeure Event ends.

(2) Notice under this section shall include a detailed description of the obligations affected by a Force Majeure Event and how the Force Majeure Event prevented the breaching Entity from fulfilling those obligations. A failure to provide timely and adequate Notice under paragraphs (1) and (2) above regarding a Force Majeure Event shall constitute a waiver of the claim of Force Majeure Event.

(3) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Market Participant of any obligation to make payments, and a failure to make payments will result in a Default. A Force Majeure Event also does not excuse a Market Participant from any consequences of non-performance pursuant to the Protocols or any Agreement.

16.3 Registration of Load Serving Entities

(1) Load Serving Entities (LSEs) provide electric service to Customers and Wholesale Customers. LSEs include Non-Opt-In Entities (NOIEs) that serve Load, Competitive Retailers (CRs) (which includes Retail Electric Providers (REPs)), and External Load Serving Entities (ELSEs). Each LSE must register with ERCOT. To become registered as an LSE, an Entity must execute a Standard Form Market Participant Agreement (using the form in Section 22, Attachment A, Standard Form Market Participant Agreement), designate LSE Authorized Representatives, contacts, and a User Security Administrator (USA) (per Section 23, Form B, Load Serving Entity (LSE) Application for Registration), and demonstrate to ERCOT’s reasonable satisfaction that it is capable of performing the functions of an LSE under these Protocols. Additionally, a REP must demonstrate and maintain certification by P.U.C. Subst. R. 25.107, Certification of Retail Electric Providers (REPs), and comply with the remaining requirements of this Section. ERCOT may immediately suspend or terminate a REP’s access to any of ERCOT’s systems if ERCOT has a reasonable suspicion that the REP is no longer certificated under P.U.C. Subst. R. 25.107.

(2) All CRs must participate in and successfully complete testing as described in Section 19.8, Retail Market Testing, prior to commencing operations with ERCOT.

(3) ERCOT may require that the Entity satisfactorily complete testing of interfaces between the Entity’s systems and relevant ERCOT systems.

(4) An Entity that wishes to register as an ELSE shall select the ELSE status on the LSE application (Section 23, Form B, Load Serving Entity (LSE) Application for Registration) and other registration forms as designated by ERCOT. An ELSE shall provide all information sufficient to justify its designation as an ELSE if so requested by ERCOT.

(5) An ELSE shall assign an Electric Service Identifier (ESI ID) for each wholesale point of delivery as specified in these Protocols. An ESI ID shall not be assigned to any individual Customer behind an ELSE wholesale point of delivery.

20.1 Applicability

(1) Except as otherwise provided in Section 20, Alternative Dispute Resolution Procedure and Procedure for Return of Settlement Funds, this Alternative Dispute Resolution (ADR) procedure applies to any claim by a Market Participant that ERCOT has violated or misinterpreted any law, including any statute, rule, Protocol, Other Binding Document, or Agreement, where such violation or misinterpretation results in actual harm, or could result in imminent harm, to the Market Participant. A Market Participant that disputes an interpretation of the ERCOT Protocols, an Other Binding Document, or an Agreement made by ERCOT through the Protocol interpretation request process described in subsection (i) of P.U.C. SUBST. R. 25.503, Oversight of Wholesale Market Participants, is not required to follow the ADR procedure prior to seeking relief from the Public Utility Commission of Texas (PUCT).

(2) Only a Counter-Party may request ADR to seek correction of Settlement data and resettlement, except that:

(a) A Market Participant that is not a Counter-Party may submit an ADR request seeking correction of Settlement data and resettlement on behalf of an affected Counter-Party upon providing ERCOT written documentation executed by the Authorized Representative of the Counter-Party designating the Market Participant as the Counter-Party’s agent for purposes of submitting the ADR request; and

(b) A Load Serving Entity (LSE), with its Counter-Party, or a Transmission and/or Distribution Service Provider (TDSP) may submit an ADR request for correction of Electric Service Identifier (ESI ID) service history, usage information, and/or resettlement, as set forth in these Protocols and the Retail Market Guide.

(3) Nothing in this ADR procedure is intended to limit or restrict the right of a Market Participant to file a petition seeking direct relief from the PUCT without first exhausting this ADR procedure where actual or threatened action by ERCOT or a Market Participant could cause irreparable harm and where such harm cannot be addressed within the time permitted under the ADR process.

(4) Except for the provisions of this Section 20.1, the ADR procedure may be modified by mutual agreement of the parties.

(5) Parties shall exercise good faith efforts to timely resolve disputes under Section 20.

(6) Nothing contained in Section 20 is intended to supersede any dispute resolution process mandated by applicable law or tariff. Furthermore, this ADR procedure does not apply to any dispute concerning an agreement between Market Participants or the terms of any tariff. To the extent any dispute not governed by Section 20 involves the interpretation of the ERCOT Protocols, an Other Binding Document, or an Agreement, that dispute may be submitted to ERCOT through the Protocol interpretation request process described in subsection (i) of P.U.C. Subst. R. 25.503.

**20.6 Mediation Procedures**

(1) The parties shall agree on a mediator who has no past or present official, financial, or personal conflict of interest with respect to the issues or parties in dispute, unless the interest is fully disclosed in writing to all participants in the dispute and all such participants waive in writing any objection to the conflict of interest. If the parties are unable to agree on a mediator within ten days of the agreement to mediate, then the Commercial Mediation Rules of the American Arbitration Association (AAA) will be used to select the mediator.

(2) The mediator and senior dispute representatives of the parties shall commence mediation of the dispute within ten days after the mediator’s date of appointment. Communications regarding mediation shall be confidential and shall not be referred to or disclosed in any subsequent proceeding. The mediator shall aid the parties in reaching a mutually acceptable resolution of the dispute. If agreement regarding the Alternative Dispute Resolution (ADR) cannot be reached, any of the parties may apply for relief to the Public Utility Commission of Texas (PUCT).

**ERCOT Nodal Protocols**

**Section 22**

**Attachment A: Standard Form Market Participant Agreement**

**TBD**

Standard Form Market Participant Agreement

Between

Insert Participant

and

Electric Reliability Council of Texas, Inc.

This Standard Form Market Participant Agreement (“Agreement”), effective as of the\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between Insert Participant, a [Insert State of Registration and Entity type] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

##### Recitals

WHEREAS:

A. As defined in the ERCOT Protocols, Participant is a (check all that apply):

Load Serving Entity (LSE)

Qualified Scheduling Entity (QSE)

Transmission Service Provider (TSP)

Distribution Service Provider (DSP)

Congestion Revenue Right (CRR) Account Holder

Resource Entity

Renewable Energy Credit (REC) Account Holder

Independent Market Information System Registered Entity (IMRE)

B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and

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

Agreements

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

Section 1. Notice.

Any Notice required to be given under this Agreement shall be provided in accordance with the Notice procedures contained in Protocol Section 1, Overview, except where another section of the Protocols authorizes notice by a different procedure under specified circumstances.

If to ERCOT:

Electric Reliability Council of Texas, Inc.

Attn: Legal Department

8000 Metropolis Drive (Building E), Suite 100

Austin, Texas 78744

Telephone: (512) 225-7000

E-mail: [MPRegistration@ercot.com](mailto:MPRegistration@ercot.com)

If to Participant regarding a breach or Default under this Agreement, then Notice will be sent using Participant’s contact information below:

[Insert Participant Name]

[Insert Contact Person/Dept.]

[Insert Street Address]

[Insert City, State Zip]

[Insert Telephone]

[Insert E-mail Address]

Participant may amend its contact information under this Agreement by submitting a Notice of Change of Information (NCI) form (Section 23, Form E, Notice of Change of Information) to ERCOT.

Section 2. Definitions.

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

Section 3. Term and Termination.

A. Term. The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a "Renewal Term") unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement. This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.

B. Termination by Participant. Participant may, at its option, terminate this Agreement:

(1) Immediately upon the failure of ERCOT to continue to be certified by the Public Utility Commission of Texas (PUCT) as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;

(2) If the “REC Account Holder” box is checked in Section A. of the *Recitals* section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the Entity approved by the PUCT (“Program Administrator”) for carrying out the administrative responsibilities related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(h) without the immediate certification of another Program Administrator under PURA §39.151; or

(3) For any other reason at any time upon thirty days written notice to ERCOT.

C. Termination by ERCOT. ERCOT may terminate this Agreement in accordance with the Default provisions in Section 16, Registration and Qualification of Market Participants.

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

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

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

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

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

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

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

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

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

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

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

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

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

B. ERCOT represents, warrants and covenants that:

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

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

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

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

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

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

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

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

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

Section 5. Participant Obligations.

A. Participant shall comply with, and be bound by, all ERCOT Protocols and Other Binding Documents.

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

Section 6. ERCOT Obligations.

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

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

Section 7. Default and Force Majeure.

Default and Force Majeure under this Agreement shall be governed by Section 16, Registration and Qualification of Market Participants. A Default or Material Breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols and Other Binding Documents.

Section 8. Limitation of Damages and Liability.

A. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSSES OF USE, INCOME, PROFIT, FINANCING, BUSINESS AND REPUTATION, PROPERTY DAMAGE), OR PERSONAL OR BODILY INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF ANY DEFAULT UNDER THIS AGREEMENT, VIOLATION OF PROTOCOL OR APPLICABLE LAW, BREACH OF WARRANTY, NEGLIGENCE OR OTHER TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

B. Duty to Mitigate. Except as expressly provided otherwise herein or in the Protocols, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party’s Default or breach of its obligations under this Agreement.

C. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM’s authority arising under or relating to PURA §39.1515 and P.U.C Subst. R. 25.365, Independent Market Monitor.

Section 9. Dispute Resolution.

A. A Participant may only seek monetary or other relief against ERCOT through the applicable dispute resolution procedures set forth in Protocol Section 20, Alternative Dispute Resolution Procedure and Procedure for Return of Settlement Funds.

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

Section 10. Miscellaneous.

A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Participant acknowledges that, to the extent it files a claim relating to ERCOT’s exercise of its responsibilities as the Independent Organization certified under PURA, the PUCT has exclusive jurisdiction over claims filed against ERCOT. Neither Party waives exclusive jurisdiction or primary jurisdiction as a defense; provided that any court suits regarding this Agreement, if allowed, shall be brought in a state, federal, or business court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens. The Parties acknowledge that this Agreement constitutes a Major Transaction under Tex. Civ. Prac. & Rem. Code § 15.020, and waive any argument to the contrary.

B. No Waiver of Sovereign Immunity. ERCOT does not waive sovereign immunity by entering into this Agreement and specifically retains all immunities and all defenses available to it under the Constitution, the laws of the State of Texas, and the common law.

C. Assignment.

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

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

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

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

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

(3) The foregoing limitations on assignment do not limit the PUCT’s authority to decertify ERCOT and/or transfer its responsibilities and/or assets to another organization or a successor organization as permitted in Tex. Util. Code Sec. 39.151 or 16 Tex. Admin. Code Sec. 25.364.

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

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

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

G. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

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

I. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties. A Participant is required to sign such a new Agreement within ten Business Days of its approval by the PUCT.

J. Conflicts. This Agreement is subject to applicable federal and state laws agency orders, and PUCT directives. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal or state law or order. In the event of a conflict between this Agreement and an applicable federal or state law agency order, or PUCT directives, the applicable federal or state law agency order, or PUCT directives shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between PUCT rules, orders, or directives and the Protocols, PUCT rules, orders, or directives shall prevail.

K. No Partnership or Fiduciary Relationship. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. This Agreement does not create any fiduciary duties between Parties.

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

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

Electric Reliability Council of Texas, Inc.:

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

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

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

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

***Participant:***

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

Name:

Title:

Date:

Market Participant Name:

Market Participant DUNS:

|  |
| --- |
| [NPRR857: Replace Section 22 Attachment A above with the following upon system implementation and satisfying the following conditions: (1) Southern Cross provides ERCOT with funds to cover the entire estimated cost of the project; and (2) Southern Cross has signed an interconnection agreement with a TSP and the TSP gives ERCOT written notice that Southern Cross has provided it with: (a) Notice to proceed with the construction of the interconnection; and (b) The financial security required to fund the interconnection facilities:]  Standard Form Market Participant Agreement  Between  Participant  and  Electric Reliability Council of Texas, Inc.  This Standard Form Market Participant Agreement (“Agreement”), effective as of the\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between [Participant], a [State of Registration and Entity type] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”). Recitals WHEREAS:  A. As defined in the ERCOT Protocols, Participant is a (check all that apply):  Load Serving Entity (LSE)  Qualified Scheduling Entity (QSE)  Transmission Service Provider (TSP)  Distribution Service Provider (DSP)  Congestion Revenue Right (CRR) Account Holder  Resource Entity  Renewable Energy Credit (REC) Account Holder  Independent Market Information System Registered Entity (IMRE)    Direct Current Tie Operator (DCTO)  B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and  C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.  Agreements  NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the “Parties”) hereby agree as follows:  Section 1. Notice.  Any Notice required to be given under this Agreement shall be provided in accordance with the Notice procedures contained in Protocol Section 1, Overview, except where another section of the Protocols authorizes notice by a different procedure under specified circumstances.  If to ERCOT:  Electric Reliability Council of Texas, Inc.  Attn: Legal Department  8000 Metropolis Drive (Building E), Suite 100  Austin, Texas 78744  Telephone: (512) 225-7000  E-mail: MPRegistration@ercot.com  If to Participant regarding a breach or Default under this Agreement, then Notice will be sent using Participant’s contact information below:  [Participant Name]  [Contact Person/Dept.]  [Street Address]  [City, State Zip]  [Telephone]  [E-mail Address]  Participant may amend its contact information under this Agreement by submitting a Notice of Change of Information (NCI) form (Section 23, Form E, Notice of Change of Information) to ERCOT. Section 2. Definitions.  A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.  Section 3. Term and Termination.  A. Term. The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a "Renewal Term") unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.  B. Termination by Participant. Participant may, at its option, terminate this Agreement:  (1) Immediately upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;  (2) If the “REC Account Holder” box is checked in Section A. of the *Recitals* section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the Entity approved by the PUCT (“Program Administrator”) for carrying out the administrative responsibilities related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(g) without the immediate certification of another Program Administrator under PURA §39.151; or  (3) For any other reason at any time upon thirty days written notice to ERCOT.  C. Termination by ERCOT. ERCOT may terminate this Agreement in accordance with the Default provisions in Section 16, Registration and Qualification of Market Participants.  D. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties under Sections 8, 9, and 10 of that have accrued under this Agreement shall survive.  Section 4. Representations, Warranties, and Covenants.  A. Participant represents, warrants, and covenants that:  (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in Texas;  (2) Participant has full power and authority to enter into this Agreement and perform all obligations, representations, warranties and covenants under this Agreement;  (3) Participant’s past, present and future agreements or Participant’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant’s obligations under this Agreement;  (4) Participant’s execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;  (5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;  (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4(A)(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;  (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;  (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;  (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;  (10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and  (11) Participant acknowledges and affirms that the foregoing representations, warranties and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.  B. ERCOT represents, warrants and covenants that:  (1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;  (2) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;  (3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT’s obligations, representations, warranties and covenants under this Agreement;  (4) ERCOT's past, present and future agreements or ERCOT's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT's obligations under this Agreement;  (5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;  (6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;  (7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;  (8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and  (9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on ERCOT's performance of its obligations under this Agreement.  Section 5. Participant Obligations.  A. Participant shall comply with, and be bound by, all ERCOT Protocols and Other Binding Documents.  B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a “public utility” under the Federal Power Act or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.  Section 6. ERCOT Obligations.  A. ERCOT shall comply with, and be bound by, all ERCOT Protocols and Other Binding Documents.  B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a “public utility” under the Federal Power Act, or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5(B) from any Market Participant, ERCOT shall provide notice of same to Participant.  Section 7. Default and Force Majeure.  Default and Force Majeure under this Agreement shall be governed by Section 16, Registration and Qualification of Market Participants. A Default or Material Breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols and Other Binding Documents.  Section 8. Limitation of Damages and Liability.  A. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSSES OF USE, INCOME, PROFIT, FINANCING, BUSINESS AND REPUTATION, PROPERTY DAMAGE), OR PERSONAL OR BODILY INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF ANY DEFAULT UNDER THIS AGREEMENT, VIOLATION OF PROTOCOL OR APPLICABLE LAW, BREACH OF WARRANTY, NEGLIGENCE OR OTHER TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.  B. Duty to Mitigate. Except as expressly provided otherwise herein or in the Protocols, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party’s performance or non-performance under this Agreement  C. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM’s authority arising under or relating to PURA §39.1515 and PUC Subst. R. 25.365, Independent Market Monitor.  Section 9. Dispute Resolution.  A. A Participants may only seek monetary or other relief against ERCOT through the applicable dispute resolution procedures set forth in Protocol Section 20, Alternative Dispute Resolution Procedure and Procedure for Return of Settlement Funds.  B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.  Section 10. Miscellaneous.  A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Participant acknowledges that, to the extent it files a claim relating to ERCOT’s exercise of its responsibilities as the Independent Organization certified under PURA, the PUCT has exclusive jurisdiction over claims filed against ERCOT. Neither Party waives exclusive jurisdiction or primary jurisdiction as a defense; provided that any court suits regarding this Agreement, if allowed, shall be brought in a state, federal, or business court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens. The Parties acknowledge that this Agreement constitutes a Major Transaction under Tex. Civ. Prac. & Rem. Code § 15.020, and waive any argument to the contrary.  B. No Waiver of Sovereign Immunity.  ERCOT does not waive sovereign immunity by entering into this Agreement and specifically retains all immunities and all defenses available to it under the Constitution, the laws of the State of Texas, or the common law.  C. Assignment.  (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT and if the assignment or transfer does not otherwise violate the Protocols or other applicable law):  (a) Where any such assignment or transfer is to an Affiliate of the Party; or  (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or  (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notice of Material Breach notice of Default, and an opportunity for the Financing Person to cure a Material Breach prior to it becoming a Default.  (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party’s obligations be enlarged, in whole or in part, by reason thereof.  (3) The foregoing limitations on assignment do not limit the PUCT’s authority to decertify ERCOT and/or transfer its responsibilities and/or assets to another organization or a successor organization as permitted in Tex. Util. Code Sec. 39.151 or PUC Subst. Rule 25.364.  D. No Third Party Beneficiary. Except with respect to the rights of the Financing Persons in Section 10(B), (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (b) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.  E. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of the Party against whom such waiver, modification, or excuse is sought to be enforced. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (a) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (b) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party’s covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.  F. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties’ intentions with respect thereto.  G. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.  H. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement.  I. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties. A Participant is required to sign such a new Agreement within ten Business Days of its approval by the PUCT.  .  J. Conflicts. This Agreement is subject to applicable federal and state laws agency orders, and PUCT directives. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal or state law or order. In the event of a conflict between this Agreement and an applicable federal or state law agency order, or PUCT directives, the applicable federal or state law agency order, or PUCT directives shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between PUCT rules, orders, or directives and the Protocols, PUCT rules, orders, or directives shall prevail.  K. No Partnership or Fiduciary Relationship. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. This Agreement does not create any fiduciary duties between the Parties.  L. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.  SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.  Electric Reliability Council of Texas, Inc.:  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  ***Participant:***  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Market Participant Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Market Participant DUNS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**ERCOT Nodal Protocols**

**Section 22**

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

**TBD**

Standard Form Reliability Must-Run Agreement

Between

Insert Participant

and

Electric Reliability Council of Texas, Inc.

This Standard Form Reliability Must-Run Agreement (“Agreement”), effective as of \_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between Insert Participant, a [Insert State of Registration and Entity type] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

Recitals

WHEREAS:

A. Participant is a Resource Entity as defined in the ERCOT Protocols, and Participant intends to supply Reliability Must-Run Service;

B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and

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

Agreements

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

Section 1. Unit-Specific Terms.

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

B. Stop Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

C. RMR Unit:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

D. Description of RMR Unit [*including location, name of Resource, etc.]:* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

E. RMR Unit Information

(1) RMR Contracted Capacity and Target Availability:

|  |  |  |
| --- | --- | --- |
| Month - Year | Capacity (MW) | Target Availability (%) |
| Jan |  |  |
| Feb |  |  |
| Mar |  |  |
| Apr |  |  |
| May |  |  |
| Jun |  |  |
| Jul |  |  |
| Aug |  |  |
| Sep |  |  |
| Oct |  |  |
| Nov |  |  |
| Dec |  |  |

F. Delivery Point: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

H. Resource Category: \_\_\_\_\_\_\_\_\_\_

I. Fuel Adder ($/MMBtu): \_\_\_\_\_\_\_\_\_\_

J. Initial Standby Cost data for contract period:

a. Total budgeted cost without contributed capital expenditures ($): \_\_\_\_\_\_\_\_\_\_

b. Total budgeted contributed capital expenditures ($): \_\_\_\_\_\_\_\_\_\_

c. Total hours in contract period: \_\_\_\_\_\_\_\_\_\_

d. Initial Standby Cost ($/hour): [Total Cost (a) \* (1 + Incentive Factor) + Total contributed capital expenditures (b)] / Total Hours (c): \_\_\_\_\_\_\_\_\_\_

Standby Payments may be recalculated from time to time as defined in Section 3.14.1.12, Calculation of the Initial Standby Cost.

K. Primary Purpose of Service:

* + - Reliability
    - Capacity in accordance with Section 6.5.1.1, ERCOT Control Area Authority

L. Notice.

Any Notice required to be given under this Agreement shall be provided in accordance with the Notice procedures contained in Protocol Section 1, Overview, except where another section of the Protocols authorizes Notice by a different procedure under specified circumstances.

**If to ERCOT**:

Electric Reliability Council of Texas, Inc.

8000 Metropolis Drive (Building E), Suite 100

Austin, Texas 78744

Tel No. (512) 225-7000

E-mail: MPRegistration@ercot.com

Attn: ERCOT Legal Department

If to Participant regarding a breach or Default under this Agreement, then Notice will be sent using Participant’s contact information as provided in its Standard Form Agreement.

Section 2. Definitions.

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

B. “Standard Form Agreement” shall mean the executed Section 22, Attachment A, Standard Form Market Participant Agreement, between the Participant and ERCOT.

Section 3. Term and Termination.

A. Term.

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

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

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

B. Extension by ERCOT. ERCOT may, at its sole discretion, extend this Agreement for a period up to ninety (90) days, even if ERCOT has previously provided notice to Participant of future termination of the Agreement, by providing at least thirty (30) days advance written notice to Participant of the extension.

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

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

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

Section 4. Representations, Warranties, and Covenants.

Section 4, Representations Warranties and Covenants, found in the Standard Form Agreement is hereby incorporated by reference into this Agreement and shall apply to the terms of this Agreement.

Section 5. Participant Obligations.

A. Participant shall comply with, and be bound by, all ERCOT Protocols and Other Binding Documents as they pertain to provision of Reliability Must-Run Service by a Resource Entity.

B. All budget and actual cost information submitted to ERCOT in accordance with the Protocols, including costs for work that is expected to be performed by an Affiliate of the Resource Entity, must include only those costs that are necessary and reflective of fair-market value.

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

Section 6. ERCOT Obligations.

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

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

Section 7. Capacity Tests for RMR Units.

A. Capacity Tests.

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

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

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

C. Effect of Test.

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

Section 8. Operation.

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

B. Planning Data.

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

(a) Current Operating Plan (COP) for each hour of the next Operating Day submitted by 0600 in the Day-Ahead;

(b) Revised COP reflecting changes in the hourly availability of the RMR Unit as soon as reasonably practical, but in no event later than 60 minutes after the event that caused the change; and

(c) Status of the RMR Unit with respect to environmental limitations, if any. If any of the specified environmental limitations will be exceeded by ERCOT’s planned or actual use of the RMR Unit Participant shall provide ERCOT with as much advance written notice as is reasonably possible.

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

C. Delivery.

(1) ERCOT shall notify Participant, through a RUC instruction, of the hours, that the RMR Unit is to operate. ERCOT may not notify Participant to operate at levels above those stated in the COP.

(2) Participant shall produce and deliver electrical energy from the RMR Unit to the Delivery Point as dispatched by Security Constrained Economic Dispatch (SCED).

Section 9. Payment.

A. Payments for an RMR Unit. ERCOT shall pay Participant for the RMR Service provided under this Agreement as specified in the ERCOT Protocols applicable to RMR Service, as those ERCOT Protocols are in effect on the Effective Date.

B. Unexcused Misconduct Events.

(1) For an RMR Unit, a “Misconduct Event” means any hour or hours during which Participant is shown available in the COP, but fails to come On-Line for the hour or hours being RUC committed. Contiguous RUC deployments shall represent a single event in determining a “Misconduct Event”.

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

(3) Participant is excused from the RMR Charge for Unexcused Misconduct for any Misconduct Event that is (a) not due to intentionally incomplete, inaccurate, or dishonest reporting to ERCOT by Participant of the availability of the Unit, or (b) caused by a failure of the ERCOT Transmission Grid.

(4) If a Misconduct Event is not excused, then to reflect this lower-than-expected quality of firmness, the Participant is subject to the RMR Charge for Unexcused Misconduct as specified in the ERCOT Protocols in effect on the Effective Date.

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

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

Section 10. Default and Force Majeure.

Section 7, Default and Force Majeure, of the Standard Form Agreement is hereby incorporated by reference into this Agreement and shall apply to the terms of this Agreement. In addition to the Default provisions incorporated by reference from the Standard Form Agreement, the following provisions apply for purposes of Default. A Default or Material Breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols and Other Binding Documents.

(1) The occurrence and continuation of any of the following events shall constitute an automatic Default by Participant under this Agreement:

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

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

(c) At any time, the Actual Availability is equal to or less than 50% of the Target Availability as specified in Table 1 Section 1 (E)(1) of this Agreement; or

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

Section 11. Limitation of Damages and Liability.

Section 8, Limitation of Damages and Liability, of the Standard Form Agreement is hereby incorporated by reference into this Agreement and shall apply to the terms of this Agreement.

Section 12. Dispute Resolution.

Section 9, Dispute Resolution, of the Standard Form Agreement is hereby incorporated by reference into this Agreement and shall apply to the terms of this Agreement.

Section 13. Miscellaneous.

Section 10, Miscellaneous, of the Standard Form Agreement is hereby incorporated by reference into this Agreement and shall apply to the terms of this Agreement.

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

***Electric Reliability Council of Texas, Inc.:***

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

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

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

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

***Participant:***

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

Name:

Title:

Date:

Market Participant Name:

Market Participant DUNS:

**ERCOT Nodal Protocols**

**Section 22**

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

**TBD**

Standard Form Black Start Agreement

Between

Insert Participant

and

Electric Reliability Council of Texas, Inc.

This Standard Form Black Start Agreement (“Agreement”), effective as of \_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between Insert Participant, a [Insert State of Registration and Entity type] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

Recitals

WHEREAS:

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

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

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

Agreements

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

Section 1. Resource-Specific Terms.

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

B. Black Start Resource.

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

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

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

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

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

C. Price:

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

D. Notice.

Any Notice required to be given under this Agreement shall be provided in accordance with the Notice procedures contained in Protocol Section 1, Overview, except where another section of the Protocols authorizes Notice by a different procedure under specified circumstances.

If to ERCOT:

Electric Reliability Council of Texas, Inc.

8000 Metropolis Drive (Building E), Suite 100

Austin, Texas 78744

Tel No. (512) 225-7000

E-mail: [MPRegistration@ercot.com](mailto:MPRegistration@ercot.com)

If to Participant regarding a breach or Default under this Agreement, then Notice will be sent using Participant’s contact information as provided in its Standard Form Agreement.

Section 2. Definitions.

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

B. “Standard Form Agreement” shall mean the executed Section 22, Attachment A, Standard Form Market Participant Agreement between the Participant and ERCOT.

Section 3. Term and Termination.

A. Term.

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

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

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

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

Section 4. Representations, Warranties, and Covenants.

Section 4, Representations, Warranties, and Covenants, of the Standard Form Agreement is hereby incorporated by reference into this Agreement and shall apply to the terms of this Agreement.

Section 5. Participant Obligations.

A. Participant shall comply with, and be bound by, all ERCOT Protocols and Other Binding Documents, ERCOT Operating Guides, and the North American Electric Reliability Corporation (NERC) Reliability Standards as they pertain to operation of a Black Start Resource by a Resource Entity.

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

Section 6. ERCOT Obligations.

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

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

Section 7. Black Start Decertification.

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

Section 8. Operation.

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

B. Planning Data.

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

(1) Availability Plan for each hour of the next Operating Day submitted by 0600 of the preceding day; and

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

C. Testing.

Participant shall perform quarterly Black Start Resource Availability Tests as described in these Protocols.

D. Delivery.

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

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

Section 9. Payment.

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

(1) Availability

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

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

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

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

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

(iv) The Black Start Resource has failed to start when required under this Agreement, and has not passed a subsequent Black Start Resource Availability Test; or

(v) The Black Start Resource failed to perform when issued a Dispatch Instruction to come On-Line any time other than for BSS and has not passed a subsequent Black Start Resource Availability Test.

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

(2) “Black Start Service Hourly Rolling Equivalent Availability Factor (BSSHREAF)” means, with respect to a given hour, the quotient (expressed as a percentage) of (a) the number of hours, including the given hour and the immediately preceding 4,379 hours, in which the Black Start Resource was Available, divided by (b) 4,380; provided that, to the extent that 4,379 hours have not elapsed since the Start Date (the difference between 4,379 and the hours that have elapsed being referred to herein as the “Assumed Hours”), the Black Start Resource shall be deemed, for purposes of this calculation, to be Available for the Assumed Hour unless the Black Start Resource has failed to perform in response to a blackout event or when a Dispatch Instruction to come On-Line has been issued. Participant’s failure to perform shall be subject to possible claw-back of its Hourly Standby Fee and reduced payment during the Assumed Hours period. A Force Majeure Event is treated the same as any other cause for unavailability for the purposes of calculating BSSHREAF.

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

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

Section 10. Default and Force Majeure.

Section 7, Default and Force Majeure, of the Standard Form Agreement is hereby incorporated by reference into this Agreement and shall apply to the terms of this Agreement. In addition to the Default and Force Majeure provisions incorporated by reference from the Standard Form Agreement, the following provisions apply for purposes of Default and Force Majeure.

(1) The occurrence and continuation of any of the following events shall constitute an automatic Default by Participant under this Agreement:

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

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

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

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

(2) Notwithstanding anything to the contrary, if Participant uses a Switchable Generation Resource (SWGR) as the Black Start Resource, the requirements or instructions of another Control Area Operator shall not constitute a Force Majeure Event or otherwise excuse the Participant from providing BSS or performing its obligations under this Agreement.

(3) Notwithstanding anything to the contrary, a Blackout does not constitute a Force Majeure Event or otherwise excuse the Participant from providing Black Start services.

Section 11. Limitation of Damages and Liability.

Section 8, Limitation of Damages and Liability, of the Standard Form Agreement is hereby incorporated by reference to this Agreement and shall apply to the terms of this Agreement.

Section 12. Dispute Resolution.

Section 9, Dispute Resolution, of the Standard Form Agreement is hereby incorporated by reference to this Agreement and shall apply to the terms of this Agreement.

Section 13. Miscellaneous.

Section 10, Miscellaneous, of the Standard Form Agreement is hereby incorporated by reference to this Agreement and shall apply to the terms of this Agreement.

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

***Electric Reliability Council of Texas, Inc.:***

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

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

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

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

***Participant:***

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

Name:

Title:

Date:

Market Participant Name:

Market Participant DUNS:

**ERCOT Nodal Protocols**

**Section 23**

**Form E: Notice of Change of Information**

**TBD**

**NOTICE OF CHANGE OF INFORMATION**

A Market Participant must update, amend and/or correct the registration information previously submitted to ERCOT using this Notice of Change of Information (NCI). The Market Participant must notify ERCOT of any change to the information or additional information on any application or form that it has previously submitted to ERCOT according to the notification timeframe in the ERCOT Protocols or, if the Protocols do not contain a timeframe for the subject matters, at least 30 days before the change will take effect. Please fill out this form electronically, print and execute. Submit all changes and/or additional information by one of the following methods: 1) Market Information System (MIS); or 2) email to [MPRegistration@ercot.com](mailto:MPRegistration@ercot.com).

Except as otherwise required by the ERCOT Protocols, ERCOT will send a written acknowledgement of receipt of the changes within five Business Days of receipt and will notify Market Participant of any deficiencies or any additional documentation required within 10 days of receipt. The notice of receipt will be sent to the email address of the Authorized Representative on file with ERCOT or the address specified in the NCI received by ERCOT.

The following contacts/information can be changed via the submittal of this NCI:

* **Authorized Representative (“AR”)** – Responsible for updating all registration information, and will be the contact person between the Market Participant and ERCOT for all business matters requiring authorization by ERCOT. *(All Market Participant Types)*
* **Backup AR** – May perform the functions of the AR in the event the AR is unavailable. *(All Market Participant Types)*
* **User Security Administrator (USA)** – Responsible for managing the Market Participant’s access to ERCOT’s computer systems through Digital Certificates. *(All Market Participant Types)*
* **Backup USA** – May perform the functions of the USA in the event the USA is unavailable. *(All Market Participant Types)*
* **Cybersecurity** – Responsible for communicating Cybersecurity Incidents.
* **24x7 Control or Operations Center (24x7)** – Responsible for operational communications. Shall have sufficient authority to commit and bind the entity. The Market Participant must provide a 24x7 phone number for the operations desk in a manner that reasonably assures continuous communication with ERCOT and is not affected by private branch exchange (PBX) features such as automatic transfer or roll to voice mail. *(Qualified Scheduling Entities (QSEs) that are Wide Area Network (WAN) Participants, sub-QSEs that are WAN Participants, Transmission Service Providers (TSPs))*
* **Compliance** – Responsible for compliance related issues. *(QSEs, Sub-QSEs, Resource Entities (“REs”), TSPs, Distribution Service Providers (DSPs))*
* **Accounts Payable (“AP”)** – Responsible for settlements and billing. *(Congestion Revenue Right (CRR) Account Holders (CRRAHs), QSEs, Sub-QSEs)*
* **Backup AP** – May perform the functions of the AP in the event the AP is unavailable. *(CRRAHs, QSEs, Sub-QSEs)*
* **Credit** – Responsible for all credit-related matters. *(Counter-Parties (CPs))*
* **Backup Credit** – May perform the functions of the Credit in the event the Credit is unavailable. *(CPs)*
* **Transition/Acquisition (“TA”)** – Requirement for Competitive Retailers (CRs) and Transmission and/or Distribution Service Providers (TDSPs). Responsible for coordinating Mass TA events between ERCOT, TDSPs and CRs. The CR may be a Provider of Last Resort (POLR), Designated CR, Gaining CR or Losing CR. Includes TA Business (“TAB”), TA Regulatory (“TAR”) and TA Technical (“TAT”). List one contact per TA. *(Load Serving Entities (LSEs), TSPs, DSPs)*
* **Legal Address Change** *(All Market Participant Types)*
* **Contact for Legal Notice** – The Market Participant’s contact for legal notice as provided in the Standard Form Agreement in Section 22, Attachment A of the Protocols*(All Market Participant Types)*

|  |  |
| --- | --- |
| \*Market Participant Account Name(s): |  |
| \*Data Universal Numbering System (DUNS) Number(s): |  |
| \*Market Participant Type(s): | CP  CRRAH  Independent Market Information System Registered Entity (IMRE)  LSE  QSE/Sub-QSE  RE  TSP and/or DSP |

Received: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Comments (if necessary):

|  |  |
| --- | --- |
| \*AR, Backup AR or Officer: |  |
| \*Signature: |  |
| \*Email: |  |
| \*Phone Number: |  |

**1. Contact type(s):**  AR  Backup AR  USA  Backup USA  Cybersecurity  24x7

Compliance  AP  Backup AP  Credit  Backup Credit  TAB

TAR  TAT

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | | |
| Telephone: | |  | |
| Email Address: | | |  |

If former contact(s) is/are no longer with the Market Participant please list name(s) here:

**Contact type(s):**  AR  Backup AR  USA  Backup USA  Cybersecurity  24x7  Compliance  AP  Backup AP  Credit  Backup Credit  TAB  TAR  TAT

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | | |
| Telephone: | |  | |
| Email Address: | | |  |

If former contact(s) is/are no longer with the Market Participant please list name(s) here:

**Contact type(s):**  AR  Backup AR  USA  Backup USA  Cybersecurity  24x7  Compliance  AP  Backup AP  Credit  Backup Credit  TAB  TAR  TAT

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | | |
| Telephone: | |  | |
| Email Address: | | |  |

If former contact(s) is/are no longer with the Market Participant please list name(s) here:

**Contact type(s):**  AR  Backup AR  USA  Backup USA  Cybersecurity  24x7  Compliance  AP  Backup AP  Credit  Backup Credit  TAB  TAR  TAT

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | | |
| Telephone: | |  | |
| Email Address: | | |  |

If former contact(s) is/are no longer with the Market Participant please list name(s) here:

**Contact type(s):**  AR  Backup AR  USA  Backup USA  Cybersecurity  24x7  Compliance  AP  Backup AP  Credit  Backup Credit  TAB  TAR  TAT

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | | |
| Telephone: | |  | |
| Email Address: | | |  |

If former contact(s) is/are no longer with the Market Participant please list name(s) here:

**Contact type(s):**  AR  Backup AR  USA  Backup USA  Cybersecurity  24x7  Compliance  AP  Backup AP  Credit  Backup Credit  TAB  TAR  TAT

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | | |
| Telephone: | |  | |
| Email Address: | | |  |

If former contact(s) is/are no longer with the Market Participant please list name(s) here:

**Contact type(s):**  AR  Backup AR  USA  Backup USA  Cybersecurity  24x7  Compliance  AP  Backup AP  Credit  Backup Credit  TAB  TAR  TAT

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | | |
| Telephone: | |  | |
| Email Address: | | |  |

If former contact(s) is/are no longer with the Market Participant please list name(s) here:

**2. Legal Address Change**

|  |
| --- |
| Address: |
| City, State, Zip: |

**3. Cancelation of User Security Administrator (USA) and Digital Certificate Opt-Out**

By checking this box, Market Participant elects to: (i) cancel its USA and Digital Certificate Opt-Out; (ii) designate a USA and optionally a Backup USA, listed in Section 1, Contact type(s), of this NCI form; and (iii) receive Digital Certificates as required by Section 16.12, User Security Administrator and Digital Certificates. Market Participant understands that designation of a USA and Backup USA, and issuance of Digital Certificates, is subject to the requirements in Section 16.12.

**4**. **Contact for Legal Notice** **(Section 1 of the Standard Form Agreement)**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Name: |  | | | | | Title: |  | | |
| Address: | |  | | | | | | | |
| City: |  | | | State: |  | | | Zip: |  |
| Telephone: | |  | | | | | | | |
| Email Address: | | |  | | | | | | |