



POWER SALES AGREEMENT ("PSA") – ERCOT INDEX RATE WITH PASS-THROUGH CHARGES

BUYER INFORMATION

Full Business Name: BROOKS COUNTY

Effective Date: 2/28/2018

DBA (if applicable):

Term: 48 month(s)

Monthly Customer Charge: \$ per month

Deposit Required: No

Total Estimated Annual Usage: 1,216,864

Yes, Amount: \$

Buyer Accounts:

| Service Address(es) | TDU | Modified Start Date, if applicable | Modified End Date, if applicable | ESI ID Number(s) |
|---------------------|-----|------------------------------------|----------------------------------|------------------|
| SEE ATTACHED | | | | |
| | | | | |
| | | | | |
| | | | | |

Buyer's Contract Price will be fixed at: 0.01999 (cents per kWh).

The contract price does not include all Pass-Through Charges. Pass-Through Charges are passed through at cost and are also the responsibility of the Buyer. ERCOT Energy will be passed through at the "Index Rate" which means the real-time 15-minute interval load zone settlement price as published by ERCOT (which is multiplied by Buyer's corresponding real-time load to determine Energy Charges).

Contract Price:

The Contract Price covers the following included charges: Seller's administrative and margin costs incurred to provide energy to Buyer.

Pass-Through Charges:

The Pass-Through Charges includes: ERCOT Energy, Transmission and Distribution Line Losses, Unaccounted for Energy, Ancillary Services, ERCOT Fees, Congestion, Renewable Portfolio Standard, TDU Charges, Public Utility Commission of Texas Fees, System Benefit Fee, Transition Charges, Taxes, Municipal Franchise Fees.

Buyer Notices, Invoices & Tax Information:

Name: IMELDA BARRERA

Email: IBARRERA@CO.BROOKS.TX.US

Street Address: P.O. BOX 517

Federal Tax ID: 746000836

City, State, Zip: FALFURRIAS, TX 78355

Phone: (361) 325-5604

Fax:

Cell Phone: 361.455.2685

Tax Exemption Notice: If Entrust does not receive the proper tax exemption documentation within 30 days of Effective Date, Buyer must petition the State of Texas for any tax refunds due.

No, the Delivery Points are not tax exempt

 Yes, the Delivery Points are tax exempt

Authorized Agent:

If completed, the persons listed below shall have full authority to take actions on behalf of Buyer under this Agreement as an Authorized Agent for the relevant Service Addresses including, but not limited to, adding or deleting Service Addresses.


Name and Title

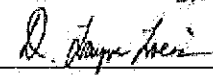
- 1. AUGUST PATROELJ
- 2.

In order to be binding, any changes to the Authorized Agent list must be made in writing either by sending a fax to 866-299-2097 or email to contracts@entrustenergy.com.

This PSA together with Seller's Terms and Conditions ("T&Cs") attached hereto, shall form a single integrated agreement between Seller and Buyer (collectively, the "Agreement"). Terms used herein which are not defined shall have the meaning ascribed to them in the T&Cs. Once the Agreement is fully executed by both Parties, it shall be binding on Buyer and Seller.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

BUYER: BROOKS COUNTY
By: 
Name: IMELDA BARRERA
Title: COUNTY JUDGE
Date: 2/26/2018

Seller: Entrust Energy, Inc.
By: 
Name: D. Layne Loessin
Title: President & CEO
Date: 2/27/2018

ESI ID LIST

| # | ESI ID | TDSP | Service Address | | | |
|----|-------------------|------|--------------------------------------|------------|----|-------|
| 1 | 10032789401764300 | AEP | 2 W Travis St Odlt 250hps | Falfurrias | TX | 78355 |
| 2 | 10032789401764301 | AEP | W Travis St Odlt 250 Hps | Falfurrias | TX | 78355 |
| 3 | 10032789402049160 | AEP | 372 W Travis St Unit Barn | Falfurrias | TX | 78355 |
| 4 | 10032789402192242 | AEP | 1400 S Saint Marys St Unit Hosp | Falfurrias | Tx | 78355 |
| 5 | 10032789402251691 | AEP | 300 N Las Pitas St | Falfurrias | TX | 78355 |
| 6 | 10032789403026022 | AEP | 931 Streetlight Unit Mv100 A | Falfurrias | TX | 78355 |
| 7 | 10032789403026023 | AEP | 935 Streetlight Unit 400mv A | Falfurrias | TX | 78355 |
| 8 | 10032789403026024 | AEP | 935 Streetlight Unit 400 Mvd | Falfurrias | TX | 78355 |
| 9 | 10032789404997178 | AEP | 408 W Travis St Annex | Falfurrias | TX | 78355 |
| 10 | 10032789406102925 | AEP | 627 Fm 754 Unit Lndfill | Falfurrias | TX | 78355 |
| 11 | 10032789406719050 | AEP | 1402 S Saint Marys St | Falfurrias | Tx | 78355 |
| 12 | 10032789406856230 | AEP | 430 W Travis St Unit Barn | Falfurrias | TX | 78355 |
| 13 | 10032789407819021 | AEP | 1400 S Saint Marys St Odlt 250hps | Falfurrias | TX | 78355 |
| 14 | 10032789409457472 | AEP | W Travis St Unit 400mhfl Odl | Falfurrias | TX | 78355 |
| 15 | 10032789409457473 | AEP | W Travis St Odlt 400mh Unit 400mh | Falfurrias | TX | 78355 |
| 16 | 10032789410877041 | AEP | W Travis St Unit 250sval Odlt | Falfurrias | TX | 78355 |
| 17 | 10032789417222530 | AEP | 16 County Road 212 Unit P15s21w 4 | Falfurrias | TX | 78355 |
| 18 | 10032789421320805 | AEP | 408 W Travis St Unit Booth3 | Falfurrias | TX | 78355 |
| 19 | 10032789422009281 | AEP | 252 W Travis St | Falfurrias | Tx | 78355 |
| 20 | 10032789422746740 | AEP | 217 E Miller St Unit Airport | Falfurrias | TX | 78355 |
| 21 | 10032789424091775 | AEP | 100 E Miller St | Falfurrias | TX | 78355 |
| 22 | 10032789425378865 | AEP | 408 W Travis St Unit Booth1 Carnival | Falfurrias | TX | 78355 |
| 23 | 10032789428328340 | AEP | 200 E Miller St | Falfurrias | TX | 78355 |
| 24 | 10032789428606360 | AEP | 100 N Miller Blvd Lot 2/ Tmp | Falfurrias | TX | 78355 |
| 25 | 10032789433957868 | AEP | 404 W Travis St Hse Mtr | Falfurrias | Tx | 78355 |
| 26 | 10032789436260991 | AEP | 1400 S Saint Marys St Odl | Falfurrias | TX | 78355 |
| 27 | 10032789436260994 | AEP | 1400 S Saint Marys St Unit 150sval O | Falfurrias | TX | 78355 |
| 28 | 10032789436420867 | AEP | 408 W Travis St Unit Booth7 | Falfurrias | TX | 78355 |
| 29 | 10032789441008950 | AEP | 169 E Allen Bldg Annex | Falfurrias | TX | 78355 |
| 30 | 10032789441008951 | AEP | 169 E Allen Odlt 400hps | Falfurrias | TX | 78355 |

 Customer Initials

ESI ID LIST

| # | ESI ID | TDSP | Service Address | | | |
|----|-------------------|------|--------------------------------------|------------|----|-------|
| 1 | 10032789445758831 | AEP | S Highway 281 Unit 250sval Odl | Encino | TX | 78353 |
| 2 | 10032789446080142 | AEP | 219 E Miller St | Falfurrias | TX | 78355 |
| 3 | 10032789448348487 | AEP | 408 W Travis St Unit Booth4 | Falfurrias | TX | 78355 |
| 4 | 10032789448507760 | AEP | 1400 S Saint Marys St Unit A11 Odl | Falfurrias | TX | 78355 |
| 5 | 10032789450295815 | AEP | 408 W Travis St Unit Booth8 | Falfurrias | TX | 78355 |
| 6 | 10032789455385090 | AEP | 100 N Miller Blvd 1-vacant | Falfurrias | TX | 78355 |
| 7 | 10032789455399750 | AEP | 424 W Travis St | Falfurrias | TX | 78355 |
| 8 | 10032789459591176 | AEP | 268 S Highway 281 | Encino | TX | 78353 |
| 9 | 10032789461271040 | AEP | 10 S Highway 281 Odl 150hps | Encino | TX | 78353 |
| 10 | 10032789463097051 | AEP | W Potts St Odl | Falfurrias | TX | 78355 |
| 11 | 10032789463097052 | AEP | W Potts St Odl 400hps | Falfurrias | TX | 78355 |
| 12 | 10032789464500213 | AEP | 200 W Miller St Annex | Falfurrias | TX | 78355 |
| 13 | 10032789467316996 | AEP | 26 S Us Highway 281 Unit Clinic | Falfurrias | TX | 78355 |
| 14 | 10032789471841690 | AEP | 938 Streetlight Unit 400mve | Falfurrias | TX | 78355 |
| 15 | 10032789474591940 | AEP | W Travis St Unit Arena | Falfurrias | TX | 78355 |
| 16 | 10032789480097541 | AEP | W Highway 285 Unit Airport | Falfurrias | TX | 78355 |
| 17 | 10032789480482257 | AEP | 3828 S Highway 281 Unit South | Falfurrias | Tx | 78353 |
| 18 | 10032789481893760 | AEP | 1400 S Saint Marys St Odl 400hps A | Falfurrias | TX | 78355 |
| 19 | 10032789482158310 | AEP | 283 S Lasater St | Falfurrias | TX | 78355 |
| 20 | 10032789484683575 | AEP | 408 W Travis St Unit Booth2 Carnival | Falfurrias | TX | 78355 |
| 21 | 10032789484976360 | AEP | 1400 S Saint Marys St Odl 400hps B | Falfurrias | TX | 78355 |
| 22 | 10032789487238860 | AEP | 6 S Highway 281 Odl 150hps | Encino | TX | 78353 |
| 23 | 10032789490794409 | AEP | 3721 S Highway 281 Unit North | Falfurrias | Tx | 78353 |
| 24 | 10032789492321651 | AEP | 366 W Travis St | Falfurrias | TX | 78355 |
| 25 | 10032789492321652 | AEP | 1 W Travis St Odl 250hps | Falfurrias | TX | 78355 |
| 26 | 10032789493892820 | AEP | 282 W Travis St | Falfurrias | TX | 78355 |
| 27 | 10032789497788600 | AEP | 262 W Travis St | Falfurrias | TX | 78355 |
| 28 | 10032789498112251 | AEP | 200 E Miller St Odl 250hps Unit 400i | Falfurrias | TX | 78355 |
| 29 | 10032789498267901 | AEP | Fm 1418 | Falfurrias | TX | 78355 |

30

Customer Initials



TERMS AND CONDITIONS

These Terms and Conditions ("T&Cs") and the attached Power Sales Agreement ("PSA") shall form a single integrated agreement ("Agreement") between Entrust Energy, Inc. ("Seller") and the Buyer stated in the PSA, as of the Effective Date stated therein. Buyer and Seller shall individually be referred to as a "Party" and collectively the "Parties". Terms used herein which are not defined shall have the meaning ascribed to them in the PSA.

ARTICLE 1: SCOPE

- 1.1 **Term.** The supply of electricity shall commence for each Buyer Account on the next available Switch Date immediately following the Effective Date that can be reasonably effectuated by ERCOT and Buyer's TDU (the "Start Date"), and shall continue until the regularly scheduled electric meter read date which is approximately the number of month(s) as indicated in the PSA following the Start Date (the "End Date"). Notwithstanding the preceding sentence, this Agreement shall continue to apply to both Parties until all obligations are completed. Thereafter, the Term shall be deemed to continue until Buyer's new REP has scheduled a switch for all of the Buyer Accounts which are the subject of the relevant PSA. Once this condition precedent is fulfilled, the final date for supply of Energy by Seller shall be the date of the switch to Buyer's new REP.
- 1.2 **Buyer Account(s).** The Buyer Account(s) will be as set forth in the PSA. Buyer shall assist Seller in taking all actions necessary to effectuate the supply of electricity to Buyer. Buyer represents that to the best of Buyer's knowledge, the Buyer Account Information is true and accurate as of the date furnished to Seller. Alternate Start and End Dates for individual Buyer Accounts require Seller consent and shall be specified in the PSA. Buyer is responsible for any TDU fees related to special or non-standard Start and End Dates.

ARTICLE 2: PURCHASE AND SALE OF ENERGY

- 2.1 **Purchase and Sale.** Seller shall provide Energy necessary to meet the Energy Requirements of each Buyer Account(s) to the applicable Delivery Point(s) for the Term, and Buyer shall be responsible for the payment of the Monthly Customer Charge (as specified in the PSA), Energy Charges and Pass-Through Charges as set forth in the PSA.
- "Energy Charges" means the product of the Contract Price(s) multiplied by the Actual Consumption for each Buyer Account.
- "Contract Price" means the Contract Price for a Service Address specified in the applicable PSA (in cents per kWh) during the Term and will include the costs of the Included Charges listed in the PSA. The Contract Price does not include, and Buyer will be responsible for paying Seller for, the Pass-Through Charges listed in the PSA and, upon the occurrence of an Event of Default, any additional costs or charges imposed or associated with the delivery of the Actual Consumption to the extent that such additional costs or charges would not have been incurred but for the Event of Default by Buyer.
- 2.2 **Load Change.** If during the Term: A) there is any event or circumstance which is likely to cause a significant change to Buyer's aggregated usage patterns including, but not limited to, Buyer's plans for construction or demolition, facility replacement or equipment modification, changes in production, planned closures, or new environmental limits, or B) the Actual Consumption for Buyer's aggregated Accounts materially deviates (as determined in Seller's sole discretion) from previous usage periods, such event shall be termed a "Load Change". If Seller or Buyer becomes aware of a Load Change, such Party shall promptly notify the other in writing. In such event, Buyer and Seller agree to meet and discuss the impact of the Load Change and after such discussion, Seller shall have the right to amend the Contract Price to reflect the impact of the Load Change by written notification to Buyer. The revised Contract Price shall be effective as of the date specified in Seller's notice and, at Seller's sole discretion, may apply to elapsed periods of time during which the usage changes occurred.
- 2.3 **Contract Price after the Agreement is terminated or expires.** The Contract Price for any quantity of Energy delivered by Seller during the period of time after this Agreement is terminated or expires shall be a variable rate expressed in \$/kWh and determined each calendar month by Seller based on expected Included Charges for the delivery zone in which the load is served and will include an administrative cost component ("retail adder") for Seller that will not exceed \$0.030 per kWh. The Contract Price applicable to usage in a calendar month will be posted on www.entrustenergy.com/commvariablepricehistory no later than 3 p.m. CPT of the last business day in the preceding month.

- 2.4 **Title and Risk of Loss.** Title, liability and risk of loss associated with the Energy purchased and sold shall pass from Seller to Buyer at the Delivery Point. The Party with title to the Energy shall indemnify the other Party from any Claims arising from any incident with respect to the Energy supplied when such Party is in possession of the Energy. The foregoing indemnities shall apply without regard to the causes related thereto, including the negligence of any Party, whether sole, joint, or concurrent, or active or passive. Buyer and Seller recognize that neither Party controls the Energy sold hereunder while such Energy is on the TDU system. Neither Party will be responsible for indemnifying the other Party for any Claims or incidents arising with respect to the Energy supplied when such Energy is on the TDU system.
- 2.5 **Outage Reporting to the TDU.** In the event of a service outage, please call your TDU directly: AEP Texas North and AEP Texas Central: (866) 223-8508; CenterPoint Energy: (800) 332-7143; Oncor Electric Delivery: (888) 313-4747; Texas-New Mexico Power: (888) 866-7456.

ARTICLE 3: INVOICING, NETTING, CREDIT, DEPOSITS AND METERING

- 3.1 **Invoicing.** As soon as practicable following the receipt of invoices detailing charges from ERCOT, the TDU and any other necessary data relating to the supply of Energy to the Buyer Account(s), Seller shall deliver to Buyer an invoice to the address specified in the PSA. Such invoice shall set forth all charges due for the billing period, including any applicable Taxes. Seller may use estimated data for billing purposes provided that such estimates shall be subject to future reconciliation upon receipt of final data regarding the actual quantity of Energy consumed for the applicable billing period. Payment shall be made by check or other means agreeable to Seller, on or before the sixteenth (16th) calendar day after the date set forth on Seller's invoice or, if such day is not a Business Day, the immediately succeeding Business Day ("Due Date") to the payment address provided by Seller. Overdue payments shall accrue interest at the Interest Rate applicable to each overdue day from and including the Due Date up to but excluding the date payment is received by Seller. Seller will charge a \$25.00 fee for each payment transaction that is not processed due to insufficient funds. Seller shall also be entitled, at its option, to charge a late payment fee of 5% on any overdue amount. Regardless of whether any amount of an invoice is disputed by Buyer, the entire invoice shall be paid when due. Any disputed amounts paid that are ultimately determined to be owed to Buyer shall be repaid by Seller with interest accrued at the Interest Rate from and including the date of the overpayment up to but excluding the date the refund payment is received by Buyer. If an additional amount is determined to be correct, Buyer shall pay to Seller the additional amount within five (5) Business Days of such determination. Any invoice dispute or adjustment shall be made in accordance with Section 3.2 below.
- 3.2 **Reconciliation.** The Parties agree that notwithstanding the provisions above, the expiration of the Term or the termination of this Agreement, Seller shall be permitted in its reasonable discretion to adjust any invoice as necessary to correct any errors by Seller or third-party, within twelve months of the date such invoice or adjustment to such invoice was rendered. Any amounts payable by a Party as a result of such adjustment shall be paid by the Party who owes it within twenty (20) calendar days of the date set forth on the relevant invoice.
- 3.3 **Payment Netting.** The Parties agree that they shall discharge mutual debts and payment obligations due and owing to each other pursuant to this Agreement through netting, in which case all amounts owed by each Party to the other Party, including any related damages calculated pursuant to Section 6.3 below, and interest, payment or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- 3.4 **Credit.** Seller's obligation to sell Energy to Buyer is conditioned upon Seller's ongoing review and approval of Buyer's creditworthiness. Buyer will, at Seller's request, from time to time: (i) provide financial information, and (ii) if Buyer's creditworthiness declines, as determined by Seller in its reasonable discretion, Buyer will provide performance assurance (including, but not limited to, additional Deposits) in an amount reasonably satisfactory to Seller.
- 3.5 **Deposits.** If Seller determines that as a condition precedent to entering into the Agreement, Buyer is required to post an initial cash deposit ("Deposit"), such amount shall be specified in the PSA and shall be processed by Seller using the payment method specified by Buyer in the PSA. Seller shall be entitled to apply such Deposit to any past due amounts owing by Buyer and shall be permitted to retain such Deposit until all amounts owed to Seller by Buyer under the Agreement are fully and finally paid.
- 3.6 **Disconnection/Reconnection.** If an electric service disconnection transaction is processed by Seller, Buyer will be charged a \$50.00 disconnection fee. This fee will be assessed regardless of whether Buyer's electric service is actually disconnected or not. In addition, Buyer will be charged a \$25.00 reconnection fee in the event that Seller processes a reconnection transaction for Buyer's account which will be in addition to any other outstanding fees and charges due; and Buyer may be required, at Seller's sole discretion, to re-contract for service and pay a deposit. The fees above are in addition to those disconnection and reconnection fees that may be

assessed by Buyer's TDU. Disconnection of Buyer's electric service from Seller will not excuse Buyer from paying any outstanding amounts owed to Seller.

ARTICLE 4: NOTICES

All notices required or permitted to be given shall be in writing and deemed to be properly delivered if sent to a Party at its specified address: (a) in person, (b) by facsimile, (c) by United States certified mail with first class postage prepaid, (d) by private, prepaid courier (such as FedEx), or (e) by any other mutually acceptable means; provided, however, notices of interruption and communications to a TDU shall be given by Buyer directly to the TDU. Notices delivered in-person, by facsimile, courier or email shall be deemed to have been received by the close of the Business Day on which it was delivered (unless transmitted or hand delivered after 5:00 p.m. local time in the place of delivery, in which case it shall be deemed received on the next Business Day). Notices delivered by mail shall be deemed to have been received two (2) Business Days after the day such notice was sent. A Party may change its address by providing written notice to the other Party, or to such other address as a Party shall from time to time designate. Please refer to the information shown below for all notices to Seller.

Seller Notices: Entrust Energy, 1301 McKinney, Suite 1200, Houston, TX 77010, Attn: General Counsel
Phone Number(s): 300.934.6688 or 866.921.6476
Fax: 866.299.2097

ARTICLE 5: FORCE MAJEURE

Force Majeure. If a Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations hereunder, such Party ("Claiming Party") shall give written notice and provide full details of the event to the other Party in writing as soon as practicable after the occurrence of the event. During such Force Majeure, the obligations of the Parties (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to the extent required; provided, however, that a suspension shall be of no greater scope and of no longer duration than is required by the Force Majeure. The Claiming Party shall make all reasonable attempts to remedy the effects of the Force Majeure and continue performance under this Agreement with all reasonable dispatch; provided, however, that no provision herein shall be interpreted to require Seller to deliver, or Buyer to receive, Energy at points other than the relevant Delivery Point(s).

"Force Majeure" shall mean an event that is beyond the reasonable control of the Claiming Party, prevents the Claiming Party from performing, is not caused by the negligence of the Claiming Party and which by the exercise of due diligence, the Claiming Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. Notwithstanding anything to the contrary in the preceding sentence, Force Majeure shall include: (a) an event affecting a TDU and/or the ERCOT ISO and (b) suspension, curtailment or service interruption by the TDU and/or the ERCOT ISO. In no event shall Force Majeure be based directly or indirectly upon: (a) a decision by Buyer to cease operations at, sell or relocate the Buyer Account(s); or (b) economic loss due to Buyer's loss of Buyer's Account(s), markets, or suppliers, and nothing contained herein shall be construed to require a Claiming Party to settle any strike or labor dispute.

ARTICLE 6: DEFAULT AND TERMINATION

6.1 Events of Default. An "Event of Default" means any of the following actions: (a) the failure by Buyer to make, when due, any payment required under this Agreement if such failure is not remedied within three (3) Business Days after written notice thereof to Buyer, (b) the failure of Buyer to provide to and/or maintain a deposit with Seller to the extent required under this Agreement, (c) any representation or warranty made by Buyer herein shall prove to be false or misleading in any material respect if not cured within five (5) Business Days after written Notice thereof to Buyer; (d) the failure by Buyer to perform any covenant set forth herein if not excused by Force Majeure or cured within five (5) Business Days after written notice thereof to Buyer; (e) the failure by Buyer to provide performance assurance in accordance with Section 3.4; (f) absent agreement to the contrary or Seller's failure to perform, the failure of Buyer to utilize Seller as its sole supplier of Energy for the Service Address(es) in accordance with the terms specified herein; or (g) Buyer (i) makes an assignment or any general arrangement for the benefit of creditors, or (ii) otherwise

becomes Bankrupt. No waiver by Seller of any one or more Events of Default by Buyer shall be construed as a waiver of any other Event of Default, whether of a like or different kind.

- 6.2 **Remedies.** If an Event of Default occurs, Seller shall have the right to designate a day, no earlier than the day such notice is issued, on which this Agreement shall terminate and accelerate all amounts owing between the Parties ("Early Termination Date"). In addition, upon the designation of an Early Termination Date, Seller shall have the right: (i) to suspend the supply of Energy on the Early Termination Date; and/or (ii) if allowed by law, to disconnect, or cause to be disconnected, each Buyer Account from electric service or allow the switch of each Buyer Account to the applicable REP and/or POLR (but in no event shall such disconnection take place prior to the Early Termination Date). Buyer agrees that it shall remain liable to pay timely to Seller all charges for Energy supplied until a switch or disconnection is effected for each Buyer Account as well as any applicable Termination Payment.
- 6.3 **Damages.** If an Early Termination Date occurs, the damages to Seller shall be determined in Seller's sole discretion and shall be equal to the positive difference, if any, between the relevant Contract Price(s) and the relevant wholesale electricity "Market Prices" as of the Early Termination Date for the Buyer Service Address(es), plus an administrative cost component of up to \$0.02 per kWh, multiplied by the estimated volume associated with Buyer's Service Address(es) for the remaining Term, plus all Costs incurred by Seller as a result of the early termination. If an Early Termination Date occurs prior to the commencement of the Term, it shall be assumed that Seller would have commenced making Energy sales to Buyer on the first meter read date on or after the Effective Date of the Term and continued until 23:59 CPT on the End Date of the Term. For the purposes of this Section, the Market Price shall be determined by Seller by taking into consideration, among other things, the load-weighted average of electric energy forward prices in the congestion zones/nodal pricing point or similar locations where the Buyer Service Address(es) are located and included Charges when calculating the Market Price.
- 6.4 **Termination Payment.** The Damages calculated pursuant to section 6.3 above shall be considered the "Termination Payment". Seller shall provide Buyer with a written notice stating the Termination Payment and explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by Buyer within five (5) Business Days after receipt of such notice.
- 6.5 **Disputes With Respect to Termination Payment.** If Buyer disputes Seller's calculation of the Termination Payment, in whole or in part, Buyer shall, within two (2) Business Days of receipt of Seller's calculation of the Termination Payment, provide to Seller a detailed written explanation of the basis for such dispute and shall first transfer performance assurance in a form acceptable to Seller in an amount equal to the Termination Payment.

ARTICLE 7: TAXES

Taxes. Each Party agrees to use reasonable efforts to implement the provisions herein in order to legally minimize Taxes, so long as neither Party is materially adversely affected by such efforts. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if that Party is exempt from Taxes. With respect to sales and purchases of Energy, Buyer shall be responsible and indemnify Seller for all Taxes that arise from or are measured by Energy sold and supplied, or Seller's receipts therefrom, whether such Taxes are imposed by law on Seller or Buyer. Unless specifically stated otherwise herein, the prices quoted by Seller are exclusive of any Taxes for which Buyer may be responsible, and which may be subsequently billed to and collected from Buyer by Seller or by a third party.

ARTICLE 8: LAW, DISPUTES, WAIVER OF CONSUMER RIGHTS

- 8.1 **Governing Law.** These provisions shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the principles of conflicts of law.
- 8.2 **UCC.** Unless otherwise herein provided, the provisions of the Uniform Commercial Code of Texas shall apply and Energy shall be treated as a "goods" as therein defined.
- 8.3 **Dispute Resolution.** The exclusive forum for any disputes shall be the State or Federal courts located in Harris County, Texas.
- 8.4 **LIMITATION OF LIABILITY.** FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED HEREIN, THE LIABILITY OF A PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES HEREBY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE LIABILITY OF A PARTY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR

INDIRECT DAMAGES IN TORT, CONTRACT UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY PROVIDED HEREIN, THE LIMITATIONS HEREIN IMPOSED SHALL BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE LOSS.

- 8.5 **WAIVER OF CONSUMER RIGHTS. TEXAS DECEPTIVE TRADE PRACTICES – CONSUMER PROTECTION ACT.** Buyer hereby waives its rights under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code, as amended or any current successor thereto (the "DTPA") a law that gives consumers special rights and protections. After consultation with an attorney of Buyer's own selection, Buyer voluntarily consents to this waiver. Furthermore, the Parties each individually and separately represent and warrant that it is not a "consumer" within the meaning of the DTPA by virtue of being a "business consumer" (also defined in the DTPA) that has either (i) assets of \$25 million or more, or (ii) is owned or controlled by a corporation or entity with assets of \$25 million or more. Therefore, the Parties agree that: (a) only Section 17.555 of the DTPA shall be applicable, (b) it has consulted with its own legal counsel in seeking or acquiring the goods or services to the extent it has deemed it necessary, and (c) it shall defend and indemnify the other Party from and against any and all claims of or by the indemnifying Party or any of its successors and assigns or any of its or their Affiliates or subsidiaries based in whole or in part on the DTPA arising out of or in connection herewith and/or arising from any breach by the indemnifying Party of its representations in this section.
- 8.6 **ADDITIONAL WAIVERS. BUYER HEREBY WAIVES THE CUSTOMER PROTECTIONS SPECIFIED IN THE PUCT SUBSTANTIVE RULES, SECTION 25.471, et seq.**
- 8.7 **TRANSFER TO POLR OR OTHER RETAIL ELECTRICITY PROVIDER. FOR THE AVOIDANCE OF DOUBT, IF BUYER DEFAULTS UNDER THIS AGREEMENT, BUYER WAIVES ANY RIGHT IT MAY HAVE UNDER THE PUCT RULES REGARDING ANY PRIOR NOTIFICATION BEFORE SELLER MAY TRANSFER BUYER TO THE APPLICABLE POLR OR OTHER DESIGNATED DEFAULT REP SERVICE IN BUYER'S TERRITORY.**

ARTICLE 9: REPRESENTATIONS AND WARRANTIES

Representations and Warranties. As a material inducement to entering into this Agreement, each Party represents and warrants continuing throughout the Term unless otherwise stated as follows: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform its obligations; (b) it has all regulatory authorizations, permits and licenses necessary for it to legally perform its obligations; (c) as of the Effective Date, the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action; (d) this Agreement and any document executed and delivered in accordance therewith constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; and (e) it is not Bankrupt and there are no reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, 11 U.S.C. Section 101 et seq. The Parties agree that nothing in this Agreement: (i) shall be construed to constitute or imply a joint venture, partnership, or association or the creation or existence of any fiduciary or similar obligation or liability between the Parties or (ii) shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy, or right of any kind, other than in connection with an assignment to a permitted assignee. Seller shall not provide, and nothing herein shall be construed as the provision of, advice regarding the value or advisability of trading in commodities that would cause Seller or any of its Affiliates to be considered a commodity-trading advisor under applicable law.

WITH THE EXCEPTION OF ANY WARRANTY THAT IS EXPRESSLY SET FORTH HEREIN, SELLER AND ITS AFFILIATES, SUCCESSORS, ASSIGNS AND DELEGATEES MAKE NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SERVICES THAT SELLER PROVIDES, OR THE ACTIVITIES SELLER UNDERTAKES.

In connection with the negotiation and execution of this Agreement, each Party represents to the other Party that: (i) the other Party is not acting as a fiduciary or financial or investment advisor for it; (ii) it is not relying upon any advice, statements, recommendations, or representations of the other Party other than the written representations expressly set forth herein; (iii) it has made its own decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary, and not upon any view expressed by



the other Party; and (iv) it is entering into this Agreement with a full understanding of all of the risks hereof and thereof (economic and otherwise) and it is capable of assuming and willing to assume those risks.

ARTICLE 10: MISCELLANEOUS

- 10.1 **Assignment and Binding Effect.** Seller shall have the right to assign this Agreement or any of its rights and obligations hereunder in its sole discretion. Buyer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Seller, which consent may be withheld or granted at the discretion of Seller. Notwithstanding the preceding sentence if Buyer desires to sell or lease all or a portion of the Buyer Accounts (the "Affected Buyer Accounts") to another entity ("Assignee A"), Buyer shall be obligated to require such Assignee A to enter into an energy supply agreement with Seller with respect to the Affected Buyer Accounts; provided, (a) Buyer shall notify Seller at least thirty (30) calendar days prior to any such assignment; (b) there is no unremedied Event of Default as of the effective time of such assignment with respect to Buyer; (c) Assignee A satisfies Seller's collateral and/or credit requirements; (d) Assignee A is eligible for the charges applicable to the Affected Buyer Accounts; (e) Assignee A assumes Buyer's obligations hereunder in writing and in form acceptable to Seller and adequate at law for such purpose; (f) Assignee A enters into an agreement with Seller with respect to the Affected Buyer Accounts on substantially the same terms as those contained in this Agreement, and (g) Buyer and Seller reach an agreement as to how to reform this Agreement to take into account the removal of the Buyer Account(s) from this Agreement. Upon a permitted assignment, the Parties agree that the Party assignor shall have no further obligations regarding future performance hereunder with respect to the Affected Buyer Accounts, other than to make full payment of any amounts owed (whether on the basis of charges, indemnity, or otherwise) for any period prior to or after the effective date of the assumption of obligations by assignee and to comply with continuing confidentiality obligations.
- 10.2 **Change in Law.** (a) If either Party or its activities hereunder become subject to any law enacted after the Effective Date ("Change in Law") that renders performance of this Agreement unenforceable or illegal, then either Party, without any obligation or other liability, whether payment or otherwise (other than payment obligations in respect of Energy supplied hereunder), shall have the right to terminate this Agreement without consent of, and upon notice to, the other Party, upon the earlier of sixty (60) calendar days prior notice or such prior notice effective as of the date the Change in Law becomes effective. Buyer shall continue to be responsible to pay Seller for any amounts related to deliveries made before such termination whether or not such amount has been invoiced to Buyer from Seller. (b) If after the Effective Date, a Change in Law occurs relating to the wholesale or retail electricity market in ERCOT resulting in new or modified fees, costs, or other charges or credits incurred by Seller in its role as an ERCOT market participant and/or other ERCOT market participants, then to the extent incurred by Seller, any incremental fees, costs, credits or other charges may be billed to Buyer as an authorized charge or adjustment to the Contract Price ("New Charges"). Seller shall provide Buyer with written notification regarding the New Charges.
- 10.3 **Entirety:** Terms used herein which are not defined will have the meaning ascribed to them in this Agreement. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Buyer acknowledges and agrees that any prior discussions, proposals, or documents exchanged between Buyer and Seller addressing the potential for energy cost savings were forward looking projections and were not and are not a promise, representation or guarantee by Seller that Buyer would reduce its energy costs or save money under the terms and conditions of this Agreement when compared to other alternatives available to Buyer now or during the Term.
- 10.4 **Documentation.** Each Party expressly acknowledges the effectiveness of facsimile or emailed "PDF'd" signatures as originals. No amendment, modification, or change shall be enforceable unless reduced to writing and executed by the Parties.
- 10.5 **Addition and Removal of Meters.** New meters may be added to the PSA at the same price and terms upon the mutual consent of Buyer and Seller. Buyer may drop a meter from PSA only with the prior written consent of the Seller.

ARTICLE 11: DEFINITIONS

The following definitions shall apply whether stated in the singular or plural:

"Actual Consumption" means the Energy measured or reported by the relevant TDU or estimated in good faith by Seller for the Buyer Account(s) in KWh for a month for scalar meters and for each hour for "IDR" meters.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the



direct or indirect ownership of fifty percent or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Ancillary Services" shall have the meaning specified in the ERCOT Protocols.

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under a bankruptcy, reorganization or similar law, (ii) has a petition filed or commenced against it for a proceeding or cause of action under a bankruptcy, reorganization or similar law which is not dismissed within 30 calendar days, (iii) makes an assignment or any general arrangement for the benefit of creditors, (iv) otherwise becomes bankrupt or insolvent (however evidenced), (v) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) is generally unable to pay liabilities or debts as they mature, or (vii) admits in writing its inability to pay its debts generally as they become due.

"Buyer Account(s)" means with Buyer's premises or facilities set forth in the relevant PSA.

"Buyer Account Information" means information regarding Buyer's business, Buyer Account(s), with meter or account numbers, historical and projected Energy usage, hours of operation, and other information reasonably required to substantiate the Energy Requirements of the Buyer's Accounts.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time in Houston, Texas.

"Congestion Zone" shall have the meaning specified in the ERCOT Protocols.

"Costs" means, with respect to a Party, brokerage fees, commissions and other costs and expenses reasonably incurred by such Party entering into new arrangements either in terminating any arrangement pursuant to which it has hedged its obligations under, or in entering into new arrangements that replace, this Agreement, and any commercially reasonable attorneys' fees incurred in connection with enforcing its rights hereunder.

"CPT" means Central Prevailing Time.

"Delivery Point" means the point of interconnection between the TDU facilities and the Buyer's facilities.

"Discretionary Service Fees" means all non-routine fees and charges including, but not limited to the following: deposits, connection fees, metering charges, installation costs, assessments by the TDU in respect of any Power Factor at any Buyer Account meter, or any similar amounts that are assessed by and payable to the TDU related to the purchase and installation of meters and associated equipment and the Buyer's use of such equipment to establish or maintain electric service at a Buyer Account or to maintain TDU system requirements, or other charges for equipment or services requested by Buyer or required by the TDU.

"Energy" means electric energy of the character commonly known as three phase, sixty-hertz electric energy.

"Energy Requirements" means an amount of Energy equal to 100% of the actual amount of energy required to supply Buyer's Account, as measured by the TDU during the Term; provided, in no event shall the amount of Energy required to be supplied hereunder exceed the physical capabilities of the TDU's facilities or contravene applicable utility service rules, tariffs or law.

"ERCOT" means the Electric Reliability Council of Texas, or any successor thereto.

"ERCOT Nodal Intra-Zonal Basis Charge" means a charge associated with the Texas Nodal Market based on the difference(s), if any, between the applicable Real Time Load Zone Settlement Point Price(s) (applicable to Buyer's ESI ID(s)) as determined by ERCOT, less the applicable Real Time Trading Hub Settlement Point Price(s) (applicable to Buyer's ESI ID(s)) as determined by ERCOT. As used herein, the terms "Hub", Settlement Point Price and Load Zone have the meaning set forth in the ERCOT Nodal Protocols, as amended from time to time.

"ERCOT Uplift Charges" includes the following costs charged by ERCOT (each as defined in the Protocols, ERCOT Operating Guides or by the PUCT): Energy Loss Charges; ERCOT Fees; UFE Charges; Renewable Energy Credit Costs.

"ERCOT Operating Guides" means ERCOT's operating guides dated February 2001 as amended from time to time.

"ERCOT Protocols" or "Protocols" means the protocols published by ERCOT, as amended from time to time.

"Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus four percent and (b) the maximum rate permitted by applicable law.

"kW" means kilowatt.

"kWh" means kilowatt-hours.

"Power Factor" means the ratio of kW to kilovolt amperes expressed as a percentage, calculated by dividing kW by kilovolt amperes.

"Provider of Last Resort" or "POLR" shall have the meaning set forth in the ERCOT Protocols, as amended from time to time.



"PUCT" means the Public Utility Commission of Texas, or any successor thereto.

"PURA" means the Public Utility Regulatory Act, as amended from time to time.

"REP" shall have the definition set forth under "Retail Electric Provider" in the ERCOT Protocols, as amended from time to time.

"Schedule/Scheduling" means the actions of Seller, Buyer and/or designated representatives, including the relevant TDU, if applicable, of notifying, requesting and confirming to each other the quantity and type of Energy to be delivered on any given day(s) during Term at specified Delivery Point.

"Switch Date" means the time and date on which the applicable TDU has completed the process necessary to permit Seller to commence or discontinue providing the services hereunder to the Buyer Account(s). The process may include, as necessary and without limitation, recognizing Seller as Buyer's electric supplier and /or limited agent; processing and acting on direct access service requests; installation of meters and the final meter read date.

"System Benefit Fee" means the non-bypassable fee set by the PUCT to finance the system benefit account. The fee is to be charged to electric retail Buyers based on the amount of kWh of Energy used as measured at the individual meter and adjusted for voltage level losses.

"T&D Charges" means, for each Buyer Account, all transmission and distribution charges and other cost recovery charges and fees outlined in the applicable TDU's tariff and billed to Seller for TDU's services to deliver Energy to the applicable Buyer Account(s) including but not limited to municipal franchise fees, non-metered service fees; nuclear generation facility decommissioning charges; transmission cost recovery factor charges; excess mitigation credits; provided, such charges and fees will not include any Transition Charges.

"Taxes" means all utility, gross receipts, sales, use, excise and other taxes, governmental charges, emission allowance costs, licenses, permits and assessments, and any other similar charge imposed as a result of this Agreement, other than taxes based on net income or net worth.

"TDU" means transmission and distribution utility, or any entity or entities transmitting or transporting Energy on behalf of Seller or Buyer to or from the Delivery Point.

"Transition Charges" means, for each Buyer Account, any or all of the following charges: competition transition charges; transition charges as defined in the PURA; and/or substantially similar charges associated with, or resulting from, the opening of the electric market in the State of Texas to REPs, including the recovery of stranded costs as defined by PURA and increases in transmission and distribution rates charged by the TDU that result from, or are otherwise attributable to, the redirection of depreciation expenses.

"UFE Charges" shall mean any charges attributable to "Unaccounted for Energy" as such term is defined in the ERCOT Protocols, as amended from time to time.

A handwritten signature in black ink, appearing to be "JRS", written over a horizontal line.