

~~DRAFT~~—CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT, effective as of the date of the signatures below (this “Agreement”), is entered into by and between Entergy Services, Inc., a Delaware corporation (“ESI”), and _____, a _____ (“_____”). ESI and _____ are each sometimes referred to individually as a “Party” and collectively, as the “Parties.”

WHEREAS, ESI has issued the 2014 Request for Proposals for Capacity Credits from Midcontinent Independent System Operator, Inc. (the “RFP”) on behalf of one or more of the Included Entergy Operating Companies (as defined in Section 13 below);

WHEREAS, in connection with the RFP, the Parties and/or their respective Affiliates may disclose to one another information that is confidential and proprietary and may enter into a transaction with each other for the sale and purchase of such capacity credits (the “Possible Transaction”);

WHEREAS, each Party wishes to maintain the confidentiality of such information and, further, does not intend to waive any of its rights thereto;

WHEREAS, as a condition to furnishing such information, each Party requires that such information be accorded confidential treatment in accordance with and subject to the provisions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. “Confidential Information” shall mean any and all technical, financial, operational, business or other non-public information, including, without limitation, data, documents, materials, studies, projections, contract proposals, processes, drawings, plans, specifications, operating procedures, correspondence, formulae, programs, analyses, and studies, whether in written or electronic form, whether communicated by writing, verbally, or otherwise, that a Party (the “Disclosing Party”) discloses to the other Party (the “Receiving Party”) or to any of the ESI Representatives or the _____ Representatives (as defined below), as applicable, including, without limitation, all notes, observations, analyses, interpretations, compilations, studies, surveys, inspections or evaluations made by or for the Receiving Party or any of its Representatives (as defined below), which contain, reflect or are based upon, in whole or in part, any of such data or information. Documents so classified by the Disclosing Party shall bear the designation “Confidential Information.” The term “Highly Sensitive Protected Material” is a subset of Confidential Information and refers to material that the Disclosing Party claims is of such a highly sensitive nature that making copies of such material or providing unrestricted access to such material to the Receiving Party or its representatives would expose the Disclosing Party, or a person or entity to which the Disclosing Party owes a duty to protect the confidentiality of such materials, to an unreasonable risk of harm. Documents so classified by Disclosing Party shall bear the designation “Highly Sensitive Protected Material.”

2. Each Party agrees to hold Confidential Information of the other Party in confidence and not to disclose any part of it to any Person, except in accordance with this Agreement, without the prior written approval of the Disclosing Party. Each Party further agrees to use the other Party’s Confidential Information only for the purposes of the RFP and for no other purpose. _____’s Confidential Information may be disclosed by ESI only to ESI’s or the Included Entergy Operating Companies’ directors, officers, employees, representatives, agents, or advisors (the “ESI Representatives”) and any interested regulatory staff who need to know the Confidential Information for the purposes contemplated by

this Agreement and who will be advised by ESI of this Agreement; provided, however, that ESI will satisfy itself that the ESI Representatives will act in accordance herewith. ESI shall be responsible for any breach of this Agreement by any of the ESI Representatives. ESI's Confidential Information may be disclosed by only to _____'s or _____'s Affiliates' directors, officers, employees, representatives, agents, or advisors (the "_____ Representatives") who need to know the Confidential Information for the purposes contemplated by this Agreement and who will be advised by _____ of this Agreement; provided, however, that _____ will satisfy itself that the _____ Representatives will act in accordance herewith. _____ shall be responsible for any breach of this Agreement by any of the _____ Representatives. The ESI Representatives and the _____ Representatives may hereinafter sometimes be referred to as the "Representatives" of the respective Parties (by way of example only, the ESI Representatives may be referred to as "the Representatives of the Disclosing Party" when ESI is the Disclosing Party).

3. In addition to the protections provided for herein for Confidential Information, Confidential Information that also has been designated as Highly Sensitive Protected Material shall be subject to the following protections. First, the Highly Sensitive Protected Material will be accorded by the Receiving Party the highest level of protection that is reasonably possible in order to preserve the confidentiality of this material. Second, only one copy of Highly Sensitive Protected Material will be provided to the Receiving Party, and the Receiving Party shall not be permitted to make any additional copies of such Highly Sensitive Protected Material, or any part of the Highly Sensitive Protected Material, without the prior written consent of the Disclosing Party. Third, the Receiving Party agrees that Highly Sensitive Protected Material shall be made available only for review by approved Representatives of the Receiving Party; which Representatives must be approved by the Disclosing Party, applying its sole and absolute discretion, before Highly Sensitive Protected Material may be provided to the proposed Representative.

4. The confidentiality obligations of this Agreement shall not apply to information disclosed in connection with this Agreement which: (i) is or becomes publicly known other than through a breach of the provisions of this Agreement or other confidentiality or other legal or fiduciary obligation by the Receiving Party or any of its Representatives; (ii) is already known to the Receiving Party at the time of disclosure, provided the source of such information was not known by the Receiving Party to be bound by a confidentiality agreement with or other legal or fiduciary obligation of confidentiality owed to the Disclosing Party or any of its Affiliates; (iii) is lawfully received by the Receiving Party from a source other than the Disclosing Party or its Representatives without, to the Receiving Party's knowledge, breach of any confidentiality agreement with or other legal or fiduciary obligation of confidentiality owed to the Disclosing Party or any of its Affiliates by such source; (iv) is independently developed by the Receiving Party without use, directly or indirectly, of Confidential Information received from the Disclosing Party or any of its Representatives; or (v) is authorized in writing by the Disclosing Party to be released from the confidentiality obligations of this Agreement.

5. All Confidential Information may be subject to review by one or more of the regulatory commissions having jurisdiction over one or more of the Included Entergy Operating Companies or by the staff(s) thereof, and may be subject to formal or informal discovery by such commission(s) or staff(s) or other parties. In addition, all Confidential Information may be subject to review by a district or appellate court in a proceeding involving one or more of the Included Entergy Operating Companies. _____ agrees that ESI or any of the Included Entergy Operating Companies may use and disclose Confidential Information in testimony, evidence or otherwise in any proceeding or non-public communication or discussion seeking or relating to approval by any such commission of the Possible Transaction or any other regulatory proceeding or proceeding before a district or appellate court to which the Possible Transaction may be relevant, and in any such case, ESI will make reasonable efforts to obtain

confidential treatment for disclosed Confidential Information. In addition, if the Receiving Party becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information of the Disclosing Party, the Receiving Party will provide the Disclosing Party with prompt written notice so the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event such protective order or other remedy is not obtained reasonably in advance of the time the Receiving Party shall be required to disclose such Confidential Information, except to the extent the Disclosing Party shall have waived compliance with the provisions of this Agreement, the Receiving Party will disclose only that Confidential Information of the Disclosing Party the disclosure of which is compelled and will make reasonable efforts to obtain confidential treatment for such Confidential Information so disclosed (and may disclose such information in accordance with this Paragraph 5 without liability hereunder).

6. The Confidential Information shall remain the property of the Disclosing Party and, upon the written request of the Disclosing Party, the Receiving Party shall, at its own expense, promptly return to the Disclosing Party all originals and copies of the writings in its possession that contain Confidential Information of the Disclosing Party, except that the portion of Confidential Information that may be found in analyses, compilations, studies and other documents prepared by or for the Receiving Party shall be destroyed rather than returned, as verified by a written certificate given by an officer of the Receiving Party to the Disclosing Party and except that ESI may retain one copy of Confidential Information that it receives from _____ in the files of its Legal Department.

7. The Disclosing Party shall be entitled to equitable relief, including injunction and specific performance, in the event of a breach or threatened breach of this Agreement upon proof of such breach. Further, the Receiving Party waives any requirement that the Disclosing Party post a bond in connection with obtaining any such equitable relief. In the event of a breach of this Agreement, such remedies shall be in addition to any other remedies available at law or equity. In no event shall any Party be entitled to exemplary, indirect, special, or punitive damages.

8. Neither Party acquires any property or other interest, including, without limitation, any right under any patent, trademark, or copyright in Confidential Information merely as a result of its disclosure or exchange under this Agreement.

9. Neither Party nor any of its respective Representatives has made or makes any representation or warranty, whether express, implied, statutory or otherwise, as to the accuracy or completeness of Confidential Information or any condition or aspect thereof. Except as otherwise agreed in writing, each Party agrees that neither the Disclosing Party nor any of its Representatives shall have any liability to the Receiving Party or any of its Representatives resulting from the use of the Confidential Information.

10. This Agreement does not constitute a joint venture or partnership between the Parties. Nothing herein shall require either Party to disclose Confidential Information or to negotiate or to enter into any agreement as a result of the exchanges and discussions contemplated by this Agreement. _____ acknowledges and agrees that ESI has no obligation to negotiate exclusively with _____ or any other Person regarding the Possible Transaction except as may be otherwise expressly provided in a subsequent written agreement. Each of the Parties acknowledges that it is sophisticated and has been advised, and will continue to be advised, by experienced counsel and, to the extent it deems appropriate, other advisors in connection with the Possible Transaction. No contract or agreement regarding the Possible Transaction or any transaction involving the Parties will be deemed to exist between the Parties unless and until a final definitive agreement setting forth the definitive terms of the Possible Transaction has been fully executed and delivered. Unless and until such a final definitive

agreement regarding the Possible Transaction has been executed and delivered, neither Party will be under any legal obligation of any kind whatsoever with respect to the Possible Transaction by virtue of this Agreement, except for the matters specifically agreed to herein or as otherwise expressly provided in a subsequent written agreement with respect to the Possible Transaction. Each Party reserves the right, in its sole discretion, to terminate discussions and negotiations at any time, for any reason or for no reason.

11. This Agreement shall be effective from the date first hereinabove written to and for a period of two (2) years thereafter and shall terminate upon the expiration of such period. Termination shall not affect the obligations of either Party under this Agreement with respect to Confidential Information already disclosed to such Party or any of its Representatives under this Agreement.

12. This Agreement may not be assigned by either Party without the prior written consent of the other Party. _____ acknowledges and agrees that each of the Included Entergy Operating Companies is an express third-party beneficiary) of this Agreement.

13. For purposes of this Agreement, the following terms shall have the meanings set forth below:

- (a) “Affiliate” shall mean any Person controlling, controlled by or under common control with another Person, with control meaning the ability to direct the management or policies of a Person, whether through the ownership of voting rights, by contract, or otherwise.
- (b) “Included Entergy Operating Companies” means Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC., Entergy Texas, Inc., and Entergy New Orleans, Inc. and their respective successors and permitted assigns.
- (c) “Person” shall mean any individual, corporation, partnership, limited liability company, joint venture, association, trust, estate, government or agency or subdivision thereof or any other entity.

14. No failure or delay by the Disclosing Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power, or privilege. No waiver by any Party of any provision of this Agreement shall be effective unless in writing and designated as a waiver, and such waiver shall not imply a subsequent or prior waiver of that or any other provision.

15. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of law rules thereof (other than Section 5-1401 of the New York General Obligations Law).

16. Any and all notices and other communications that are required or permissible pursuant to this Agreement shall be in writing, and shall be deemed given: (i) upon personal delivery to an officer of the recipient as set forth below or (ii) upon the sender's receipt of electronic confirmation of transmission, if sent by facsimile; or (iii) upon receipt if sent by mail or courier. The Parties designate the following addresses for the provision of such notices:

To ESI:
Entergy Services, Inc.
639 Loyola Avenue, 26th floor
New Orleans, LA 70113
[Attention: General Counsel

Facsimile number: (504) 576-2977]

With a copy to:
Lawrence Hand, Jr.
Entergy Services, Inc.
639 Loyola Avenue, 26th floor
New Orleans, LA 70113
Facsimile number: (504) 576 – 5579.

To _____:

[To be completed]

17. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Any unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

18. The Parties hereby expressly acknowledge and agree that (i) they are or may be involved in the same or similar businesses, (ii) nothing herein or otherwise will restrict either Party from competing with the other Party or its Affiliates, and (iii) there is no fiduciary relationship or other implied obligation of the Parties with respect to the subject matter hereof or based on any course of dealing, the Parties’ respective obligations being solely those expressly set forth herein.

19. This Agreement constitutes the entire Agreement between the Parties on the subject of confidentiality of information disclosed during the RFP; there are no terms, conditions, representations, warranties, or agreements between the Parties concerning the subject matter of this Agreement that have not been specifically stated herein. This Agreement may not be modified except by written agreement designated as a modification executed by authorized officers of the Parties.

20. This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the date first above written.

By: _____
Name: _____
Title: _____

ENTERGY SERVICES, INC.
By: _____
Name: _____
Title: _____

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