

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “Agreement”), entered into effective as of [            ], 2015 (the “Effective Date”), is by and between Entergy Services, Inc. (“ESI”), a Delaware corporation, and [Bidder] (“[Bidder]”), a [            ] [corporate form]. ESI and [Bidder] are sometimes hereinafter referred to individually as a “Party” and collectively as “Parties.”

### RECITALS:

A. ESI has issued the 2015 Request for Proposals for Long-Term Combined-Cycle Gas Turbine Capacity and Energy Resources and Limited-Term Capacity and Energy Resources for Entergy Texas, Inc. (the “RFP”) on behalf of Entergy Texas, Inc. (“ETI”).

B. In connection with the RFP, the Parties and/or their respective Representatives (as defined below) may disclose to one another information that is confidential and proprietary and may enter into a transaction with each other (the “Possible Transaction”).

C. Each Party wishes to maintain the confidentiality of such information and, further, does not intend to waive any of its rights thereto.

D. 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.

### AGREEMENT:

In consideration of the premises and mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties, intending to be bound, agree as follows:

1. Definitions. As used herein, “Confidential Information” means, subject to Section 2 below, all data, analyses, documents, materials and other information furnished by the Party disclosing the same (the “Disclosing Party”) or any of its Representatives to the Party receiving the same (the “Receiving Party”) or any of its Representatives in connection with the Possible Transaction, whether prior to, on or after the Effective Date, and any and all written reproductions, summaries, notes, analyses, compilations, studies, documents, and materials prepared by or for the Receiving Party or any of its Representatives to the extent containing, reflecting or based upon, in whole or in part, such data, analyses, documents, materials or other Confidential Information of the Disclosing Party disclosed pursuant hereto. Confidential Information may be in any form whatsoever, including, without limitation, writings, computer code or programs, logic diagrams, component specifications, drawings, or other media, and may be written or oral. “Representative” means, with respect to a Party, any affiliate of such Party, and any shareholder, member, manager, partner, trustee, director, officer, employee, agent, contractor, lender or potential lender, or representative, including, without limitation, legal counsel, financial advisors, ratings agency advisors, and accountants, of such Party or such affiliate.

2. Exceptions.

(a) Notwithstanding the provisions of Section 1 above, the term “Confidential Information” shall not include information that:

- (i) was, prior to disclosure, either known by or within the possession of the Receiving Party without an obligation of confidentiality binding upon the Receiving Party or otherwise in the public domain;
- (ii) is or becomes, at the time of or following disclosure, available to the Receiving Party on a non-confidential basis from a source that is not prohibited, to the Receiving Party’s knowledge, from disclosing such information by any contractual, fiduciary or other legal obligation of non-disclosure, or otherwise is or becomes part of the public domain (including pursuant to any permitted public disclosure under Section 3(a)(i) of this Agreement) other than as a result of a disclosure by the Receiving Party or any of its Representatives that is not permitted by this Agreement; or
- (iii) is independently developed by the Receiving Party or any of its Representatives without breaching any of its disclosure or use obligations under this Agreement or any other agreement.

3. Limitations on Disclosure.

(a) The Receiving Party and its Representatives may not disclose any Confidential Information received hereunder to any other person, including, without limitation, a governmental authority, except that, subject to Section 3(b) below, the Receiving Party and its Representatives may disclose Confidential Information (i) to any third party to whom the Receiving Party or its Representatives is requested or required by any judicial, regulatory or other governmental authority with jurisdiction to disclose Confidential Information (*e.g.*, by order, deposition, interrogatory, civil investigative demand, request for documents, subpoena, or similar process or rule of procedure, or by statute, rule, or regulation, or other legal requirement), or if the Receiving Party or any Representative thereof is compelled by applicable securities laws or a stock exchange listing agreement to disclose Confidential Information, but in either case only to the extent disclosure is requested or required; (ii) to any of its Representatives who are directly involved in and require access to such information in connection with the Possible Transaction; (iii) to the limited extent authorized in writing by the Disclosing Party; and (iv) with respect to [Bidder’s] Confidential Information, as provided in Section 3(c). The Receiving Party agrees that any of its Representatives to whom Confidential Information is disclosed will be informed of the confidential or proprietary nature thereof and that, as between the Parties, the Receiving Party shall be responsible for any prohibited or unauthorized use or disclosure of Confidential Information by the Receiving Party or any of its Representatives that is not authorized hereunder. The term “person,” as used in this Agreement, shall be broadly interpreted to include the media (including the social media) and any individual, corporation, partnership, fund, limited liability company, trust, association, joint venture, unincorporated organization,

group, governmental entity or any department, agency or political subdivision thereof, or other entity.

(b) If the Receiving Party or any of its Representatives is requested or required to disclose Confidential Information or any portion thereof under Section 3(a)(i) above, the Receiving Party shall give, to the extent practical and legally permissible, reasonably prompt written notice of the existence and circumstances surrounding such requested or required disclosure to the Disclosing Party so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other relief in the appropriate forum and/or waive compliance by the Receiving Party with the terms of this Agreement applicable to the Confidential Information requested or required to be disclosed. If the Disclosing Party determines to seek a protective order or other relief, the Receiving Party shall use good faith efforts, at the sole cost and expense of the Disclosing Party, to cooperate with the Disclosing Party in such undertaking. If, despite the Receiving Party's compliance with its obligations hereunder, such protective order or other relief is not obtained by the time at which the Receiving Party or any of its Representatives is, upon the advice of its legal counsel (including in-house legal counsel), legally compelled to make such disclosure, or the Disclosing Party waives in writing compliance with the provisions hereof, the Receiving Party or its Representatives may disclose Confidential Information without liability to the Disclosing Party hereunder, provided that the Receiving Party agrees to furnish, and to require its Representatives to furnish, only that portion of the Confidential Information legally required to be disclosed upon the advice of such legal counsel (including in-house legal counsel).

(c) [Bidder] acknowledges that the Confidential Information it or any of its Representatives discloses to ESI or its Representatives hereunder may be subject to review by regulatory bodies having jurisdiction over the retail rates and services provided by ETI, including, without limitation, the Public Utility Commission of Texas, and by the Federal Energy Regulatory Commission, or by the staffs thereof, and may be subject to formal or informal discovery by any such regulatory body or staff. In addition, [Bidder] acknowledges that all such Confidential Information may be subject to review by a district or appellate court in a proceeding involving ETI. [Bidder] agrees that, notwithstanding anything herein to the contrary, ESI and its Representatives may, without notice to [Bidder], use and disclose such Confidential Information in testimony, applications, pleadings, evidence or in response to formal or informal discovery in any proceeding or in any non-public communication or discussion seeking or relating to approval or review by any such regulatory body or district or appellate court of the Possible Transaction or any other regulatory or judicial proceeding to which the Possible Transaction may be relevant, and in any such case, ESI will make reasonable efforts to obtain confidential treatment for such Confidential Information, including, without limitation, providing such information to the regulatory body and/or its staff under the confidentiality protections permitted by the governing rules and order of such commission. [Bidder] acknowledges and agrees that ESI and its Representatives hereunder shall be entitled to disclose to any governmental authority as a matter of right, and without seeking any confidential treatment therefor or providing notice thereof to [Bidder], the names of the parties to the Possible Transaction; the nature and type and general descriptions of the Possible Transaction; and terms of the Possible Transaction that ESI, in its good faith judgment, believes are reasonable and appropriate to include in its public application for or other public filing(s) seeking approval of the Possible Transaction by a governmental authority.

4. Limitations on Use. Absent the express written consent of the Disclosing Party, Confidential Information disclosed hereunder may be utilized by the Receiving Party and its Representatives only for the purpose of the Possible Transaction and for no other purpose.

5. Reservation of Rights. The Parties agree that: (i) all rights in or to Confidential Information disclosed pursuant to this Agreement are reserved to the Disclosing Party; (ii) subject to the express obligations of each Party set forth in this Agreement, nothing in this Agreement shall diminish or restrict in any way the rights that each Party has to market, lease, sell, or otherwise make available its products and services to any customer or third party; and (iii) no license or conveyance of any rights under any information, discoveries, inventions, or patents is granted or implied by either Party to the other under this Agreement.

6. Term. This Agreement shall commence on the Effective Date and shall continue in effect for a period of two (2) years from the Effective Date, and all obligations hereunder (other than undischarged obligations arising out of any breach of this Agreement) shall terminate and expire upon the expiration of such two-year term.

7. No Obligation to Disclose or Negotiate; Definitive Agreements. This Agreement does not and shall not be construed to obligate either Party to disclose Confidential Information to the other Party or to negotiate or to enter into any agreement as a result of the exchanges and discussions contemplated by this Agreement. Disclosure of Confidential Information shall be at the sole discretion of the Disclosing Party, subject to the terms of any other separate binding written agreement entered into between the Parties. [Bidder] acknowledges and agrees that neither ESI nor ETI has an obligation to negotiate exclusively with [Bidder] 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. The Parties (i) understand, acknowledge and agree that no enforceable contract or agreement providing for the Possible Transaction shall be deemed to exist unless and until one or more written agreements for the Possible Transaction (each, a “Definitive Agreement”) has been negotiated, executed and delivered by the Parties (or affiliates of the Parties); and (ii) agree that unless and until any Definitive Agreement between the Parties (or affiliates of the Parties), with respect to the Possible Transaction has been executed and delivered, and then only in accordance with the terms thereof and applicable law, neither Party nor its Representatives have or shall have any legal obligation to the other Party or its Representatives of any kind whatsoever with respect to the Possible Transaction.

8. No Warranties. Except as provided in Section 16 below or to the extent expressly set forth in any other written agreement, instrument or other document binding upon the Disclosing Party or its Representatives (as applicable), neither the Disclosing Party nor any of its Representatives (i) makes or shall be deemed to have made any representation or warranty of any kind or character as to any of its Confidential Information, including, without limitation, accuracy or completeness (and no representation or warranty as to the Confidential Information shall be deemed made or exist), or (ii) shall have any liability to the Receiving Party or any other person on any basis (including, without limitation, in contract, tort, under federal or state

securities laws or otherwise) resulting from the use of Confidential Information by the Receiving Party or any of its Representatives.

9. Return of Confidential Information.

(a) While this Agreement remains in effect, the Receiving Party, upon the Disclosing Party's written request, shall return to the Disclosing Party as promptly as practicable, but in no event later than thirty (30) days from the date such request is received, all Confidential Information provided to the Receiving Party and in its possession or the possession of its Representatives. In lieu of returning the information as provided herein, the Receiving Party may destroy all Confidential Information provided by, and shall certify in writing such destruction to, the Disclosing Party. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party shall continue to be bound by its obligations hereunder for the duration of the term of confidentiality hereof. Counsel for the Receiving Party may retain one (1) copy of Confidential Information (in whole or in part) for its files; provided, however, that any such Confidential Information so retained shall be subject to the terms of this Agreement.

(b) Notwithstanding Section 9(a) above, (i) the Receiving Party and its Representatives shall not be obligated to return or destroy any Confidential Information that the Receiving Party is retaining pursuant to a document retention hold established in connection with any actual or anticipated civil or criminal investigation or litigation, in which event the Confidential Information shall be retained by the Receiving Party or its Representatives until such time as the document retention hold is no longer in effect, at which time the Confidential Information shall be returned to the Disclosing Party or destroyed as aforesaid; (ii) to the extent that the Receiving Party's or any of its Representative's computer back-up procedures create copies of the Confidential Information, the Receiving Party or such Representative may retain such copies in its archival or back-up computer storage for the period the Receiving Party or such Representative normally archives backed-up computer records; (iii) each of the Receiving Party and its Representatives may retain those materials containing the Disclosing Party's Confidential Information that are distributed to or created by its board of directors or senior management in connection with the Possible Transaction; and (iv) the Receiving Party and its affiliates shall not be required to return or destroy any filing or other document or material provided to, or document or material created or held by, any governmental authorities in connection with the Possible Transaction.

(c) Any Confidential Information not returned or destroyed pursuant to this Section 9 shall be retained subject to the terms this Agreement until it is returned, destroyed or erased.

10. Integration Clause. This Agreement embodies all of the understandings, and merges all other or prior agreements, understandings or arrangements between the Parties concerning the subject matter hereof.

11. Assignment. This Agreement may not be assigned by a Party without the other Party's prior written consent (which shall not be unreasonably withheld, delayed or conditioned),

except by any Party in connection with the sale or bona fide transfer of all or substantially all of the business or assets of the assigning Party, provided that the assignee agrees in writing to be bound by the terms and conditions hereof and promptly notifies the other Party in writing of such agreement. Upon any assignment made in compliance with this Section 11, this Agreement shall inure to and be binding upon each assignee of the assigning Party. All assignments in breach of this Agreement shall be null and void. [Bidder] acknowledges and agrees that ETI is an express third-party beneficiary of this Agreement.

12. Equitable Relief. The Parties agree that the restrictions contained herein are fair and reasonable and necessary to protect the legitimate interests of the Disclosing Party, and that the Disclosing Party may suffer irreparable injury if the Receiving Party or any of its Representatives were to violate any provision of this Agreement. The Receiving Party acknowledges and agrees that, without prejudice to any other right and remedy available to the Disclosing Party at law or in equity, the Disclosing Party shall be entitled to (i) seek injunctive relief and specific performance of the terms hereunder and (ii) recover all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, expert witness fees and other out-of-pocket costs, from the Receiving Party if there is a breach or threatened breach of any of the provisions of this Agreement by the Receiving Party.

13. Governing Law; Jury Waiver. This Agreement, and all claims hereunder, shall be governed by and construed in accordance with the laws of the state of Texas, without giving effect to the principles of conflict of laws that would require or permit the application of the laws of any other jurisdiction. EACH PARTY HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN ANY OF THEM ARISING UNDER THIS AGREEMENT.

14. Multiple Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document. Any executed counterpart transmitted by facsimile, electronic communication in portable document format (.pdf), or similar transmission by any Party shall be deemed an original and shall be binding upon such Party.

15. Amendments. No amendment, modification, waiver, or other change to this Agreement shall be enforceable, except as specifically provided for in this Agreement, unless reduced to writing and executed by both Parties (or with respect to a waiver, by the waiving Party).

16. Disclosure Rights. The Disclosing Party represents and warrants to the Receiving Party that it may disclose or make available all Confidential Information disclosed to the Receiving Party hereunder without violating or being in breach of any contractual, fiduciary, or other obligation of non-disclosure existing at the time of such disclosure. The Disclosing Party shall indemnify, defend and hold harmless the Receiving Party and its Representatives from and against, and shall pay to the Receiving Party and its Representatives the amount of, any and all reasonable out-of-pocket expenditures in respect of any and all losses, damages, liabilities, obligations, penalties, fines, charges, costs, expenses and disbursements (including interest



with a copy to:

Entergy Services, Inc.

Attn: [            ]

[Address]

[Address].

If to [Bidder]:

[Bidder]

Attn: [            ]

[Address]

[Address]

Facsimile: [            ]

*[Signature page follows]*



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

ENTERGY SERVICES, INC. .

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

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

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

[BIDDER]

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

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

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