

## PROPOSAL SUBMISSION AGREEMENT

THIS PROPOSAL SUBMISSION AGREEMENT (this “Agreement”) is made and entered into effective on \_\_\_\_\_, 2011 (the “Effective Date”), by \_\_\_\_\_, a \_\_\_\_\_ (“Bidder”), in favor of Entergy Arkansas, Inc., an Arkansas corporation, and its successors and assigns (“EAI”).

### **RECITALS**

WHEREAS, in response to EAI’s 2011 Request For Proposals (RFP) For Transition Plan Resources, dated June 10, 2011 (as amended, supplemented or otherwise modified, the “RFP”), Bidder is submitting and delivering to EAI (i) one or more proposals to EAI and (ii) this Agreement;

WHEREAS, Bidder desires to continue to participate, and EAI desires to permit Bidder to continue to participate, in EAI’s competitive bidding process for acquiring additional capacity and energy supply resources for EAI pursuant to the RFP (the “RFP Process”) on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, Bidder intends for the terms of this Agreement to be enforceable by EAI against Bidder;

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bidder, by signing this Agreement below, hereby agrees as follows:

1. Definitions. Each of the following terms when used in this Agreement with initial letters capitalized has the meaning ascribed to it below:

“APSC” means the Arkansas Public Service Commission or any successor commission.

“Bidder Representative” means any officer, employee, agent, consultant, advisor or representative of Bidder or any of Bidder’s affiliates. For the avoidance of doubt, EAI is not and shall not be considered a Bidder Representative in connection with the RFP or the RFP Process.

“Definitive Agreement” means a legally binding agreement setting forth the terms and conditions and other provisions relating to a Transaction, mutually executed and delivered by authorized representatives of EAI (or an agent for EAI) and Bidder (or other authorized seller), but does not include a letter of intent, a memorandum of understanding, or any other preliminary written agreement, or any acceptance of any offer or proposal.

“EAI Representative” means any officer, employee, agent, affiliate, consultant, advisor or representative of EAI.

“Entergy Operating Companies” means, as of the Effective Date, EAI, Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Texas, Inc.

“ESI” means Entergy Services, Inc.

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“Law” means any statute, law, rule, regulation, ordinance, code, or other applicable legislative or administrative action of any governmental authority, or any judicial, regulatory, or administrative interpretation thereof having the force or effect of the foregoing, in each case as applicable to or binding upon the affected person or entity or any of its properties or to which such person or entity or any of its property is subject.

“Product Templates” means the six templates set forth in Appendix C of the RFP, each of which sets forth terms and conditions applicable to a particular product solicited by the RFP and the information that Bidder is required, requested or allowed to provide in its Proposal(s).

“Proposal” means any offer to enter into a Transaction submitted (or to be submitted) by Bidder in response to the RFP.

“RFP Administrator” means the administrator of the RFP set forth in Section 21 of the main body of the RFP.

“Transaction” means a commercial transaction, or series of commercial transactions, in which Bidder (or other authorized seller) provides to EAI capacity, energy and associated electric products from a specified generation resource pursuant to a Definitive Agreement resulting from the RFP Process and that is structured as a power purchase agreement or tolling agreement.

2. Certain Bidder Representations and Warranties. Bidder represents and warrants and, as applicable, covenants to EAI as follows:

(a) Bidder has all requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement by Bidder have been duly authorized by all necessary action on the part of Bidder and do not violate, conflict with, or result in a breach of any provision of its organizational or governing documents. This Agreement constitutes a legally valid and binding obligation enforceable against Bidder in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights generally or general principles of equity (whether considered in a proceeding at law or in equity). Bidder is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of EAI or any EAI Representative in so doing, has had complete discretion in seeking and obtaining the advice and counsel of experts relating to specialized subject matter of this Agreement, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.

(b) The execution and delivery of each Proposal by Bidder have been duly authorized by all necessary action on the part of Bidder. Each Proposal has been executed and delivered by a duly authorized officer or other authorized representative of Bidder. In submitting

a Proposal, Bidder offers to enter into a Definitive Agreement providing for the Transaction contemplated by such Proposal on substantially the same terms and conditions set forth in the applicable Product Template made available to Bidders on the EAI RFP website, [http://entergy-arkansas.com/transition\\_plan](http://entergy-arkansas.com/transition_plan), and such Proposal. Each Proposal submitted by Bidder is Bidder's good faith best offer. Bidder has reviewed and is familiar with the terms and conditions of the RFP, including each Product Template corresponding to each Proposal submitted by Bidder. With respect to any Proposal selected by EAI for possible selection, Bidder covenants that it shall enter into good faith negotiations with EAI to finalize, and shall use reasonable best efforts (or do, or cause to be done, all things necessary or appropriate) to finalize, execute and deliver a Definitive Agreement providing for the Transaction contemplated by such Proposal on substantially the same terms and conditions set forth in such Product Template and such Proposal.

(b) Except with respect to the RFP Administrator, Bidder has not disclosed and no Bidder Representative has disclosed, and Bidder covenants that it shall not disclose and no Bidder Representative shall disclose, to any other Bidder or potential Bidder in the RFP Process (i) the fact that Bidder is participating in the RFP Process, provided that Bidder's attendance alone at any Bidders' conference or similar meeting to which EAI invited more than one participant in the RFP Process shall not constitute such disclosure, or (ii) the existence of, or the price or any other term or condition of, any Proposal or any other submission of Bidder to EAI or any EAI Representative in connection with the RFP Process. Notwithstanding the foregoing, the above Bidder covenant shall not apply with respect to any information described in clause (i) or (ii) that has entered the public domain through no failure of Bidder or Bidder's Representatives to comply with the terms hereof or any other agreement to which Bidder or a Bidder's Representative is party or by which Bidder or a Bidder's Representative is bound.

(c) To the knowledge of each Bidder Representative who has actually participated in the preparation of a Proposal on behalf of Bidder, there is no uncured violation by Bidder of applicable state or federal antitrust Laws or other applicable Laws that pertain to competitive bidding practices in connection with such Proposal.

(d) Bidder has not entered into and covenants that it will not enter into any understanding, agreement, plan or scheme pertaining to a Proposal, whether express or implied, formal or informal, oral or written, with any competitor of Bidder, with respect to prices, terms or conditions of sale, output, production, distribution, territories, or customers, which understanding, agreement, plan or scheme pertaining to such Proposal would be in violation of applicable Law.

3. EAI Disclaimer. Bidder understands, acknowledges and agrees that, (i) except as may be expressly provided in a Definitive Agreement, any and all information furnished by or on behalf of EAI in connection with the RFP Process, including, without limitation, information contained in the RFP, is being or will be provided by or on behalf of EAI without any representation or warranty of any kind as to the information so provided, including, without limitation, accuracy or completeness; (ii) except as otherwise provided in Section 4 below, neither EAI nor any EAI Representative shall have any liability to Bidder or any Bidder Representative relating to or arising from the use of or reliance upon any such information or any error or omission therein or otherwise in connection with the RFP Process; and (iii) the information and processes described by EAI in the RFP or otherwise provided by EAI or an EAI

Representative in connection with the RFP Process are merely statements or indications of EAI's current intent, and such statements or indications create no binding obligation or actionable promise or inducement on the part of EAI or any EAI Representative.

4. EAI Obligations Limited To Definitive Agreement. Bidder understands, acknowledges and agrees that no enforceable contract or agreement providing for or promising a Transaction shall be deemed to exist or enforceable against EAI or any EAI Representative unless and until a Definitive Agreement for such Transaction has been executed and delivered by authorized representatives of EAI and Bidder (or other authorized seller). Bidder also understands, acknowledges and agrees that (i) unless and until a Definitive Agreement between EAI and Bidder (or other authorized seller) with respect to a Transaction has been executed and delivered, neither EAI nor any EAI Representative has or shall have any legal obligation to Bidder of any kind whatsoever with respect to such Transaction, whether by virtue of this Agreement, the RFP or any other written, electronic or oral expression with respect to the RFP Process or such Transaction and (ii) if a Definitive Agreement between EAI and Bidder (or other authorized seller) with respect to a Transaction has been executed and delivered, the only legal obligations of EAI with respect to such Transaction shall be those expressly set forth in the terms and conditions of such Definitive Agreement and applicable Law.

5. EAI RFP Process Discretion. Bidder understands, acknowledges and agrees that, subject to applicable Laws, (i) EAI shall be free to conduct the process for any Transaction, including, without limitation, the RFP Process, as EAI determines in its sole and absolute discretion, (ii) the RFP and any procedures relating to the RFP Process may be changed at any time without notice to Bidder or any other person, and (iii) the provisions of Appendix A (Reservation of EAI Rights and Other RFP Terms) of the RFP (available to Bidder on the EAI RFP website, [http://entergy-arkansas.com/transition\\_plan](http://entergy-arkansas.com/transition_plan)) apply to, are accepted by, and are enforceable against Bidder, and such provisions are incorporated herein by reference. Except in a proceeding before FERC, the APSC or a court described in Section 10 below, Bidder shall not assert, and hereby knowingly, voluntarily and unconditionally forever waives and disclaims any right to assert, in any regulatory or judicial forum, any claim or complaint regarding or related to the conduct or result of the RFP Process.

6. Bidder Qualifications. Bidder has previously provided, or is providing in the Proposal, or from time to time after Bidder's execution of this Agreement may provide, to EAI certain information with respect to Bidder's qualifications to participate in the RFP Process. Bidder represents and warrants to EAI that all such information Bidder has previously provided or is providing in the Proposal is true and accurate as of the Effective Date and that any such information Bidder may hereafter provide concerning the Proposal will be true and accurate as of the date Bidder provides it to EAI. Bidder agrees that, so long as Bidder continues to participate in the RFP Process, Bidder will inform EAI promptly of any material change in any of the information so provided by Bidder and will promptly provide EAI with subsequently filed or prepared information (including, without limitation, any financial statements and reports) of the type previously provided or contemplated.

7. Bidder Indemnification of EAI. Bidder shall defend, indemnify and hold harmless EAI, its parent and affiliates, and each of their officers, directors, employees, attorneys, agents and successors and assigns, upon demand, from and against any and all demands, suits, penalties, obligations, damages, claims, losses, liabilities, payments, costs and expenses,

including reasonable legal, accounting and other expenses in connection therewith and costs and expenses incurred in connection with investigations and settlement proceedings, which arise out of, are in connection with, or relate to, (i) any breach or violation of any covenant, obligation or agreement of Bidder set forth in this Agreement or (ii) any breach or inaccuracy of any of the representations or warranties of Bidder in this Agreement.

8. Waivers. Without limiting Section 14 below, no waiver by EAI of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of EAI and designated as a waiver. Any waiver at any time by EAI of its rights, duties, and/or obligations with respect to any default under this Agreement, or with respect to any other matter arising out of or in connection with this Agreement, shall not be deemed a continuing waiver, nor a waiver with respect to any prior or subsequent default or other matter and shall be limited to its express terms. Any delay in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. A failure of EAI to enforce any provision of this Agreement or to require performance by Bidder of any of the provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of EAI thereafter to enforce each and every provision hereof.

9. Assignment; Successors and Assigns. This Agreement and all of the rights, benefits, powers, privileges, duties, or obligations hereunder may be assigned by EAI, without prior notice to Bidder or Bidder's consent, to any of the Entergy Operating Companies or to any party or parties that acquire an ownership interest in EAI, its assets, businesses or any material part thereof, but none of this Agreement or any rights, benefits, powers, privileges, duties or obligations hereunder may be assigned or otherwise transferred by Bidder without EAI's prior written consent, which may be granted or withheld in EAI's sole and absolute discretion. Any purported assignment or other transfer by Bidder in violation of the preceding sentence shall be void *ab initio* and of no effect. This Agreement shall be binding upon Bidder and the successors and permitted assigns of Bidder.

10. Governing Law; Jurisdiction and Venue; Waiver of Jury Trial. This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by and under the laws of the State of New York (without giving effect to principles of conflicts of laws) (other than Section 5-1401 of the New York General Obligations Law). Bidder hereby irrevocably consents to the non-exclusive personal jurisdiction and venue of any Arkansas state or United States Federal court of competent jurisdiction sitting in [Little Rock, Arkansas], in any action, claim or proceeding arising out of or in connection with this Agreement. **BIDDER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES AND AGREES NOT TO ASSERT (I) THE DEFENSE OF LACK OF PERSONAL JURISDICTION, FORUM NON CONVENIENS OR ANY SIMILAR DEFENSE WITH RESPECT TO THE MAINTENANCE OF ANY SUCH ACTION, CLAIM OR PROCEEDING IN LITTLE ROCK, ARKANSAS, AND (II) THE RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION OR PROCEEDING.**

11. Liability for Bidder Representatives. Bidder shall ensure that each Bidder Representative is informed of the terms of this Agreement and that each such person adheres to this Agreement as it applies to Bidder as if such person were a party hereto. Bidder shall be responsible for any breach of this Agreement resulting from or arising out of the acts or omissions of any Bidder Representative.

12. Severability. All provisions of this Agreement are severable. In the event that any provision of this Agreement is held to be invalid or unenforceable, such provision shall be (i) invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof and (ii) revised or reformed, to the maximum extent permitted under applicable Law, in a manner resulting in rights, duties and obligations most closely representing the intention of Bidder and EAI as expressed herein.

13. Term. The term of this Agreement shall commence on the date hereof and shall continue in effect until the last to occur of (i) the completion of the RFP Process, (ii) the conclusion of any regulatory proceedings or litigation relating to the RFP Process, the Proposal or this Agreement or (iii) six (6) years from the Effective Date.

14. Integration. This Agreement contains the entire agreement between EAI and Bidder with respect to the subject matter hereof and supersedes all prior understandings, agreements and writings between them with respect to the subject matter hereof, whether written or oral, save and except for any written agreement with respect to confidentiality obligations and Bidder registration. This Agreement may not be altered, amended, modified or otherwise changed by any prior, contemporaneous, or subsequent agreements, understandings, discussions or course of dealings unless the same is reduced to a writing that specifically refers to this Agreement and is signed by authorized representatives of Bidder and EAI. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

15. Enforceability; Reliance. Bidder acknowledges and agrees that, notwithstanding anything to the contrary herein or elsewhere, Bidder intends for this Agreement to be, and this Agreement shall be, fully enforceable in all respects by EAI against Bidder, and EAI shall be considered the sole beneficiary of this Agreement. Bidder hereby waives and disclaims any legal or equitable defense to any claim made by or on behalf of EAI or any EAI Representative deriving from or otherwise arising out of EAI not being a signatory to this Agreement. The obligations, waivers, disclaimers and terms of Sections 2 through 13 herein are fundamental to this Agreement, and EAI's decisions to allow Bidder to continue to participate in this RFP and enter into this Agreement are made in express reliance on such obligations, waivers, and disclaimers.

IN WITNESS WHEREOF, Bidder has executed this Agreement as of the Effective Date and in the manner first written above.

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

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

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

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