

## PROPOSAL SUBMISSION AGREEMENT

THIS PROPOSAL SUBMISSION AGREEMENT (this “Agreement”) is made and entered into effective on \_\_\_\_\_, 2016 (the “Effective Date”), by \_\_\_\_\_, a \_\_\_\_\_ (“Bidder”), in favor of Entergy Arkansas, Inc. (“EAI”).

### **RECITALS**

WHEREAS, in response to EAI’s 2016 Request for Proposals for Long-Term Renewable Generation Resources, dated May 26, 2016 (as amended, supplemented or otherwise modified, the “RFP”), Bidder is submitting and delivering to EAI (i) one or more Proposals (defined below) and (ii) this Agreement; and

WHEREAS, Bidder desires to continue to participate, and EAI desires to permit Bidder to continue to participate, in a competitive bidding process for the potential purchase of long-term renewable energy supply resources 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.

“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, mutually executed and delivered by duly authorized representatives of EAI and Bidder (or the seller under the proposal submitted by Bidder that is the basis of such agreement), setting forth the definitive terms and conditions of a Transaction. For the avoidance of doubt, a “Definitive Agreement” does not include a letter of intent, a memorandum of understanding, other similar preliminary written agreement or document with respect to a Transaction, or any acceptance, written, oral, or other, of any offer or proposal submitted by Bidder (or the seller pursuant to or in connection with the Proposal).

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

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

“Independent Monitor” or “IM” means Ms. Elizabeth R. Benson of Energy Associates, an independent consulting firm retained by EAI to act as independent monitor for the RFP.

“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.

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

“RFP Administrator” means the administrator of the RFP set forth in Section 1.6 of the main body of the RFP.

“Term Sheets” means the term sheets that set forth some of the key commercial terms that would apply to any Transaction arising out of the RFP.

“Transaction” means a commercial transaction arising or resulting from the RFP in which Bidder (or the seller under the proposal submitted by Bidder that is the basis of such transaction) provides to EAI capacity, capacity-related benefits, energy, other electric products, and environmental attributes from a specified generation resource pursuant to a Definitive Agreement and that is structured as an acquisition or a power purchase agreement.

2. Certain Bidder Representations, Warranties, and Covenants. 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, 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. By submitting a Proposal, Bidder is offering to enter into a Definitive Agreement providing for the Transaction contemplated by such Proposal on substantially the same terms and conditions set forth in such Proposal and the Term Sheet corresponding to such Proposal and made available to Bidders on the 2016 EAI RFP website, [http://entergyarkansas.com/rfp/energy\\_capacity.aspx](http://entergyarkansas.com/rfp/energy_capacity.aspx). 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 the Term Sheets. With respect to any Proposal selected by EAI for possible negotiation of a Definitive Agreement, Bidder agrees to 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 Proposal.

(c) Except with respect to disclosures to the RFP Administrator and the Independent Monitor, Bidder has not disclosed and no Bidder Representative has disclosed, and Bidder covenants that neither it nor any Bidder Representative will 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 the attendance by Bidder or a Bidder Representative at any meeting organized by EAI and to which EAI invites one or more participants in connection with the RFP is not a disclosure that violates the terms of this Agreement or a basis for a claim that Bidder's representation in clause (i) immediately above is false or inaccurate or that Bidder has breached its covenant in such clause, 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.

(d) 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.

(e) 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 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 either EAI or 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 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 shall be 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, following consultation with the IM, without notice to Bidder or any other person, and (iii) the provisions of Appendix F (Reservation of EAI Rights and Other RFP Terms) of the RFP (available to Bidder on the 2016 EAI RFP website, [http://entergyarkansas.com/rfp/energy\\_capacity.aspx](http://entergyarkansas.com/rfp/energy_capacity.aspx)) 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, and any and all rights derivative or arising out of any such 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 and the applicable RFP document(s) do not otherwise provide, 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. Bidder shall defend, indemnify and hold harmless EAI, each of its parents and other affiliates, and each of their respective 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, as agent, of any provision of this Agreement shall be effective unless and to the extent set forth in a 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 its affiliates 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 New York or United States Federal court of competent jurisdiction sitting in New York, New York, 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 NEW YORK, NEW YORK, 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 agent, 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 physically 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 or EAI Representatives (as applicable) shall be considered the sole beneficiaries of this Agreement. Bidder hereby waives and disclaims any legal or equitable defense to any claim made by or on behalf of EAI, any EAI Representative in connection with this Agreement or the RFP deriving from or otherwise arising out of EAI or any EAI Representative 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 ID: \_\_\_\_\_

Resource ID: \_\_\_\_\_

Proposal ID: \_\_\_\_\_

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

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

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

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