

PROFESSIONAL SERVICES AGREEMENT

AMONG

THE PUBLIC UTILITY COMMISSION OF TEXAS,  
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

AND

TEXAS RELIABILITY ENTITY, INC.

This Agreement ("Agreement"), effective as of the last date signed below by a duly authorized representative of any Party ("the Parties") ("Effective Date"), is entered into by and among the Public Utility Commission of Texas, an agency of the state of Texas (the "PUCT"), Electric Reliability Council of Texas, Inc. ("ERCOT"), a Texas non-profit corporation, and Texas Reliability Entity, Inc. ("Texas RE") a Texas non-profit corporation.

Article 1. Definitions

1.1 Project: "Project" shall mean the professional or technical services (including deliverables) that Texas RE shall perform on behalf of PUCT pursuant to the terms and conditions of this Agreement and Statements of Work ("SOWs") executed by the parties pursuant to the terms and conditions of this Agreement and describing the scope of Projects and Services (as defined in Subsection 1.4 below), the schedule for performance, the fees to be paid for such Projects and Services, the time period during which the Services shall be rendered, and any additional terms agreed to by the Parties. This Agreement and any SOW may only be modified by written and signed agreement of the parties.

1.2 Confidential Information: "Confidential Information" shall mean all information, technical data or know-how that relates to the business, services or products of Market Participants or Texas RE, ERCOT or their consultants, market participants, or vendors, including, without limitation, any research, products, services, developments, inventions, processes, techniques, designs, scientific, technical, engineering, distribution, marketing, financial, merchandising and sales information, that is disclosed to Texas RE within the scope of Texas RE's Services, directly or indirectly, in writing, orally or by drawings or inspection and market information that is deemed confidential or "Protected Information" under ERCOT Protocols, PUCT rules, Section 1500 of the North American Electric Reliability Corporation (NERC) Rules of Procedure, or other law. Confidential Information does not include information, technical data or know-how that (i) is already published or available to the public, or subsequently becomes available, other than by a breach of this Agreement; (ii) is received from a third party not to Texas RE's knowledge in breach of any obligation of confidentiality; (iii) is independently developed by personnel or agents of Texas RE without reliance on the Confidential Information; or (iv) is produced by Texas RE in compliance with an order, rule or law of any federal, state, local or municipal body having jurisdiction over a party, provided that Texas RE gives ERCOT and the PUCT notice, to the extent reasonably possible, of such order, rule or law and gives ERCOT and

the PUCT an opportunity to defend and/or attempt to limit such production. Confidentiality of Market Participant information shall be governed by the ERCOT Protocols and PUCT Rules, and Texas statutes.

1.3 Deliverable: "Deliverable" means any report, analysis, recommendation, or evaluation completed by Texas RE under the terms of this Agreement.

1.4 Services: "Services" means any and all services performed and any and all reports, analysis, recommendations, deliverables, or other products delivered by Texas RE as specified in SOWs executed by the parties.

1.5 Individual: "Individual" means Texas RE's employee, agent, or subcontractor.

1.6 "Market Entity": "Market Entity" means an entity that engages in any activity that is the subject of the ERCOT Protocols, including ERCOT and all entities listed on ERCOT's website at: <http://www.ercot.com/mktparticipants>.

1.7 "Market Participant": "Market Participant" means an entity that engages in any activity that is the subject of the ERCOT Protocols except ERCOT and is listed on ERCOT's website at: <http://www.ercot.com/mktparticipants>.

1.8 "Monitoring", or "monitor": "Monitoring," "monitor," or "monitoring" means review and evaluate compliance with the reliability-related ERCOT Protocols ("Protocols") and Operating Guides ("Operating Guides"), the reliability-related provisions of the PUCT Substantive Rules, and the reliability-related provisions of the Public Utility Regulatory Act (collectively "the Legal Requirements") by ERCOT and ERCOT Market Participants (collectively "Market Entities"). Use of the terms "Monitoring", "monitor" or "monitoring" is not intended to include the routine, real-time compliance monitoring performed by ERCOT as part of its normal systems operation function.

## Article 2. Compensation

2.1 Payment for Services: In exchange for all Services provided by Texas RE, ERCOT shall pay Texas RE the Quarterly Payment set forth in this Agreement and the applicable SOW, in accordance with the Fees and Rates schedule set forth in Exhibit A.

2.2 Out-Of-Pocket Expenses: ERCOT shall reimburse Texas RE for Texas RE's reasonable actual out-of-pocket expenses incurred in performing activities benefiting PUCT or ERCOT under this Agreement, which will be included in the Quarterly Payment. For all expenses that are incurred in connection with travel, ERCOT shall reimburse Texas RE's expenses pursuant to Texas RE's Business Expense Reimbursement Policy, as amended from time to time, a copy of which is attached hereto as Exhibit B.

2.3 Sole Compensation: Payments under this Article 2 are Texas RE's sole compensation under this Agreement and any SOW executed pursuant to this Agreement, irrespective of whether in exchange for Services or otherwise. Texas RE acknowledges and agrees that the PUCT has not been appropriated any funds for the purposes of this Agreement or for the Services acquired hereunder. Texas RE acknowledges and agrees all compensation to

Texas RE under this Agreement shall come from the approved invoices paid by ERCOT. The Parties expressly agree that nothing in this Agreement is intended to constitute an obligation against or payable from funds appropriated to the PUCT for another purpose, or general revenue funds or any other funds of the State of Texas.

**2.4 Invoice Submission:** Texas RE shall submit quarterly invoices for Services to be performed and all reasonable actual out-of-pocket expenses to be incurred during the quarter, including travel, lodging, meals and external copying charges for the previous quarter to the PUCT Contact Person with a copy to the ERCOT Contact Person. Texas RE must submit a quarterly invoice for each Project no earlier than 30 days prior to the beginning of the quarter. The invoice shall be for the amount of the Fixed Payment less any credit due for the previous quarter, based upon invoice reconciliation defined in Article 2.6.

Texas RE shall submit quarterly invoices to PUCT and ERCOT as follows:

The Public Utility Commission of Texas  
Attention: Accounts Payable  
1701 N. Congress Ave., 7<sup>th</sup> floor  
Austin, TX 78701

Electric Reliability Council of Texas, Inc.  
Attention: Accounts Payable Department  
7620 Metro Center Drive  
Austin, TX 78744

**2.5 Invoice and Payment:** Within five (5) business days of receiving the invoice, including the Quarterly Payment less any Credit, the PUCT Contact Person will review and approve the invoice for payment, in full or in part, and will notify both Texas RE and ERCOT. ERCOT shall pay all PUCT approved and undisputed amounts within 30 days of receipt of the invoice from Texas RE. Payment for amounts in excess of \$10,000 shall be remitted via wire transfer. ERCOT will review the invoice and notify Texas RE Contact Person and the PUCT Contact Person within five (5) business days of receipt of the invoice copy from Texas RE whether ERCOT needs clarification or more information concerning an invoice.

**2.6 Invoice Reconciliation:** Within 30 days of submitting a quarterly invoice, Texas RE will provide the PUCT with an accounting of all time spent performing Services for each of the listed rate categories as specified in the pertinent Statement of Work and all out-of-pocket expenses incurred in performing Services. If Texas RE's accounting reflects that Texas RE's Quarterly Payment is more than the amount of Services performed (at the appropriate rate categories) plus reimbursement of Texas RE's out-of-pocket expenses, Texas RE will provide the PUCT with notice of the amount to be credited against Texas RE's next Quarterly Payment (Credit). At the expiration of the Agreement, Texas RE will re-pay any positive Credit balance to ERCOT, with notice to the PUCT, within sixty days of termination or expiration of the Agreement.

### Article 3. Records

Texas RE shall maintain records and books of account relating to Services and expenses under this Agreement in accordance with generally accepted accounting practices. Texas RE's records shall include, but not be limited to, accounting and payroll records (hard copies as well as electronic data), correspondence, schedules, receipts, memoranda, and any other documentation relating to this Agreement or work performed hereunder.

Texas RE shall make these records and books available to PUCT, ERCOT, or their designated representatives for review upon reasonable notice during Texas RE's normal business hours. Texas RE acknowledges that these records and books are subject to audit and/or reproduction during regular business hours and upon prior reasonable notice by ERCOT, the PUCT, or the State Auditor's Office or a duly authorized representative thereof. Texas RE shall maintain all such records for a period of four years after the termination or expiration of the Agreement or for such longer periods as may be required by law.

Texas RE shall make available to ERCOT and the PUCT, prior to execution of this Agreement, its annual financial statements, and Texas RE shall make available to ERCOT, upon request during the Term of this Agreement, its annual financial statements. The information contained in Texas RE's financial statements or obtained by ERCOT during any audit will be kept confidential by ERCOT and the PUCT to the extent allowed by law.

### Article 4. Subcontracting Parties

4.1 Notice: The parties acknowledge and agree that Texas RE intends to perform the Services required under this Agreement using its own employees. Should Texas RE determine it is necessary or desirable to utilize the services of one or more contract workers to perform services required under this Agreement, Texas RE will notify the PUCT Contact Person and ERCOT Contact Person of any proposed subcontractor and will submit information regarding subcontractors to the PUCT Contact Person and ERCOT Contact Person for approval before engaging the contract worker. The PUCT and ERCOT will not withhold such approval unreasonably. The PUCT and ERCOT must approve any subcontractor.

4.2 Primary Point of Contact: Texas RE will serve as the primary point of contact for the PUCT and ERCOT with Texas RE's subcontractors on all administrative matters related to this Agreement.

4.3 Sole Responsibility: Texas RE is solely responsible for the work produced by all subcontractors that it may engage and for the timely payment for all such work produced by all subcontractors.

4.4 Prime Vendor Contract: The Parties expressly agree that this Agreement is intended to constitute a prime vendor contract with Texas RE serving as the prime vendor for delivery of the Services made the subject hereof. Texas RE acknowledges and agrees that it is fully liable and responsible for timely, complete delivery of the Services described in this Agreement notwithstanding the engagement of any subcontractor to perform an obligation under this Agreement. Any subcontractor under consideration by Texas RE must successfully pass the required Background Investigation described in Article 7.

## Article 5. Term

This Agreement begins on the Effective Date and expires on December 31, 2010. If any SOW begun during the term of this agreement has not been completed on the expiration date, however, then this Agreement will remain in effect with respect to that SOW until such SOW has either expired or been otherwise terminated in accordance with this Agreement.

## Article 6. Termination

6.1 Termination for Cause by the PUCT: If Texas RE is in default of any material term of this Agreement, the PUCT may serve upon Texas RE written notice requiring Texas RE to cure such default. Texas RE has 30 days after receipt of notice to correct the default or make arrangements satisfactory to the PUCT for correcting the default. If Texas RE has failed to cure the default or to make arrangements to correct the default, the PUCT may terminate this Agreement for default and shall have all rights and remedies provided by law and this Agreement. In the event of termination, Texas RE will provide reasonable cooperation to PUCT and ERCOT to transfer its duties under the Agreement to another entity without disruption.

6.2. Termination for the Convenience of the PUCT: The PUCT may, upon 60 days written notice to Texas RE, terminate this Agreement whenever the interests of the PUCT so require. In the event of termination, Texas RE will provide reasonable cooperation to PUCT and ERCOT to transfer its duties under the Agreement to another entity without disruption. Texas RE shall be compensated at the rates specified in this Agreement for all Services provide and expenses incurred until the effective date of the termination and reasonable expenses incurred as a result of the termination.

6.3 Termination for Cause by Texas RE: If the PUCT or ERCOT is in default of any material term of this Agreement, the Texas RE may serve upon the defaulting party written notice of default requiring the party to cure such default. The defaulting party has 30 days after receipt of notice to correct the default or make arrangements satisfactory to Texas RE for correcting the default. If the defaulting party fails to cure the default or to make arrangements to correct the default, Texas RE may terminate this Agreement for default and shall have all rights and remedies provided by law and this Agreement.

6.4 Survival: In the event that this Agreement expires or is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate; provided that the provisions of Articles 10, 11,12, 17, 18, 19, and 24 in their entirety shall survive any termination or expiration of this Agreement.

## Article 7. Parties' Responsibilities

7.1 Texas RE: Texas RE's specific responsibilities for Services will be included in each SOW. Texas RE is responsible for supplying its own computers and equipment for use at its own facility. Texas RE is further responsible for the following:

Background investigation: For each employee, agent, or contract worker who ERCOT authorizes to have unescorted ("badged") access to ERCOT's facilities or access to ERCOT computers or information systems, Texas RE must perform a background investigation, including: (i) a criminal background check, in each county, state, and country in which the

individual has worked, lived, or attended school, showing no felonies and no misdemeanors except those misdemeanors that ERCOT and PUCT accept in writing, using a vendor of consumer report services acceptable to ERCOT; (ii) a verification of the individual's prior employment and educational history; (iii) a check of the individual's driving history if driving is required for the performance of Services; and (iv) a clean supervised five-panel drug screen to detect cocaine, amphetamines, opiates, phencyclidine and marijuana, by a medical office or drug testing service acceptable to ERCOT. Texas RE shall provide to ERCOT written confirmation of the passing of the full background investigation for each individual. ERCOT will keep all information obtained during the background check and drug screen confidential to the extent allowed by law. Individuals with access to ERCOT information systems must have training prescribed by the NERC prior to obtaining unescorted facilities access. ERCOT will provide or arrange and pay for such training.

Compliance with ERCOT Policies and Procedures: Texas RE agrees that it and its employees, agents, and subcontractors will abide by ERCOT's Code of Conduct and all policies and procedures applicable to ERCOT independent contractors which are provided to it, while performing Services for PUCT, while on ERCOT premises, or while using ERCOT equipment or networks, including the ERCOT Security Policy and Policy on Acceptable Use of ERCOT Resources, a copy of which shall be furnished to Texas RE. Texas RE will not be provided with email accounts or corporate network access by ERCOT.

7.2 Public Utility Commission of Texas: PUCT will supervise and oversee Texas RE's activities. The PUCT may periodically review the performance of the Texas RE under this Agreement and any Project to assess whether the Texas RE is meeting the requirements of this Agreement and providing diligent and professional services under the Agreement. The PUCT shall provide the Texas RE a written report of the conclusions it reaches in any such review. If in the PUCT's sole judgment, the Texas RE's performance has not been adequate it may, in accordance with Section 6.1, terminate the Agreement.

7.3 ERCOT: ERCOT will provide the Texas RE with reasonable access to ERCOT's operations centers and ERCOT's records concerning operations, settlement, and reliability. ERCOT will provide other assistance and cooperation necessary for the Texas RE to perform its functions, including all assistance and cooperation that the PUCT determines is appropriate pursuant to this Agreement.

#### Article 8. Assignment, Amendments and Modifications

8.1 Assignment: This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of any party; provided however that Texas RE shall not, without the prior written consent of ERCOT, assign, subcontract, or transfer this Agreement or any obligation incurred under this Agreement.

8.2 Amendment: This Agreement may only be amended by a writing signed by all Parties.

#### Article 9. Representations, Warranties and Covenants

Texas RE warrants that it will perform all Services related to this Agreement with due diligence and in full compliance with the highest professional standards of practice in the

industry. Texas RE warrants that it has good title to and/or the right to transfer Deliverables provided to PUCT under this Agreement. Texas RE shall perform Services in compliance with all laws, and, if any licenses or permits are required for Texas RE to perform the Services, Texas RE warrants that it shall maintain such licenses or permits.

#### Article 10. Liability and Damages

10.1 ERCOT AND PUCT SHALL NOT BE LIABLE UNDER THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND. THE TOTAL CUMULATIVE LIABILITY OF ERCOT OR PUCT FOR CLAIMS OF ANY KIND, WHETHER BASED ON AGREEMENT OR TORT OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL NOT EXCEED THE COMPENSATION PAID OR OWED TO TEXAS RE FOR SERVICES UNDER THIS AGREEMENT PLUS REASONABLE LEGAL FEES.

10.2 EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTIONS 14 AND 20.2, TEXAS RE SHALL NOT BE LIABLE UNDER THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTIONS 14 AND 20.2, THE TOTAL CUMULATIVE LIABILITY OF TEXAS RE FOR CLAIMS OF ANY KIND, WHETHER BASED ON AGREEMENT OR TORT OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL NOT EXCEED THE COMPENSATION PAID TO TEXAS RE FOR SERVICES UNDER THIS AGREEMENT PLUS REASONABLE LEGAL FEES.

#### Article 11. Property Rights

11.1 Ownership of Deliverables: For any deliverables requested by and/or delivered to PUCT in connection with Services under any SOW signed pursuant to this Agreement ("Deliverables"), Texas RE does hereby, without reservation, irrevocably:

- Sell, assign, grant, transfer, and convey to PUCT, its successors and assigns, Texas RE's entire right, title, and interest (past, present, future, and throughout the world) in and to (i) such deliverables and (ii) any and all claims, of any nature whatsoever, for past, present or future infringement or violation of the deliverables;
- To the extent that all or any portion of the deliverables includes a work of authorship created by Texas RE, either solely or jointly with another, and to the extent such work is eligible for treatment as a "work for hire," deem each such work of authorship created as a "work made for hire" (as that term is defined in the United States Copyright Act (17 U.S.C. et seq.)) that is owned solely by PUCT;
- Represent, warrant, and covenant that Texas RE forever waives all moral rights in the Deliverables and shall never assert any moral rights in the Deliverables; and
- Acknowledge and agree that Texas RE shall have no license, sublicense, right or immunity, either directly, indirectly, or by implication, estoppel or otherwise, under all or any part of the deliverables.

11.2 Professional Materials: "Professional Materials" means any software, software designs, raw experience modeling, industry data, and any generic analyses of such data, routines, user-interface conventions, interfaces to third-party products, user-interface

design patterns, other development and design tools, and documentation that Texas RE developed prior to the execution of this Agreement. ERCOT and PUCT agree that Deliverables shall not include any Professional Materials that are delivered to ERCOT or PUCT under this Agreement so long as such do not contain any of ERCOT's Confidential Information. ERCOT and PUCT acknowledge and agree that Texas RE retains all right, title and interest in the Professional Materials.

## Article 12. Confidential Information

12.1 Texas RE's Responsibilities: For purposes of this Agreement, ERCOT will and the PUCT may be disclosing Confidential Information, as defined in this Agreement, to Texas RE. Texas RE agrees not to disclose Confidential Information for any purpose other than as permitted under this Agreement. Texas RE shall take reasonable actions and precautions to prevent unauthorized disclosure of Confidential Information. Confidential Information and all copies thereof shall remain the property of the party that provides the information to Texas RE ("the disclosing party"). Texas RE agrees to immediately notify the disclosing party upon discovery of any unauthorized disclosure of Confidential Information and to cooperate in any reasonable way to help disclosing party regain possession of the Confidential Information and prevent further unauthorized disclosure.

Texas RE shall promptly provide Confidential Information to the PUCT or PUCT staff on request, and shall include distinctive designations on or in any such information that the information is or includes Confidential Information.

12.2 Public Information Act: Notwithstanding any other provisions of this Agreement, the Parties understand that all information under the possession or control of the PUCT, whether or not marked "Confidential" is subject to the Public Information Act, Govt. Code, Chapter 552. In the event of a request for any Confidential Information under the Public Information Act, an authorized representative of the PUCT may furnish a copy of the requested Confidential Information to the Open Records Division at the Office of the Attorney General (OAG) together with a copy of this Agreement and shall immediately notify Texas RE and ERCOT that such documents are being furnished to the OAG.

12.3 Remedies: Texas RE acknowledges and agrees that breach of this Section, or any promise or covenant contained herein, by it may result in irreparable and continuing damage to ERCOT or a Market Participant, for which there would be no adequate remedy at law, and that, in the event of such breach, ERCOT may be entitled to injunctive relief and/or a decree for specific performance, in addition to all such other and further relief as may be available at law, in equity, or otherwise.

12.4 Survival of Confidentiality: The provisions of this Section shall survive any termination or expiration of this Agreement. Texas RE shall require Individuals to abide by the provisions of this section, notwithstanding the expiration or termination of this Agreement or an Individual's termination of employment.

## Article 13. Conflicts of Interest and Employment Restriction

13.1 Texas RE may not provide any services for any other client that creates a conflict of interest with ERCOT or PUCT. The PUCT and ERCOT acknowledge that Texas RE is the duly authorized (by NERC and the Federal Energy Regulatory Commission) Regional Entity for the ERCOT region and that this activity does not create a conflict of interest. Texas RE represents that any of its employees, agents, or subcontractors who provide Services to PUCT will not concurrently provide any services to Market Participants and will not concurrently provide services to any other client where such services might create a conflict of interest. Each employee, agent, or contract worker who provides services under this Agreement must first sign Texas RE's Ethics Agreement.

13.2 Texas RE shall disclose immediately to ERCOT and PUCT any conflicts of interests that it has or might have with ERCOT or the PUCT. ERCOT and PUCT may waive, in writing, any conflicts of interest that are not prohibited. All conflicts of interest will be presumed to be prohibited unless they are disclosed to and specifically waived by ERCOT and PUCT. A conflict of interest exists when:

- Texas RE, Texas RE's affiliates, or Texas RE's employees stand to gain or lose from or otherwise be materially affected by an ERCOT or a PUCT business decision;
- Any employee of ERCOT has any ownership interest in Texas RE or is directly related to the spouse, dependent child, or any household member of any of Texas RE's officers, directors, affiliates, or employees;
- Texas RE or any of its officers, directors, or affiliates has an interest, direct or indirect, in a member or Market Participant or an affiliate of a Market Participant, or a market participant of ERCOT or its officers or directors has an interest, direct or indirect, in Texas RE or serves as an officer, director, partner, owner, shareholder, owner of debt securities, employee, attorney, or consultant for ERCOT or a Market Participant or an affiliate of a Market Participant;
- Texas RE or any of its affiliates has a known interest, direct or indirect, in any other entity dealing with ERCOT, and the interest is of such an extent or nature that Texas RE's decision might be affected or determined by it;
- Texas RE or its employees who provide Services under this Agreement are directly related to any PUCT Commissioner;
- Texas RE is providing services to an entity that has a direct conflict of interest with ERCOT where such conflict could expose ERCOT to risk of negative press or improper use of Confidential Information (as defined herein), ERCOT Deliverables or ERCOT intellectual property rights;
- Texas RE or any of its officers, directors, or employees owns a company that is providing consulting services to a market participant;
- Texas RE or any of its officers, directors, or employees accepts a gift, gratuity, or entertainment from ERCOT, a Market Participant, affiliate of a Market Participant, or an employee or agent of a market participant or affiliate of a market participant; or
- Texas RE or any of its officers, directors, or employees directly or indirectly solicits, requests from, suggests, or recommends to a Market Participant or affiliate of a Market Participant, or an employee or agent of a Market Participant or affiliate of a Market Participant, the employment of a

person by a Market Participant or affiliate.

13.3 It is not a conflict of interest if an employee of the Texas RE indirectly owns an interest in a retirement system, institution, or fund that in the normal course of business invests in diverse securities independently of the control of the employee.

13.4 Texas RE will not enter into engagements to perform other services (other than as Regional Entity) for ERCOT or any other entity, without the prior written approval of the PUCT as long as this Agreement is in effect.

#### Article 14 Indemnification

14.1 TEXAS RE SHALL DEFEND, INDEMNIFY AND HOLD ERCOT AND PUCT, ITS OFFICERS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LIABILITIES, ASSESSMENTS, PENALTIES, LOSSES, DEMANDS, DAMAGES, COSTS (INCLUDING COURT COSTS), ATTORNEYS' FEES, EXPENSES, OR INTEREST PAYMENTS THAT ERCOT OR PUCT MAY AT ANY TIME INCUR BY REASON OF ANY DEMAND, PROCEEDING, ACTION, SUIT OR CLAIM BROUGHT AGAINST ERCOT OR PUCT BY ANY NON-PARTY OR ANY INDIVIDUAL ARISING FROM OR RELATING TO AN ACTUAL ACT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE TEXAS RE, OR ANY ONE OR MORE OF ITS EMPLOYEES, OFFICERS, DIRECTORS, AFFILIATES, OR AGENTS, INCLUDING BUT NOT LIMITED TO ANY INDIVIDUAL.

14.2 ERCOT or PUCT shall promptly notify Texas RE of any such claim. Texas RE shall (i) have the obligation to undertake the defense of such claim, process, or other legal proceeding by representatives of its choosing, reasonably satisfactory to ERCOT and PUCT, at Texas RE's expense; provided, however, that ERCOT and PUCT may participate in the defense with counsel of their own choosing and at their own expense, and (ii) pay any final judgment entered against ERCOT or PUCT or any settlement agreed to in writing by Texas RE on such issue in any such suit or proceeding. In the event Texas RE fails to defend such claim in good faith and diligently, ERCOT and PUCT shall have the right to undertake the defense, compromise, or settlement of such claim on behalf of and for the account and risk of Texas RE and at Texas RE's expense.

14.3 If all or any part of the Deliverables is the subject of any claim, suit or proceeding for infringement or misappropriation of any Intellectual Property Right, Texas RE may, and in the event of any adjudication that the Deliverables or any part thereof infringes or misappropriates any patent, trademark, copyright or trade secret, or if the licensing or use of the Deliverables or any part thereof is enjoined, Texas RE shall, at its expense do one of the following things: (i) procure for ERCOT and PUCT the right under such patent, trademark, copyright or trade secret to fully use the Deliverables or the affected part thereof; or (ii) replace the Deliverable or affected part thereof with another non-infringing Deliverable; or (iii) suitably modify the Deliverable or affected part thereof to make it non-infringing.

#### Article 15. Other Acknowledgements and Agreements by the Parties

15.1 Electronic Signatures. This Agreement may be executed by facsimile or scanned

and electronically transferred signatures. A copy of this Agreement bearing such a signature or signatures shall have the same force and effect as an original agreement with inked original signatures. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, scan, facsimile) is considered an original.

**15.2 Authorized Representatives:**

The following persons have the authority to amend this Agreement and to agree to SOWs for services compensated at an hourly rate:

**For the PUCT:**

Attention: Executive Director  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711-3326  
Fax: (512) 936-7036

**For ERCOT:**

Attention: General Counsel  
7620 Metro Center Drive  
Austin, Texas 78744

**For Texas RE:**

Larry Grimm, President and CEO  
2700 Via Fortuna, Suite 225  
Austin, Texas 78746  
Fax: (512) 225-7165

The following persons are designated as Contact Persons and liaisons for the parties with respect to coordinating in the implementation of this agreement:

**For the PUCT:**

Attention: Pam Whittington, Director, Oversight and  
Enforcement Division  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
Phone: (512) 936-7245  
Fax: (512) 936-7361  
[pam.whittington@puc.state.tx.us](mailto:pam.whittington@puc.state.tx.us)

**ERCOT Contact Person:**

Matt Morais, Assistant General Counsel  
7620 Metro Center Drive  
Austin, TX 78744  
(512) 225-7177  
[mmorais@ercot.com](mailto:mmorais@ercot.com)

For Texas RE:  
Susan D. Vincent, General Counsel  
2700 Via Fortuna, Suite 225  
Austin, Texas 78746  
(512) 583-4922  
Email: [susan.vincent@texasrc.org](mailto:susan.vincent@texasrc.org)

A party may change its designated representatives, by giving notice to the other parties as provided for in Article 24.

#### Article 16. Insurance

16.1 Texas RE shall, at its sole cost and expense, secure and maintain as a minimum, from the Effective Date and thereafter during the term of this Agreement, for its own protection and the protection of ERCOT and PUCT, the following insurance coverage with insurance companies with a minimum A.M. Best Rating of A-V:

- A. Commercial General Liability with a limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate covering bodily injury and tangible property damage claims;
- B. Umbrella Liability insurance in the amount of \$2,000,000 per incident which shall be excess of Commercial General Liability coverage required herein; and
- C. Workers' Compensation coverage — minimum coverage for employer liability as determined by law.

16.2 Texas RE shall, within 30 days of the effective date, furnish to PUCT certificates of insurance, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage and that ERCOT and PUCT are named as an additional insured under the Commercial General Liability policy and any Automobile Liability policy. The CGL and any Automobile policy shall also include a waiver of subrogation in favor of PUCT and ERCOT, its directors, agents, representatives, independent Texas REs, servants, and employees. Texas RE shall provide ERCOT with renewal or replacement certificates at least 30 days prior to expiration or termination of any such bonds or insurance. Failure to consistently maintain such fidelity bond or insurance coverage, or to timely provide ERCOT with insurance certificates, shall constitute a material breach of this Agreement.

#### Article 17. Dispute Resolution

The parties agree that, to the extent permitted by Chapter 2260 of the Texas Government Code or other Texas statutes, any and all disputes that may arise between the Parties regarding the terms of this Agreement shall be first submitted for settlement by negotiation and mediation or other means of alternative dispute resolution. The parties further agree that any such dispute resolution to which Chapter 2260 of the Texas Government Code applies shall be conducted in accordance with PUCT Substantive Rule Chapter 27, Subchapter C.

#### **Article 18. Sovereign Immunity**

The State of Texas and the PUCT do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them under the laws of the State of Texas or the common law.

#### **Article 19. Governing Law**

Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in the State of Texas and shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Parties consent to the exclusive jurisdiction of the State of Texas. The Parties hereby submit to the jurisdiction of courts located in, and venue is hereby stipulated to, the state courts located in Travis County, Texas. Each Party stipulates that it is subject to the jurisdiction of the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Agreement. Further, each Party hereby waives any right to assert any defense to jurisdiction being held by the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Agreement.

#### **Article 20. Compliance with Law**

20.1 General: Texas RE shall comply with all federal, state and local laws, executive orders, regulations, and rules applicable at the time of performance. Texas RE warrants that all services sold hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations, including Equal Employment Opportunity laws, to which they are subject. All laws and regulation required in agreements of this character are hereby incorporated by this reference.

20.2 Taxes: Texas RE is solely responsible for all taxes (federal, state, local) and other similar statutory obligations arising from, relating to, or in connection with any payment made to Texas RE by ERCOT, except for state or local sales taxes, that must be included on Texas RE's invoices to ERCOT. Texas RE shall defend, indemnify and hold ERCOT and the PUCT harmless to the extent of any obligation imposed by law on ERCOT to pay any such tax.

20.3 Worker's Compensation: Texas RE agrees that it shall be in compliance with applicable state worker's compensation laws throughout the term of this Agreement.

20.4 Conflicts: Texas RE agrees to abide by the requirements of and policy directions provided by the Texas statutes and the rules and regulations of the PUCT, and will inform and consult with the PUCT when further interpretations or directions are needed in order to fully implement the rules and regulations of the PUCT. In the event that Texas RE becomes aware of inconsistencies between this Agreement and a Texas statute or PUCT rule, Texas RE will so advise the PUCT and will cooperate fully to revise applicable provisions of this Agreement as necessary. Texas RE will promptly notify the PUCT if any requirements or policy directions of the PUCT are ever inconsistent with any requirements of Texas RE's delegation agreement with NERC.

**Article 21. Texas RE Certification**

**21.1 Effect of Acceptance:** By accepting the terms of this Agreement, Texas RE certifies that, to the extent applicable:

**21.1.1 Prohibitions on Gifts:** Texas RE has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement.

**21.1.2 Delinquent Obligations:** Texas RE is not currently delinquent in the payment of any franchise or sales tax owed the State of Texas, and is not delinquent in the payment of any child support obligations under applicable state law.

**21.1.3 Antitrust:** Neither Texas RE nor anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et seq., of the Texas Business and Commerce Code or the Federal Antitrust Laws, nor has communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.

**21.1.4 Family Code:** Texas RE has no principal who is ineligible to receive funds under Texas Family Code § 231.006 and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**21.1.5 Prohibited Compensation:** Texas RE has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this Agreement.

**21.1.6 Government Code:** Pursuant to Texas Government Code § 2155.004, regarding the collection of state and local sales and use taxes, the Texas RE is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.

**21.1.7 Outstanding Obligations:** Payments due under the contract will be applied towards any debt that is owed to the State of Texas, including but not limited to delinquent taxes and child support.

**21.1.8 Contracting with Executive Head of State Agency:** The Agreement is in compliance with Texas Government Code § 669.003 relating to contracting with the executive head of a State agency.

**21.1.9 Buy Texas:** Texas RE will comply with Texas Government Code § 2155.4441, pertaining to service contracts regarding the use of products produced in the State of Texas.

**21.1.10 Hurricane Recovery.** Contractor certifies that the individual or business entity named in this proposal is not ineligible for contract award under Government Code § 2155.004 and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

## Article 22. General Provisions

**22.1 Relationship of Parties:** Texas RE is and shall remain at all times an independent contractor, and nothing in this Agreement shall be deemed to create a joint venture, partnership, employment, franchise, master-servant, or agency relationship among the Parties. Except as expressly provided to the contrary elsewhere in this Agreement, no Party has any right or authority to act on behalf of another Party, nor to assume or create any obligation, liability or responsibility on behalf of another Party. Under no circumstances shall the relationship of employer and employee be deemed to arise between the PUCT and Texas RE's personnel or between ERCOT and Texas RE's personnel. Texas RE shall be solely responsible for achieving the results contemplated by this Agreement, whether performed by its agents, employees, or subcontractors and for supervising the manner and methods by which the results are achieved.

**22.2 Taxes and Statutory Withholdings:** Texas RE acknowledges that it is not a PUCT employee, but is an independent contractor. Accordingly, it is Texas RE's sole obligation to report as income all compensation received by Texas RE under the terms of this contract. Texas RE is solely responsible for all taxes (federal, state, local), withholdings, social security, unemployment, Medicare, Worker's Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Texas RE under this contract. Texas RE shall defend, indemnify, and hold the PUCT or ERCOT harmless to the extent of any obligation imposed by law on the PUCT or ERCOT to pay any tax (federal, state, local), withholding, social security, unemployment, Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Texas RE under this contract.

Further, Texas RE understands that neither it nor any of its individual employees is eligible for any PUCT or ERCOT employee benefit, including but not limited to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Worker's Compensation, health and welfare benefits, profit sharing, 401(k), or any employee stock option or stock purchase plans. Texas RE hereby waives any and all rights to any such PUCT or ERCOT employment benefit.

**22.3 Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

**22.4 Force Majeure:** No Party shall be responsible to another Party for any resulting loss if fulfillment of any of the terms or provisions of this Agreement is delayed or prevented by any act or event that is beyond the reasonable control of the affected Party (including but not limited to, court decisions, including appeals, acts of God, landslides, lightning, earthquakes, fires, explosions, floods, epidemics or acts of a public enemy, wars, blockades, riots, rebellions, sabotage, insurrections, civil disturbances, or similar occurrences; and strikes, work stoppages, secondary boycotts and walkouts).

22.5 Waiver: Neither the PUCT, ERCOT, nor Texas RE shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified, or excused by a Party, unless such waiver, modification, or excuse is in writing and signed by an authorized officer of the Party. The failure by or delay of the aggrieved Party in enforcing or exercising any of its rights under this Agreement shall not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, nor shall it prevent a subsequent enforcement or exercise of such right. The Party shall be entitled to fully enforce any other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action by that aggrieved Party against another Party under this Agreement or otherwise.

22.6 Headings: Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.

22.7 Export Laws: Texas RE represents, warrants, agrees, and certifies that it (a) shall comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) shall not knowingly permit any non-Party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third Party materials accessed by Texas RE during the course of this Agreement in violation of any such laws, rules or regulations.

22.8 Entire Agreement: This Agreement, including Exhibits A& B, constitutes the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes and merges all prior discussions, writings, negotiations, understandings, and agreements with respect thereto and shall not be amended or modified, nor shall any right be waived, except by a written amendment as provided in this Agreement.

22.9 Preprinted Forms: The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this Agreement, including but not limited to Article 20.11, cannot be amended, modified or altered by any conflicting preprinted terms, provisions or conditions contained in a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Agreement and any terms and conditions on a purchase order, acknowledgment or other preprinted form, the terms and conditions of this Agreement will govern.

#### Article 23. Specific Personnel

Texas RE warrants that it shall use its best efforts to avoid any changes to the Texas staff assigned to perform activities under this Agreement, during the course of this Agreement. This provision shall not be deemed to prohibit the Texas RE from dismissing any individual for unacceptable work performance, violations of confidentiality provisions, or other policies or provisions applicable to the work performed under this agreement. Should personnel changes occur during the contract period, Texas RE will recommend to the PUCT personnel with comparable experience and required qualifications and training.

The PUCT must approve any change in personnel on this project. Texas RE shall provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Texas RE shall remove from the project any individual whom the PUCT finds unacceptable. Texas RE shall replace such individual with another individual satisfactory to the PUCT as soon as practicable.

**Article 24. Notice**

Except as otherwise stated in this Agreement, all notices provided for in this Agreement shall be (a) in writing, (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this Agreement), (c) sent by Certified U.S. mail, Return Receipt Requested, with proper postage affixed and (d) deemed effective upon the third business day after deposit of the notice in the U.S. mail.

**IF TO THE PUCT:**

Attention: W. Lane Lanford,  
Executive Director  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, TX 78711-3326

With a copy to the PUCT Contact Person, Pam Whittington, at the same address.

**IF TO Texas RE:**

Attention: Susan Vincent, Director Legal and Enforcement  
2700 Via Fortuna, Suite 225  
Austin, Texas 78746

**IF TO ERCOT:**

Attention: Matt Morais, Assistant General Counsel  
7620 Metro Center Drive  
Austin, Texas 78744

IN WITNESS WHEREOF the Parties by their duly authorized representatives have executed this Agreement as of July 1, 2010.

<p><b>The Public Utility Commission of Texas</b></p> <p>By: <u><i>W. Lane Lantieri</i></u> Name: <u>W. Lane Lantieri</u> Title: <u>Executive Director</u> Date: <u>7/2/10</u></p>	<p><b>Electric Reliability Council of Texas, Inc.</b></p> <p>By: <u><i>H. B. Doggett</i></u> Name: <u>H. B. "Trip" Doggett</u> Title: <u>President and CEO</u> Date: <u>07/06/2010</u></p>
<p><b>Texas Reliability Entity, Inc.</b></p> <p>By: <u><i>Larry D. Grimm</i></u> Name: <u>Larry D. Grimm</u> Title: <u>President and CEO</u> Date: <u>7/2/10</u></p>	

APPROVED  
AS TO FORM  
SV

PUC General Law  
Approved: *LCJ*

APPROVED  
AS TO FORM  
*EB*  
for WLR  
07.06.10

**Exhibit A**  
**Statement of Work No. 1 Under Tri-Party Professional Services Agreement**

**STATEMENT OF WORK No. 1 UNDER  
TRI-PARTY PROFESSIONAL SERVICES AGREEMENT**

This Statement of Work Agreement (the "SOW") is entered into by and between Electric Reliability Council of Texas, Inc. ("ERCOT"), the Public Utility Commission of Texas ("PUC"), and Texas Reliability Entity, Inc. ("Texas RE"). This SOW sets forth Services to be performed pursuant to the terms and conditions of the Tri-Party Professional Services Agreement effective July 1, 2010 by and between ERCOT, PUC, and Texas RE (the "Agreement"). This SOW in no way alters the terms and conditions of the Agreement other than as specifically set forth in this SOW. The effective date for this SOW shall be the Authorized Start Date specified below and the termination date for this SOW shall be the End Date specified below.

**I. Scope of Services**

Subject to the PUC's supervision and oversight, Texas RE will act as the Reliability Monitor for the ERCOT Region and will be responsible for monitoring, investigating, auditing, and reporting to the PUC regarding compliance with the reliability-related ERCOT Protocols ("Protocols") and Operating Guides ("Operating Guides"), and the reliability-related provisions of the PUC Substantive Rules, and the reliability-related provisions of the Public Utility Regulatory Act (collectively "the Legal Requirements") by ERCOT and ERCOT Market Participants (collectively "Market Entities"). Also, the Texas RE will provide other reliability-related subject matter advice, expertise, and assistance to the PUC in the conduct of the PUC's oversight and enforcement activities, on the terms and conditions as set forth herein. The tasks, duties, and responsibilities ("Services") of the Texas RE will include, but are not limited to, the following:

- A. Knowledge of the Legal Requirements. Texas RE must be knowledgeable regarding the Legal Requirements. Texas RE will maintain sufficient staff to carry out the services specified in this Agreement. Texas RE and its staff must have a working knowledge and understanding of the Legal Requirements. Texas RE and its staff must also have a working knowledge and understanding of the enforcement authority, policies, and procedures of the PUC.
- B. Monitoring, Overseeing, and Reporting by the Texas RE. Texas RE is the Reliability Monitor selected by the PUC to monitor, oversee, and report to the PUC regarding ERCOT and Market Participant compliance and non-compliance with the Legal Requirements. With the exception of routine, real-time compliance monitoring performed by ERCOT, Texas RE shall perform the majority of compliance monitoring of Market Entities. Texas RE may use a variety of methods/procedures to monitor and oversee reliability compliance, including data submittal, compliance audits, self certifications, spot checks, self reports, complaints, data requests, event analysis, and investigations (collectively "Reliability Monitoring and Oversight Procedures").

Texas RE shall develop procedures to gather and analyze information and data as needed for its monitoring compliance activities and actively monitor reliability in the ERCOT power region, pursuant to the direction of the PUCT. Texas RE will perform the following:

*Monitoring and Overseeing Compliance with the Legal Requirements*

1. Develop Monitoring and Oversight Procedures to ensure reliability;
2. Identify violations of Legal Requirements via Monitoring and Oversight Procedures;
3. Monitor indicators of reliability deficiencies; and
4. Conduct investigations of specific ERCOT network reliability-related events and prepare reports.

*Records and Reporting*

1. Report to the PUCT potential compliance violations of the Legal Requirements;
2. Keep a record of all potential occurrences of non-compliance with the Legal Requirements and develop a system for tracking such occurrences of potential non-compliance and maintain a record of related investigative and enforcement activities;
3. Promptly provide information to allow Market Entities the information to understand and respond to alleged occurrences of non-compliance with Legal Requirements;
4. Keep a record of remedial actions taken by the Market Entities to understand and respond to alleged occurrences of non-compliance;
5. Inform the PUCT Staff if the non-compliance is not resolved after ERCOT or the Texas RE has verbally informed the Market Participant of a problem; and
6. Submit to the PUCT monthly reports on reliability compliance matters, including potential violations of Legal Requirements, Texas RE investigations, and other reliability compliance oversight activities.

C. PUCT Enforcement Support. The PUCT is responsible for enforcement activities and prosecutions, as discussed in further detail below. Texas RE will assist and support the PUCT in its enforcement and prosecution obligations by promptly developing reports, providing technical expertise, and otherwise supporting PUCT enforcement activities as needed. Support activities under this Section C shall include, but not limited to, the following:

1. Coordinate with the PUCT to identify compliance priorities, assess resources, implement methods for effective compliance monitoring, and assess the effectiveness of ERCOT systems reliability;
2. Provide expert advice, analysis, reports, and testimony services relating to the Texas RE's analysis, findings, and expertise, as a part of the PUCT staff's case in enforcement proceedings initiated by the PUCT

and provide other requested technical assistance and support to the PUCT regarding Market Entity compliance with Legal Requirements; and

3. Coordinate with the PUCT to develop procedures for the coordination of enforcement activities between the Texas RE and PUCT and for PUCT, including identification of priorities, allocation of resources for investigations, and approval of investigations that require significant resources in excess of the work covered by the fixed fees under this agreement.

**D. Evaluation of Network Operations and Current and Proposed Changes to Legal Requirements.** Texas RE will evaluate the operation of the network and the wholesale electric system and will assist the PUCT and ERCOT by developing recommendations for enhancing the reliability and efficiency of the ERCOT network and operated systems. In coordination with the PUCT, the Texas RE will:

1. Regularly monitor compliance performance measures to evaluate Market Participants and ERCOT compliance with the Legal Requirements;
2. Evaluate whether ERCOT manages the electric systems it operates and administers, in accordance with ERCOT Requirements;
3. Assess the effectiveness of ERCOT's management system operations;
4. Review proposed changes to the Protocols ("Protocol Revision Requests") and Operating Guides ("Operation Guide Revision Requests") to identify potential reliability impacts and inefficiencies;
5. Attend ERCOT stakeholder meetings relating to network and electric system issues;
6. Interact with Market Entities to better understand their operations; and
7. Recommend measures to enhance network reliability to improve system design.

## **II. Responsibilities of ERCOT**

ERCOT is the independent system operator of the regional electrical network and is responsible for ensuring its reliability and adequacy. In performing its duties, ERCOT is directly responsible and accountable to the PUCT and will cooperate fully with the PUCT in the PUCT's oversight and investigatory functions consistent with the duties, rights, and obligations provided for in the Legal Requirements. Accordingly, ERCOT has responsibility in the first instance for certain real-time compliance monitoring and reporting to the PUCT and Texas RE. ERCOT will provide reasonable cooperation and technical assistance, consistent with the Legal Requirements, to the Texas RE and the PUCT in the performance of their duties.

The tasks, duties, and responsibilities of ERCOT will include, but are not limited to, the following:

1. Keep a record of all occurrences of non-compliance with Legal Requirements that are identified by ERCOT;
2. Promptly provide information to the Market Participants to allow Market Participants to understand and respond to alleged occurrences of non-compliance with Legal Requirements;
3. Report to Texas RE occurrences of non-compliance by the Market Participants in each instance;
4. Inform Texas RE if the non-compliance is not resolved after ERCOT has informed the Market Participants of a problem;
5. Provide Texas RE with access to ERCOT's operations centers and ERCOT's records, data, and other information concerning operations, settlement, and reliability and timely respond to data requests by Texas RE;
6. Provide other reasonable assistance and cooperation necessary for Texas RE to perform its functions, including all support and cooperation which is determined appropriate by the PUCT.
7. Provide, based upon reasonable and timely requests from PUCT staff, technical assistance, analysis, reports, and testimony that may be used as part of PUCT staff's case in enforcement proceedings.
8. Provide, based upon reasonable and timely requests from PUCT staff, technical assistance and information to the PUCT regarding Market Entity compliance with Legal Requirements.

### **III. Responsibilities of PUCT**

- A. PUCT Enforcement. The PUCT is responsible for enforcement activities and has a legal staff that will prosecute enforcement proceedings. The PUCT will also provide a liaison to Texas RE to coordinate with investigation and enforcement activities, and evaluate whether enforcement is appropriate, based on reports provided by the Texas RE. The PUCT will also provide staff to evaluate the penalties that are appropriate for violations of the Legal Requirements.
- B. PUCT Supervision.
  1. Texas RE and ERCOT activities will be subject to the supervision and oversight of the PUCT;
  2. Texas RE will perform all Services in accordance with the instructions, directions, and requests of the PUCT; and
  3. The PUCT may periodically review the performance of Texas RE under this Agreement and any SOWs to assess whether the Texas RE is meeting the requirements of this Agreement and providing diligent and professional services under the Agreement. If in the

PUCT's sole judgment, Texas REs' performance has not been adequate, it may, with 30 days notice, terminate the Agreement.

**IV. Fees, Expenses, and Payments**

- A. In exchange for Services performed by Texas RE during each quarter, ERCOT shall pay Texas RE \$237,500 (Quarterly Payment), in advance, on July 1, 2010 and October 1, 2010, less the amount of any Credit from the previous period (as described above in Subsection IV D), if any. The Quarterly Payment includes reimbursement for Services provided by Texas RE and for reasonable out-of-pocket expenses (including but not limited to travel expenses incurred by Texas RE staff in accordance with the Texas RE Business Reimbursement Corporate Policy) incurred by Texas RE in performing Services.
- B. Texas RE, the PUCT, and ERCOT intend for Texas RE to perform all Services for fees and expenses that are equal to or less than the amount of the Quarterly Payment. In coordination with the PUCT, Texas RE will organize its compliance monitoring and reporting and technical support Services to avoid exceeding the Quarterly Payment. If, at any time, Texas RE believes that any Services requested or required by the PUCT may exceed the Quarterly Payment, Texas RE shall promptly notify the PUCT Contact Person to discuss and agree to a re-prioritization of Services. If required, Texas RE is responsible for ensuring that the time and expenses spent by its staff in performing Services do not exceed the Quarterly Payment.
- C. Within 30 days after the end of each calendar quarter, Texas RE will provide the PUCT with an accounting of all time spent performing Services for each of the below-listed rate categories and all out-of-pocket expenses incurred in performing Services.
- D. If Texas RE's accounting reflects that Texas RE's Quarterly Payment is more than the amount of Services performed (at the appropriate rate categories) plus reimbursement of Texas RE's out-of-pocket expenses, Texas RE will provide the PUCT and ERCOT with notification of a Credit, which will state the amount to be credited against Texas RE's next Quarterly Payment. At the expiration of the Agreement, Texas RE will refund any positive balance to ERCOT, with notice to the PUCT, within sixty (60) days of termination or expiration of the Agreement. If applicable, ERCOT will reimburse any negative balance to Texas RE, with notice to the PUCT within (60) days of termination of the Agreement with a total not-to-exceed amount of (\$475,000.00).
- E. All Texas RE employees and contract workers who perform Services will accurately track the amount of time they spend performing Services, using Texas RE's time tracking system.
- F. ERCOT will pay Texas RE for Services in accordance with the following rate categories (which rates include Texas RE internal expenses such as employee benefits, rent, overhead expenses, telephone, and internal copying and postage charges):

1. Data Management staff: \$ 60
2. Compliance Engineer/Analyst 1 or 2: \$ 80
3. Compliance Engineer/Analyst 3 or Senior: \$ 100
4. Manager or Corporate Counsel: \$ 100
5. Director or Officer: \$ 150

G. If at any time Texas RE believes it would be beneficial to use a subcontractor to perform any Services, Texas RE will first notify the PUCT Contact Person and seek to obtain consent in writing (which may be via email) for the use of the consultant and the consultant's rate. Texas RE may not use a consultant to perform any Services without obtaining prior written approval from the PUCT. Payment for Services of subcontractor shall originate from the quarterly payment.

H. Texas RE shall track and account for all out-of-pocket expenses incurred in performing Services, and ERCOT shall reimburse Texas RE for all Texas RE's reasonable actual out-of-pocket expenses that are incurred in performing the Services, including but not limited to lodging, airline, rental cars, mileage, meals, and other costs of business travel; documentation services performed by third-party vendors; cell phone charge reimbursement for employees; and all other third-party expenses incurred by Texas RE or its employees in performing Services. Reimbursable out-of-pocket expenses do not include routine Texas RE overhead such as rent, employee benefits expenses, or reimbursement for copies, facsimiles, or long distance telephone calls made in Texas RE's office, all of which are included in the hourly rates listed above.

I. Texas RE employees and subcontractors, if any, will comply with the Texas RE Business Expense Reimbursement Corporate Policy, which is attached hereto as Exhibit B.

J. Texas RE's fees and expenses will not exceed \$475,000 during the Term.

**V. PUCT Contact Person:**

The PUCT employee who will be the authorized PUCT Contact for all Services is:

Pam Whittington  
(512) 936-7245  
Pam.Whittington@puc.state.tx.us

**VI. ERCOT Contact Person:**

The ERCOT employee who will be the authorized ERCOT Contact Person for all Services is:

Matt Morais, Assistant General Counsel  
7620 Metro Center Drive  
Austin, TX 78744  
(512) 225-7177  
mmorais@ercot.com

**VII. Texas RE Contact Person:**

The Texas RE employee who will be the authorized Texas RE Contact Person for all Services is:

Susan Vincent  
(512) 583-4922  
[susan.vincent@texasre.org](mailto:susan.vincent@texasre.org)

**VIII. Start Date:**

The date upon which Texas RE will begin to provide Services under this SOW is July 1, 2010 (the "Authorized Start Date").

**IX. End Date:**

The last date upon which Services may be provided is December 31, 2010 (the "End Date").

**X. Electronic Signatures.**

A copy of this SOW bearing electronic signatures (e.g., photocopy, scan, facsimile) shall have the *same force and effect as an original agreement with inked original signatures.*

<p><i>The Public Utility Commission of Texas</i></p> <p>By: <u><i>W. Lane LaFord</i></u> Name: <u><i>W. Lane LaFord</i></u> Title: <u><i>Executive Director</i></u> Date: <u><i>7/2/10</i></u></p>	<p><i>Electric Reliability Council of Texas, Inc.</i></p> <p>By: <u><i>H. B. Doggett</i></u> Name: <u><i>H. B. "Trip" Doggett</i></u> Title: <u><i>President and CEO</i></u> Date: <u><i>07/06/10</i></u></p>
<p><i>Texas Reliability Entity, Inc.</i></p> <p>By: <u><i>Larry D. Grimm</i></u> Name: <u><i>Larry D. Grimm</i></u> Title: <u><i>President and CEO</i></u> Date: <u><i>7/2/10</i></u></p>	

APPROVED  
AS TO FORM  
SV

PUC General Law  
Approved: *LCF*

APPROVED  
AS TO FORM  
*WLM*  
for *WLM*  
07.06.10

**Exhibit B**  
**Texas RE Business Expense Reimbursement Corporate Policy**

## **TEXAS RELIABILITY ENTITY CORPORATE PROCEDURE**

Document Name:	Business Expense Reimbursement Corporate Procedure
Document ID:	TRE PRO 6.2
Effective Date:	July 1, 2010
Owner:	Manager, Finance and Accounting
Governs:	Texas RE Personnel
Approved:	President and CEO

### **I. Purpose**

The purpose of this corporate procedure is to set forth the procedures required for the reimbursement of business expenses incurred by employees for business related travel (including airline, gas, rental cars, meals, and lodging expenses) and for other minor ordinary, reasonable, and customary expenses incurred by employees for the benefit of Texas RE while performing official corporate business.

### **II. Requirements**

- A. Texas RE will reimburse employees (and Contract Workers, if specifically allowed by the applicable Contract) for properly submitted and documented reasonable (1) business expenses incurred by them while on business travel for Texas RE and (2) minor expenses (less than \$1,000) for non-software supplies purchased by employees for business use outside of the normal Texas RE procurement procedures. To obtain reimbursement for other any business expenses, such other business expense must be approved in writing in advance by a Texas RE Director or Officer. This approval may be made by email. Software purchases must be approved in advance by the Manager or Director of Information Technology.
- B. All purchases for Texas RE must be made competitively and economically. All business travel must be approved in advance by the supervisor and must be as economical and efficient as reasonably possible. Reimbursed expenses must be in compliance with the following:
  - 1. Employee Cell Phone Service.
    - (a) Allowance: If a supervisor approves an employee's job function as requiring a cell phone, the employee will receive an allowance of \$40 per month to cover expected cell phone costs. This allowance is added directly to an employee's paycheck in the amount of \$20 per pay period.
    - (b) If an officer approves an employee's job function as requiring more costly wireless connectivity such as a smart phone or personal digital assistant, the employee will receive an allowance of up to \$80 per month, instead of the cell phone \$40 per month. This allowance is added directly to an employee's paycheck in the amount of \$40 per pay period.

(c) **Cell Phone and Related Equipment:** Texas RE does not purchase cell phones, smart phones or PDAs for individual use. It is the employee's responsibility to purchase and to ensure that all cell phones and related equipment acquired by the employee conform to Texas RE policies, standards, and procedures relating to system access and appropriate use.

(d) **Other Charges:** Texas RE will reimburse employees for the cost of cell phone minutes used for company business that exceed the base charge, with appropriate itemized receipts as documentation. Texas RE does not reimburse activation or cancellation charges. Texas RE does not reimburse employees for cellular phone services when such service is no longer required by Texas RE or service has been cancelled for non-payment.

(e) **Cell Phone Number Included in E-mail System and Employee Directory:** If an employee receives reimbursement for cell phone expenses, the employee's cell phone number must be listed with the employee's contact information in Texas RE's e-mail system.

(f) **Confirmation of Reimbursements for Cell Phone:** Given the changing nature of job responsibilities, at least two times per year the CEO will be provided a list of the employees in their chain of command that have cell phone. The CEO will confirm the need to continue the cell phone service reimbursement amount for each employee or direct the termination of such reimbursement(s).

## 2. Airlines.

(a) Airline travel should be arranged in advance, to the extent feasible, and coach class and non-refundable airline tickets should be purchased. Texas RE will pay the change fee if business needs require a change to a non-refundable ticket. (Personal airline mileage or points may be used to upgrade airline tickets so long as there is no cost to Texas RE.) Employees and Contract Workers are responsible for excess costs resulting from a non-authorized class of air transportation and for any penalty charges for lost tickets.

(b) Employees must include a copy of the flight confirmation, indicating the cost and itinerary, as documentation for each airline expense reimbursement request.

(c) Airline cost of any single round trip airfare or equivalent that exceeds \$700 before taxes requires Director or Officer written approval (which may be given via email). Reimbursement will be subject to adjustment or denial if such airfare was not pre-approved by the appropriate Director or Officer.

3. **Personal Automobiles:** Texas RE Personnel using their personal automobile on Texas RE business will be reimbursed only for Texas RE business mileage (based on current Internal Revenue Service guidelines – which is programed into the Concur tool) and associated travel expenses (i.e., tolls and parking). Texas RE will not reimburse any personal automobile maintenance expenses or any traffic or parking tickets, fines, thefts, or damage to personal autos resulting from business use or for any

other losses sustained during business use. Texas RE Personnel who use their personal vehicles for business purposes are responsible for maintaining the minimum insurance limits specified by applicable State law and ensuring that their insurance coverage extends to primary or incidental business use of the vehicle. The Individual is responsible for any costs involved in securing this insurance and those costs are non-reimbursable

4. **Rental Cars.** Texas RE will reimburse Personnel for Compact or Economy car rental rates unless there are more than two people sharing the auto. In this situation, an upgrade to a mid-sized car is allowed. Texas RE is insured for business travel with rental vehicles under a corporate insurance policy; so, it is not necessary for Personnel to purchase insurance from the rental car company when renting a vehicle for Texas RE business use in the USA. Texas RE will not reimburse Personnel for insurance acquired through the rental company.

(a) Other Transportation (taxi, buses, trains, etc.): Business necessity and reasonable costs should justify all decisions regarding transportation expenses. Use of shuttle buses or share-a-ride programs is encouraged whenever practical.

5. **Hotels.**

(a) Texas RE Personnel should use reasonably priced hotels that are located in the general area in which business will be conducted, that are rated as three star hotels or lower on the AAA rating scale or equivalent. When a meeting or event attended is at a hotel with a rating that is higher than three stars, Texas RE Personnel may stay that that hotel without an exception, regardless of the hotel's assigned star rating. Texas RE will not reimburse (without an exception) requests for reimbursement of hotel charges within 50 miles of Texas RE's office.

(b) Texas RE will not reimburse expenses for incidental hotel charges such as mini bar charges, alcoholic beverages, gym fees, or movie costs.

(c) For extended out of town stays, Texas RE Personnel should arrange for lower cost, long-term rates.

(d) Texas RE will not reimburse cancellation costs for late cancellation of a hotel reservation unless the late cancellation was caused by Texas RE business that was not reasonably anticipated.

6. **Parking**

(a) Airport parking will be reimbursed at long-term rates; other parking will be reimbursed at actual rates.

7. **Meals.**

(a) Meals for business trips more than 50 miles from the Texas RE office are reimbursable on a per-diem basis, in accordance with General Standards Accounting (GSA) guidelines (located at <http://www.gsa.gov/perdiem>) for the location at which the meal occurs. If a destination is not listed on the GSA website, a per-diem reimbursement allowance of \$46 per day may be used. The per-diem

reimbursement allowance is intended to cover the cost of food, beverages, tips, gratuity and taxes. Any costs incurred by the traveler exceeding the per-diem reimbursement allowance will be considered personal expenses.

(b) The per-diem reimbursement allowance should be reduced proportionately when one or more meals of the day are otherwise provided (by others or as part of a meeting), or when the timing of the travel does not include the full day. The reduction for meals not reimbursed should be: (i) 20% reduction for breakfast, (ii) 30% reduction for lunch, and 50% reduction for dinner.

(c) Employees are responsible for the cost of their meals when their job duties or attendance at training sessions requires them to be less than 50 miles from the Texas RE.

(d) Business Meal Exceptions. An Officer or Director may approve reimbursement of business meal expenses that are necessary or helpful, reasonable, and related to the conduct of business. Business meals expected to exceed \$50 per person must be pre-approved by an Officer. For business meals to qualify for Texas RE reimbursement the expenditure must be either directly related to or associated with the active conduct of company business and documented with the date incurred; names and titles of attendees; company affiliation; location where incurred; nature and purpose of the business discussion; and amount.

(e) Group Meetings and Off-site Meetings: For group meetings, off-site meetings, business conference group meals, entertainment, and other group expenditures, the name, title, and business relationship of all participants, including the highest level employee that participated in the group event must be included on the expense report. The approval must be the next higher level employee not in attendance, unless the Texas RE Corporate Governance and Authority Corporate Policy requires a higher level approval. Officers may approve group meals for conferences, staff meetings, etc., whether hosted by them or their direct reports.

(f) Working lunches at Texas RE offices should be utilized prudently, not on a regular basis.

(g) Texas RE will reimburse reasonable order-in meals for Texas RE Personnel working three or more hours duration beyond the normal (eight hour) work schedule.

(h) A Manager or Director may approve reimbursement for order-in group meals for overtime work of at least five hours duration on working weekends or holidays.

(i) Texas RE will not reimburse the cost of alcoholic beverages. If the cost of a meal or group event includes alcoholic beverages, Texas RE Personnel must deduct the cost of any alcoholic beverages, along with the applicable tax and tip, from the reimbursement request.

## 8. Miscellaneous Expenses

(a) **Training Sessions and Continuing Education Registration:** Texas RE will reimburse registration or enrollment costs relating to training sessions, continuing education courses, or similar business meetings if the training is authorized in advance by the Director as related to the employee's job duties and beneficial to Texas RE.

(b) **Dues and Memberships:** Membership dues for technical/professional organizations and societies are reimbursable, provided the membership relates to the employee's current job duties and are deemed by the employee's manager to be beneficial to Texas RE.

(c) **Professional License Fees:** Fees are reimbursable provided the license relates to the employee's current job responsibilities and is deemed by the employee's manager to be beneficial to Texas RE.

(d) **Incidental Tips and Gratuities:** Tips or gratuities are allowed and will be reimbursed up to a maximum of 20 percent.

- C. Texas RE uses the Concur expense tool for the submission and approval of expense reimbursement requests. Any additional approvals or exceptions required for a specific expense reimbursement must be attached with the submission of the Concur expense reimbursement request.

### III. **Procedures**

- A. **Submission:** Employees seeking to be reimbursed for purchases must submit the request for reimbursement through the Concur expense tool, attaching all required receipts, prior approvals, and other documentation.
- B. **Approval:** Business expense reimbursement requests must be approved in accordance with the Texas RE Corporate Governance and Authority Corporate Policy. When a Manager, Director, or Officer (supervisor) approves an expense reimbursement request, the supervisor is confirming that he or she reviewed and approved the appropriateness of each expense and verified that all proper documentation was attached.
- C. **Receipts:** Itemized receipts are required for all transportation, hotel, auto rental expenditures (including fuel for rented vehicles) and all other expenditures of \$25 or more or as otherwise specifically identified below. Excessive or inappropriate expenses will be rejected and not reimbursed. Receipts are not required for reimbursement of meals reimbursed on a per-diem basis.
- D. **Business Purpose:** The business purpose (who, what, when, where and why) of each expense must be clearly indicated on the expense report submitted in Concur. Any additional documentation should be attached to the report before submission. Meeting or conference agendas should be attached when business travel includes an overnight stay to attend business meetings or conferences.
- E. **Frequency and Reimbursement:** All expenses should be submitted within 60 days after the end of the month that the expenses were incurred, via Concur.

1. Business expense reimbursement requests submitted more than 60 days after the expenses were incurred require written Officer approval, which must be included with the expense submission in Concur. In reviewing expense reimbursement requests for accuracy and proper accounting, the accounting staff will return the report back to the employee requesting them to attach evidence of the officer's approval as a receipt.

2. Employees that leave employment with Texas RE must submit all requests for expense reimbursement before their termination date, and supervisors must promptly approval all appropriate and documented expense reimbursement requests. Reimbursement of outstanding and properly submitted and documented expense reimbursement requests will be included with the last paycheck.

F. **Cash Advances and Advance Payments:** Texas RE does not normally issue cash advances for employee business expenses. Texas RE Personnel are expected to use the Texas RE procurement procedures to purchase most goods and services. Texas RE Personnel may use their own funds or credit cards to incur reimbursable business expenses for approved business travel or other minor business expenses and then seek reimbursement from Texas RE following this Corporate Procedure.

1. If authorized as an exception, Texas RE will make advance payment directly to vendors for registration fees, airfare, hotel and other expenses.

2. Exceptions must be approved in advance by a Director or Officer, as follows:

(a) The requesting employee should complete a Texas RE Manual Check Request Form, describing the expense and stating the basis of the exception.

(b) The employee should have his or her Manager and Director sign approval on the Manual Check Request Form and submit it to Accounting.

3. If an exception is approved for advance payment to a vendor for a planned reimbursable business expense, the employee must provide and obtain written approval by his or her Manager of a reconciliation of actual reimbursable expenses incurred to the advance payment amount. The employee must attach the reconciliation to the Concur expense report, as a receipt, along with all other required receipts and documentation. The expense report must be submitted in Concur within 30 days of the event for which the advance payment exception was approved.

#### **IV. Roles and Accountabilities**

- A. The Manager, Finance and Accounting is responsible for maintaining and communicating this Corporate Procedure.
- B. All Texas RE Personnel are responsible for understanding and complying with this Corporate Procedure.
- C. Exceptions: Any exceptions to this Corporate Procedure must be documented (including the purpose of the expense and the basis of the exception) and approved in writing by the CEO or his or her designee.

SUPPLEMENT TO PROFESSIONAL SERVICES AGREEMENT  
AND STATEMENT OF WORK NO. 1  
AMONG THE PUBLIC UTILITY COMMISSION OF TEXAS,  
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., AND  
TEXAS RELIABILITY ENTITY, INC.

This Supplement ("Supplement"), is entered into by and among the Public Utility Commission of Texas, an agency of the state of Texas (the "PUC"), Electric Reliability Council of Texas, Inc. ("ERCOT"), a Texas non-profit corporation, and Texas Reliability Entity, Inc. ("Texas RE") a Texas non-profit corporation (collectively, "the Parties"), effective on January 1, 2011 ("Effective Date"), to amend and extend the Professional Services Agreement ("Agreement") and Statement of Work No. 1 ("SOW") signed by the Parties effective July 1, 2010. Except as specifically changed herein, the terms of the Agreement and attached SOW continue in full force and effect through the new Term, as defined below.

**I. Term**

- A. The Term of the Agreement and SOW are extended through December 31, 2013. The expiration date of the Agreement in Article 5 and the End Date of the SOW in Paragraph IX are hereby modified to be December 31, 2013.
- B. The Agreement and SOW may be further extended for one or more additional one-year periods by written agreement of the Parties to the terms and conditions, so long as the Parties agree to the extension on or before April 1<sup>st</sup> of the year in which the Agreement and SOW expire.
- C. This Supplement is executed subject to Texas RE's obtaining formal approval from the Federal Energy Regulatory Commission and North American Electric Reliability Corporation. If these entities do not approve Texas RE's continuation of these Reliability Monitor services, Texas RE will notify the PUC and ERCOT of the required termination date.

**II. Background**

- A. P.U.C. SUBST. R. 25.503(j) provides that "ERCOT shall develop and submit for commission approval a process to monitor material occurrences of non-compliance with ERCOT procedures, which shall mean occurrences that have the potential to impede ERCOT operations, or represent a risk to system reliability,"
- B. By Order dated July 24, 2006, in PUC Docket No. 32350 , the PUC:
  - 1. Held that ERCOT had complied with the requirements of the first sentence of P.U.C. Subst. R 25.503(j) by developing and submitting for Commission approval the ERCOT Compliance Process; and
  - 2. Approved the ERCOT Compliance Process as submitted by ERCOT on June 23, 2006.
- C. In 2007, Texas Regional Entity was formed as a functionally independent division of ERCOT to replace the previous ERCOT Compliance Office and contract with the North American Electric Reliability Corporation (NERC) as the Regional Entity for the

ERCOT region. On June 30, 2010, Texas Regional Entity assigned all rights, obligations, and liabilities to Texas RE, which was formed as a Texas non-profit on January 1, 2010 to be the Regional Entity for the ERCOT region, and Texas Regional Entity was eliminated as a division of ERCOT.

- D. Due to the elimination of the ERCOT Compliance Office after the July 24, 2006 Order, the PUCT must modify the processes used to monitor and report compliance with the Legal Requirements. The PUCT desires to have ERCOT and Texas RE generally continue to follow the ERCOT Compliance Process, with Texas RE performing most of the functions previously performed by the ERCOT Compliance Office as the Reliability Monitor, as set forth in the SOW. The PUCT will approve modifications to this process through the Monitoring and Oversight procedures it approves pursuant to the SOW.
- E. The PUCT requires that:
  - 1. ERCOT continue to comply with the P.U.C. Subst. R 25.503(j), and whenever ERCOT is required to notify commission staff pursuant to P.U.C. Subst. R 25.503(j)(4), ERCOT shall also notify Texas RE; and
  - 2. ERCOT continue to comply with the obligations of the *ERCOT Compliance Process* except for those obligations identified for “ERCOT Compliance”, unless and until the PUCT approves modifications to these requirements, through approval of new procedures or otherwise, and ERCOT also report to Texas RE all matters it is required by the *ERCOT Compliance Process* to report to ERCOT Compliance or the PUCT.
- F. Texas RE will perform services as the Reliability Monitor, as described in SOW No. 1, including the development of additional procedures, pursuant to P.U.C. Subst. R 25.503 and § 39.151 of the Public Utility Regulatory Act (PURA). These Reliability Monitor services may include obligations formerly provided by ERCOT Compliance under the *ERCOT Compliance Process*.

### **III. Responsibilities of ERCOT**

- A. In the SOW, Section II, subsection 6 is amended to specifically add the words, “access, electronic data” as follows:

“Provide other reasonable assistance and cooperation necessary for Texas RE to perform its functions, including all access, electronic data, support, and cooperation which is determined appropriate by the PUCT, consistent with the data security requirements applicable to ERCOT pursuant to NERC standards, Legal Requirements, or other laws.”

### **IV. Fees, Invoices, and Payments**

- A. In the Agreement:
  - 1. Paragraph 2.2 is deleted.
  - 2. The following clause is deleted from the end of the last sentence of Article 2.4, “less any credit due for the previous quarter, based upon invoice reconciliation defined in Article 2.6”.
  - 3. Article 2.6 of the Agreement is removed.
- B. In the SOW:

1. The following sentence in Paragraph IV is removed:  
 "ERCOT shall pay Texas RE \$237,500 (Quarterly Payment), in advance, on July 1, 2010 and October 1, 2010, less the amount of any Credit from the previous period (as described above in Subsection IV D), if any."
2. The following sentence is added in Paragraph IV to replace the above:  
 "ERCOT shall pay Texas RE the following amount (Quarterly Payment), in advance, as follows:
  - \$237,500 on July 1, 2010 and October 1, 2010;
  - \$242,500 on January 1, April 1, July 1, and October 1, of 2011;
  - \$249,775 on January 1, April 1, July 1, and October 1, of 2012; and
  - \$257,275 on January 1, April 1, July 1, and October 1, of 2013."
3. Subparagraphs IV C, D, E, F, G, and H are removed.
4. By January 31, 2011, Texas RE will provide the PUCT with an accounting of all time spent performing Services for each of the rate categories listed in Subparagraph IV C of the Agreement prior to this Supplement and all out-of-pocket expenses incurred in performing Services in the fourth quarter of 2010. By February 28, 2011, Texas RE will provide the PUCT and ERCOT formal notification of any Credit, which will state the amount that may be credited against Texas RE's April 1, 2011 payment, subject to confirmation by the PUCT.
5. Paragraph IV J is changed to state, "Texas RE's fees and expenses will not exceed \$3,473,200 for the Term."

**V. Texas RE Contact and Notice Information**

- A. The Texas RE address and fax number have changed to the following:  
 805 Las Cimas Parkway, Suite 200  
 Austin, Texas 78746  
 Fax: (512) 233-2233

<p><i>The Public Utility Commission of Texas</i></p> <p>By: <u>Brian H. Lloyd</u>        Name: <u>Brian H. Lloyd</u>        Title: <u>Executive Director</u>        Date: <u>12/22/10</u></p>	<p><i>Electric Reliability Council of Texas, Inc.</i></p> <p>By: <u>H.B. Doggett</u>        Name: <u>H.B. "TRIP" DOGGETT</u>        Title: <u>PRESIDENT and CEO</u>        Date: <u>12/21/10</u></p>
<p><i>Texas Reliability Entity, Inc.</i></p> <p>By: <u>Larry D. Grimm</u>        Name: <u>LARRY D. GRIMM</u>        Title: <u>PRESIDENT AND CEO</u>        Date: <u>12/20/10</u></p>	

APPROVED AS TO FORM  
 [Signature]  
 for Brandt Rydell

EXTENSION OF AND SECOND SUPPLEMENT TO PROFESSIONAL SERVICES

AGREEMENT

AND STATEMENT OF WORK NO. 1

AMONG THE PUBLIC UTILITY COMMISSION OF TEXAS,

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., AND

TEXAS RELIABILITY ENTITY, INC.

This Extension and Second Supplement ("Extension"), is entered into by and among the Public Utility Commission of Texas, an agency of the state of Texas (the "PUCT"), Electric Reliability Council of Texas, Inc. ("ERCOT"), a Texas non-profit corporation, and Texas Reliability Entity, Inc. ("Texas RE"), a Texas non-profit corporation (collectively, "the Parties"), effective on January 1, 2014 ("Effective Date"), to amend and extend the Professional Services Agreement ("Agreement") and Statement of Work No. 1 ("SOW") signed by the Parties effective July 1, 2010. Except as specifically changed herein, the terms of the Agreement and SOW, including the attached Supplement to Professional Services Agreement and Statement of Work No. 1 ("Supplement") signed by Parties effective January 1, 2011, continue in full force and effect through the new Term, as defined below.

**I. Term**

A. The Term of the Agreement and SOW is extended through December 31, 2015, with an option to extend the agreement for another two years by written agreement of the Parties to the terms and conditions, so long as the Parties agree to the extension on or before April 1, 2015. The expiration date of the Agreement in Article 5 and the End Date of the SOW Section IX are hereby modified to be December 31, 2015.

B. In the Agreement, Article 6 is amended to add the following:

"6.25 Termination for the Convenience of Texas RE: Texas RE may, upon 60 days written notice to the PUCT, terminate this Agreement whenever the interests of the Texas RE so require. In the event of termination, Texas RE will provide reasonable cooperation to PUCT and ERCOT to transfer its duties under the Agreement to another entity without disruption. Texas RE shall be compensated at the rates specified in this Agreement for all Services provided and expenses incurred until the effective date of the termination."

**II. Responsibilities of Texas RE**

In the SOW, Section I, Subsection B, Subparagraph *Records and Reporting* is amended to add the following:

- “7. Maintain confidentiality of all communications as privileged under the Texas Rules of Civil Procedure and the Texas Rules of Evidence between Texas RE, ERCOT, PUCT Staff and other client representatives of PUCT Staff made in anticipation of litigation or in furtherance of PUCT Staff’s enforcement matters.”

**III. Responsibilities of ERCOT**

In the SOW, Section II, second paragraph is amended to add the following:

- “9. Maintain confidentiality of all communications as privileged under the Texas Rules of Civil Procedure and the Texas Rules of Evidence between ERCOT, Texas RE, PUCT Staff and other client representatives of PUCT Staff made in anticipation of litigation or in furtherance of PUCT Staff’s enforcement matters.”

**IV. Fees, Expenses, and Payments**

In the SOW, Section IV, Subsection A (as amended by the Supplement) is amended to read as follows:

“In exchange for Services performed by Texas RE during each quarter, ERCOT shall pay Texas RE the following amount (Quarterly Payment), in advance, as follows:

- \$242,500 on January 1, April 1, July 1, and October 1, of 2014; and
- \$249,775 on January 1, April 1, July 1, and October 1, of 2015.

The Quarterly Payment includes reimbursement for Services provided by Texas RE and for reasonable out-of-pocket expenses (including but not limited to travel expenses incurred by Texas RE staff in accordance with the Texas RE Business Reimbursement Corporate Policy) incurred by Texas RE in performing Services.”

IN WITNESS WHEREOF the Parties by their duly authorized representatives have executed this Agreement effective July 1, 2013.

<p><b>The Public Utility Commission of Texas</b></p> <p>By: <u>B. Wood</u>  Name: <u>BRIAN WOOD</u>  Title: <u>EXEC DIRECTOR</u>  Date: <u>6-24-13</u></p>	<p><b>Electric Reliability Council of Texas, Inc.</b></p> <p>By: <u>H.B. Doggett</u>  Name: <u>H.B. "TRIP" DOGGETT</u>  Title: <u>PRESIDENT + CEO</u>  Date: <u>7-3-13</u></p>
<p><b>Texas Reliability Entity, Inc.</b></p> <p>By: <u>W. Lane Lanford</u>  Name: <u>W. Lane Lanford</u>  Title: <u>CEO</u>  Date: <u>6-19-13</u></p>	

