

Standard Offer Community Solar Power Purchase Agreement

Form CSG-4

This Standard Offer Community Solar Power Purchase Agreement (“Agreement”) is made and entered into this _____ day of _____ 20____, by and between Entergy New Orleans, LLC (“ENO” or “Company”), a Texas limited liability company, whose principal place of business is 1600 Perdido Street, New Orleans, Louisiana 70112 and _____ (“Subscriber Organization”) a _____ whose principal place of business is _____, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.” Subscriber Organization [owns and operates] [operates] the CSG Facility defined below.

RECITALS:

This Agreement governs the relationship between ENO and Subscriber Organization, both on behalf of itself and as authorized agent for Subscribers (as defined in Section 1.22 below) and the CSG Facility Owner (as defined in Section 1.6 below), if applicable, with respect to the Output generated by the community solar generating facility (the “CSG Facility”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a generating capacity rating of _____ [not to exceed two megawatts as measured by the alternating current rating of the inverter (MW_{AC})].

Any references to “Rules” pertain to the New Orleans Community Solar Rules promulgated by the Council for the City of New Orleans (“Council”) in Docket UD-18-03.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I **DEFINITIONS**

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in the Rules, which specify the facilities, entities, functions and requirements of the New Orleans community solar program (“Community Solar Program”), implemented by the City Council of New Orleans, as of the date of this Agreement.

1.1. “Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the CSG Facility, applicable to each Subscriber’s Subscription reflecting such Subscriber’s allocable portion of Output produced by the CSG Facility in a particular Production Month. In accordance with Section 4.6 below, the Subscriber Organization is required to timely provide the Allocation to ENO monthly, which ENO will in turn use to calculate the Credit for each billing month.

1.2. “Baseline Annual Usage” shall refer to a Subscriber’s accumulated electricity use in kilowatt-hours (kWh) for the previous 12-month period at the time the Subscription is entered into, as measured at ENO’s meter, net of any distributed generation provided by the Subscriber to the utility system at that meter. For a Subscriber that does not have a record of 12 months of electricity use at the time of the Subscriber’s most recent Subscription, an estimate of the Subscriber’s accumulated 12 months of electricity use in kWh, determined in a manner specified in the Community Solar Program Implementation Plan submitted by ENO and approved by the Council in Council Docket UD-18-03 (“Plan”).

1.3. “Community Solar Generating Facility” or “CSG Facility” shall mean a solar energy facility that: (i) converts solar energy to electricity; (ii) has a generating capacity/nameplate rating that does not exceed two (2) megawatts (MW); (iii) can provide power to or is connected to ENO’s distribution system; (iv) is located in ENO’s service territory; (v) is individually metered; (vi) has at least three Subscribers; (vii) sells the Output from the facility to ENO and which the purchase of the Output from the facility shall take the form of a credit against the Subscriber’s electric bill; and (viii) the beneficial use and renewable attributes of the Output of the facility belongs to the Subscribers.

1.4. “Council” mean the Council of the City of New Orleans.

1.5. “Credit” shall mean the dollar amount per kilowatt hour (“kWh”) paid by ENO to each Subscriber as a credit on the Subscriber’s monthly retail electric service bill to compensate the Subscriber for its allocated share of Output produced by the applicable CSG Facility and delivered to ENO, in accordance with ENO’s Community Solar Generating Facilities Subscription Service rate schedule (“Schedule CSGF”).

1.6. “CSG Facility Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the CSG Facility. If the CSG Facility Owner is the same entity as Subscriber Organization, then Section 3.2 hereof shall not be applicable.

1.7. “Customer” means a retail electric customer account holder of ENO. For purposes of this Agreement, this term shall not be applied to a Subscriber Organization that is issued a retail electric customer account number for a CSG Facility by ENO.

1.8. “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.9. “Electric Tariffs” shall mean ENO’s rates for electric service as in effect and on file with the Council from time to time.

1.10. “Force Majeure” shall have the meaning as set forth in Section 6.1 of this Agreement.

1.11. “House Power” shall mean the supply of retail power for consumption at the Site.

1.12. “Initial Subscriber Report” shall mean the list of potential Subscribers for a CSG Facility provided by the Subscriber Organization to ENO as required by the Plan. The Initial

Subscriber Report shall be in the form required by ENO and shall include for each potential Subscriber the name, identifying information, and the proposed Allocation applicable to the Subscription such that ENO can verify the potential Subscriber's eligibility to participate in the program.

1.13. "Interconnection Agreement" shall mean the separate agreement to be entered into between Subscriber Organization and ENO providing the terms and conditions by which Subscriber Organization will interconnect and operate the CSG Facility in parallel with ENO's electric distribution system at the Site.

1.14. "Low-Income Customer" shall mean a Customer whose gross annual household income is at or below fifty percent (50%) of the Area Median Income for the year of subscription or who is certified for any federal, state or local assistance program that limits participation to households whose income is at or below fifty percent (50%) of the Area Median Income.

1.15. "Low-Income Subscriber" means a Subscriber who is a Low-Income Customer.

1.16. "Monthly Subscription Information" shall mean the information submitted to ENO on the Initial Subscription Report as modified by the information provided on the Monthly CSG Facility Subscription Updates required by the Plan and as described in Section 4.6, below.

1.17. "Output" means the energy and power produced by a CSG Facility.

1.18. "Production Month" shall mean the calendar month during which Output is produced by the CSG Facility and delivered to ENO at the Service Connection.

1.19. "Renewable Energy Credit" or "REC" shall mean a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource.

1.20. "Service Connection" is the location on the CSG Facility's premises/facilities at which a point of delivery of power between ENO and the CSG Facility is established.

1.21. "Site" shall mean the parcel of real property within ENO's territory on which the CSG Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the CSG Facility. The Site is more specifically described in Exhibit A to this Agreement.

1.22. "Subscriber" shall mean a Customer of ENO that holds a Subscription to one or more CSG Facilities and has identified one or more individual meters or accounts related to electric service to which the Subscription(s) shall be attributed. A "Subscriber" shall also mean a Low-Income Subscriber.

1.23. "Subscription" shall mean a proportional interest owned or held by a Subscriber in the CSG Facility, which meets all of the requirements set forth in Section 3.3, below.

1.24. “Unsubscribed Energy” refers to any energy Output of a CSG Facility in kWh that is not allocated to a Subscriber as part of a Subscription.

ARTICLE II
SALE AND DELIVERY OF OUTPUT AND OWNERSHIP OF RENEWABLE
ENERGY CREDITS

2.1 Sale and Delivery of Subscribed Output. Effective upon the Date of Commercial Operation, Subscriber Organization shall sell and deliver to ENO at the Production Meter all of the Output produced by the CSG Facility and attributable to Subscriptions held by all Subscribers in the CSG Facility. As set forth in the Rules, ENO shall not be obligated to make any payment to Subscriber Organization for the Subscribed Output but instead will render monthly Credits to Subscribers as described below.

2.2 For each Subscriber, ENO shall apply a monthly Credit each billing period to such Subscriber’s bill for retail electric service in accordance with ENO’s Rate Schedule CSGF based upon the Allocation as set forth in the applicable Monthly Subscription Information. ENO is only obligated to apply monthly bill Credits for Subscribed Output produced and delivered by the CSG Facility to the Production Meter.

2.3 For purposes of applying the monthly Credit to Subscribers’ bills, ENO shall be entitled to rely exclusively on the Monthly Subscription Information as updated by Subscriber Organization in accordance with the procedures required by the Plan referenced in Section 4.6, below. The correction of previously-applied monthly Credits among Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to a Subscriber’s Subscription in the CSG Facility and the beneficial share of Output produced by the CSG Facility shall be the full responsibility of the Subscriber Organization.

2.4 The ownership and title to all renewable energy attributes or RECs associated with the CSG Facilities shall belong to the individual Subscribers.

2.5 If the Subscriber Organization can demonstrate an increased value provided directly to Subscribers with ownership and title of the RECs by the Subscriber Organization, the Subscriber Organization should provide said support to the Council, which may allow the Subscriber Organization to offer Subscribers the opportunity to redeem the value of such RECs on an individual or consolidated basis.

2.6 Purchase and Sale of Unsubscribed Energy. Effective upon the Date of Commercial Operation, Subscriber Organization agrees to sell, and ENO agrees to purchase, up to twenty percent (20%) of the monthly Unsubscribed Energy produced by the CSG Facility and delivered to ENO at the Production Meter. The rate per kWh that ENO shall pay Subscriber Organization for the up-to-twenty percent (20%) portion of Unsubscribed Energy pursuant to this Section shall be ENO’s estimated avoided energy costs for the appropriate time period from ENO’s most recent biennial filing with the Clerk of Council of the City of New Orleans pursuant to the Public Utilities Regulatory Policies Act of 1978, Section 201. As provided in the Rules, ENO shall receive all Unsubscribed Energy beyond the up-to-twenty percent (20%) portion without any obligation or

requirement to render payment therefor. The amount of monthly Unsubscribed Energy shall be determined after all Subscribers have been billed and credited based on the monthly Output of each applicable CSG Facility.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, Subscriber Organization shall be deemed to be in control of the energy output from the CSG Facility up to and until delivery and receipt by ENO at the Service Connection and ENO shall be deemed to be in control of such energy from and after delivery and receipt at such Service Connection. Subscriber Organization warrants and represents to ENO that it has or will have at the time of delivery good and sufficient title to all Output and/or the ability to transfer good and sufficient title of same to ENO.

2.8 Exclusive Dealing. Subscriber Organization shall not sell any Output generated from the CSG Facility to any person or entity other than ENO during the Term of this Agreement.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 Subscriber Organization represents and warrants as follows:

- (a) it is registered with the Council and has a valid identification number, which shall be maintained and renewed annually in accordance with the Rules;
- (b) it has and will maintain acceptable proof of Site control such as evidence of property ownership, an executed lease agreement, or a signed option to purchase a lease;
- (c) it has the right and authority to sell the Unsubscribed Energy produced by the CSG Facility to ENO on behalf of the CSG Facility Owner, the Subscribers and itself; and
- (d) it will at all times maintain a valid Interconnection Agreement.

3.2 If the CSG Facility Owner and the Subscriber Organization are not the same person, then the undersigned CSG Facility Owner hereby agrees and consents to the terms of this Agreement and hereby authorizes Subscriber Organization to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as Subscriber Organization, and to sell on the CSG Facility Owner's behalf any and all of CSG Facility Owner's interest in the Output produced by the CSG Facility to ENO in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to Subscribers and Subscriptions. The conditions set forth in the following subparagraphs (a) through (d) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as specifically provided otherwise below. ENO reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of such conditions. For purposes of this Agreement, the Allocation for any Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid Subscriber or Subscription shall be treated as an unsubscribed portion, and the Monthly Subscription Information automatically changed accordingly, unless and until such Allocation is changed by Subscriber Organization in a manner that satisfies all such conditions.

(a) A Customer may not hold Subscriptions representing a total amount of energy in the Community Solar Program that exceeds 100 percent (100%) of the value of the Subscriber's Baseline Annual Usage and must comply with the provisions of Section III.A.(3) of the Rules.

(b) No Customer may own more than a forty percent (40%) interest in the beneficial use of the electricity generated by the CSG Facility, including without limitation, the renewable energy and RECs associated with or attributable to the CSG Facility.

(c) Each Subscription shall be sized to represent at least one kW of the CSG Facility's nameplate rating. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible Low-Income Subscriber.

(d) CSG Facilities shall be classified into one of two categories: (i) Open Category: CSG Facilities of any size up to two MW as measured by the alternating current rating of the system's inverter; and (ii) Low-Income Category: CSG Facilities of any size up to two MW as measured by the alternating current rating of the system's inverter in which a minimum of 30 percent (30%) of the CSG Facility's Output is provided to Low-Income Subscribers.

3.4 Requirements and Restrictions Applicable to the CSG Facility. The conditions set forth in the following subparagraphs (a) through (d) of this Section 3.4 must be satisfied at all times during the Term of this Agreement. ENO shall have the right hereunder to refuse to purchase any and all Output from the CSG Facility during the period it is not in compliance with any of such conditions if the Subscriber Organization does not remedy the deficiency in a timely manner.

(a) The CSG Facility shall have at least three (3) Subscribers.

(b) The CSG Facility's generating capacity/nameplate rating must not exceed two (2) MW as measured by the alternating current rating of the system's inverter.

(c) The CSG Facility must be located within ENO's service territory, must be individually metered and must connect to ENO's distribution system.

(d) The total number of accounts per CSG Facility may be determined by the Subscriber Organization; however, each Subscription shall be sized to represent at least one kW of the CSG Facility's nameplate rating. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible Low-Income Subscriber.

3.5 Responsibility for Verification of Subscriber Eligibility. The Subscriber Organization and ENO shall jointly verify that each Subscriber is eligible to be a Subscriber in the CSG Facility, except for a Subscriber's eligibility to be considered a Low-Income Subscriber, which shall be the sole responsibility of the Subscriber Organization. The Subscriber Organization shall provide an Initial Subscriber Report to ENO within the deadline and in the form required by the Plan. Should ENO determine that any of the customer information provided is either incorrect or incomplete, the Subscriber Organization shall correct the deficiency within the required deadline. The Initial Subscriber Report shall include, at a minimum, each potential Subscriber's name and ENO Account number, the percentage share of the CSG Facility Allocation owned by the Subscriber, the effective date of the ownership of that Subscription, the premises to which the

Subscription is attributed for the purpose of applying billing credits, and whether the Subscriber meets the criteria to be eligible as a Low-Income Subscriber. Changes in the Subscriber enrollment records shall be communicated by the Subscriber Organization to ENO electronically using the Monthly CSG Facility Subscription Update form required by the Plan, as described in Section 4.6, below. Transfers of Subscriptions shall also be communicated by the Subscriber Organization to ENO using the required Monthly CSG Facility Subscription Update form and will be handled as described in the Plan and Section 4.6, below.

3.6 Compliance with Laws. A Subscriber Organization, and, where relevant, third-party-owner/developer, are responsible for ensuring that its CSG Facility is constructed, maintained, and operated in compliance with all relevant local, state and federal laws, rules, regulations and standards, including but not limited to, reliability, safety, zoning, permitting, occupational safety and health, and environmental laws, rules, regulations and standards, as well as adherence to ENO's interconnection policies and procedures and the Rules.

3.7 False Representation. Any representation or warranty made by Subscriber Organization in this Agreement that shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on ENO, shall constitute an event of default subject to Section 7.1 hereof.

3.8 ENO Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by ENO of the design, installation or operation of the CSG Facility or any component thereof, and ENO expressly disclaims all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV **TERM, RENEWAL OPTIONS, COMMERCIAL OPERATION AND** **PERFORMANCE**

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of 10 years from and after the Date of Commercial Operation ("Initial Term"), subject to early termination as set forth herein, or until the termination of any Interconnection Agreement associated with the CSG Facility, whichever occurs first. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Renewal. If Subscriber Organization is in compliance with the terms of this Agreement, it will have the option to renew for up to 10 years in two 5-year renewal periods ("Renewal Period"). Company will send Subscriber Organization a renewal notice three (3) months prior to the expiration of the Initial Term.

4.3 Project Development. Prior to the Commercial Operation Date, Subscriber Organization agrees to provide Company with a schedule of the projected completion and in-service dates for the project, and inform Company of any changes to the schedule within five (5)

business days of the time that the Subscriber Organization becomes aware of such changes. Upon request, the Company shall have the right to monitor the testing and operation of the CSG Facility at the CSG Facility for compliance with this Agreement, *provided, however, that* Company shall comply with all of Subscriber Organization's applicable safety and health rules and requirements. Company's monitoring of the CSG Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the CSG Facility.

4.4 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the CSG Facility is installed; (b) the CSG Facility has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by ENO personnel at the Site; (c) all permits necessary to authorize the production and, if applicable, delivery to ENO of Output generated by the CSG Facility have been obtained; (d) the Production Meter has been installed; and (e) the Interconnection Agreement has been entered into between ENO and Subscriber Organization and the CSG Facility has been interconnected with ENO's electric distribution system pursuant to the Interconnection Agreement.

4.5 Deposit. If Commercial Operation is not achieved within 12 months of any approved application, Subscriber Organization shall provide to ENO an additional deposit of \$50 per kW to continue under the Community Solar Program as required under Section VII(D)(11) of the Rules. ENO shall return the CSG Facility deposit upon commencement of Commercial Operation, unless the CSG Facility fails to begin operating within 18 months of an approved application, in which case the deposit shall be forfeited, and this Agreement terminated.

4.6 Maintenance and Repair of CSG Facility. The Subscriber Organization shall maintain the CSG Facility and the individual components thereof in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the CSG Facility or any of the individual components of the system should be damaged or destroyed such that the extent of the damage affecting output exceeds twenty (20) percent of the CSG Facility's nameplate rating, the Subscriber Organization shall provide ENO written notice of such damage, a description of the equipment damaged, the corresponding reduction to the CSG Facility's output, and the anticipated duration of repairs to the facility to return the facility to its original nameplate rating. If, after such damage, the CSG Facility is not returned to its original nameplate rating within one hundred and eighty (180) days, ENO shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the CSG Facility is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, ENO shall have the right to terminate this Agreement by providing written notice to Subscriber Organization anytime during the period following the expiration of such ninety (90) days and before the CSG Facility has been made fully operational again.

4.7 Updating of Subscription Information. Subscriber Organizations are required to provide real time reporting of production as specified by ENO. For CSG Facilities greater than 250 kW, the Subscriber Organization shall provide real time access to production data. ENO may require different real time reporting for CSG Facilities 250 kW and smaller. As required by the Plan, the Subscriber Organization will provide electronically to ENO a Monthly CSG Facility Subscription Update for each CSG Facility listing Subscribers who have been added or deleted

since the prior month along with their applicable Subscription amounts. The monthly update shall follow a standard format specified by ENO in order to integrate data into ENO's billing system. The monthly update shall also include the amount of the CSG Facility's capacity that remains unsubscribed. The update must be provided within the deadline imposed by the Council-approved Plan for updates to take effect for the first billing cycle of the next month. If the Subscriber Organization provides the update after the specified deadline, updates would take effect on the first billing cycle of the month following the next month.

4.8 Certification of Low-Income Qualification. The Subscriber Organization shall certify to ENO in writing that the Subscriber Organization has verified the eligibility of all Low-Income Subscribers needed to qualify for the program prior to receiving permission to operate from ENO. By May 1 of each year, the Subscriber Organization shall re-certify in writing to the Company the Low-Income Subscriber status of all Subscribers to its CSG Facilities that are designated as such.

4.9 Audits. ENO reserves the right, upon thirty (30) days written notice, to audit Subscriber Organization's Subscriber and Subscription records and to inspect the CSG Facility at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, and any applicable requirements of the Distribution Interconnection Standards, ENO shall install, and thereafter own, operate, maintain and read the Production Meter, which shall be sufficiently sized to measure all Output generated by the CSG Facility, and Subscriber Organization shall reimburse ENO for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to Subscriber Organization by ENO after the Production Meter is installed. If Subscriber Organization does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. ENO reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.2 Telecommunications Equipment. Subscriber Organization shall cause to be provided, and shall own, operate and maintain at the Subscriber Organization's sole cost any necessary electronic communications equipment or devices that are required to provide real-time access to 15-minute interval data regarding the Output produced by the CSG Facility. Unless otherwise notified in writing by ENO that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to ENO. ENO reserves the right to replace the telecommunication equipment at its sole cost.

5.3 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by Subscriber Organization pursuant to Section 5.2 is inactive or non-operational during any Production Month when ENO attempts to access measurement data from the telemetry equipment on the Production Meter, Subscriber Organization shall be assessed a Trip

Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of ENO's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the CSG Facility shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. Subscriber Organization's payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to Subscriber Organization by ENO. If Subscriber Organization does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.4 House Power. This Agreement does not provide for House Power. Subscriber Organization shall be solely responsible for arranging retail electric service exclusively from ENO in accordance with ENO's Electric Tariffs. Subscriber Organization shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.4. Subscriber Organization's right to self-generate hereunder shall be limited to the electrical energy consumed at the Site that is directly related to the CSG Facility's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify Subscriber Organization's or ENO's rights, duties, and obligations under this Agreement. This Agreement shall not be construed to create any rights between Subscriber Organization and ENO with respect to the arrangements for House Power.

5.5 Interconnection Agreement. The Parties recognize that Subscriber Organization and ENO will enter into a separate Interconnection Agreement consistent with the provisions of Entergy's Distribution Design Basis/Standards DR7-01 or DR7-02. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the CSG Facility pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify Subscriber Organization's or ENO's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between Subscriber Organization and ENO with respect to the Interconnection Agreement.

ARTICLE VI

FORCE MAJEURE

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this

Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a CSG Facility or significantly impair its operation such that it is no longer capable of generating Output; long-term material changes in Output flows across the CSG Facility caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of Subscriber Organization to secure and protect the CSG Facility, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Subscriber Organization, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the CSG Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of ENO's or Subscriber Organization's supplies, or that affect demand or price for any of ENO's or Subscriber Organization's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding

this provision, ENO shall have no obligation to make any payment for Output under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

ARTICLE VII

DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below:

(A) Third-party owner/developer, Subscriber Organization and their affiliated and parent companies' failure at any time during the Term of this Agreement to meet the requirements under Section 3.1(d) (Interconnection Agreement). In such event Company may, and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the Subscriber Organization as a result of such termination. The provisions of paragraph 7.3 shall not apply to an event of default under this paragraph.

(B) The failure by either Party to perform or observe any other material term or provision of this Agreement, that is not excused by Force Majeure, and such failure remains unremedied for 30 days after notice thereof shall have been given by the non-defaulting Party.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert a default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought

for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. ENO shall not be responsible or liable for any personal injury or property damage caused by the CSG Facility or any individual component equipment of the system. ENO shall not be liable to the Subscriber Organization for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. ENO makes no warranty or representation concerning the taxable consequences, if any, to Subscriber Organization with respect to the production and sale of Output, and Subscriber Organization is urged to seek professional advice regarding this issue.

8.2 Indemnification by Subscriber Organization. Subscriber Organization shall indemnify, defend, and hold ENO, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature that may be brought on account of the installation, maintenance, operation, repair, or replacement of the CSG Facility or any component equipment of the system, or Subscriber Organization's administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

ARTICLE IX
LAWS AND REGULATORY BODIES

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder, or either of the Parties hereto.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month

next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of ENO and Subscriber Organization under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of Subscriber Organization to sell and deliver the Output of the CSG Facility to ENO and the obligations of ENO to accept and pay Subscriber Organization as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Louisiana.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all constitute one and the same instrument. The Parties agree that a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld. In no event shall any assignment by Subscriber Organization become effective before a new Subscriber Agency Agreement has been entered into between Subscriber Organization's assignee and each and every Subscriber.

10.3 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.4 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.5 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction

that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.6 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.7 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.8 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to ENO:

If to Subscriber Organization:

or at such other address as either party may hereafter designate to the other in writing.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SUBSCRIBER ORGANIZATION

Name (printed): _____

Title: _____

Signature: _____ **Date:** _____

ENTERGY NEW ORLEANS, LLC

Name (printed): _____

Title: _____

Signature: _____ **Date:** _____

CSG FACILITY OWNER (if different from Subscriber Organization)

Name (printed): _____

Title: _____

Signature: _____ **Date:** _____

No. _____

Exhibit A

DESCRIPTION OF CSG Facility SITE: