

PROFESSIONAL SERVICES AGREEMENT

AMONG

THE PUBLIC UTILITY COMMISSION OF TEXAS,

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

AND

POTOMAC ECONOMICS, LTD.

This Agreement (“Agreement”), effective as of the last date signed below by a duly authorized representative of any Party (“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 Potomac Economics, Ltd. (“Contractor” or “PE”), a Virginia corporation.

Article 1. Definitions

1.1 Project: “Project” shall mean the professional or technical services (including deliverables) that Contractor shall perform on behalf of ERCOT or 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 ERCOT or ERCOT's 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 Contractor within the scope of Contractor's Services, directly or indirectly, in writing, orally or by drawings or inspection and market information that is deemed confidential under ERCOT Protocols, PUCT rules, 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 Contractor's knowledge in breach of any obligation of confidentiality; (iii) is independently developed by personnel or agents of Contractor without reliance on the Confidential Information; or (iv) is produced by Contractor in compliance with an order, rule or law of any federal, state, local or municipal body having jurisdiction over a party, provided that Contractor 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, PUCT Rules, and Texas statutes.

1.3 Deliverable: "Deliverable" means any report, analysis, recommendation, or evaluation completed by Contractor 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 Contractor as specified in SOWs executed by the parties.

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

## Article 2. Compensation

2.1 Payment for Services: In exchange for all Services provided by Contractor, ERCOT shall pay Contractor the fees set forth in this Agreement and the applicable SOW, in accordance with the Fees and Rates schedule set forth in Exhibit A, and as supported by approved invoices.

2.2 Out-Of-Pocket Expenses: In connection with services that are compensated on an hourly rate under this Agreement, ERCOT shall reimburse Contractor for Contractor's reasonable actual expenses incurred in performing activities benefiting the PUCT or ERCOT under this Agreement, but only to the extent that such expenses are pre-approved in writing by ERCOT in consultation with the PUCT. If expenses are incurred in connection with travel, ERCOT shall reimburse Contractor's expenses pursuant to ERCOT's Business Expense Reimbursement Standard, as amended from time to time, a copy of which is provided to Contractor and attached hereto as Exhibit B.

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

2.4 Invoice Submission: Contractor shall submit invoices monthly for services performed and all reasonable actual out of pocket expenses incurred including travel, lodging, meals and telephone charges for the previous month to the PUCT Contract Administrator with a copy to the ERCOT Contact Person.

Contractor must submit a monthly invoice for each Project. Contractor must attach to the invoice a copy of the timesheet containing the daily billings for each person working on that Project. The timesheet must detail the name of the Project, the services performed, and the time spent on the Project. PUCT and ERCOT will reject for payment any invoice that is incomplete. Each timesheet must indicate the ERCOT facility at which the Services were performed and whether any Services were performed at any location other than an ERCOT facility. ERCOT and PUCT may review badge logs for ERCOT facilities to verify presence of Contractor's employees and verify time charged.

Each invoice shall contain a summary description of the work performed by each individual during the previous month, the time billed by each individual on an hourly basis), and, if any individual performed Services on more than one project or for general purposes, the time billed for each project and for general purposes.

For Projects compensated on a fixed fee basis, Contractor shall issue an invoice containing a description of the work performed, including a listing of all milestones and deliverables, in accordance with the terms of the Project. Invoices for fixed fee services shall include individual timesheets for activities that are subject to a limitation on the hours of professional services.

Contractor shall submit monthly 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.  
Accounts Payable Department  
7620 Metro Center Drive  
Austin, TX 78744

2.5 Invoice Approval and Payment: Within five (5) business days of receiving the invoice, including copies of receipts for pre-approved expenses, the PUCT Contract Administrator will review and approve the invoice for payment, in full or in part, and will notify both Contractor and ERCOT. ERCOT shall pay all PUCT approved and undisputed amounts within thirty (30) days of receipt of the invoice from Contractor. Payment for amounts in excess of \$10,000 shall be remitted via wire transfer. ERCOT will review the invoice and notify Contractor Contract Administrator and the PUCT Contract Administrator within five (5) business days of receipt of the invoice copy from Contractor whether ERCOT needs clarification or more information concerning an invoice or challenges the delivery or sufficiency of performance for services covered by the invoice.

Article 3. Records

Contractor shall maintain records and books of account relating to Services and expenses under this Agreement in accordance with generally accepted accounting practices. Contractor'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.

Contractor shall make these records and books available to the PUCT, ERCOT, or their designated representatives for review upon reasonable notice during Contractor's normal business hours. Contractor 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.

Contractor shall maintain all such records for a period of three (3) years after the termination or expiration of the Agreement or for such longer periods as may be required by law. Contractor shall also provide ERCOT and the PUCT, prior to execution of this Agreement, its annual financial statements, and Contractor shall make available to ERCOT, upon request during the Term of this Agreement, its annual financial statements. The information contained in Contractor'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 Contractor intends to perform the Services required under this Agreement using its own employees. Should Contractor determine it is necessary or desirable to utilize the services of one or more subcontractors to perform services required under this Agreement, Contractor will notify the PUCT Contract Administrator and ERCOT Contact of any proposed subcontract or subcontractor and will submit information regarding subcontractors to the PUCT Contract Administrator and ERCOT Contact for approval before engaging the subcontractor. The PUCT and ERCOT will not withhold such approval unreasonably. The parties must approve any subcontract or subsequent substitution of a subcontractor.

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

4.3 Sole Responsibility: Contractor is solely responsible for the work produced by all subcontractors or other non-parties that it may engage and for the timely payment for all such work produced by all subcontractors or other non-parties.

4.4 Prime Vendor Contract: The Parties expressly agree that this Agreement is intended to constitute a prime vendor contract with Contractor serving as the prime vendor for delivery of the Services made the subject hereof. Contractor 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 permitted subcontractors must successfully pass the required Background Investigation described in Article 7.

#### Article 5. Term

This Agreement begins on January 1, 2013 and the contract's initial term shall expire on December 31, 2015, with an option to extend the agreement for another two years at the PUCT's discretion. 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 Contractor is in default of any material term of this Agreement, the PUCT may serve upon Contractor written notice requiring Contractor to cure such default. Contractor has thirty (30) days after receipt of notice to correct the default or make arrangements satisfactory to the PUCT for correcting the default. If Contractor 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, Contractor 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 ninety (90) days written notice to Contractor, terminate this Agreement whenever the interests of the PUCT so require. In the event of termination, Contractor will provide reasonable cooperation to PUCT and ERCOT to transfer its duties under the Agreement to another entity without disruption. Contractor shall be compensated at the rates specified in this Agreement for all services provided 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 Contractor: If the PUCT or ERCOT is in default of any material term of this Agreement, the Contractor may serve upon the PUCT and ERCOT written notice of default requiring the PUCT or ERCOT to cure such default. The PUCT or ERCOT has thirty (30) days after receipt of notice to correct the default or make arrangements satisfactory to Contractor for correcting the default. If the PUCT or ERCOT has failed to cure the default or to make arrangements to correct the default, Contractor 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 Contractor: Contractor's specific responsibilities for Services will be included in each SOW. Contractor is responsible for supplying its own computers and equipment for use at its own facility and away from ERCOT's Austin, Texas facility. Contractor is further responsible for the following:

Background investigation: For each employee, agent, or subcontractor who will have unescorted ("badged") access to ERCOT's facilities or access to ERCOT computers or information systems, Contractor 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. Contractor shall provide to ERCOT written results 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 North American Electric Reliability Council prior to obtaining unescorted facilities access. ERCOT will provide or arrange and pay for such training.

Compliance with ERCOT Policies and Procedures: Contractor 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 while performing Services for PUCT and ERCOT, 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 Contractor. Further, all Individuals shall execute the then-current form of confidentiality, conflict of interest, ethics, electronic resource use, and antitrust agreements required by ERCOT prior to their entering ERCOT premises, using ERCOT equipment or networks, or beginning services for ERCOT. The form of the current required Contractor Ethics Agreement is attached hereto as Exhibit C and is incorporated herein for all purposes. Contractor acknowledges and agrees that all Services involving the installation, creation, or modification of software must comply with ERCOT's Application Security Requirements and other written standards, policies, and procedures. Contractor acknowledges that (i) any e-mail or computer usage by any individual using ERCOT computer or electronic equipment and (ii) any tangible item situated on ERCOT's premises (including, for example, but not limited to filing cabinets, desks or other work areas), is subject to inspection by ERCOT or PUCT personnel at any time with or without notice.

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

7.3 ERCOT: ERCOT will provide the Contractor with full access to ERCOT's operations centers and ERCOT's records concerning operations, settlement, and reliability. ERCOT will provide office and conference space at its Austin, Texas facility, equipped with standard office furniture and equipment (fax, printer, copier) and telephones (land lines), and high-speed internet access. In addition, the Contractor will have occasional access to other ERCOT conference rooms and copiers, as needed. ERCOT will provide other support and cooperation necessary for the Contractor to perform its functions, including all support and cooperation that the PUCT determines is appropriate.

#### 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 Contractor shall not, without the prior written consent of ERCOT or the PUCT, 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

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

#### Article 10. Liability and Damages

10.1 NEITHER ERCOT NOR THE PUCT SHALL 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 THE 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 CONTRACTOR FOR SERVICES UNDER THIS AGREEMENT PLUS REASONABLE LEGAL FEES.**

**10.2 EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTIONS 14 AND 20.2, POTOMAC ECONOMICS 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 POTOMAC ECONOMICS FOR CLAIMS OF ANY KIND, WHETHER BASED ON AGREEMENT OR TORT OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL NOT EXCEED THE COMPENSATION PAID TO CONTRACTOR 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 ERCOT in connection with Services under any SOW signed pursuant to this Agreement (“Deliverables”), Contractor does hereby, without reservation, irrevocably:**

- **Sell, assign, grant, transfer and convey to ERCOT and the PUCT, its successors and assigns, Contractor’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 Contractor, 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 ERCOT;**
- **represent, warrant and covenant that Contractor forever waives all moral rights in the Deliverables and shall never assert any moral rights in the Deliverables; and**
- **acknowledge and agree that Contractor 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 Contractor developed prior to the execution of this Agreement. ERCOT and the PUCT agree that Deliverables shall not include any Professional Materials that are delivered to ERCOT or the PUCT under this Agreement so long as such do not contain any of ERCOT’s**

**Confidential Information.** ERCOT and the PUCT acknowledge and agree that Contractor retains all right, title and interest in the Professional Materials and PE Software.

**11.3 License to Professional Materials:** In consideration of and effective upon ERCOT's payment to Contractor of amounts required under this Agreement and any SOW executed pursuant to this Agreement, and subject to the other terms and conditions of this Agreement, Contractor hereby grants to ERCOT and the PUCT a non-exclusive, non-transferable, royalty-free, license to use, copy, operate, process and modify the Professional Materials for use in connection with the associated Deliverables.

**11.4 PE Software:** "PE Software" means software that has been developed by the Contractor to produce the indices, metrics and screens used by the Contractor to monitor the ERCOT markets. PE Software includes all revisions, modifications and enhancements to such PE Software that may be delivered to ERCOT pursuant to this Agreement, as well as all Documentation concerning the PE Software, all media on which such PE Software resides, and all copies of the above. ERCOT and PUCT agree that Deliverables and Professional Materials shall not include any PE Software or modifications to PE Software that are delivered to ERCOT or PUCT under this Agreement. ERCOT and PUCT acknowledge and agree that Contractor retains all right, title and interest in the PE Software.

## **Article 12. Confidential Information**

**12.1 Contractor's Responsibilities:** For purposes of this Agreement, ERCOT will and the PUCT may be disclosing Confidential Information, as defined in this Agreement, to Contractor. Contractor acknowledges that the terms of this Agreement are considered ERCOT Confidential Information, and Contractor will not publicly release information about its relationship with ERCOT, the PUCT, or this Agreement (via activities such as news releases, articles, brochures, advertisements, web pages, prepared speeches, or otherwise) without prior written consent by ERCOT and the PUCT.

Contractor agrees not to disclose Confidential Information for any purpose other than as permitted under this Agreement. Contractor 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 Contractor ("the disclosing party"). Confidential Information, shall, upon request of the disclosing party or immediately upon termination of this Agreement, be promptly returned by Contractor to the disclosing party, accompanied by all copies of such documentation made by Contractor, provided that Contractor may keep a copy of this Agreement. Contractor 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 ERCOT regain possession of the Confidential Information and prevent further unauthorized disclosure.

Contractor shall promptly provide Confidential Information to the PUCT or PUCT staff on request, and shall write or stamp the word "Confidential" on any information that is or includes Confidential Information.

Contractor recognizes that by performing services under this agreement, Contractor may become aware of methods by which market participants could manipulate or "game" the ERCOT system ("Loopholes") and thereby take unethical advantage of Loopholes in the ERCOT system. Contractor agrees that to the extent Contractor becomes aware of such information, it will promptly notify the PUCT and ERCOT of the existence of such Loopholes and that it will treat such information as Confidential Information, except as to the required notification to the PUCT.

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 Contractor and ERCOT that such documents are being furnished to the OAG.

12.3 Remedies: Contractor 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 participant in the ERCOT markets, 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. Contractor 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 Contractor may not provide any services for any other client that creates a conflict of interest with ERCOT or PUCT. Contractor represents that any of its employees, agents, or subcontractors who provide Services to ERCOT and the 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 subcontractor who provides services under this Agreement must first sign ERCOT's Contractor Ethics Agreement, which is found at Exhibit C. Contractor will provide ERCOT with a copy of each employee's, agent's, or subcontractor's signed Ethics Agreement.

13.2 Contractor shall disclose immediately to ERCOT and the PUCT any conflicts of interests that it has or might have with ERCOT or the PUCT. ERCOT and the 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 the PUCT. A conflict of interest exists when:

- Contractor, Contractor's affiliates, or Contractor'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 Contractor or is directly related to the spouse, dependent child, or any household member of any of Contractor's officers, directors, affiliates, or employees;
- Contractor or any of its officers, directors, or affiliates has an interest, direct or indirect, in a member or market participant of ERCOT or an affiliate of a market participant, or a market participant of ERCOT or a market participant's officers or directors has an interest, direct or indirect, in Contractor 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;
- Contractor 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 Contractor's decision might be affected or determined by it;
- Contractor or its employees who provide Services under this Agreement are directly related to any PUCT Commissioner;
- Contractor 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;
- Contractor or any of its officers, directors, or employees owns a company that is providing consulting services to a market participant;
- Contractor 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
- Contractor 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 Contractor 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 The PUCT and ERCOT recognize that the contractor performs independent monitoring of the markets in other RTOs and similar services for transmission operators and utilities and acknowledge that such service does not present any conflict of interest with respect to this agreement. Contractor will not enter into engagements to perform services (other than market monitoring) for an ERCOT market participant, without the prior written approval of the PUCT. In accordance with Section 13.2, Contractor will notify the PUCT and ERCOT of substantial changes in duties in monitoring other markets and other engagements that may result in a conflict of interest.

13.5 Contractor and the PUCT will confer and adopt post employment restrictions applicable to the Contractor and its employees, consistent with PUCT rules.

#### Article 14 Indemnification

14.1 CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD ERCOT AND THE 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 THE PUCT MAY AT ANY TIME INCUR BY REASON OF ANY DEMAND, PROCEEDING, ACTION, SUIT OR CLAIM BROUGHT AGAINST ERCOT OR THE PUCT BY ANY NON-PARTY OR ANY INDIVIDUAL ARISING FROM OR RELATING TO AN ACTUAL (A) ACT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CONTRACTOR, OR ANY ONE OR MORE OF ITS EMPLOYEES, OFFICERS, DIRECTORS, AFFILIATES, CONTRACTORS, LICENSEES OR AGENTS, INCLUDING BUT NOT LIMITED TO ANY INDIVIDUAL OR (B) CLAIM THAT ANY SOFTWARE OR DELIVERABLE PROVIDED BY CONTRACTOR INFRINGES ANY UNITED STATES PATENT, TRADEMARK, OR COPYRIGHT OR IS CLAIMED TO BE A MISAPPROPRIATION OF A TRADE SECRET.

14.2 ERCOT or the PUCT shall promptly notify Contractor of any such claim. Contractor 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 the PUCT, at Contractor's expense; provided, however, that ERCOT and the 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 the PUCT or any settlement agreed to in writing by Contractor on such issue in any such suit or proceeding. In the event Contractor fails to defend such claim in good faith and diligently, ERCOT and the 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 Contractor and at Contractor'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, Contractor 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, Contractor 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:

Brian Lloyd, Executive Director,  
1701 N. Congress Ave., 7th floor  
Austin, Texas 78701  
Fax: (512) 936-7036

##### For ERCOT:

Bill Magness, Vice President and General Counsel  
7620 Metro Center Drive  
Austin, Texas 78744

##### For Potomac Economics:

Dr. David Patton  
Potomac Economics  
9990 Fairfax Boulevard, Ste 560  
Fairfax, VA 22030  
Fax: 703-383-0796

The following persons are designated as contract administrators or contact persons and liaisons for the parties with respect to coordinating in the implementation of this agreement:

##### For the PUCT:

Robert M. Long, Director, Oversight & Enforcement Division  
1701 N. Congress Ave., 7th floor  
Austin, Texas 78711-3326

Fax: (512) 936-7294  
email: Mick.Long@puc.texas.gov

ERCOT Contact Person:  
Bill Magness, Vice President and General Counsel  
7620 Metro Center Drive  
Austin, Texas 78744  
Fax: (512)225-7076  
Email: [bmagness@ercot.com](mailto:bmagness@ercot.com)

For Potomac Economics:  
Dr. David Patton  
Potomac Economics  
9990 Fairfax Boulevard, Ste 560  
Fairfax, VA 22030  
Fax: 703-383-0796

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 Contractor 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. A Fidelity Bond or Crime Policy in the amount of \$1,000,000 with third party coverage for ERCOT and PUCT for Contractor's employees working on ERCOT premises or working with ERCOT intellectual property, proprietary information, or Confidential Information;
- B. Errors & Omissions (Professional Liability) insurance with a limit of \$1,000,000 per claim made and \$2,000,000 annual aggregate;
- C. 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;
- D. Umbrella Liability insurance in the amount of \$1,000,000 per incident which shall be excess of Commercial General Liability coverage required herein; and
- E. Workers' Compensation coverage – minimum coverage for employer liability as determined by law.

16.2 Contractor shall furnish to ERCOT 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 the 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 the PUCT and ERCOT, its directors, agents, representatives, independent contractors, servants, and employees. Contractor shall provide ERCOT with renewal or replacement certificates at least thirty (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: Contractor shall comply with all federal, state and local laws, executive orders, regulations and rules applicable at the time of performance. Contractor 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: Contractor 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 Contractor by ERCOT, except for state or local sales taxes, that must be included on Contractor's invoices to ERCOT. **CONTRACTOR 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: Contractor agrees that it shall be in compliance with applicable state worker's compensation laws throughout the term of this Agreement.

20.4 Conflicts: Contractor 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 Contractor becomes aware of inconsistencies between this Agreement and a Texas statute or PUCT rule, Contractor will so advise the PUCT and will cooperate fully to revise applicable provisions of this Agreement as necessary.

#### Article 21. Contractor Certification

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

21.2 Prohibitions on Gifts: Contractor 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.

21.3 Delinquent Obligations: Contractor 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.

21.4 Antitrust: Neither Contractor 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.

21.5 Family Code: Contractor 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.

21.6 Prohibited Compensation: Contractor 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.

21.7 Family Code: Pursuant to Texas Family Code § 231.006(d), no individual or business entity named in this contract is ineligible to receive the specified grant, loan, or payment; and Contractor acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

21.8 Government Code: Pursuant to Texas Government Code § 2155.004, regarding the financial participation of a person who received compensation from the agency to participate in preparing the specifications or request for proposal on which this Agreement is based, the Contractor 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.

21.9 Government Code: Pursuant to Texas Government Code § 21.55.006, regarding the award by the federal government of for relief, recovery, or reconstruction efforts regarding Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005, the Contractor 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.

21.10 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.

21.11 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.

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

## Article 22. General Provisions

22.1 Relationship of Parties: Contractor 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 Contractor's personnel or between ERCOT and Contractor's personnel. Contractor 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:** Contractor acknowledges that it is not a PUCT employee, but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this contract. Contractor 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 Contractor under this contract. Contractor shall defend, indemnify and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT 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 Contractor under this contract.

Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT 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. Contractor hereby waives any and all rights to any such PUCT 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 nor Contractor 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: Contractor 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 Contractor during the course of this Agreement in violation of any such laws, rules or regulations.

22.8 Entire Agreement: This Agreement, including Exhibits A through C, 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. Any services agreed upon by the parties pursuant to the prior Agreement that are still in progress as of the date this Agreement is executed are considered to be subject to the terms of 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 acknowledgments. 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

The IMM shall establish an office in space provided by ERCOT in its facility in Austin, Texas with a staff that is sufficient to carry out the day-to-day market monitoring functions and consult with PUCT staff on a regular basis. The Austin staff shall consist of at least eight persons who have technical and economic proficiency in the areas of electric generation and transmission, economics, information technology, law, and the analysis of complex transactions, including the interaction between the energy and financial markets. Such staffing for legal support will include a full time employee licensed to practice law in the State of Texas. The selection of the IMM director and the mix of technical expertise

prescribed for staffing IMM operations in Austin are subject to PUCT approval. The Contractor staff includes David Patton and other Potomac staff in the Fairfax, Virginia office.

Contractor warrants that it shall use its best efforts to avoid any changes to the Texas staff during the course of this Agreement. This provision shall not be deemed to prohibit the Contractor 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, Contractor 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. Contractor shall provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Contractor shall remove from the project any individual whom the PUCT finds unacceptable. Contractor 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: BRIAN LLOYD, EXECUTIVE DIRECTOR  
1701 N. Congress Ave., 7th Floor  
Austin, TX 78701

With a copy to the PUCT Contract Administrator, Mick Long, at the same address.

#### IF TO CONTRACTOR:

ATTENTION: DR. DAVID PATTON  
Potomac Economics  
9990 Fairfax Boulevard, Ste 560  
Fairfax, VA 22030  
Fax: 703-383-0796

#### IF TO ERCOT:

ATTENTION: 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 January 1, 2013.

<p><b>The Public Utility Commission of Texas</b></p> <p>By: <u>[Signature]</u> Name: <u>Brian H. Lloyd</u> Title: <u>Executive Director</u> Date: <u>12-31-12</u></p>	<p><b>Electric Reliability Council of Texas, Inc.</b></p> <p>By: <u>[Signature]</u> Name: <u>H.B. Daggett</u> Title: <u>Pres &amp; CEO</u> Date: <u>1/10/13</u></p>
<p><b>Potomac Economics, Ltd.</b></p> <p>By: _____ <del>General Partnership name</del></p> <p>By: <u>[Signature]</u> Name: <u>President</u> Title: <u>David B. Patton</u> Date: <u>12-29-12</u></p>	<p>APPROVED AS TO FORM <u>[Signature]</u></p>

PUC General Law

Approved: [Signature]

## Exhibit A

### Fees and Rates

- A. Hourly Rate Services. Most of the Services by Contractor will be provided on a fixed fee basis, as described in Statement of Work No. 1, which is signed, on even date herewith, between the parties. Such services will include all services provided under this agreement by the IMM staff located in Austin and up to 50 hours per year of advice, consulting services, or other support from Dr. Patton.

If additional services not specified in Statement of Work No. 1 are requested and agreed to by the parties, the parties will execute separate Statements of Work, describing the services and the total compensation for such services.

**Exhibit B**  
**ERCOT CORPORATE STANDARD**

# ERCOT CORPORATE STANDARD

Document Name:	Business Expense Reimbursement Corporate Standard
Document ID	CS3.5
Effective Date:	August 30, 2012
Owner:	VP Finance and Treasury
Governs:	ERCOT Personnel
Approved:	H.B. Doggett, ERCOT, Inc. President & CEO

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## 1. Purpose

This corporate standard covers travel and business expenses incurred by Individuals on behalf of ERCOT and outlines the minimum requirements for reimbursement of necessary and reasonable travel and business expenses incurred by them. This corporate standard describes ERCOT expense reimbursement documentation requirements and Internal Revenue Service (IRS) Regulations in addition to providing a framework for consistent reimbursement of approved business expenses. This corporate standard does not identify all expenses that may be incurred or reimbursable.

Unless other written agreements for expense reimbursement are made, Employees, Contract Workers, and individuals seeking employment at ERCOT who may travel to ERCOT for interviews (collectively "Individuals"), are expected to follow this corporate standard. Contract Workers will be reimbursed through the contracting company issuing their paycheck unless otherwise established in contractual terms between ERCOT and the contracting company.

## 2. Terms & Definitions

<i>Term</i>	<i>Definition / Description</i>
<b>Contract Worker</b>	As defined in the Master List of Terms & Definitions.
<b>Individual</b>	For the purposes of CS3.5, an Individual is an employee, Contract Worker, or other person who seeks reimbursement for ERCOT related expenses.

## 3. Standards

### 3.1. Law

Applicable laws and government regulations take priority over ERCOT corporate standards.

### **3.2. Special Circumstances and Exceptions**

Reimbursement requests for expenses that are not consistent with this corporate standard require the circumstances and business purpose of the expenditure to be clearly documented and approved by the CFO or their designee.

### **3.3. Internal Control**

#### **3.3.1. Approvals**

Business expense reimbursement requests must be approved in accordance with ERCOT's Delegation of Authority Corporate Standard. The person approving the expense reimbursement reviews the appropriateness of each expense and verifies that the proper documentation is attached.

#### **3.3.2. Receipt Requirements**

Original, 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. The \$25 threshold is a minimum requirement only – excessive or inappropriate expenses will be rejected and not reimbursed.

### **3.4. Business Purpose**

The business purpose (who, what, when, where, why) of each expense must be clearly stated on the expense report.

### **3.5. Frequency and Reimbursement**

All expenses should be submitted via the automated business expense reimbursement system within 60 days after the end of the month that the expenses were incurred.

Employee business expense reimbursement requests submitted more than 90 days after the expenses were incurred must be approved by an officer before it will be processed. Evidence of officer's approval should be attached to the reimbursement request.

### **3.6. Cash Advances and Advance Payments**

ERCOT does not issue cash advances for employee business expenses. It is generally expected that ERCOT staff will incur reimbursable business expenses on their own account and then seek reimbursement from ERCOT following this corporate standard.

Advance payment will be made directly to vendors for registration fees, airfare, hotel and other expenses, if necessary, on an exception basis as described in Section 3.2 of this corporate standard. Such exceptions must be processed consistent with other requirements of this corporate standard and should be processed using ERCOT's approved Manual Check Request Form process (contact an Accounts Payable staff person).

### **3.7. Air Transportation, Auto Rental, and Hotel**

#### **3.7.1. Air Transportation**

ERCOT's standard is to use coach class air transportation and the lowest airfare possible that meets business travel requirements (e.g. use at least seven-day advance, use normally traveled routes, which often include one intermediate stop, use alternate airports where more than one exists within proximity of the departure location, use most economic carrier, etc). Individuals are responsible for excess costs resulting from a non-authorized class of air transportation. The Individual is responsible for penalty charges for lost tickets. An Individual may purchase or use personal mileage rewards to obtain air class upgrades to a non-authorized class of air transportation, however these costs are not reimbursable.

Individuals paying for their own airline ticket must attach a copy of the flight confirmation (indicating the cost and itinerary) to their expense report.

Any single round trip airfare or equivalent purchased by a Contract Worker that costs over \$700 before taxes must be approved in advance of ticket purchase by the Individual's ERCOT manager. Documentation submitted in support of the reimbursement request for airfare exceeding this threshold shall include the business need for the airfare and evidence of pre-approval.

#### **3.7.2. Non-Refundable Airline Tickets and Advance Purchased Tickets**

When non-refundable and advance purchased tickets must be changed due to business need, ERCOT will reimburse the additional expense incurred to make the changes.

#### **3.7.3. Personal Travel Combined with Business Travel**

Employees may combine business travel with personal travel. Expenses incurred by the employee for personal travel must be clearly documented and separated from the business portion of the trip. Personal travel expenses are not reimbursable.

#### **3.7.4. Cost Savings from Weekend Travel**

Individuals may elect to stay over a Saturday night if such election results in a lower airfare or cost saving to ERCOT. In this case, the Individual may be reimbursed for the hotel stay, car rental and meals (at regular reimbursable amounts) incurred over the weekend, as long as there is a net cost savings to ERCOT. Expenses other than hotel, car rental and meals are not reimbursable unless the extended stay is for business reasons. The Individual's request for reimbursement of expenses incurred in connection with weekend travel must include documentation of the net cost savings to ERCOT.

#### **3.7.5. Frequent Traveler/User Programs**

Frequent flier travel mileage awards, air ticket vouchers or coupons (e.g. for "bumping") belong to the Individual. Individuals are responsible for any additional costs associated with frequent traveler programs, including the cost of

enrollment. *Use of airline, hotel or rental car marketing incentives that increase costs to ERCOT are prohibited.*

### **3.7.6. Auto Rental**

Car rentals should be justified by business necessity and cost, and should be shared whenever possible. Individuals should make every effort to use the preferred car rental agencies listed on ERCOT Procurement's SharePoint site. Reimbursement for gasoline expenditures related to a rental vehicle is allowed with a receipt. Individuals must, whenever possible, refuel rental cars before returning them to the car rental agency (include the fuel receipt with documentation).

ERCOT will reimburse Individuals at compact or economy car rental rates unless there are more than two people traveling together. In this situation, an upgrade to a mid-sized car is allowed. ERCOT is insured for business travel with rental cars under a corporate insurance policy; therefore it is not necessary for employees to purchase insurance from the rental car company when renting a vehicle in the USA. ERCOT will not reimburse employees for insurance acquired through the rental company.

### **3.7.7. Hotels**

Actual hotel expenses for ERCOT business trips are reimbursable up to a maximum of the allowable per-diem amount if they are reasonable and appropriate for the occasion. Under the per diem method, travelers will be reimbursed an actual amount of hotel expense to be capped at the per diem amount stated in IRS Publication 1542. The publication establishes a per diem amount for lodging based on the travel destination. Any lodging costs incurred by the traveler exceeding the lodging per-diem reimbursement allowance will be considered personal expenses.

Vice Presidents, Directors, or Managers may at their discretion authorize reimbursement of hotel expenses in excess of IRS per-diem rates for reasons including economic justification, business need, and employee safety.

Current lodging per-diem rates can be obtained on the following websites.

- [www.irs.gov](http://www.irs.gov) – Search on “Per Diem Rates”
- [www.gsa.gov](http://www.gsa.gov) – Select “Per Diem Rates”

If a destination is not listed in either of these locations, the standard lodging per-diem reimbursement allowance should be used. For assistance with per diem rates, contact ERCOT's Accounting Department.

Individuals requiring accommodations near an ERCOT office should make every effort to select a hotel from the preferred hotels listed on ERCOT Procurement's SharePoint site.

For extended out of town stays, lower cost, long-term rates should be arranged.

In general, employees will not be reimbursed for hotel charges within 50 miles of ERCOT facilities. Exceptions for special circumstances must be approved in accordance with Section 3.2 of this corporate standard.

In cases where a double occupancy room is required for personal reasons (e.g., Individual is traveling with a non-business companion and is charged a higher rate), the "personal portion" must be deducted from the charges and paid by the Individual.

Incidental hotel charges such as mini bar charges, alcoholic beverages, gym fees, and movie costs are not reimbursable.

Hotel cancellation charges are not reimbursed by ERCOT unless ERCOT is directly responsible for the cancellation under extraordinary circumstances that prevented prior notification.

Itemized lodging receipts are required for reimbursement.

### **3.8. Other Transportation and Alternative Lodging**

#### **3.8.1. Taxi, Bus, Limousine, or Train**

Business necessity and reasonable costs should justify all other transportation expenses (taxi, buses, trains, etc). Use of shuttle buses or share-a-ride programs is encouraged whenever practical. Private limousine rental should be avoided unless there is a valid business reason.

#### **3.8.2. Personal Automobile**

Individuals using their personal automobile on ERCOT business will be reimbursed only for ERCOT business mileage and associated expenses (i.e., tolls, parking, etc). The reimbursement rate is based on current IRS guidelines and the reimbursement is meant to cover all costs of "wear and tear" to the Individual's personal vehicle when used for business purposes. Accordingly, ERCOT will not reimburse for oil changes and other personal automobile maintenance expenses.

Requests for reimbursement of mileage expenses relating to use of the Individual's personal vehicle for ERCOT business must be based on reasonable mileage traveled by the Individual. The request must include documentation of the originating, intermediate, and final trip destinations as warranted.

Mileage between ERCOT's Met Center facility in Austin (including the Airport Hilton and Met Center properties) and its Taylor facilities (including other nearby off-site meeting facilities in Taylor), will be reimbursed based upon 35 miles each way or 70 miles round trip. Mileage between ERCOT's Met Center facility in Austin (including the Airport Hilton and Met Center properties) and its Bastrop facility will be reimbursed based upon 17 miles each way or 34 miles round trip. Mileage between ERCOT's Taylor facility and its Bastrop facility will be reimbursed based upon 39 miles each way or 78 miles round trip. Individuals are responsible for mileage associated with commuting to/from the office during regularly scheduled work days.

In cases where an Individual chooses to drive to a meeting outside of the state of Texas rather than fly, the Individual will be paid the lesser of 1) mileage as noted above plus other incremental costs; or 2) a reasonable estimate of the air fare plus other incremental costs (e.g. mileage to/from the airport, parking, transportation costs at destination, etc)

ERCOT is not responsible for traffic or parking tickets, fines, thefts, or damage to personal autos resulting from business use or for any other losses sustained by the Individual.

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

### **3.8.3. *Alternative Lodging (in-lieu-of hotel)***

Employees may choose to lodge with friends or relatives during a business trip. The employee may be reimbursed for the actual cost of meals with their host up to \$50 per day with a maximum amount of \$150 per week. Receipts are required for reimbursement of all such payments.

### **3.8.4. *Parking***

Airport parking will be reimbursed at long-term rates.

## **3.9. *Meals Reimbursement***

### **3.9.1. *Business Meal Requirements***

Business meal expenses must be ordinary, necessary, reasonable and related to the conduct of business. For business meals to qualify for ERCOT reimbursement the expenditure must be either directly related to or associated with the active conduct of company business and documented as follows:

- Date incurred;
- Names and titles of attendees;
- Company affiliation;
- Location where incurred – serving establishment and city;
- Nature and purpose of the business discussion;
- Amount

### **3.9.2. *Meals for Trips More than 50 Miles From the Home Office***

Actual meal expenses for ERCOT business trips are reimbursable up to a maximum of the allowable per-diem amount if they are reasonable and appropriate for the occasion. Under the per-diem method, travelers will be reimbursed an actual amount of meal expense to be capped at the per diem

amount stated in IRS Publication 1542. The publication establishes a per-diem amount for meals and incidental expenses (MI&E per diem) based on the travel destination. The MI&E 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 MI&E per-diem reimbursement allowance will be considered personal expenses.

Current MI&E per-diem rates can be obtained on the following websites.

- [www.irs.gov](http://www.irs.gov) – Search on “Per Diem Rates”
- [www.gsa.gov](http://www.gsa.gov) – Select “Per Diem Rates”

If a destination is not listed in either of these locations, the standard MI&E per-diem reimbursement allowance should be used. For assistance with per-diem rates, contact ERCOT’s Accounting Department.

Partial MI&E per-diems will be paid if some meals are not eligible for reimbursement. For example, meals provided at no cost to the traveler (such as those provided by seminars) are not eligible for MI&E per-diem reimbursement. In addition, when travel is for a partial day not covering three typical meal periods, the MI&E per-diem reimbursement allowance should be adjusted downward.

Other meal costs (e.g. groceries) will be reimbursed on an actual cost basis supported by detailed/itemized receipts provided they do not exceed comparable costs that would have been incurred under other, more usual meal arrangements.

The Individual’s professional judgment is required. Excessive meal costs will be rejected and will not be reimbursed.

### **3.9.3. Meals for Trips Less than 50 Miles From the Home Office**

When job duties or attendance at training sessions require an Individual to be less than 50 miles from their assigned home office, meals are the responsibility of the Individual and are not reimbursable.

### **3.9.4. 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 Individual 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 ERCOT’s approved Delegation of Authority Corporate Standard requires a higher approval. Officers may approve group meals for conferences, staff meetings, etc., whether hosted by them or their direct reports.

Working lunches at ERCOT offices should be utilized prudently, not on a regular recurring basis. Supporting documentation as described in Section 3.9.1 must be provided.

### **3.9.5. Working Three or More Hours beyond the Normal Work Schedule**

Meal expenses incurred for required overtime work of three hours duration or more in one regularly scheduled work day are reimbursable.

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

These meals must be served on ERCOT premises and the circumstances of the overtime meal expenses must be described on the expense report.

### **3.9.6. Alcoholic Beverages**

If the cost of a meal or group event includes alcoholic beverages, Individuals must deduct the cost of any alcoholic beverages from the reimbursement request, along with the applicable tax and tip, as such expenses are not reimbursable.

## **3.10. Miscellaneous Expenses**

### **3.10.1. Training Session and Continuing Education Registration**

Registration or enrollment costs relating to training sessions, continuing education courses, or similar business meetings are reimbursable provided the training is related to the Individual's current or expected job duties and is deemed by the Individual's manager or ERCOT Contact to be beneficial to ERCOT.

### **3.10.2. 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 ERCOT.

### **3.10.3. 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 ERCOT.

### **3.10.4. Personal Calls**

Personal calls to home, etc., while traveling out of town are an allowable expense within reason. Calls should be made using the most cost effective method available (calling card, cell phone if national coverage plan, etc.). Please use professional judgment to determine the reasonableness of such calls.

### **3.10.5. Incidental Tips and Gratuities**

Reasonable tips or gratuities are allowed and will be reimbursed. Tips or gratuities for meals are included in the meal reimbursement Section 3.9.2.

### **3.10.6. Laundry**

ERCOT will reimburse Individuals for reasonable valet and laundry charges for trips that span more than seven days.

### **3.10.7. Incidental Business Expenses**

ERCOT will reimburse reasonable, ordinary, and necessary incidental expenses incurred by Individuals conducting ERCOT business. These expenses should be minor in nature and incurred under the exercise of good faith by the Individual. Such expenses include minor purchases of materials and supplies, conference calls, courier services, subscriptions, etc.

### **3.10.8. Cell Phone Service**

#### **Allowance**

If an employee's job function has been approved by their supervisor as requiring a cell phone, an allowance of \$40 or \$80 per month may be provided to cover expected cell phone costs, depending on expected business call volume for that job function.

If the employee's job function also requires wireless priority service (WPS), an additional allowance of \$6 per month may be provided (for a total of \$86 per month). Only members of the Executive Management Team and the Disaster Management Team are eligible for WPS allowances.

If an employee qualifies for an allowance, the allowance is added directly to the employee's paycheck the first pay period of the month.

ERCOT does not reimburse cell phone charges incurred by Contract Workers.

#### **Cell Phone and Related Equipment**

ERCOT does not purchase cell phones or PDAs for individual use. The device purchase, services, and the associated phone number belong to the individual whether employed by ERCOT or not. ERCOT does not reimburse these purchases.

It is the employee's responsibility to ensure cell phones and related equipment acquired by the employee conform to ERCOT policies, standards, and procedures relating to system access and appropriate use.

#### **Other Charges**

ERCOT does not reimburse activation or cancellation charges.

#### **Cell Phone Number Included in E-mail System**

It is the responsibility of the employee receiving reimbursement for cell phone expenses and the employee's manager to ensure their cell phone number is made available as necessary for business purposes.

### **3.10.9. Remote Access Allowance**

Employees approved by their supervisor (and their director if the supervisor is a manager) as providing 24 X 7 Call Out Support (where response time is critical to problem resolution) may be reimbursed for the actual cost of maintaining remote access at home.

Reimbursement will be based on the employee's specific written request supported by an invoice or bill produced by the remote access vendor (e.g. Time Warner Cable).

### **Equipment**

It is the employee's responsibility to ensure remote access services and equipment acquired by the employee conforms to ERCOT policies, standards, and procedures relating to system access and appropriate use.

#### **3.10.10. *Wireless Internet Card Service Allowance***

Employees approved by their officer as having job responsibilities requiring wireless Internet connectivity with a personal computer will be eligible to receive a company-owned wireless Internet card and receive company-paid wireless internet services.

If approved by the officer, ERCOT will purchase wireless Internet cards for employees and will be direct-billed for wireless Internet card services provided for personal computers.

### **3. Responsibility**

The Controller and CFO are responsible for maintaining and communicating this corporate standard.

## **APPENDIX A - FREQUENTLY ASKED QUESTIONS**

### **Business Expenses**

#### **Do I need receipts for everything?**

All expenditures over \$25, with the exception of mileage and meals covered by per-diem reimbursement allowance, must have original, itemized receipts.

#### **Are any receipts needed for under \$25?**

Reimbursement of certain expenditures that involve an allocation of costs between business and personal may need an original, itemized receipt. An example of this is personal cell phone reimbursements. Receipts are required for all transportation, hotel and auto rental expenditures. Receipts are also required for all payments made under Section 3.8.3 Alternative Lodging. In addition, **some departments require receipts for all expenditures**. Check with your supervisor or manager.

#### **What if I lose my receipts?**

Don't!!! Obtain duplicate itemized receipts by calling the merchant. After every effort has been made and an itemized receipt cannot be obtained, then the Missing Receipt Form (xls) must be completed and approved by an officer. The Missing Receipt Form is to be attached to the expense report.

### **Travel Expenses - Commercial Airline**

#### **Do I need to include my airfare on my expense report?**

The documentation for air travel paid by you personally would be attached to your expense report.

#### **Can I drive to a training seminar or business meeting rather than fly?** Yes, as long as it is cheaper to drive than fly (and flying is actually an option!).

**Even if it is cheaper to fly, can I still drive? (This sometimes happens when an employee takes family, friend or spouse and plan to stay additional vacation days or make stops along the way.)**  
You can drive with your family, spouse or friend if you plan to spend additional days in the area. If your trip takes you outside the state of Texas, however, you will only be reimbursed for the business portion of your trip calculated as the lesser of 1) mileage plus incremental business costs or 2) a reasonable estimate of the airfare plus other incremental costs. Include an explanation and documentation of the flight cost vs. mileage cost.

### **Travel Expenses - Personal Vehicles**

#### **What is the mileage rate?**

Rate per mile is established by the Internal Revenue Service for

reimbursement of business use of personal vehicle. The current rate can also be obtained by contacting an Accounts Payable staff person.

**If I drive to a meeting or training class during my workday, can I be reimbursed for the mileage?**

You can be reimbursed for mileage from your normal work site to an alternate work location and back to your normal work site. Reimbursement for travel within the same city or immediate work area is at the discretion of your manager.

*Example:* Your office is at TCC. You leave your office mid-morning to attend an 11:00 am meeting at the Met Center. You return to your office at TCC after the meeting. You can be reimbursed for mileage to and from the Met Center.

**If I drive directly to a meeting or training class or an alternate work site from my home during my workday, can I be reimbursed for the mileage?**

Yes. The maximum you can be reimbursed for mileage from your home to an alternate work site is the lesser of the following:

- number of miles from your home to the alternate work location less your normal commuting miles, or
- number of miles from your normal work site to the alternate work location.

You can also be reimbursed for mileage back to your home from an alternate work location under this same methodology. Mileage reimbursement and calculation of miles driven is always at the discretion of your manager as long as it does not exceed the method noted above.

*Example:* You live in Circle C and work at the Met Center (normal commute is 10 miles). You attend an all-day training class at TCC 1 in Taylor (commute is 40 miles). You can be reimbursed for 30 miles each way (60 miles round trip).

*Example:* You live in Manor and work at the Met Center (normal commute is 15 miles). You have an all day business meeting at the TCC 1 in Taylor (commute is 20 miles). You can be reimbursed for only the difference between your normal commute and commute to TCC1 (20 miles less 15 miles or 5 miles each way for a total of 10 miles).

*Example:* You live in Manor and work at TCC 1 (normal commute is 20 miles). You have an all day temporary desk side support assignment at the Met Center and travel directly from your home to the Met Center (commute is 15 miles). You are not eligible for mileage reimbursement because your normal; commute distance (20 miles) is greater than your temporary commute distance (15 miles).

**If I drive to a special meeting at my regular work location on a non-scheduled workday, can I be reimbursed for the mileage?**

Yes. You can be reimbursed for mileage from your home to and from your regular work location on a day when you are not regularly scheduled to work.

**If I drive to an out of town meeting, can I be reimbursed for other mileage during the trip such as mileage to a restaurant for lunch?**

Within reason, such mileage will be reimbursed.

**If I drive to an alternate work location or off-site meeting on a non-scheduled workday, can I be reimbursed for the mileage?**

Yes. You can be reimbursed for mileage from your home to and from the meeting/training location if it is on a day when you are not regularly scheduled to work.

*Example:* I am leaving on a business trip and am taking an airline flight on Sunday morning and returning on Wednesday afternoon. My regular workdays are Monday through Friday. I live in Cedar Park and work at the Met Center. I can be reimbursed for the miles from my home to the airport on Sunday and the number of miles from the airport to the Met Center for my trip home.

*Example:* I am attending an employee retreat at Lakeway. I live in College Station and work at TCC 1. My regular workdays are Monday through Friday. I drive to Lakeway on Thursday morning from my house and return home on Saturday morning. I can be reimbursed for the miles from TCC 1 to Lakeway on Thursday and the number of miles from Lakeway to my home in College Station on Saturday.

**Can I get reimbursed for gasoline that I put in my personal vehicle while on company business?**

No. Never request reimbursement for fuel for personal vehicles. Gas and normal wear and tear on your vehicle is incorporated into the mileage reimbursement rate. You must submit an expense report for reimbursement of mileage.

**What if I have an accident while using my personal car for a business trip?**

Individuals are responsible for maintaining legally required automobile insurance coverage that extends to primary or incidental business use of the vehicle being used. Your insurance should cover losses to your car and to any other property or persons involved in the accident. ERCOT insurance will not cover any losses from your use of your personal car. If you have questions, please contact the Legal department.

## **Travel Expenses – Auto Rental**

**What if I have an accident while using a rental car?** If you are injured, please immediately obtain any needed medical attention. Call your supervisor or the HR department as soon as possible and they will tell you what you need to do next! If you would like, prior to leaving on your trip you may check out a brochure that describes what you should do if you have an accident. Simply send an e-mail request to [Insurance@ercot.com](mailto:Insurance@ercot.com) and a brochure will be forwarded to you. Simply return the brochure when you return.

## **Lodging**

**Can I take a friend or spouse with me when I go on a trip?** Yes, as long as the Individual is reimbursed only for their business related expenses. If a hotel room is shared, an Individual must pay the difference between single and double occupancy rate.

**Can I purchase movie rentals and charge them to my room?** You can charge them to your room, but you must make sure that you deduct these charges when preparing your expense reimbursement report. ERCOT does not reimburse for movies. Similarly, ERCOT will not reimburse for in-room bar, exercise room fee or any other amenities charged on your hotel bill.

**Can I be reimbursed for a hotel stay near one of ERCOT's offices?** Only on an exception basis given extraordinary circumstances. Exceptions must be approved as required by Section 3.2.

## **Meals**

**Can Individuals be reimbursed for overtime meals?** Yes, but the meals need to be served on ERCOT premises, and must be extraordinary/emergency work situations which do not allow the Individual to leave the premises, and not be recurring in nature.

**Can I be reimbursed for meals while traveling during normal work hours?** Meals that are reasonable and appropriate will be reimbursed when the Individual is traveling further than 50 miles (one way) from his home office.

When your normal job duties or attendance at a training session require that an employee be less than 50 miles (one way) from their assigned home office, meals are the responsibility of the employee.

**If I am attending an out of town conference requiring an overnight stay but where the conference sponsor provides breakfast, lunch and dinner**

**as part of the conference registration cost, can I be reimbursed for other meals if I choose to forego the conference provided meal and eat elsewhere?**

No. If the conference price included the cost of meals Individuals should take advantage of those meals. If other meal costs are incurred, they are at the Individual's discretion and will not be reimbursed.

**What kind of documentation do I need for meals when I travel?**

Under the per-diem reimbursement method, receipts for meals are not required. However, your manager may require you to provide receipt for meals. You are advised to check with your manager.

### **Other Travel Expenses**

**Are parking costs reimbursed?**

Yes, reasonable parking costs incurred in connection with fulfillment of valid business purposes are reimbursable. Individuals should use less expensive, long term parking whenever possible.

**Are tolls incurred while traveling between ERCOT facilities reimbursable?**

Reasonable and necessary tolls are reimbursable.

Yes.

**What types of travel expenses are not reimbursed?**

You cannot be reimbursed for personal items that you would normally purchase for yourself at home. Personal items may include shampoo, toothpaste, etc. souvenirs, film, transportation and admission to area attractions, and any other expenses not directly relating to the business purpose of the business trip.

**How do I deduct personal items from my receipts?**

It is easier to pay for personal items separately. If you must deduct items from a receipt, don't forget to deduct pro-rata share of tax and tip, if applicable.

### **Other Business Expenses - Incidental Expenses**

**Should I get reimbursed for my professional license fees or should ERCOT pay these directly for me?**

Any professional license that you can take with you to another employer (CPA, Professional Engineer, etc.) should be paid by you, not ERCOT. In most cases, ERCOT will reimburse you the cost of these fees if directly related to your job. A copy of the license fee renewal form and a copy of your payment should be attached to your expense report for reimbursement.

**What kind of documentation do I need for business meals?**

If a meal is over \$25, or your manager requires a receipt for meals under \$25,

an original receipt is required. Business purpose and names of those attending must be included.

### **Reimbursement Procedures**

#### **How often should I submit an expense report?**

An expense report should be submitted within 60 days from the date of the expenditure.

#### **What happens if I don't turn in my expense report timely?**

Any expense report filed more than 90 days after the expense is incurred must be signed by an officer who may or may not approve the reimbursement. Make every effort to turn in expense reports timely. More timely reporting results in fewer lost receipts and more accurate monthly budget and financial reporting for the period.

#### **How will I know that my expense report has been processed?**

The expense reimbursement will be detailed as a separate line item on your payroll advice.

#### **Who can approve my expense report?**

Someone with the appropriate approval authority based on the Delegation of Authority Corporate Standard. This will normally be your manager.

#### **What if I have any additional questions on expense reimbursements processes?**

As a first step, ask your manager or supervisor.

### **Exceptions**

**What if I have a situation that is not covered by the policy or expect to incur costs greater than is allowed by this corporate standard?** To try to make sure that exceptions are dealt with consistently across ERCOT, the CFO or designee is responsible for addressing exceptions to this policy. Currently, the CFO has designated the Treasurer to address exceptions that might come to him. E-mail is a great way to communicate the situation surrounding the exception.

# EXHIBIT 1 – MISSING RECEIPT FORM

## MISSING RECEIPT FORM

For \_\_\_\_\_

Receipt for: _____	Receipt for: _____
Date: _____	Date: _____
Amount: _____	Amount: _____
Vendor: _____	Vendor: _____
Description: _____	Description: _____
Signature: _____	Signature: _____

Receipt for: _____	Receipt for: _____
Date: _____	Date: _____
Amount: _____	Amount: _____
Vendor: _____	Vendor: _____
Description: _____	Description: _____
Signature: _____	Signature: _____

Receipt for: _____	Receipt for: _____
Date: _____	Date: _____
Amount: _____	Amount: _____
Vendor: _____	Vendor: _____
Description: _____	Description: _____
Signature: _____	Signature: _____

**Exhibit C**  
**CONTRACTOR ETHICS AGREEMENT**

## **CONSULTANT ETHICS AGREEMENT**

Consultants of Electric Reliability Council of Texas, Inc. ("ERCOT") must conduct ERCOT's business with integrity and total objectivity toward ERCOT, its Members and its Market Participants (as listed on ERCOT's public website). Consultants must act in compliance with all applicable laws, rules, and regulations, and in accordance with NERC Rules of Procedure, ERCOT Protocols, Corporate Policies, Corporate Standards, and Operating Procedures. ERCOT will not tolerate fraud, misconduct, or violations of this Consultant Ethics Agreement or Code of Conduct.

### **Confidential Information**

Consultants who receive Confidential Information in the course of their services to ERCOT must maintain the confidentiality of such Confidential Information and take reasonable actions and precautions to prevent unauthorized disclosure of same. "Confidential Information" means all information:

- marked "Confidential" or defined as "Confidential Information" in Section 1500 of the NERC Rules of Procedure and
- defined as "Protected Information" in Section 1.3 of the ERCOT Protocols.

Confidential Information specifically includes all documents, knowledge, electronic, and tangible or intangible information provided that is or includes any of the following:

- Proprietary, competitively or commercially sensitive information, technical data, or know-how related to the business, services, or products of (and developed or acquired by):
  - ERCOT
  - transmission owners and operators, and
  - users of the bulk power system (including but not limited to Registered Entities on NERC's Compliance Registry, ERCOT Members, and ERCOT Market Participants, or any of their consultants or vendors);
- Critical Energy Infrastructure information;
- Personnel information that identifies or could be used to identify a specific individual or reveals financial, medical, or other personal information;
- Work papers, including any records produced for, or created in the course of, an evaluation or audit;
- Investigative files, including any records produced for, or created in the course of, an investigation; or
- Cyber Security Incident information.

### **Disclosure of Prior Work at ERCOT**

Consultants must disclose: (i) all dates (beginning date through end date) during which the consultants were employed by ERCOT or Texas Reliability Entity in the past, and (ii) all dates (beginning date through end date) during which the consultants performed services for ERCOT or Texas Reliability Entity in the past.

## **Conflicts of Interest**

Consultant must conduct ERCOT's business free from the influence of any Conflict of Interest of the consultant or any of the following:

- the consultant's spouse or domestic partner, and dependent children ("Dependent Parties"); and
- the consultant's parents, non-dependent children, siblings, and any other individual living in the consultant's household ("Related Parties").

Any circumstance that could cause even the appearance of self-interested action by a consultant, or an undue benefit being provided to a Dependent Party, Related Party, supplier, or Market Participant, must be disclosed so that ERCOT management may evaluate the potential Conflict of Interest. "Conflicts of Interest" are defined in, and consultant must abide by applicable provisions of, CS5.18, *Conflict of Interest Corporate Standard*.

A consultant who becomes aware of a potential or actual Conflict of Interest must immediately inform the ERCOT Legal Department to allow ERCOT officers to evaluate the situation. After full disclosure by the consultant, ERCOT officers may agree to conditions that appropriately limit any potential influence from a Conflict of Interest.

## **Securities Laws**

Consultant may not trade in securities of third parties (e.g., suppliers) if, because of consultant's service to ERCOT, he or she has access to material non-public information about that third party.

## **Anti-trust Laws**

Consultant must abide by the ERCOT *Antitrust Compliance Corporate Standard* (CS1.10) and all applicable anti-trust laws.

## **Acceptable Use of ERCOT Assets**

Consultant must abide by the ERCOT *Acceptable Use Corporate Standard* (CS7.1) and must refrain from using ERCOT equipment, networks, tools and premises for purposes other than the conduct of ERCOT business.

## **Non-Solicitation**

In consideration for receiving ERCOT's Confidential Information and retention by ERCOT, consultant shall not, while working for ERCOT and for a period of one (1) year after ceasing to work for ERCOT, either directly or indirectly solicit, induce or encourage any ERCOT employee to either terminate employment with ERCOT or accept employment with any other entity. The term "solicit, induce or encourage" includes, but is not limited to, initiating communications with an ERCOT employee relating to possible employment, offering bonuses or additional compensation or referring ERCOT employees to personnel, recruiters or other agents.

## **Notice**

Any consultant who has concerns or questions about these requirements and prohibitions should contact the ERCOT Legal Department. Any consultant who becomes aware of a violation or the appearance of a violation of the Code of Conduct by any person must immediately notify the ERCOT Legal Department, or file an anonymous report through EthicsPoint ([www.ethicspoint.com](http://www.ethicspoint.com) or 1-866-384-4277) or other available ERCOT anonymous reporting tool.

**Disclosure of Conflicts and Prior Service**

After reviewing the ERCOT Code of Conduct and Employee Ethics Agreement, I wish to disclose the following prior services to ERCOT and potential conflict(s) of interest:

**Check this box if you have no prior service or conflicts of interest to report.**

**Prior Services to ERCOT**

Dates of Prior Service: \_\_\_\_\_

Dates of Prior Employment: \_\_\_\_\_

**Potential Conflicts of Interest:**

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

Relationship to Employee: \_\_\_\_\_

Description of Potential Conflict: \_\_\_\_\_

## CONSULTANT AGREEMENT

By signing below, I hereby confirm and acknowledge that:

- (i) I have read and understand the requirements of the ERCOT Code of Conduct and this Consultant Ethics Agreement, the *Antitrust Compliance Corporate Standard* (CS1.10), the *Confidentiality Corporate Standard* (CS5.19), the *Fraud Prevention and Whistleblower Corporate Standard* (CS5.38), and the *Acceptable Use Corporate Standard* (CS7.1);
- (ii) I agree to be bound by and comply with all requirements of all ERCOT corporate policies and standards, operating procedures and Protocols, and the NERC Rules of Procedure;
- (iii) I agree to maintain the confidentiality of all Confidential Information;
- (iv) If I have signed any previous ERCOT Ethics Agreement, I further confirm that I have complied with those requirements since the date of such previous Ethics Agreement(s);
- (v) I have made complete disclosure herein of any prior services to ERCOT and any potential Conflict of Interest involving me, a Dependent Party, or a Related Party;
- (vi) If I become aware of a Conflict of Interest involving me, a Dependent Party, or a Related Party, or if any information I disclosed changes, I will promptly notify the Legal Department in writing; and
- (vii) I will be subject to contract termination, injunction, and all other available legal or equitable remedies for any acts in violation of applicable laws, rules, regulations, or this Consultant Ethics Agreement or otherwise not in compliance with ERCOT Protocols, Corporate Policies, Corporate Standards, and Operating Procedures , whether my violation is intentional or careless.

Consultant Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

Consultant Employer: \_\_\_\_\_

ERCOT Contact: \_\_\_\_\_

**NOTE: You must complete the Disclosure section even if you have no conflicts of interest to disclose.**

**Note: The signed form will be maintained in the Legal Department**

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

This Statement of Work Agreement No. 1 (the "SOW") is entered into by and between Electric Reliability Council of Texas, Inc. ("ERCOT"), the Public Utility Commission of Texas ("PUC") and Potomac Economics, Ltd. ("Contractor"). This SOW sets forth Services to be performed pursuant to the terms and conditions of the Tri-Party Professional Services Agreement effective January 1, 2013 by and between ERCOT, PUC, and Contractor (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, the Contractor will act as the Independent Market Monitor for the ERCOT Region and will be responsible for monitoring the wholesale electricity market in the ERCOT power region, including all markets for energy, ancillary capacity services, and congestion revenue rights, and monitoring all aspects of ERCOT's operations that affect supply, demand, and the efficient functioning of the competitive wholesale electricity market. The tasks, duties, and responsibilities of the Contractor will include the following:

- A. Market Knowledge. The IMM Director must be knowledgeable regarding market monitoring in an electricity market. Contractor will hire an IMM Director and staff to carry out the day-to-day monitoring functions specified in this Agreement. The Contractor, IMM Director, and staff must promptly become familiar with the ERCOT Protocols ("Protocols") and all PUC Rules and Texas statutes relating to the wholesale electricity market, including but not limited to wholesale market design and operations, restrictions on the existence and abuse of market power, and market monitoring. The Contractor must also be familiar with the enforcement authority, policies, and procedures of the PUC.
  
- B. Detection and Prevention of Manipulation and Assessment of Market Power in ERCOT Wholesale Markets. The Contractor shall develop and refine tools to gather and analyze information and data as needed for its market monitoring activities and actively monitor the wholesale electricity market in the ERCOT power region, pursuant to the direction of the PUC, including the following:
  - 1. Develop and refine tools and information to identify abnormal events and potentially anticompetitive behavior in the ERCOT wholesale electricity market, through the use of market screens and indices;
  - 2. Regularly monitor the wholesale power market through the use of market screens and indices to identify any abnormal wholesale market events;
  - 3. Conduct market power tests, monitor structural indicators of market power, and conduct other analyses related to market power determination;
  - 4. Analyze events that fail the screens and indices, potentially anti-competitive behavior, and other abnormal activities and market events, using computer simulation and advanced quantitative tools as necessary, and initiate informal discussion of events with ERCOT and PUC staff and market participants, if appropriate;

5. Conduct investigations of specific market events when anomalies are discovered and prepare reports; and
6. Coordinate with the PUCT and ERCOT to develop procedures for the coordination of investigative activities among the Contractor, ERCOT, and PUCT and for PUCT approval of investigations that require significant resources.

C. Evaluation of Wholesale Market Operations, Current Protocols and Proposed Changes to the Protocols. The Contractor will evaluate the operation of the wholesale electricity market and will assist the PUCT and ERCOT by developing recommendations for enhancing the competitiveness and efficiency of ERCOT administered markets. The Contractor will:

1. Develop, refine, and regularly monitor market performance measures to evaluate market participants' compliance with ERCOT protocols. Such compliance issues will be limited to those that have a material impact on the efficiency or competitiveness of the ERCOT market;
2. Evaluate whether ERCOT manages the markets it administers in accordance with the Protocols;
3. Assess the effectiveness of ERCOT's management of the energy, ancillary capacity services, and congestion rights markets, and evaluate the effectiveness of congestion management and system operations by ERCOT.
4. Analyze the Protocols and proposed changes to the Protocols to identify potential reliability impacts, opportunities for strategic manipulation, and other economic inefficiencies;
5. Attend ERCOT stakeholder meetings relating to current market issues and changes in market design;
6. Interact with market participants to better understand their operations and market behavior; and
7. Recommend measures to enhance market efficiency and improve market design.

D. Reporting Obligations and Enforcement Support. The PUCT is responsible for enforcement activities and prosecutions, as discussed in further detail below. Contractor will assist and support the PUCT in its enforcement and prosecution obligations by promptly developing informative reports and supporting PUCT enforcement activities. As part of this assistance, the Contractor will:

1. Immediately and directly report to the PUCT Commissioners and the PUCT liaison any irregular or potentially anti-competitive behavior, including any potential market manipulations, market power abuse, or market power strategies and any discovered or potential violations of PUCT Rules or ERCOT Protocols or operating guides;
2. Submit to the PUCT daily, monthly, and quarterly reports on prices and congestion, abnormal bids and offers, and unusual market or operational behavior;
3. Submit to the PUCT annual reports that assess the competitiveness of the market, identify market design flaws, assess the efficiency of ERCOT's management of the

energy, ancillary capacity services, and congestion rights markets, evaluate the effectiveness of congestion management by ERCOT, evaluate whether there are inefficiencies, inappropriate incentives, flaws or opportunities for manipulation in the market design, and recommend methods to correct any flaws and enhance the efficiency of the wholesale market. The final draft of this report will be submitted to the PUCT for review no later than May 15 each year; and will be published by May 30;

4. Maintain a market oversight website to share market information with the public;
5. Submit other reports as set forth in the PUCT Rules or as otherwise requested by the PUCT and communicate regularly with PUCT staff;
6. Coordinate with the PUCT to identify market-monitoring priorities, assess resources and methods for effective market monitoring, and assess the effectiveness of ERCOT information systems in facilitating market monitoring;
7. Provide expert advice, analysis, reports, and testimony services relating to the IMM's independent analysis, findings, and expertise, as a part of the PUCT staff's case in enforcement proceedings initiated by the PUCT executive director;
8. Coordinate with the PUCT to develop procedures for the coordination of enforcement activities between the Contractor and the PUCT and for the 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;
9. Obtain legal support to provide its services to the PUCT for enforcement actions in selective matters, as directed in writing by the PUCT, by hiring a full-time attorney;
10. Inform the PUCT Oversight & Enforcement Director of any third party inquiries concerning enforcement matters; and
11. Maintain confidentiality of all communications as privileged under the Texas Rules of Civil Procedure and the Texas Rules of Evidence between the Contractor, PUCT Staff and other client representatives of PUCT Staff made in anticipation of litigation or in furtherance of PUCT Staff's enforcement matters.

E. Performance Benchmarks.

1. Documentation of IMM Activities. The IMM will assign an internal identification number to all investigations, enforcement activities, and other projects and matters conducted by the IMM. The IMM will maintain a database of these activities and matters and will provide access by the Commission to such database.
2. Governance Committee. Within 30 days after the Effective Date, Contractor, PUCT, and ERCOT will form a joint management oversight committee (the "Governance Committee") that will be responsible for monitoring the performance of the Parties in their respective roles and responsibilities under this SOW. The Governance Committee will meet at least bi-annually in person or via telephone to review business and technical issues, and discuss and monitor the Parties' satisfaction with

performance of obligations under this SOW. However, additional meetings may be requested by the Governance Committee as needed.

3. Reporting. The IMM will provide a quarterly report to the Commission that addresses investigation and enforcement activities, as well as other projects conducted by the IMM. The report should be separated into two parts—one for investigation and enforcement activities and one for other IMM projects.

(a) Investigation and Enforcement Activities Report. Every investigation or enforcement matter involving the IMM will be listed in this report. The report should include, at a minimum, the following information:

- Internal identification number;
- Name of investigation or enforcement activity;
- PUCT Docket number, if applicable;
- Description of the investigation or enforcement activity;
- Dates that an investigation is opened and closed;
- Key dates in the investigation or enforcement activity;
- Description of major activities performed in the investigation or enforcement action;
- A point of contact for each investigation and the members of the IMM team assigned to each activity.
- List of investigations that have been referred to the Commission during the period covered by that report;
- Cumulative hours spent on investigation and enforcement activities per quarter.

(b) Other Projects Report. All non-investigation related activities or projects will also be detailed in this report. The report should include, at a minimum, the following information:

- Internal identification number;
- Name of project;
- PUCT Docket number, if applicable;
- Description of the project;
- Dates that the project began and ended;
- Key dates in the project;
- Description of major activities performed in the project;
- A point of contact for each project and the members of the IMM team assigned to each project;
- Indicate whether the project is recurring or not; if non-recurring, provide the date by which such project must be accomplished.
- Cumulative hours spent on other projects per quarter.

F. Required Duties and Minimum Staffing Level. The IMM shall perform all of the duties specified herein. The IMM shall establish an office in space provided by ERCOT in its facility in Austin, Texas with a staff that is sufficient to carry out the day-to-day market monitoring functions and consult with PUCT staff on a regular basis. The Austin staff shall consist of at least eight persons who have technical and economic proficiency in the areas of electric generation and transmission, economics, information technology, law, and the analysis of complex transactions, including the interaction between the energy and financial markets.

Such staffing for legal support will include a full time employee licensed to practice law in the State of Texas. The selection of the IMM director and the mix of technical expertise prescribed for staffing IMM operations in Taylor are subject to PUCT approval. The Contractor staff includes David Patton and other Potomac staff in the Fairfax, Virginia office.

The IMM Director, Deputy Director, or designated liaison of the IMM shall spend at least eight hours a week at the offices of the PUCT. The PUCT will provide appropriate office space, high-speed internet access, and a parking permit.

## II. Responsibilities of ERCOT and PUCT

### A. ERCOT Support.

1. ERCOT will provide the Contractor with full access to ERCOT's operations centers and ERCOT's records, data, and other information concerning operations, settlement, and reliability.
2. ERCOT will provide office and conference space at its Taylor, Texas facility or its Austin, Texas facility equipped with standard office furniture and equipment (fax, printer, and copier) and telephones (land lines), and high-speed internet access. Computers for use by the Contractor's staff located in the ERCOT facility will be provided by ERCOT; computers for use by staff working in other locations must be provided by the Contractor. In addition, the Contractor will have occasional access to other ERCOT conference rooms and copiers, as needed.
3. ERCOT will provide other support and cooperation necessary for the Contractor to perform its functions, including all support and cooperation which is determined appropriate by the PUCT.

B. PUCT Enforcement Support. 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 the Contractor to coordinate on investigation and enforcement activities, and evaluate whether enforcement is appropriate, based on reports provided by the Contractor. The PUCT will also provide staff to evaluate the penalties that are appropriate for violations of PUCT or market rules and testify on this matter.

### C. PUCT Supervision.

1. The Contractor activities will be subject to the supervision and oversight of the PUCT.
2. The PUCT may periodically review the performance of the Contractor under the Agreement and this SOW to assess whether the Contractor is meeting the requirements of the Agreement and providing diligent and professional services under the Agreement. The PUCT shall provide the Contractor a written report of the conclusions it reaches in any such review. If in the PUCT's sole judgment, the Contractor's performance has not been adequate, it may direct the Contractor to replace the IMM director and may, with 90-day notice, terminate the Agreement.

## III. Cost of Services

### A. Fixed Fee Services.

Contractor will perform Services for an annual Fixed Fee, according to the fixed fee schedule below. These services will include all services provided under this agreement by the IMM staff located in Austin and up to 50 hours per year of advice, consulting services, or other support from Dr. Patton.

Agreement Year	Dates	Total Annual Fixed Fee	Monthly Payment
Year 1	January 1, 2013 – December 31, 2013	\$3.2 Million	\$266,666.66
Year 2	January 1, 2014 – December 31, 2014	\$3.3 Million	\$275,000.00
Year 3	January 1, 2015 – December 31, 2015	\$3.4 Million	\$,283,333.33
Year 4 (Optional)	January 1, 2016 – December 31, 2016	\$3.5 Million	\$291.666.66
Year 5 (Optional)	January 1, 2017 – December 31, 2017	\$3.6 Million	\$300.000.00

IV. Expenses:

Except for expenses for licensing fees for PE software licensed to ERCOT under a separate agreement, no other expenses will be charged to or reimbursed by ERCOT for the engagement.

V. Not to Exceed

The total amount billed under this SOW for the Services and expenses shall not exceed seventeen million dollars (\$17,000,000) without a prior written agreement by ERCOT and the PUCT.

VI. PUCT Contact Person:

The PUCT employee who will be the authorized PUCT Contact for all Services is Mick Long, 512-936-7294, Mick.Long@puc.texas.gov.

VII. ERCOT Contact Person:

The ERCOT employee who will be the authorized ERCOT Contact Person for all Services is Bill Magness, 512-225-7076, bmagness@ercot.com.

VIII. Contractor Contact Person:

The Contractor employee who will be the authorized Contractor Contact Person for all Services is Dr. David Patton, 9990 Fairfax Boulevard, Ste 560, Fairfax, Virginia, 22030, 703-383-0720, dpatton@potomaceconomics.com.

IX. Start Date:

The date upon which Contractor will begin to provide Services under this SOW is January 1, 2013 (the "Authorized Start Date").

X. End Date:

The last date upon which Services may be provided is December 31, 2017 (the "End Date"), assuming that the optional years are exercised by the PUCT.

XI. 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><b>Potomac Economics, Ltd.</b> By: _____ By: <u>[Signature]</u> Name: <u>David B. Patton</u> Title: <u>President</u> Date: <u>12/29/12</u></p>	<p><b>Electric Reliability Council of Texas, Inc.</b> By: _____ By: <u>[Signature]</u> Name: <u>H. B. Doggett</u> Title: <u>Pres &amp; CEO</u> Date: <u>1/10/13</u></p>
<p><b>The Public Utility Commission of Texas</b> By: <u>[Signature]</u> Name: <u>BRIAN H. LLOYD</u> Title: <u>EXECUTIVE DIRECTOR</u> Date: <u>12/31/12</u></p>	<p></p>

PUC General Law

Approved: [Signature]