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January 25, 2017

Hon. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: Louisville Gas and Electric Company and Kentucky Utilities Company;  
Docket No. ER17-\_\_\_\_-000

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act,<sup>1</sup> and Part 35 of the Federal Energy Regulatory Commission's ("FERC" or the "Commission") regulations,<sup>2</sup> Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively, "LG&E/KU"), hereby tender for filing a new Independent Transmission Organization Agreement ("ITO Agreement") between LG&E/KU and TransServ International, Inc. ("TranServ"). As discussed herein, the existing agreement between LG&E/KU and TranServ expires on August 31, 2017. The terms of the ITO Agreement being submitted with this filing are substantially similar to the terms of the currently effective ITO Agreement located at Attachment Q to the LG&E/KU Joint Pro Forma Open Access Transmission Tariff ("OATT"), with a few modifications discussed further herein.

LG&E/KU respectfully request an effective date for the new ITO Agreement of September 1, 2017. LG&E/KU respectfully request waiver of the Commission's 120-day prior notice limit for consideration of the ITO Agreement now, to ensure that the new agreement has been accepted for filing well in advance of that date.

## **I. BACKGROUND**

LG&E/KU are both public utilities and are wholly-owned subsidiaries of LG&E/KU Energy LLC, a public utility holding company and a wholly-owned subsidiary of PPL Corporation ("PPL"). PPL is headquartered in Allentown, Pennsylvania. LG&E is an electric and natural gas utility based in Louisville, Kentucky. LG&E currently serves customers in

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<sup>1</sup> 16 U.S.C. § 824d (2016).

<sup>2</sup> 18 C.F.R. Part 35 (2016).

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Louisville and 16 surrounding counties. KU is an electric utility, based in Lexington, Ky., serving 77 Kentucky counties and five counties in Virginia.

LG&E/KU withdrew from the Midwest Independent Transmission System Operator, Inc. (“MISO”) regional transmission organization (“RTO”) in 2006.<sup>3</sup> As a means of addressing certain market power concerns that had previously been addressed by LG&E/KU’s participation in the RTO, LG&E/KU proposed to utilize an ITO.<sup>4</sup> The ITO administers the terms of the OATT and processes transmission service and generator interconnection requests, while LG&E/KU, in their role as the Transmission Owner, provide the actual service to customers.

LG&E/KU selected Southwest Power Pool, Inc. (“SPP”) as the first ITO for the LG&E/KU system. LG&E/KU withdrew from MISO on September 1, 2006, and began working with SPP as the ITO. On August 30, 2011, LG&E/KU requested Commission approval of a new ITO agreement with TranServ, to be effective when SPP’s agreement terminated on August 31, 2012.<sup>5</sup> LG&E/KU proposed that TranServ, together with its subcontractor MAPPCOR, perform the functions that SPP had previously performed as the ITO.<sup>6</sup> By order dated December 15, 2011, the Commission conditionally accepted TranServ as the new ITO, effective September 1, 2012.<sup>7</sup> Subsequently, in 2015, MAPPCOR tendered its Notice of Contract Termination to TranServ, effective August 31, 2015. On September 1, 2015, TranServ assumed all duties that were initially subcontracted to MAPPCOR under the terms of the ITO Agreement.<sup>8</sup>

TranServ’s current ITO contract expires on August 31, 2017. LG&E/KU and TranServ have negotiated and executed a new ITO Agreement, which lays out the terms and conditions pursuant to which TranServ will perform the ITO functions under the OATT, beginning September 1, 2017.

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<sup>3</sup> *Louisville Gas and Elec. Co., et al.*, 114 FERC ¶ 61,282 (2006).

<sup>4</sup> *Id.* at PP 66, 80.

<sup>5</sup> *Louisville Gas and Elec. Co.*, Docket Nos. ER11-4396-000 and EC98-2-000, Filing of Replacement ITO Proposal (Aug. 30, 2011).

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Louisville Gas and Elec. Co.*, 137 FERC ¶ 61,195 (2011).

<sup>8</sup> *Louisville Gas and Elec. Co.*, Docket No. ER15-1901-000, Filing of Revised Attachment Q ITO Agreement (June 11, 2015).

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## II. DESCRIPTION OF THE PROPOSED ITO AGREEMENT AND MODIFICATIONS FROM THE CURRENTLY EFFECTIVE VERSION

The new ITO Agreement with TranServ continues many of the terms of the existing agreement. For example, TranServ will continue perform its duties in an independent, fair, and nondiscriminatory manner, in accordance with Good Utility Practice, the terms and conditions of the OATT, all applicable laws and regulatory requirements (including reliability standards), and any methodologies, process, or procedures that LG&E/KU may develop to ensure system reliability and legal/regulatory compliance.<sup>9</sup> TranServ will also continue to coordinate with Tennessee Valley Authority in its role as the Reliability Coordinator for LG&E/KU's system.<sup>10</sup> However, TranServ and LG&E/KU have agreed to some modifications to the ITO Agreement in order to clarify their respective rights and obligations moving forward:

- TranServ will cooperate with all reasonable requests by LG&E/KU for information, interviews with TranServ personnel, or other support that may be needed to investigate possible FERC, NERC or other compliance violations or prepare for or respond to compliance-related audits, self-certifications, and other inquiries by Regulatory Authorities (whether internal or external).<sup>11</sup>
- TranServ will be prohibited from hiring current or former Company employees until at least one (1) year subsequent to the Company employee's separation from Company. Likewise, Company is prohibited from hiring current or former TranServ employees until one (1) year subsequent to the TranServ employee's separation from TranServ.
- TranServ shall provide prompt notice of new TranServ Personnel or TranServ Designees to Company to assure new persons undergo FERC Standards of Conduct training within the first thirty (30) days of their employment with TranServ.
- Under the new ITO Agreement Compensation for TranServ will be \$2,479,543.56 (subject to increases or decreases if there are changes to the services that TranServ provides, as detailed in Section 5 of Appendix A to the ITO Agreement) for the first year of service.<sup>12</sup> This amount will increase 1.5% for each Contract Year under the contract, rather than a 2.5% annual increase under the currently-effective contract.<sup>13</sup> LG&E/KU will also reimburse

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<sup>9</sup> ITO Agreement at Section 1.3.

<sup>10</sup> ITO Agreement at Section 1.2.

<sup>11</sup> *Id.*

<sup>12</sup> ITO Agreement at Section 3.1.

<sup>13</sup> *Id.*

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TranServ for certain out-of-pocket costs (such as legal support or travel and lodging related to performance of the ITO services).<sup>14</sup>

- The new ITO agreement has removed the provisions which previously obligated LG&E/KU to pay TranServ a true-up payment if TranServ did not receive a minimum level of revenue for System Impact Studies or Interconnection Feasibility Studies.<sup>15</sup>
- The term of the new ITO Agreement will begin on September 1, 2017.<sup>16</sup> Once effective, the ITO Agreement will continue for an initial term of five years, with additional one-year term extensions.<sup>17</sup> The parties have added a new provision stating that three hundred and sixty days prior to the conclusion of the initial term either party may notify the other, in writing, of a desire to amend terms or pricing of the ITO Agreement for the subsequent terms.<sup>18</sup> If no such amendment is agreed upon by 180 days prior to the beginning of the first subsequent term, the ITO Agreement will terminate on the later of (i) the conclusion of the initial term, as defined above, or (ii) receipt of the required regulatory approvals.<sup>19</sup> The ITO Agreement may be terminated at the end of a term upon 180 days' notice by either party,<sup>20</sup> on the fifth anniversary of the agreement's effective date.<sup>21</sup>
- The parties have added a provision regarding early termination, stating that LG&E/KU may terminate the ITO Agreement if the guaranty that TranServ executed November 29, 2016 in favor of LG&E/KU is terminated, and TranServ does not provide a satisfactory replacement guaranty.<sup>22</sup>
- Appendix A to the ITO Agreement, which details the specific duties for TranServ to carry out as the ITO, remains largely unchanged. The only changes to that appendix are:
  - An addition to Section 3.1.5 regarding transmission planning, that both parties will communicate openly and in a timely manner; each will perform their respective work;

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<sup>14</sup> ITO Agreement at Section 3.2.

<sup>15</sup> *Compare* ITO Agreement at Section 3.3 *with* 2012 ITO Agreement at Section 3.3.

<sup>16</sup> ITO Agreement at Section 4.1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> ITO Agreement at Section 4.2.

<sup>21</sup> ITO Agreement at Section 4.3.

<sup>22</sup> ITO Agreement at Section 4.10.

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and both will continually work together to improve mutual and individual processes in a joint effort to assure work is completed pursuant to Company standards and deadlines.

- Clarifications to Section 5, that TranServ's compensation may be modified up or down as the result of modifications to the service functions, and that a change to a service function requiring a reduction in personnel qualifies as a Major Change requiring a Change Order prior to implementation.

### III. CONTENTS OF FILING, COMMUNICATIONS, EFFECTIVE DATE, WAIVER

In addition to this Transmittal Letter, LG&E/KU have included the following:

- An executed copy of the new ITO Agreement with TranServ;
- A blackline version of the ITO Agreement, showing the revisions to the 2012 ITO Agreement.

All communications with regard to this filing should be directed to the following persons:

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LG&E/KU propose an effective date of September 1, 2017 for the new ITO Agreement as contained in Attachment Q. LG&E/KU respectfully request waiver of the 120-day limitation for Section 205 filings to permit submission of the new ITO Agreement now. LG&E/KU believe that the terms of the ITO Agreement are just and reasonable; however, early consideration of the ITO Agreement will provide LG&E/KU and TranServ sufficient time to address any issues in the event the Commission requires any changes.

LG&E/KU respectfully request a waiver of any portion of Section 205 or 18 C.F.R. Part 35 that has not been satisfied by this filing.

LG&E/KU respectfully request that the Commission find that the new ITO Agreement with TranServ is just and reasonable, and accept it for filing for the reasons described herein.

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#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, LG&E/KU hereby respectfully request (1) that the Commission accept their proposed agreement with TranServ for filing pursuant to FPA Section 205 with an effective date of September 1, 2017, and (2) that the Commission grant waiver as requested herein.

Respectfully submitted,

*/s/ Jennifer Keisling*

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**AGREEMENTS BETWEEN THE TRANSMISSION OWNER AND THE ITO  
AND THE RELIABILITY COORDINATOR**

**Independent Transmission Organization  
Agreement**

**Between**

**Louisville Gas and Electric Company/  
Kentucky Utilities Company**

**And**

**TranServ International, Inc.**

**FINAL**

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## **INDEPENDENT TRANSMISSION ORGANIZATION AGREEMENT**

This Independent Transmission Organization ("ITO") Agreement (this "Agreement") is entered into on September 1, 2017, between Louisville Gas and Electric Company and Kentucky Utilities Company, corporations organized pursuant to the laws of the Commonwealth of Kentucky (collectively, "Company"), and TranServ International, Inc., an entity organized pursuant to the laws of Delaware ("TranServ"). Company and TranServ may sometimes be individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Company owns, among other things, an integrated electric transmission system ("Transmission System"), over which open access transmission service is provided to customers in the Company's Balancing Authority Area (as that term is defined by the North American Electric Reliability Corporation ("NERC"));

WHEREAS, the Company has an Open Access Transmission Tariff ("OATT") on file with the Federal Energy Regulatory Commission ("FERC");

WHEREAS, Company's current contract with TranServ is scheduled to expire on August 31, 2017;

WHEREAS, Company desires that, upon expiration of the current contract, TranServ will continue its work under this Agreement, as detailed herein;

WHEREAS, Company remains the owner of its Transmission System and shall be the ultimate provider of transmission services to Eligible Customers (as defined in the OATT), including the sole authority to amend the OATT;

WHEREAS, TranServ: (i) is independent from Company; (ii) possesses the necessary competence and experience to perform the functions provided for hereunder; and (iii) is willing to perform such functions under the terms and conditions agreed upon by the Parties as set forth in this Agreement; and

WHEREAS, as part of Company's goal to maintain independence in the operation of its Transmission System in order to prevent any exercise of transmission market power, Company entered into a Reliability Coordinator Agreement (the "Reliability Coordinator Agreement") with the Tennessee Valley Authority, NERC-certified reliability coordinator (the "Reliability Coordinator"), pursuant to which the Reliability Coordinator provides to Company certain required reliability functions.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### **Section 1 - Services to be Provided; Standards of Performance**

1.1 Services. TranServ shall perform, or cause to be performed, the services described in Appendix A hereto as well as any obligations expressly assigned to the ITO under the OATT ("ITO Services") during the Term in accordance with the terms and conditions of this

Agreement, subject to modification pursuant to Section 1.4 hereto.

**1.2 Coordination with Reliability Coordinator.** In conjunction with its performance of ITO Services, TranServ shall coordinate and cooperate with the Reliability Coordinator in accordance with the terms of the OATT and all NERC and SERC Reliability Corporation (“SERC”) requirements. TranServ shall provide to the Reliability Coordinator, subject to the terms and conditions of this Agreement, including TranServ’s obligations with respect to Confidential Information in Section 10, any information that the Reliability Coordinator may reasonably request in order to carry out its functions under the Reliability Coordinator Agreement, which agreement is included in the OATT.

**1.3 TranServ Performance: Compliance.**

**1.3.1 Performance.** TranServ, TranServ Personnel and any TranServ Designee (as defined in Section 17.5) shall perform TranServ’s obligations (including ITO Services) under this Agreement:

(a) in an independent, fair, and nondiscriminatory manner; and

(b) in accordance with:

(i) any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition (“Good Utility Practice”). Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act Section 2 14(a)(4);

(ii) the terms and conditions of the OATT;

(iii) all applicable laws and the requirements of federal and state regulatory authorities, including the Kentucky Public Service Commission (“KPSC”), Department of Energy (“DOE”), FERC, NERC, SERC, and the North American Electric Standards Board (“NAESB”) (collectively, “Regulatory Authorities”); and in fulfilling this requirement in this subsection (iii), TranServ will cooperate with all reasonable requests by Company for information, interviews with TranServ personnel, or other support that may be needed to investigate possible FERC, NERC or other compliance violations or prepare for or respond to compliance-related audits, self-certifications, and other inquiries by Regulatory Authorities (whether internal or external); and

(iv) any methodologies, processes, or procedures relating to ITO Services which Company may develop and which Company determines are necessary or appropriate to ensure safe and reliable system operations and compliance with all applicable laws and the applicable requirements of Regulatory Authorities.

**1.4 Changes to ITO Services.** The Parties agree that all changes to ITO Services resulting from legal and regulatory developments, as well as Company requests, shall be assessed using a

change order process. This process will include a written assessment of impacts to ITO Services consistent with Section 5 of Appendix A. Changes will be implemented only after mutual execution of a change document, which may be titled a Change Order or an Amendment. If the Parties are unable to agree on whether a change constitutes a “Minor Change,” or a “Major Change,” as those terms are used in Section 5 of Appendix A, such Dispute shall be resolved in accordance with Section 3.6.

## **Section 2 - Independence and Standards of Conduct**

**2.1 TranServ Personnel.** All ITO Services shall be performed by staff members of TranServ (“TranServ Personnel”) or TranServ Designees. No TranServ Personnel or TranServ Designee shall also be employed by Company or any of its Affiliates (as defined in FERC’s regulations, 18 C.F.R. § 35.34(b)(3) (2011)). TranServ, TranServ Employees, and TranServ Designees shall (i) be Independent of and (ii) shall not discriminate against Company, any of its Affiliates, or any Tariff Participant. For purposes of this Agreement: (a) “Independent” shall mean that TranServ, TranServ Personnel, and any TranServ Designees are not subject to the control of Company, its Affiliates or any Tariff Participant, and have full decision-making authority to perform all ITO Services in accordance with the provisions of this Agreement. Any TranServ Personnel or TranServ Designee owning securities in Company, its Affiliates or any Tariff Participant shall divest such securities within six (6) months of first being assigned to perform such ITO Services, provided that nothing in this Section 2.1 shall be interpreted or construed to preclude any such TranServ Personnel or TranServ Designee from indirectly owning securities issued by Company, its Affiliates or any Tariff Participant through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted toward the electric industry or the electric utility industry or any segment thereof) under which the TranServ Personnel or the TranServ Designee does not control the purchase or sale of such securities. Participation by any TranServ Personnel or TranServ Designee in a pension plan of Company, its Affiliates or any Tariff Participant shall not be deemed to be a direct financial interest if the plan is a defined-benefit plan that does not involve the TranServ Personnel’s or TranServ Designee’s ownership of the securities; and (b) “Tariff Participant” shall mean Company Transmission System customers, interconnection customers, wholesale customers, affected transmission providers, any Market Participant (as defined in FERC’s regulations, 18 C.F.R. § 35.34(b)(2) (2011)) and similarly qualified third parties within the Company Balancing Authority Area. For the avoidance of doubt, Company shall have no veto authority over the selection of TranServ Personnel or TranServ Personnel matters, including TranServ’s appointment of a TranServ Project Manager (as provided in Section 8.2) except that the Company and TranServ hereby agree that TranServ shall be prohibited from hiring current or former Company employees until at least one (1) year subsequent to the Company employee’s separation from Company. Likewise, Company is prohibited from hiring current or former TranServ employees until one (1) year subsequent to the TranServ employee’s separation from TranServ.

**2.2 Standards of Conduct Treatment.** All TranServ Personnel and TranServ Designees performing work under this Contract shall be treated, for purposes of the FERC’s Standards of Conduct (18 C.F.R. Part 358), as transmission function employees. All restrictions relating to information sharing and other relationships between marketing function employees and transmission function employees, as those terms are defined in the Standards of Conduct, including the non-discrimination requirements contained therein, shall apply to TranServ Personnel and TranServ Designees performing work under this Contract, or likely to become privy to transmission function information. Said TranServ Personnel and TranServ Designees

shall participate in any Standards of Conduct training that the Company may request for compliance purposes. TranServ shall provide prompt notice of new TranServ Personnel or TranServ Designees to Company to assure new persons are trained within the first thirty (30) days of their employment with TranServ.

### **Section 3 - Compensation; Billing and Payment; Performance Review**

3.1 **Compensation for Services.** Company shall pay to TranServ an annual fee for performance of the ITO Services ("**Annual Fee**"). The Annual Fee (subject to increases or decreases in accordance with **Section 5 of Appendix A**) shall be \$2,479,543.56 for the first Contract Year and shall escalate by one and five-tenths percent (1.5%) of the prior year's Annual Fee for each Contract Year thereafter.

3.2 **Out-of-Pocket Costs.** Company shall reimburse TranServ for actual out-of-pocket third party costs and expenses, without markup, for (a) regulatory legal support that is reasonably allocable to TranServ's performance of ITO Services, provided that in no event shall Company reimburse TranServ for legal fees associated with any actual or potential Dispute under this Agreement, (b) travel and lodging that are reasonably allocable to TranServ's performance of ITO Services and (c) setting up regular stakeholder meetings (collectively, (a), (b) and (c) are "**Out-of-Pocket Costs**"); provided, however, that all Out-of-Pocket Costs subject to reimbursement under this **Section 3.2** must be reviewed and approved by Company prior to TranServ incurring such expense.

#### 3.3 **Payment.**

3.4.1 **Monthly Payment.** TranServ shall deliver to Company monthly invoices by regular mail, facsimile, electronic mail or such other means as the Parties agree. Such invoices shall set forth (i) one-twelfth (1/12) of the Annual Fee for each month in advance, and (ii) any Out-of-Pocket costs incurred during the previous month, provided however, that travel expenses occurring on the last three (3) days of each month may be carried over to future invoices for ease of administration. Company shall make payment of the amount invoiced by wire transfer in immediately available funds to an account specified by TranServ not later than the thirtieth (30<sup>th</sup>) day after receipt of the invoice, unless such day is not a business day, in which case on the next business day. All such payments shall be deemed made when said wire transfer is received by TranServ. Overdue payments shall accrue interest calculated at the FERC interest rate as defined in 18 C.F.R. §35.19a(2)(iii)(A) (2011) ("**FERC Interest Rate**").

#### 3.4 **Annual Review.**

3.4.1 **Annual Review.** Commencing at the end of each Contract Year, no later than sixty (60) days after the end of each Contract Year, TranServ shall determine and deliver to Company a calculation of TranServ's actual labor in providing ITO Services for the preceding Contract Year ("**Annual Labor**"). The Annual Labor calculation shall detail the job title and number of full-time employees assigned to ITO Services, and the number of hours spent in performing ITO Services. The Annual Labor shall also include the hours for any tasks which TranServ outsourced to TranServ Designees.

#### 3.5 **Compensation Disputes.** Notwithstanding the Dispute resolution provisions in **Section**

**8.3**, for any Disputes concerning compensation under this **Section 3**, Company shall timely file notice of such Dispute with FERC and request that FERC resolve such Dispute. Transerv retains the authority to file notice with FERC of any such Dispute if it so desires. If either Party in good faith disputes any invoice submitted by the other Party pursuant to this Agreement, then the disputing Party (i) shall timely pay the other Party the entire invoiced amount and (ii) shall furnish the other Party with a written explanation specifying the amount of and the basis for the Dispute. Within twenty (20) days after resolution of such Dispute, the Party owing money shall pay the other Party the amount owed, if any, together with interest calculated at the FERC Interest Rate.

#### **Section 4 - Term and Termination**

**4.1 Term.** The initial term of this Agreement shall begin on September 1, 2017 (“**Commencement Date**”), and shall continue for five (5) years thereafter (“**Initial Term**”). At the conclusion of the Initial Term, this Agreement shall automatically extend for successive one (1) year terms (each a “**Subsequent Term**”), unless terminated by either Party in accordance with the terms of this Agreement. Three hundred and sixty (360) days prior to the conclusion of the Initial Term either Party may notify the other, in writing, of a desire to amend terms or pricing of this Agreement for the Subsequent Terms. If such amendment is not agreed upon by both parties 180 days prior to the beginning of the first Subsequent Term, the Amendment shall not automatically extend and will terminate on the later of i) the conclusion of the Initial Term, as defined above, or ii) receipt of the regulatory approvals required under **Section 4.5**. The Initial Term or any Subsequent Terms are each referred to herein as a “**Term**.” For the purposes of this Agreement, a “**Contract Year**” shall begin on the Commencement Date or anniversary thereof and conclude twelve (12) months thereafter.

**4.2 Termination by Either Party.** This Agreement may be terminated by either Party at the end of a Term upon prior one hundred eighty (180) days written notice to the other Party, which termination shall be effective upon the later of (i) one hundred eighty (180) days after the date of such written notice, or (ii) receipt of the regulatory approvals required under **Section 4.5**.

#### **4.3 Immediate Termination.**

**4.3.1 Termination for Cause.** Subject to **Section 4.5**, either Party may terminate this Agreement upon prior written notice thereof to the other Party if:

- (a) **Material Failure or Default.** The other Party fails, in any material respect, to comply with, observe or perform, or defaults, in any material respect, in the performance of the terms and conditions of this Agreement, and such failure or default remains uncured for thirty (30) days after written notice thereof, provided that such failure or default is susceptible to cure and the other Party is exercising reasonable diligence to cure such failure or default;
- (b) **Pattern of Failure.** It determines, in its reasonable discretion, that there has been a pattern of failure by the other Party to comply with the standards of performance set forth in **Section 1.3.1**, whether or not such failure is material;
- (c) **Gross Negligence, Willful Misconduct or Fraud.** The other Party commits gross negligence, willful misconduct or fraud in the performance of its obligations under this Agreement;

(d) **Material Misrepresentation.** Any representation made by the other Party hereunder shall be false or incorrect in any material respect when made and such misrepresentation is not cured within thirty (30) days of such discovery or written notice thereof, or is incapable of cure;

(e) **Bankruptcy.** The other Party: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due; or

(f) **Dissolution.** The other Party dissolves or is dissolved or its legal existence is otherwise terminated.

4.3.2 **Immediate Termination Not For Cause.** Subject to Section 4.5, Company may terminate this Agreement upon thirty (30) days prior written notice thereof to TranServ if:

(a) **Failure to Negotiate Amendment.** The Parties are unsuccessful in negotiating an amendment or amendments to this Agreement pursuant to Section 17.9;

(b) **Regulatory Changes/Modifications.** A Regulatory Authority makes any material changes, modifications, additions, or deletions to this Agreement, unless both Parties agree to such changes, modifications, additions, or deletions;

(c) **Failure to Receive Regulatory Approval.** Prior to the Commencement Date, FERC rejects this Agreement or Company's selection of TranServ as the ITO;

(d) **RTO.** Company joins a regional transmission organization ("RTO"); or

(e) **Extended Force Majeure.** A Party is excused because of Force Majeure (as defined in Section 11) for more than thirty (30) days from performing any of its material obligations under this Agreement.

4.4 **Termination for Lack of Independence.** Subject to Section 4.5, Company may terminate this Agreement upon prior written notice thereof to TranServ if FERC or the KPSC issues a final order that declares that TranServ lacks independence from Company and TranServ cannot obtain independence in a reasonable manner or time period.

4.5 **Regulatory Approval.** No termination of this Agreement shall be effective until approved by FERC and the KPSC. Notice of termination provided pursuant to Sections 4.3 and 4.4 shall become effective immediately upon approval by FERC and the KPSC.

4.6 **Return of Materials.** Upon any termination of this Agreement TranServ shall timely and

in an orderly manner turn over to Company all materials that were prepared or developed pursuant to this Agreement prior to termination, and return or destroy, at the option of Company, all Data and other information supplied by Company to TranServ or created by TranServ on behalf of Company.

4.7 Survival. All provisions of this Agreement which are by their nature or terms intended to survive the termination of this Agreement, including the obligations set forth in Section 7 and Section 10, shall survive termination of this Agreement.

4.8 Compensation for Early Termination.

4.8.1 If Company terminates this Agreement before the end of a Term pursuant to Section 4.3.2 (a), (b), (d) or (e), then Company shall pay to TranServ the Annual Fee(s) through the longer of the end of the Contract Year or for six (6) months subsequent to the date of termination, which fees shall be accelerated hereunder for this purpose, plus any unpaid Out-of-Pocket Costs that TranServ has incurred through the date of any such termination. In the event that this Section 4.8.1 should trigger an acceleration of Annual Fee(s) that would otherwise span multiple years, such fees paid by Company to TranServ shall not include any escalation of one and five-tenths percent (1.5%) as described in Section 3.1 that had not yet been previously applied to the Annual Fee(s).

4.8.2 If Company terminates this agreement before the end of the Term, and such termination is for cause pursuant to Section 4.3.1, then Company shall only be liable for TranServ's Out-of-Pocket Costs incurred pursuant to contracts which extend beyond any early termination date.

4.9 Post-Termination Services. Commencing on the date that any termination becomes effective ("Termination Date") and continuing for up to one hundred eighty (180) days thereafter, TranServ shall (a) provide ITO Services (and any replacements thereof or substitutions therefor), to the extent Company requests such ITO Services to be performed, and (b) cooperate with Company in the transfer of ITO Services (collectively, the "Post-Termination Services") as such services are authorized under a separate agreement between the Parties. TranServ shall, upon Company's request, provide the Post-Termination Services at a cost to be negotiated and mutually agreed to at that time. The quality and level of performance of ITO Services by TranServ shall not diminish. After the expiration of the Post-Termination Services, TranServ shall answer questions from Company regarding ITO Services on an "as needed" basis at TranServ's then-standard billing rates.

4.10 Termination for Guaranty Termination. A guaranty with Open Access Technology International, Inc., in favor of Company and with TranServ as a counterparty was executed (November 29, 2016) (hereinafter "the Guaranty"). Subject to Section 4.5, Company may terminate this Agreement if the Guaranty is terminated and TranServ does not provide a replacement Guaranty determined, by Company, to be satisfactory.

## Section 5 - Data Management and Intellectual Property

5.1 Supply of Data. During the Term, Company shall supply to TranServ, and/or grant

TranServ access to all Data that TranServ requests and that TranServ believes is necessary to perform its duties and obligations under this Agreement, including ITO Services. The Parties shall agree upon the initial format and manner in which such Data shall be provided. For purposes of this Agreement, “Data” means all information, text, drawings, diagrams, models, images or sounds which are embodied in any electronic or tangible medium and which (a) are supplied or in respect of which access is granted to TranServ by Company under this Agreement, which shall be Company’s Data, (b) are prepared, stored or transmitted by TranServ solely on behalf of Company, which shall be Company’s Data; or (c) are compiled by TranServ by aggregating Data owned by Company and Data owned by third parties, which shall be TranServ’s Data.

5.2 Property of Each Party. Each Party acknowledges that the other Party’s Data and the other Party’s software, base data models and operating procedures for software or base data models (“Processes”) are the property of such other Party and agrees that it will do nothing inconsistent with such ownership, including preserving all intellectual property and/or proprietary rights in such other Party’s Data and Processes as provided in Section 6.

5.3 Data Integrity. Each Party shall reasonably assist the other Party in establishing measures to preserve the integrity and prevent any corruption or loss of Data, and the Parties shall reasonably assist each other in the recovery of any corrupted or lost Data. Each Party shall reasonably retain and preserve any of the other Party’s Essential Data that are supplied to it during the Term. “Essential Data” means any Data that is reasonably required to perform ITO Services under this Agreement and that must be retained and preserved according to any applicable law, regulation, reliability criteria, or Good Utility Practice. Each Party shall exercise commercially reasonable efforts to preserve the integrity of the other Party’s Data that are supplied to it during the Term, in order to prevent any corruption or loss of the other Party’s Data.

5.4 Confidentiality. Each Party’s Data shall be treated as Confidential Information in accordance with the provisions of Section 10.

## **Section 6 - Intellectual Property.**

6.1 Ownership. All inventions, discoveries, processes, methods, designs, drawings, blueprints, information, works of authorship, or the like, whether or not patentable or copyrightable (collectively, “Intellectual Property”), which TranServ first conceives, develops, or begins to develop, either alone or in conjunction with Company or others, with respect to ITO Services under this Agreement, shall be jointly owned by Company and TranServ, and each party shall have the right to use such intellectual property unless specifically otherwise specified on a change document hereunder.

6.2 Royalties and License Fees. Unless the Parties otherwise agree in writing, TranServ shall procure and pay all royalties and license fees which may be payable on account of ITO Services or any part thereof. In case any part of ITO Services is held in any suit to constitute infringement and its use is enjoined, TranServ within a reasonable time shall, at the election of Company and as Company’s exclusive remedy hereunder, either (a) secure for Company the perpetual right to continue the use of such part of ITO Services by procuring for Company a royalty-free license or such other permission as will enable TranServ to secure the suspension of any injunction, or (b) replace at TranServ’s own expense such part of ITO Services with a non-



infringing part or modify it so that it becomes non-infringing (in either case with changes in functionality that are acceptable to Company).

## **Section 7 - Indemnification and Limitation of Liability**

**7.1 Company Indemnification.** Subject to the limitations specified in Section 7.6, Company shall indemnify, release, defend, reimburse and hold harmless TranServ and its directors, officers, employees, principals, representatives and agents (collectively, the "TranServ Indemnified Parties") from and against any and all third party claims (including claims of bodily injury or death of any person or damage to real and/or tangible personal property), demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, costs and expenses, and attorney fees, (each, an "Indemnifiable Loss") asserted against or incurred by any of the TranServ Indemnified Parties arising out of, resulting from or based upon TranServ performing its obligations pursuant to this Agreement, provided, however, that in no event shall Company be obligated to indemnify, release, defend, reimburse or hold harmless the TranServ Indemnified Parties from and against any Indemnifiable Loss which is caused by the negligence, the gross negligence or willful misconduct of any TranServ Indemnified Party.

**7.2 TranServ Indemnification.** Subject to the limitations specified in Section 7.6, TranServ shall indemnify, release, defend, reimburse and hold harmless Company and its directors, officers, employees, principals, representatives and agents (collectively, the "Company Indemnified Parties") from and against any and all Indemnifiable Losses asserted against or incurred by any of the Company Indemnified Parties arising out of, resulting from or based upon TranServ's or a TranServ Designee's negligence, gross negligence, or willful misconduct, provided, however, that in no event shall TranServ be obligated to indemnify, release, defend, reimburse or hold harmless any Company Indemnified Parties from and against any Indemnifiable Loss which is caused by the negligence, gross negligence or willful misconduct of any Company Indemnified Party.

**7.3 Regulatory Indemnification.** Subject to the limitations specified in Section 7.6, TranServ shall indemnify, release, defend, reimburse and hold harmless any Company Indemnified Parties from and against all regulatory penalties and sanctions (including penalties or sanctions levied by a Regulatory Authority) arising out of, resulting from or based upon TranServ breach of this Agreement, specifically including Section 1.3.1 hereto, provided, however, that in no event shall TranServ be obligated to indemnify, release, defend, reimburse or hold harmless any Company Indemnified Parties from and against any penalty or sanction which is caused by the gross negligence or willful misconduct of any Company Indemnified Party.

**7.4 Cooperation Regarding Claims.** If an Indemnified Party (which for purposes of this Section 7.4 shall mean an TranServ Indemnified Party or a Company Indemnified Party) receives notice or has knowledge of any Indemnifiable Loss that may result in a claim for indemnification by such Indemnified Party against an Indemnifying Party (which for purposes of this Section 7.4 shall mean Company or TranServ) pursuant to this Section 7, such Indemnified Party shall as promptly as possible give the Indemnifying Party written notice of such Indemnifiable Loss, including a reasonably detailed description of the facts and circumstances relating to such Indemnifiable Loss, a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its claim for indemnification with respect thereto. Failure to promptly give such written notice or to provide such information and documents shall not

relieve the Indemnifying Party from the obligation hereunder to respond to or defend the Indemnified Party against such Indemnifiable Loss unless and only to the extent such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party against such Indemnifiable Loss. Except for indemnification for penalties and sanctions under Section 7.3, the Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party in accordance with this Section 7, shall be entitled to assume the defense or to represent the interest of the Indemnified Party with respect to such Indemnifiable Loss, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost. If and to the extent that the defense or settlement of any Indemnifiable Loss is reasonably likely to involve injunctive, equitable or prospective relief or materially and adversely affect the Indemnified Party's business or operations other than as a result of money damages or other money payments assumed by the Indemnifying Party, then such defense or settlement will be subject to the reasonable approval of the Indemnified Party. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants and participating in its own defense at its own cost and expense.

**7.5 Release and Indemnification Regarding Liens.** TranServ hereby releases and/or waives for itself and its successors in interest, and for all TranServ Designees and their successors in interest, any and all claims or right of mechanics or any other type of lien to assert and/or file upon Company's or any other party's property or any part thereof as a result of performing ITO Services. TranServ shall execute and deliver to Company such documents as may be required by applicable laws (*i.e.*, partial and/or final waivers of liens and/or affidavits of indemnification) to make this release effective and shall give all required notices to TranServ Designees with respect to ensuring the effectiveness of the foregoing releases against those parties. TranServ shall secure the removal of any lien that TranServ has agreed to release in this Section 7.5 within five (5) working days of receipt of written notice from Company to remove such lien. If not timely removed, Company may remove the lien and charge all costs and expenses including legal fees (for inside and/or outside legal counsel) to TranServ including, without limitation, the costs of bonding off such lien. Company, in its sole discretion, expressly reserves the right to off-set and/or retain any reasonable amount due to TranServ from payment of any one or more of TranServ's invoices upon Company having actual knowledge of any threatened and/or filed liens and/or encumbrances that may be asserted and/or filed by any TranServ Designee and/or third party with respect to the ITO Services, with final payment being made by Company only upon verification that such threatened and/or filed liens and/or encumbrances have been irrevocably satisfied, settled, resolved and/or released (as applicable), and/or that any known payment disputes concerning the ITO Services involving TranServ and any TranServ Designees have been resolved so that no actions, liens and/or encumbrances of any kind or nature will be filed against Company and/or Company's property.

**7.6 Limitation of Liability.** Other than as provided in Section 7.3, neither Party shall be liable to the other for any special, punitive, or consequential damages arising out of ITO Services, even if advised of the possibility of such damages. Company agrees that ITO Services are not consumer goods for purposes of international, U.S. Federal or U.S. state warranty laws. Indemnification pursuant to Sections 7.1, 7.2, and 7.3, as well as any direct damages to Company arising out of a material breach of this Agreement shall be limited in the aggregate to the total amount of fees actually paid by Company to TranServ under this Agreement through the date that any penalty or judgment is assessed.

## **Section 8 - Contract Managers; Dispute Resolution**

**8.1 Company Contract Manager.** Company shall appoint an individual (the "Company Contract Manager") who shall serve as the primary Company representative under this Agreement. The Company Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of Company's obligations under this Agreement, and (b) be authorized to act for and on behalf of Company with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the Company Contract Manager may, upon written notice to TranServ, delegate such of his or her responsibilities to other Company employees, as the Company Contract Manager deems appropriate.

**8.2 TranServ Project Manager.** TranServ shall appoint, among TranServ Personnel, an individual (the "TranServ Project Manager") who shall serve as the primary TranServ representative under this Agreement. The TranServ Project Manager shall have overall responsibility for managing and coordinating the performance of TranServ obligations under this Agreement. Notwithstanding the foregoing, the TranServ Project Manager may, upon written notice to Company, delegate such of his or her responsibilities to other TranServ Personnel, as the TranServ Project Manager deems appropriate.

**8.3 Resolution of Disputes.** Any dispute, claim or controversy between the Parties arising out of or relating to this Agreement (each, a "Dispute") shall be resolved in accordance with the procedures set forth in this Section 8.3; provided, however, that this Section 8.3 shall not apply to Disputes arising from or relating to (a) the amount of compensation to be paid by Company pursuant to Section 3.1, which shall be resolved pursuant to Section 3.6, (b) confidentiality or intellectual property rights, in which case either Party shall be free to seek available legal or equitable remedies, or (c) alleged violations of the OATT, in which case either Party shall be free to bring the Dispute to FERC.

**8.3.1 Notice of Dispute.** Each Party shall provide written notice to the other party of any Dispute, including a description of the nature of the Dispute.

**8.3.2 Dispute Resolution by Contract Managers.** Any Dispute shall first be referred to the Company Contract Manager and TranServ Project Manager, who shall negotiate in good faith to resolve the Dispute.

**8.3.3 Dispute Resolution by Executive Management Representatives.** If the Dispute is not resolved within fifteen (15) calendar days of being referred to the Company Contract Manager and the TranServ Project Manager pursuant to Section 8.3.2, then each Party shall have five (5) calendar days to appoint an executive management representative who shall negotiate in good faith to resolve the Dispute.

**8.3.4 Binding Arbitration.** If the Dispute is not resolved within ten (10) calendar days of being referred to executive management representatives, and the amount in dispute or potential damages exceeds \$250,000 USD, the Parties shall proceed in good faith to submit immediately the matter to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") as they may be amended from time to time (the "Arbitration Rules") subject to the following conditions:

(a) The Parties shall give due consideration to using the Expedited Procedures under

the Arbitration Rules in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration fees and costs.

(b) The Parties agree that three arbitrators will be used. Each Party will directly appoint one arbitrator of its choosing from a list of members from the National Roster (as that term is used in the Arbitration Rules) provided by the AAA pursuant to R-12, within ten (10) Days after receipt of such names. The two arbitrators so appointed shall select a third arbitrator from the National Roster to serve as chairperson.

(c) "Baseball" arbitration (in which each Party presents a proposed award or resolution and the actual award must be one of the two submitted), or close variants thereof, shall not be used.

(d) The arbitrators have no authority to appoint or retain expert witnesses for any purpose unless agreed to by the Parties.

(e) All arbitration fees and costs shall be borne equally, regardless of which Party prevails.

(f) Each Party shall bear its own costs of legal representation and witness expenses, unless the arbitrator(s) determines that one Party should bear some or all of the costs of legal representation and witness expenses of the other Party.

(g) The Parties waive any right of appeal or recourse to any court except to compel arbitration, to compel the appointment of arbitrators, to stay judicial proceedings pending arbitration, for an injunction pending determination by the arbitrators, for disqualification of arbitrators, for aid in furtherance of arbitration, to confirm the award, to enforce any judgment confirming the award, or in circumstances of fraud or failure to disclose information or documents required by the arbitrators.

(h) The decision or award of a majority of the arbitrators shall govern. The decision or award of the arbitrators shall be final and binding upon the Parties to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and shall be enforceable under the Federal Arbitration Act and applicable states' laws.

**8.3.5 Rights and Remedies.** If the Dispute is not resolved within ten (10) calendar days of being referred to executive management representatives, and the amount in dispute or potential damages does not exceed \$250,000 USD, each Party is free to pursue any rights or remedies it may have at law or equity.

**8.4 Rights Under FPA Unaffected.** Except as provided in Section 17.2 relating to the variation or amendment of this Agreement, nothing in this Agreement is intended to limit or abridge any rights that Company may have to file or make application before FERC under Section 205 of the Federal Power Act to revise any rates, terms or conditions of the OATT.

**8.5 Statute of Limitations; Continued Performance.** The Parties agree to waive the applicable statute of limitations during the period of time that the Parties are seeking to resolve a Dispute pursuant to Section 8.3, and the statute of limitations shall be tolled for such period. The Parties shall continue to perform their obligations under this Agreement during the

resolution of a Dispute.

## **Section 9 - Insurance**

**9.1 TranServ's Insurance Obligation.** During the Term, TranServ shall provide and maintain, and shall require TranServ Designees to provide and maintain, the following insurance (and, except with regard to Workers' Compensation, naming Company as additional insured and waiving rights of subrogation against Company and Company's insurance carrier(s)), and TranServ shall submit evidence of such coverage(s) of TranServ and any TranServ Designees to Company prior to the start of ITO Services. Furthermore, TranServ shall notify Company, prior to the commencement of ITO Services, of any threatened, pending and/or paid off claims to third parties, individually or in the aggregate, which otherwise affects the availability of the limits of such coverage(s) inuring to the benefit of Company as hereinafter specified:

**9.1.1 Workers' Compensation and Employer's Liability Policy,** which shall include provisions required by applicable law in the jurisdiction of location of workers.

**9.1.2 Employer's Liability (Coverage B) with limits of One Million Dollars (\$1,000,000) Bodily Injury by Accident, each Accident, \$1,000,000 Bodily Injury by Disease, each Employee, and including:**

- (a) a thirty (30) day cancellation clause; and
- (b) broad form all states endorsement.

**9.1.3 Commercial General Liability Policy,** which shall have minimum limits of One Million Dollars (\$1,000,000) each occurrence; One Million Dollars (\$1,000,000) Products/Completed Operations Aggregate each occurrence; One Million Dollars (\$1,000,000) Personal and Advertising Injury each occurrence, in all cases subject to Two Million Dollars (\$2,000,000) in the General Aggregate for all such claims, and including:

- (a) a thirty (30) day cancellation clause;
- (b) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by TranServ under this Agreement; and
- (c) Broad Form Property Damage.

**9.1.4 Commercial Automobile Liability Insurance** covering the use of all owned, non-owned, and hired automobiles, with a bodily injury, including death, and property damage combined single minimum limit of One Million Dollars (\$1,000,000) each occurrence with respect to TranServ's vehicles assigned to or used in performance of ITO Services under this Agreement.

**9.1.5 Umbrella/Excess Liability Insurance** with minimum limits of Two Million Dollars (\$2,000,000) per occurrence; Two Million Dollars (\$2,000,000) aggregate, to apply to employer's liability, commercial general liability, and automobile liability.

**9.1.6** To the extent applicable, if engineering or other professional services will be

separately provided by TranServ as specified in Appendix A, then Professional Liability Insurance with limits of Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, which insurance shall be either on an occurrence basis or on a claims made basis (with a retroactive date satisfactory to Company).

9.2 Quality of Insurance Coverage. The above policies to be provided by TranServ shall be written by insurance companies which are both licensed to do business in the state where ITO Services will be performed and either satisfactory to Company or having a Best Rating of not less than "A-". These policies shall not be materially changed or canceled except with thirty (30) days written notice to Company from TranServ and the insurance carrier. Evidence of coverage, notification of cancellation or other changes shall be mailed to: Attention: Manager, Supply Chain, LG&E and KU Services Company, P.O. Box 32020, Louisville, Kentucky 40232.

9.3 Implication of Insurance. Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements; however, Company shall not be obligated to review any of TranServ's certificates of insurance, insurance policies, or endorsements, or to advise TranServ of any deficiencies in such documents. Any receipt of such documents or their review by Company shall not relieve TranServ from or be deemed a waiver of Company's rights to insist on strict fulfillment of TranServ's obligations under this Agreement.

9.4 Other Notices. TranServ shall provide written notice of any accidents or claims in connection with ITO Services or this Agreement to Company's Manager, Risk Management at LG&E and KU Services Company, P.O. Box 32030, Louisville, Kentucky 40232.

## Section 10 - Confidentiality

10.1 Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean, in respect of each Party, all information and documentation of such Party, whether disclosed to or accessed by the other Party in connection with this Agreement and which is identified as Confidential Information, or which otherwise would be treated as confidential by the recipient, including confidential information provided by third-parties; provided, however, that the term "Confidential Information" shall not include information that: (a) is independently developed by the recipient, as demonstrated by the recipient's written records, without violating the disclosing Party's proprietary rights; (b) is or becomes publicly known (other than through unauthorized disclosure); (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (d) is already known by the recipient at the time of disclosure, as demonstrated by the recipient's written records, and the recipient has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements between the Parties entered into before the Commencement Date; or (e) is rightfully received by a Party free of any obligation of confidentiality.

10.2 Protection of Confidential Information. All Confidential Information shall be held in confidence by the recipient to the same extent and in at least the same manner as the recipient protects its own Confidential Information, and such Confidential Information shall be used only for purposes of performing obligations under this Agreement. Except as otherwise provided in Section 10.3, neither Party shall disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from, the other Party in any form to, or for the use or

benefit of, any person or entity without the owner of such information's prior written consent. Each Party shall be permitted to disclose relevant aspects of the other Party's Confidential Information to its officers, directors, agents, professional advisors, contractors, subcontractors (including TranServ Designees) and employees and to the officers, directors, agents, professional advisors, contractors, subcontractors and employees of its Affiliates (collectively, "Representatives"), to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations or the determination, preservation or exercise of its rights and remedies under this Agreement; provided, however, that the recipient shall take all reasonable measures to ensure that Confidential Information is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, directors, agents, professional advisors, contractors, subcontractors and employees. Recipient agrees to be liable for the wrongful actions of its Representatives under this Section 10.2. The obligations in this Section 10 shall not restrict any disclosure pursuant to any Regulatory Authority if such release is necessary to comply with valid laws, governmental regulations or final orders of regulatory bodies or courts; provided that, other than in respect of disclosures pursuant to Section 10.3, the recipient shall give prompt written notice to the disclosing Party in reasonable time to exercise whatever legal rights the disclosing Party may have to prevent or limit such disclosure. Further, the recipient shall cooperate with the disclosing Party in preventing or limiting such disclosure.

**10.3 Regulatory Requests for Confidential Information.** Notwithstanding anything in this Section 10 to the contrary, if a Regulatory Authority or its staff, during the course of an investigation or otherwise, requests Confidential Information from TranServ, TranServ shall provide the requested Confidential Information to the requesting Regulatory Authority or its staff within the time provided for in the request for information. In providing the Confidential Information to a Regulatory Authority or its staff, TranServ shall, consistent with 18 C.F.R. § 388.112 (2011) or any other applicable confidentiality regulation, request that the Confidential Information be treated as confidential and non-public by the Regulatory Authority and its staff and that the information be withheld from public disclosure. TranServ shall notify Company when it is notified by the Regulatory Authority or its staff that a request for public disclosure of, or decision to publicly disclose, Confidential Information has been received, at which time either TranServ or Company may respond before such Confidential Information is made public, pursuant to 18 C.F.R. § 388.112 or the applicable confidentiality regulation.

## **Section 11 - Force Majeure.**

**11.1 Force Majeure.** Neither Party shall be liable to the other Party for any failure or delay of performance hereunder due to an event which (i) is not reasonably foreseeable or within the reasonable control of the Party claiming Force Majeure (the "Claiming Party") or any Person over which the Claiming Party has control, (ii) was not caused by the acts, omissions, negligence, fault or delays of the Claiming Party or any person over whom the Claiming Party has control, (iii) is not an act, event or condition the risks or consequences of which the Claiming Party has expressly agreed to assume pursuant to this Agreement, and (iv) by the prompt exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided (collectively, (i) - (iv) are "Force Majeure"). Force Majeure shall include: acts of God; acts of the public enemy, war, hostilities, invasion, insurrection, riot, civil disturbance, or order of any competent civil or military government; explosion or fire; strikes or lockouts or other industrial action (excluding those of the Claiming Party unless such action is part of a wider industrial dispute materially affecting other employers); labor or material shortage; malicious acts, vandalism or sabotage; action or restraint by court order of any public or governmental authority

(so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action). Neither Party shall be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to Force Majeure, except for the obligation to pay any amount when due, provided that the Claiming Party:

11.1.1 gives prompt written notice to the other Party of the event or circumstance giving rise to the event of Force Majeure;

11.1.2 affords the other Party reasonable access to information about the event or circumstances giving rise to the event of Force Majeure;

11.1.3 takes commercially reasonable steps to restore its ability to perform its obligations hereunder as soon as reasonably practicable, provided that the Claiming Party shall not be obligated to take any steps that are not otherwise in accordance with Good Utility Practice; and

11.1.4 exercises commercially reasonable efforts to perform its obligations hereunder.

## **Section 12 - Reporting; Audit.**

### **12.1 Regulatory Reporting.**

12.1.1 TranServ shall have the authority to report in writing to FERC in respect of any compensation-related Dispute that arises between TranServ and Company pursuant to Section 3.6.

12.1.2 TranServ shall report in writing to FERC every six (6) months (commencing on the six (6) month anniversary of the Commencement Date and every six (6) months thereafter during the Term) in respect of (a) any concerns expressed by stakeholders and TranServ's response to same and (b) any issues or OATT provisions that hinder TranServ from performing its duties and obligations under this Agreement and the OATT.

12.1.3 In addition to the reports provided for above, TranServ shall make such other reports to Regulatory Authorities as may be required by applicable law and regulations or as may be requested by such Regulatory Authorities.

12.2 Books and Records. TranServ shall maintain full and accurate books and records pertinent to this Agreement, and TranServ shall maintain such books and records for a minimum of five (5) years following the expiration or early termination of this Agreement or longer if necessary to resolve a pending Dispute. Company will have the right, at reasonable times and under reasonable conditions, to inspect and audit, or have an independent third party inspect and audit, TranServ's operations, books, and records (a) to ensure compliance with this Agreement, including TranServ's performance of ITO Services in accordance with Section 1.3.1, (b) to verify any cost claims or other amounts due hereunder, and (c) to validate TranServ's internal controls with respect to the performance of ITO Services. TranServ shall maintain an audit trail, including all original transaction records and timekeeping records, of all financial and non-financial transactions and activities resulting from or arising in connection with this Agreement as may be necessary to enable Company or the independent third party, as applicable, to perform the foregoing activities. Company shall be responsible for any costs and expenses incurred in



connection with any such inspection or audit, unless such inspection or audit discovers that Company was charged inappropriate or incorrect costs and expenses, in which case, TranServ shall be responsible for a percentage of the costs and expenses incurred in connection with such inspection or audit equal to the percentage variance by which Company was charged inappropriate or incorrect costs and expenses. TranServ shall provide reasonable assistance necessary to enable Company or an independent third party, as applicable, to perform the foregoing activities and shall not be entitled to charge Company for any such assistance. Amounts incorrectly or inappropriately invoiced by TranServ to Company, whether discovered prior to or subsequent to payment by Company, shall be adjusted or reimbursed to Company by TranServ within twenty (20) days of notification by Company to TranServ of the error in the invoice.

### **Section 13 - Independent Contractor**

13.1 TranServ, in performing ITO Services, shall not act as an agent or employee of Company, but shall be and act as an independent contractor and, except as established in Section 1.3.1, shall be free to perform ITO Services by such methods and in such manner as TranServ may choose, doing everything necessary to perform such ITO Services properly and safely and having supervision over and responsibility for the safety and actions of its employees and the suitability of its equipment. TranServ Personnel and TranServ Designees shall not be deemed to be employees and/or agents of Company. TranServ agrees that if any portion of ITO Services are subcontracted to TranServ Designees, such TranServ Designees shall be bound by and observe the conditions of this Agreement to the same extent as required of TranServ. In such event, Company strongly encourages the use of Minority Business Enterprises, Women Business Enterprises and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Company recognizes as proper.

13.2 Notwithstanding any provision in this Agreement to the contrary, unless approved in writing by Company, TranServ shall not (and shall not permit any TranServ Personnel or TranServ Designee to):

13.2.1 Sell, lease, pledge, mortgage, encumber, convey, or make any license, exchange or other transfer, assignment or disposition of any property or assets of Company;

13.2.2 Enter into, amend, terminate, modify or supplement any contract or agreement (including any labor or collective bargaining agreement) on behalf, or in the name, of Company;

13.2.3 Except upon the approval of Company or pursuant to the direction of Company, take any action that would, to TranServ's knowledge: (a) invalidate any warranty that runs to Company under any contract or agreement; or (b) release any person or entity from its obligations under any contract or agreement with Company;

13.2.4 Make any warranty or representation on behalf of Company;

13.2.5 Except as contemplated under Section 7.4, settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of any claim, suit, debt, demand or judgment against or due by Company, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect

thereof to a judgment, or consent to the same;

13.2.6 Pledge the credit of Company in any way in respect of any commitments for which it has not received express written authorization from Company; or

13.2.7 Engage in any other transaction on behalf of Company not permitted under this Agreement.

**Section 14 - Taxes.**

Each Party shall be responsible for the payment of its own taxes, including taxes based on its net income, employment taxes of its employees, taxes on any property it owns or leases, and sales, use, gross receipts, excise, value-added or other transaction taxes. Sales and/or use taxes, that become applicable to services performed within Minnesota, shall be added to TranServ fees and compensation otherwise herein described.

**Section 15 - Notices.**

15.1 Notices. All notices, requests, consents and other communications required or permitted hereunder shall be in writing, signed by the Party giving such notice or communication, and shall be deemed given: (a) upon receipt, when mailed by U.S. certified mail, postage prepaid, return receipt requested; or (b) upon the next business day, when sent by overnight delivery, postage prepaid using a recognized courier service.

If to Company:

LG&E/KU  
VP, Transmission  
220 West Main St  
PO Box 32010  
Louisville, KY 40232

If to TranServ:

TranServ International, Inc.  
Contracts Administration  
3660 Technology Drive NE  
Minneapolis, MN 55418

15.2 Changes. Either Party may, from time to time, change the names, addresses, facsimile numbers or other notice information set out in Section 15.1 by notice to the other Party in accordance with the requirements of Section 15.1.

**Section 16 - Personnel and Work Conditions; NERC Requirements.**

16.1 Applicable Laws and Safety. TranServ agrees to protect TranServ Personnel and

TranServ Designees and be responsible for their performance of the ITO Services, and to protect Company's facilities, property, employees and third parties from damage or injury. TranServ shall at all times be solely responsible for complying with any and all applicable laws and facility rules relating to health and safety, in connection with ITO Services and for obtaining (but only as approved by Company) all permits and approvals necessary to perform ITO Services. Without limiting the foregoing, TranServ agrees to strictly abide by and observe all standards of the Occupational Safety & Health Administration ("OSHA") which are applicable to ITO Services, as well as Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy which are both hereby incorporated by reference (Contractor hereby acknowledges receipt of a copy of such Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy) and any other rules and regulations of the Company, all of which are provided to TranServ in writing and incorporated herein by reference. TranServ also agrees to review in good faith and execute any amendments and/or modifications that may be issued in the future by Company from time to time, with respect to Company's Contractor Code of Business Conduct and/or any of its related policies which are the subject of this Section 16, provided however, that TranServ shall not be obliged by such requirement if the requirements conflicts with an alternate regulatory code of conduct imposed on TranServ. In the event TranServ subcontracts any of ITO Services to a TranServ Designee, TranServ shall notify Company in writing of the identity of TranServ Designee before utilizing TranServ Designee. TranServ shall require any TranServ Designees to complete the safety and health questionnaire and checklists provided by Company and shall provide a copy of such documents to Company upon request. TranServ shall conduct, and require such TranServ Designees to conduct, safety audits and job briefings during performance of ITO Services as applicable. In the event such TranServ Designee has no procedure for conducting safety audits and job briefings, TranServ shall include TranServ Designee in its safety audits and job briefings. All applicable safety audits shall be documented in writing by TranServ and such TranServ Designees. TranServ shall provide documentation of any and all audits identifying safety deficiencies and concerns and corrective action taken as a result of such audits to Company semi-monthly. TranServ further specifically acknowledges, agrees and warrants that TranServ has complied, and shall at all times during the term of this Agreement, comply in all respects with all laws, rules and regulations relating to the employment authorization of TranServ Personnel including, but not limited to, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, whereby TranServ certifies to Company that TranServ has (a) properly maintained, and shall at all times during the term of this Agreement properly maintain all records required by Immigration and Customs Enforcement, such as the completion and maintenance of the Form I-9 for each TranServ employee; (b) that TranServ maintains and follows an established policy to verify the employment authorization of TranServ Personnel; (c) that TranServ has verified the identity and employment eligibility of all TranServ Personnel in compliance with all applicable laws; and (d) that TranServ is without knowledge of any fact that would render any TranServ Personnel or TranServ Designee ineligible to legally work in the United States. TranServ further acknowledges, agrees and warrants that any TranServ Designee shall be required to agree to these same terms as a condition to being awarded any subcontract for such ITO Services.

**16.2 Hazards and Training.** TranServ shall furnish adequate numbers of trained, qualified, and experienced TranServ Personnel suitable for performance of ITO Services. Such TranServ Personnel shall be skilled and properly trained to perform ITO Services and recognize all hazards

associated with ITO Services. Without limiting the foregoing, TranServ shall participate in any safety orientation or other of Company's familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Company.

**16.3 Drug and Alcohol.** TranServ shall develop and strictly comply with any and all drug and alcohol testing requirements as required by applicable laws. TranServ shall provide Company with a copy of its drug and alcohol testing requirements.

**16.4 NERC Reliability Standards.** The following additional provisions shall apply to the extent TranServ's performance of ITO Services requires physical or electronic access to areas or assets which are located within physical security perimeters as defined by NERC's Reliability Standards for the Bulk Electric Systems of North America (collectively, the "NERC Standards"), including without limitation any Company data center or control center. In the event of TranServ's non-compliance with the NERC Standards referenced in this Section 16.4, Company shall notify TranServ in writing of the non-compliance and specify appropriate remedial actions.

**16.4.1 Information Protection.** Without compromising the confidentiality provisions in Section 10, TranServ shall at all times comply with the Company's information protection program(s) as defined by CIP-003, R4. Among the information protected by this program are: (i) all operational procedures; (ii) lists of critical cyber assets; (iii) network topology or similar diagrams; (iv) floor plans of computing centers that contain critical cyber assets; (v) equipment layouts of critical cyber assets; (vi) disaster recovery plans; (vii) incident response plans; and (viii) security configuration information. TranServ shall protect this protected information from disclosure consistent with the program.

**16.4.2 Access Revocation.** TranServ shall immediately advise appropriate Company's management if any TranServ Personnel or TranServ Designees who have key card access to a Company restricted area or electronic access to a protected system no longer require such access.

**16.4.3 Training.** If any TranServ Personnel require key card access to a Company restricted area or electronic access to a protected system, TranServ shall ensure that such personnel complete, and retake as requested, all necessary NERC training as requested by Company.

**16.4.4 Personnel Risk Assessment.** If any TranServ Personnel require key card access to a Company restricted area or electronic access to a protected system, TranServ shall ensure that Company receives necessary waivers and information from TranServ Personnel to complete, and repeat as necessary, such background checks as requested by Company.

**16.4.5 Continuing Obligations.** TranServ further acknowledges that its compliance with the NERC Standards referenced in this Section 16.4 is a continuing obligation during and after the Term. Upon written notice to TranServ, Company shall have the absolute right to audit and inspect any and all information regarding TranServ's compliance with this Section 16.4, and/or to require confirmation of the destruction of any documentation received from or regarding Company. TranServ is encouraged to contact Company's Compliance Department pursuant to Section 16.5 to ensure TranServ understands and

complies with this Section 16.4.

**16.5 Compliance Department.** The Company has a Compliance Department. Should TranServ have actual knowledge of violations of any of the herein stated policies of conduct in this Section 16, or in standards of performance detailed in Section 1.3.1, or have a reasonable basis to believe that such violations have occurred, whether by TranServ Personnel or a TranServ Designee, TranServ has an affirmative obligation to immediately report, at least on an anonymous basis, any such known violations to the Company's Office of Compliance in care of Director, Compliance and Ethics, LG&E/KU Services, 220 West Main Street, Louisville, Kentucky 40202.

**16.6 Equal Employment Opportunity.** To the extent applicable, TranServ shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 C.F.R. § 60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 C.F.R. § 60-250.4 relating to the employment and advancement of disabled veterans and Vietnam era veterans; (iii) Rehabilitation Act regulations set forth in 41 C.F.R. § 60-741.4 relating to the employment and advancement of qualified disabled employees and applicants for employment; (iv) the clause known as "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" set forth in 15 USC § 637(d)(3); and (v) the subcontracting plan requirement set forth in 15 USC § 637(d).

## **Section 17 - Miscellaneous Provisions.**

**17.1 Governing Law.** This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without giving effect to its conflicts of law rules.

**17.2 Amendment.** This Agreement shall not be varied or amended unless such variation or amendment is agreed to by the Parties in writing and accepted by applicable Regulatory Authorities. The Parties explicitly agree that neither Party shall unilaterally petition to FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act to amend this Agreement or to request that FERC initiate its own proceeding to amend this Agreement. Nothing in this Section 17.2 shall be construed to limit or affect any other rights that the Parties may have as set forth in Section 8.4, the OATT or otherwise.

**17.3 Liability of Affiliates.** Any and all liabilities of Company and/or its Affiliates under this Agreement shall be several but not joint.

**17.4 Publicity.** TranServ shall not issue news releases, publicize or issue advertising pertaining to ITO Services or this Agreement without first obtaining the written approval of Company.

**17.5 Assignment.** Any assignment of this Agreement or any interest herein or delegation of all or any portion of a Party's obligations, by operation of law or otherwise, by either Party without the other Party's prior written consent shall be void and of no effect; provided, however, that consent will not be required for Company to assign this Agreement to an Affiliate or a successor entity that acquires all or substantially all of the operational business assets of the

assigning entity whether by merger, consolidation, reorganization, sale, spin-off or foreclosure; provided, further, that such Affiliate or successor entity (a) agrees to assume all obligations hereunder from and after the date of such assignment and (b) has the legal authority and operational ability to satisfy the obligations under this Agreement. As a condition to the effectiveness of such assignment (i) the assignor shall promptly notify the other Party of such assignment, (ii) the Affiliate or successor entity shall provide a confirmation to the other Party of its assumption of assignor's obligations hereunder, and (iii) assignor shall promptly reimburse the other Party, upon receipt of an invoice, for any one-time incremental costs reasonably incurred as a result of such assignment. For the avoidance of doubt, nothing herein shall preclude Company from transferring any or all of its transmission facilities to another entity or disposing of or acquiring any other transmission assets. Notwithstanding anything to the contrary contained in this Section 17.5, TranServ shall be entitled to contract with one or more persons (each, an "TranServ Designee") to perform only those ITO Services which the OATT expressly provides for being performed by a "designee" of TranServ (as opposed to TranServ or TranServ Personnel); provided that TranServ shall not be relieved of any of its obligations, responsibilities or liabilities under this Agreement as a result of contracting with one or more TranServ Designees in accordance with this Section 17.5 and shall be responsible and liable for any ITO Services performed by TranServ Designees.

**17.6 No Third Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, this Agreement is made solely for the benefit of the Parties and their successors and permitted assigns and no other person shall have any rights, interest or claims hereunder or otherwise be entitled to any benefits under or on account of this Agreement as third party beneficiary or otherwise.

**17.7 Waivers.** No waiver of any provision of this Agreement shall be effective unless it is signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights or remedies under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights or remedies, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

**17.8 Enforcement of Rights.** Each Party shall have the right to recover from the other Party all expenses, including fees for and expenses of inside and/or outside counsel, arising out of the other Party's breach of this Agreement or any other action to enforce or defend rights hereunder.

**17.9 Severability; Renegotiation.** The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision herein. If any provision of this Agreement is found to be invalid, illegal or otherwise unenforceable, the same shall not affect the other provisions hereof or the whole of this Agreement and shall not render invalid, illegal or unenforceable this Agreement or any of the remaining provisions of this Agreement. If any provision of this Agreement or the application thereof to any person, entity or circumstance is held by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, or if a modification or condition to this Agreement is imposed by such court or regulatory authority, the Parties shall in good faith negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the Parties immediately prior to such holding, modification or condition.

**17.10 Remedies.** No remedy conferred by any of the provisions of this Agreement is intended

to be exclusive of any other remedy available at law or equity or otherwise. The election of one or more remedies shall not constitute a waiver of the right to pursue any other available remedies.

**17.11 Representations and Warranties.** Each Party represents and warrants to the other Party as of the date hereof as follows:

17.11.1 **Organization.** It is duly organized, validly existing and in good standing under the laws of the State in which it was organized, and has all the requisite power and authority to own and operate its material assets and properties and to carry on its business as now being conducted and as proposed to be conducted under this Agreement.

17.11.2 **Authority.** It has the requisite power and authority to execute and deliver this Agreement and, subject to the procurement of applicable regulatory approvals, to perform its obligations under this Agreement. The execution and delivery of this Agreement by it and the performance of its obligations under this Agreement have been duly authorized by all necessary corporate action required on its part.

17.11.3 **Binding Effect.** Assuming the due authorization, execution and delivery of this Agreement by the other Party, this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar applicable laws affecting creditors' rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

17.11.4 **Regulatory Approval.** It has obtained or will obtain by the Commencement Date, any and all approvals of, and acceptances for filing by, and has given or will give any notices to, any applicable federal or state authority, including FERC and the KPSC (as applicable), that are required for it to execute, deliver, and perform its obligations under this Agreement.

17.11.5 **No Litigation.** There are no actions at law, suits in equity, proceedings, or claims pending or, to its knowledge, threatened against it before or by any federal, state, foreign or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

17.11.6 **No Violation or Breach.** The execution, delivery and performance by it of its obligations under this Agreement do not and shall not: (a) violate its organizational documents; (b) violate any applicable law, statute, order, rule, regulation or judgment promulgated or entered by any applicable federal or state authority, which violation could reasonably be expected to materially adversely affect the performance of its obligations under this Agreement; or (c) result in a breach of or constitute a default of any material agreement to which it is a party.

17.11.7 **No Other Warranties.** EXCEPT AS PROVIDED IN THIS AGREEMENT, TRANSERV MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17.12 Further Assurances. Each Party agrees that it shall execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the purpose of this Agreement and are not inconsistent with the provisions of this Agreement.

17.13 Entire Agreement. This Agreement and the Attachments hereto set forth the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements, whether oral or written, related to the subject matter of this Agreement. The terms of this Agreement and the Attachments hereto are controlling, and no parole or extrinsic evidence, including to prior drafts and drafts exchanged with any third parties, shall be used to vary, contradict or interpret the express terms and conditions of this Agreement.

17.14 Good Faith Efforts. Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and the other Party to fulfill their obligations under this Agreement. Where the consent, agreement or approval of any Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, delayed or conditioned. Where a Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised, other than where expressly provided for herein. To the extent that the jurisdiction of any federal or state authority applies to any part of this Agreement or the transactions or actions covered by this Agreement, each Party shall cooperate with the other Party to secure any necessary or desirable approval or acceptance of such authorities of such part of this Agreement or such transactions or actions.

17.15 Time of the Essence. With respect to all duties, obligations and rights of the Parties specified by Regulatory Authorities, time shall be of the essence in this Agreement.

17.16 Interpretation. Unless the context of this Agreement otherwise clearly requires:

17.16.1 all defined terms in the singular shall have the same meaning when used in the plural and vice versa;

17.16.2 the terms "hereof," "herein," "hereto" and similar words refer to this entire Agreement and not to any particular Section, Attachment or any other subdivision of this Agreement;

17.16.3 references to "Section" or "Appendix" refer to this Agreement, unless specified otherwise;

17.16.4 references to any law, statute, rule, regulation, notification or statutory provision shall be construed as a reference to the same as it applies to this Agreement and may have been, or may from time to time be, amended, modified or re-enacted;

17.16.5 references to "includes," "including" and similar phrases shall mean "including, without limitation;"

17.16.6 the captions, section numbers and headings in this Agreement are included for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement;



17.16.7 “or” may not be mutually exclusive, and can be construed to mean “and” where the context requires there to be a multiple rather than an alternative obligation; and


17.16.8 references to a particular entity include such entity’s successors and assigns to the extent not prohibited by this Agreement.

17.17 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other and no provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provision. Each Party acknowledges that in executing this Agreement it has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and it has not been influenced by any representation or statement made by the other Party or its counsel not contained in this Agreement.

17.18 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon Company and TransServ, notwithstanding that Company and TransServ may not have executed the same counterpart.

The Parties have caused this Independent Transmission Organization Agreement to be executed by their duly authorized representatives as of the dates shown below.

**LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY**

  
Name: Stephanie R. Pryor  
Title: Manager Supply Chain  
Date: 12/9/16

**TRANSERV INTERNATIONAL, INC.**

  
Name: Sasan Mokhtari, PhD  
Title: President & CEO  
Date: 12/15/16

**LEGAL**  
  
12/10/16

**Appendix A**  
**Louisville Gas and Electric**  
**Company/**  
**Kentucky Utilities Company**

**INDEPENDENT TRANSMISSION**  
**ORGANIZATION**

**SERVICE SPECIFICATION**

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## **1. Overview**

This Appendix A is intended to be consistent with the terms and conditions of the LG&E/KU Open Access Transmission Tariff (OATT), including Attachment P thereto. If there is any conflict between this Appendix A and the OATT, the OATT shall govern. TranServ shall perform its obligations under this Appendix A in accordance with Section 1.3.1 of this Agreement.

The services delegated to TranServ include the administration of the LG&E/KU Open Access Same-time Information System (OASIS), transmission service request evaluation process, Available Transfer Capability (ATC)/ Available Flowgate Capability (AFC) management, study queue administration, study performance, and stakeholder facilitation. TranServ, as the ITO, will administer the OATT granting of service for both short and long-term transmission requests, administer the large generator interconnection request queue, and perform transmission studies. TranServ will facilitate the LG&E/KU long-term transmission planning function and stakeholder processes.

## **2. Definitions**

**Company** - Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU)

**ITO** - Independent Transmission Organization

**ITO Services** - The applicable functions to be performed as specified in the ITO Agreement

**RC** - Reliability Coordinator

**Service Interruption** - A Service Interruption is the loss of Service function, under the direct control of TRANSERV with no mutually agreed to work around provided within the Service

**Normal Business Hours** - TranServ normal business hours are between the hours of 0700 and 1700 CT, Monday-Friday on days other than the holidays listed below:

1. New Year's Day
2. Memorial Day
3. Independence Day
4. Labor Day
5. Thanksgiving

6. Day after Thanksgiving
7. Day before Christmas
8. Christmas Day

### **3. Roles and Responsibilities for Providing ITO Services**

#### **3.1 TranServ**

TranServ International, Inc. (TranServ) will provide services to LG&E/KU as the ITO. The services that TranServ will provide include:

##### **3.1.1 Customer Interface**

Responsibility for operating and maintaining OASIS website and keeping it up-to-date with Federal Energy Regulatory Commission (FERC) and North American Energy Standards Board (NAESB) posting requirements, including all Order No. 890 posting requirements (such as study performance metrics, Available Transfer Capability (ATC) calculations, etc.). This includes establishing an interface for customers to submit service requests, and oversight and evaluation of ATC values calculated using software procured from Open Access Technology International, Inc. (OATI) and information from the RC. TranServ's responsibilities and duties in administering OASIS will include the following:

- Performing the duties of a Responsible Party as defined in the Commission's OASIS regulations, 18 C.F.R. § 37.5 and FERC Order No. 676.
- Posting information required to be on the Transmission Provider's OASIS under the Commission's OASIS regulations, 18 C.F.R. § 37.6 and FERC Order No. 676.
- Maintaining and retaining information posted on OASIS in accordance with the Commission's regulations, including 18 C.F.R. Parts 37 and 125.
- Establishing and maintaining queues for processing transmission service requests and generator interconnection (GI) requests.
- Participating in the drafting and posting of Business Practices on the OASIS website, including any FERC or NAESB-required Business Practices. Company shall have final review, ownership, and approval for all Business Practices.
- Participating in periodic reviews of, and providing expertise/comments on, the OATT. Company retains final authority over the OATT's content, including retaining the right and responsibility to file changes to the OATT.
- Participating in stakeholder meetings and/or conference calls as required. These stakeholder meetings will include TranServ, Company, Customers (as appropriate) the RC, and other entities as required, to address concerns regarding Company's system,

administration of the OATT, and related issues.

- Responsibility for coordinating with third-party transmission system owners and operators as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.
- Management of ATC/AFC Calculation and Posting.
- Implementation of certain aspects of the Congestion Management Process (CMP) established by the Midcontinent Independent System Operator, Inc. (MISO), PJM Interconnection LLC (PJM), and TVA.
- Administration of request evaluations for LG&E/KU tariff service.
- Processing of e-Tags as the transmission provider.
- Reviewing software changes requested from OATI, verifying and testing for proper operations before OATI implements those changes.

### **3.1.2 Transmission Service and Generator Interconnection Requests and Studies**

- Receive and process all applications for Point-to-Point, Network Integration Transmission Service (NITS), and for GIs.
- For short-term Point-to-Point Transmission Service requests (i.e., where the request is within the posted ATC horizon), evaluate and approve a request where the posted ATC is sufficient for the requested transaction. If ATC is insufficient, TranServ shall propose conditional service options to the customer in accordance with the OATT, or otherwise deny the service. If the customer accepts conditional service options, TranServ will be responsible for performing biennial reassessments, as provided under the OATT.
- For long-term Point-to-Point Transmission Service requests, NITS, or GI requests:
  - Determine whether a System Impact Study (SIS) is necessary to accommodate the request.
  - Render all study agreements (SIS, Interconnection Feasibility Studies (IFS), Facilities Study (FS), and Feasibility Analysis Studies (FAS)) to customers within the timeframe provided in the OATT.
  - Perform the SIS or FAS in the timeframe provided in the OATT, including clustered SISs when requested by customers and/or Company.
  - Perform the SIS or FAS using Company's planning criteria.

- For any study that TranServ performs that requires information from Company (e.g., good faith construction estimates that are included in the SIS), request such information from Company no less than ten (10) business days before the expiration of the applicable study period.
  - Complete study reports and post on OASIS within the timeframe required under the OATT.
  - Notify the Company and individual customers of completed study reports, and alert the Company to initiate service agreements, if applicable.
  - Receive customer deposits.
  - Bill customers for SIS, IFS, FS, and FAS as required by the OATT, including provision of an itemized bill for services if requested by a customer.
  - Reimburse Company for any study costs incurred in contributing to the study and render payment to any third-party vendors for work performed.
- Responsible for receiving and processing requests to designate or un-designate Network Resources, as provided under the OATT.
  - If a customer requests a modification to its service, or if a customer assigns its transmission service to a third-party who request modification to the service, process those modification requests in accordance with the terms of the OATT.
  - Track all study metrics, including data submittals, input validations, modifications, time and costs associated to perform the study.
  - Track the performance of all studies and alert Company if a FERC filing requirement or penalty payment has been triggered due to late studies, as described under the OATT.

### **3.1.3 ATC Calculation**

- Calculate ATC as provided for in Attachment C to the OATT. This includes receiving initial AFC values from the RC, calculating final AFC values using the algorithms included in Attachment C, and converting the AFC to ATC using OATI software.
- Post on OASIS the mathematical algorithms used to calculate firm and non-firm AFC. TranServ shall also post the results of the AFC calculations on OASIS.
- Daily review of transmission service requests (TSRs) and eTag action and statistics.



- Daily review of posted AFC/ATC information and investigation into any anomalies.
- Review, observation, and validation of the Total Transfer Capability (TTC) development process.

### **3.1.4 Interchange and Scheduling**

- As the Transmission Service Provider, responsible for the following activities:
  - Confirm that each electronic schedule (e-Tag) has a confirmed transmission service request.
  - Approve the interchange schedules as the transmission service provider.
  - Curtail electronic schedules if requested by the RC or Balancing Authority (BA).
  - Monitor and validate the Net Scheduled Interchange (NSI), as processed by OATI software, to ensure timely creation of the NSI data file with a syntactical quality check on the data set.

### **3.1.5 Transmission Planning**

- TranServ will participate in Company's transmission planning process as outlined in Attachment K to the OATT, including the following activities:
  - Review and approve Company's long-term (generally one year and beyond) plan for the reliability/adequacy of Company's Transmission System.
  - Review and approve Transmission System models (steady state, dynamics, and short circuit).
  - Develop alternatives to Planning Redispatch service.
  - Notify impacted transmission entities of any planned transmission changes that may influence their facilities.
  - Participate with the SPC and associated SPC working groups, as required.
  - Participate in the overall OATT Attachment K process as observer.
  - The Parties agree that the final annual transmission plan and decision of whether/when to construct and expand the system rests with Company.
  - Both parties will communicate openly and in a timely manner; each will perform their respective work; and both will continually work together to improve mutual and individual processes in a joint effort to assure work is completed pursuant to

## Company standards and deadlines.

### 3.1.6 Compliance

- Establish and adhere to a “culture of compliance” for TranServ Personnel and TranServ Designees consistent with FERC’s Policy Statement on Compliance, 125 FERC ¶ 61,058 (2008) as may be supplemented or amended by further FERC orders. TranServ shall take such reasonable steps requested by the Company in furtherance of such a culture of compliance.
- In accordance with *Louisville Gas and Electric Company*, 114 FERC ¶ 61,282 at P 152 (2006), provide FERC with semi-annual reports “detailing concerns expressed by stakeholders and [ITO’s] response to those concerns as well as any issues or tariff provisions that hinder [ITO] from performing its required duties” as requested.
- Maintain records and provide reports as required by the Kentucky Public Service Commission (KPSC), OATT, Department of Energy (DOE), FERC, NERC, SERC Reliability Corporation (SERC) or NAESB. Without limiting the foregoing, Company may from time-to-time provide TranServ with specific direction as to records that Company expects to support compliance efforts, and TranServ shall maintain such records as directed.
- Assist Company, as requested by Company, in the preparation of applications, audit materials, filings, reports or responses to any Regulatory Authority. Without limiting the foregoing, this assistance may include from time-to-time preparation for (and participation in, if appropriate) FERC or NERC audits and providing event analysis information for FERC, NERC or SERC. TranServ’s support shall be provided in a time frame reasonably requested by Company.
- Monitor FERC, NERC, SERC, and NAESB activities for changes in standards or compliance requirements that may require modification to the ITO Services or other coordination with Company. To the extent possible, TranServ shall notify Company of any proposed or pending modifications prior to their implementation. The Parties shall work together to establish a work plan and timetable for implementation of any such changes. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments as well Company requests, shall be assessed using the change order process detailed in Section 5 of this Appendix A.

## **3.2 Transmission Planner**

TranServ will provide certain services to LG&E/KU, the Transmission Planner (TP). The services include:

### **3.2.1 Customer Interface**

- TranServ will participate in the drafting of Business Practices; including any FERC or NAESB required Business Practices. Company shall have final review, ownership, and approval for all Business Practices.
- TranServ will participate in periodic reviews of, and provide expertise/comments on the OATT. Company retains final authority over the OATT's content, including retaining the right and responsibility to file changes to the OATT.
- Responsible for planning, coordinating and holding regular stakeholder meetings and/or conference calls. These stakeholder meetings will include TranServ, Company, and the RC, and other entities as required, to address concerns regarding Company's system, administration of the OATT, and related issues. This activity includes (as necessary) performing background checks for stakeholders who desire access to Critical Energy Infrastructure Information (CEII), preparing meeting materials, facilitating the meeting, and preparing post-meeting minutes for posting on OASIS.
- Responsible for coordinating with third-party transmission system owners and operators as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.

## **3.3 LG&E/KU**

TranServ understands that Company has the following responsibilities in support of the ITO Services under this Appendix A:

### **3.3.1 Customer Interface**

- Contracting for the OATI webSmartOASIS service that meets FERC and NAESB requirements.
- Contracting for the OATI webTrans service used to evaluate and take actions on transmission service requests and e-Tags.
- Continuation of Agreement with the RC to provide necessary data for AFC/ATC calculation

and posting processes.

- Final review, ownership, and approval for all Business Practices.
- Final authority over the OATT's content, including the right and responsibility to file changes to the OATT.
- Cooperate in the coordination with third-party systems as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.

### **3.3.2 Compliance**

- From time-to-time provide TranServ with specific direction as to records that Company expects to support compliance efforts, TranServ shall maintain such records as directed in order to provide reports as required by the KPSC, OATT, DOE, FERC, NERC, SERC or NAESB.
- Respond to TranServ notifications of FERC, NERC, SERC, and NAESB activities for changes in standards or compliance requirements that may require modification to the ITO Services or other coordination with Company within requested response timelines. Work together with ITO to establish a work plan and timetable for implementation of any such changes. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments as well Company requests, shall be assessed using the change order process detailed in Section 5 of this Appendix A.

## **4. Customer Support**

TranServ will provide support for Service 24-hours per day and 365-days per year by utilizing a single point of contact support staff. During Normal Business Hours the support staff can be contacted by telephone or by e-mail as outlined in published TranServ's ITO Support Information. After Normal Business Hours support is achieved through telephone only. TranServ will take all reasonable effort to ensure that reported problems or other Customer support related events are responded to within 30-minutes of the event notification when ITO Support Procedures are followed.

### **4.1 Problem Resolution**

Problems or outages are reported to TranServ by following customer support processes. All problems or questions are assigned a severity level by mutual agreement of the parties. Problems which are considered Critical or High in severity should be reported to TranServ at any time. Problems considered Medium or Low severity should be reported by phone during business hours or by e-mail at any time. The severity level classifications are defined as follows:

- Critical** - Problems or issues that are impacting business immediately or impacting grid reliability and action is required prior to next business day.
- High** - Problems or issues that affect a key functionality of Service component and there is no work around available but immediate business or grid reliability impact is not present.
- Medium** - Business processes are impacted, but satisfactory work around is in place to avoid business interruptions.
- Low** - Customer inquiries or reported problems and issues that create nuisances or inconveniences for the customer. Minimal or no business impact is occurring.

<b>Ticket Resolution</b>		
<b>Action</b>	<b>TranServ Responsibility</b>	<b>Time To Remedy</b>
Correct a 'Critical' severity Problem or Issue	During normal business hours TranServ will respond to reported Critical severity problems and begin corrective action immediately until either a satisfactory work around is in place or problem is resolved. Outside of normal business hours TranServ will respond to reported Critical severity problems within 30-minutes of notification. Escalation to responsible TranServ senior management will occur in all cases.	TranServ will work continuously until resolution is in place. This may include a temporary work around until a permanent correction can be implemented. <b>Performance goal is to resolve all Critical severity tickets within 4-hours.</b>
Correct a 'High' severity Problem or Issue	During normal business hours TranServ will respond to reported High severity problems and begin corrective action to resolve with either a satisfactory work around or problem resolution prior to end of business day. Outside of normal business hours TranServ will respond to reported High severity problems within 30-minutes of notification. Escalation to responsible TranServ senior management will occur in all cases.	TranServ will provide an initial problem analysis update within 8-hours at all times. This may include a recommended temporary work around until a permanent correction can be implemented. <b>Performance goal is to resolve all High severity tickets within 24-hours.</b>
Correct a 'Medium' severity Problem or Issue	TranServ will schedule corrective action jointly with Customer. Problems of Medium severity should be reported by telephone during business hours or by e-mail at any time.	TranServ will provide an initial problem analysis update within 3-business days of notification of problem. An appropriate action plan and resolution schedule will be mutually agreed to with the Customer. <b>Performance goal is to resolve all Medium severity tickets by agreed to commitment date.</b>
Correct a 'Low' severity Problem or Issue	TranServ will schedule corrective action jointly with Customer. Problems of Low severity should be reported by telephone during business hours or by e-mail at any time.	TranServ will provide an initial problem analysis update within 5-business days. An appropriate action plan and resolution schedule will be mutually agreed to with the Customer. <b>Performance goal is to resolve all Low severity tickets by agreed to commitment date.</b>

#### **4.1.1 Tickets - OATI webSupport**

To ensure all customers of TranServ receive a high level of customer service all calls or e-mails with questions or reported problems are documented in a Ticket. All TranServ staff members utilize OATI webSupport, an issue reporting and assignment platform allowing tracking and confirmed resolution of all issues reported to TranServ. Upon receiving a communication from a customer, TranServ will open a webSupport Ticket. The Ticket contains customer contact information, data metrics on the type of problem, an identification of the TranServ staff member to whom the Ticket is currently assigned, a detailed description of the problem, and a detailed description of the problem's current status which will eventually include a description of how the issue was resolved. The TranServ staff member provides the Ticket number to the customer for all issues not resolved immediately. If the issue cannot be resolved by the TranServ staff member creating the Ticket, the Ticket is reassigned to another member of the TranServ team. The TranServ staff member who initially created the Ticket is expected to use webSupport's monitoring capability to determine unresolved Tickets, and to reassign or escalate it as necessary at any time to promote prompt resolution within response timing guidelines.

#### **4.1.2 Response Time**

TranServ support staff will answer all calls as received during normal business hours and take all reasonable effort to resolve issues at the time of call. For issues and problems that are not immediately resolved, TranServ will follow normal processing for assigned severity level and notify customer once resolution occurs.

Calls to support staff outside of normal business hours will be answered as received and customer will be notified within 30-minutes on planned actions to be taken by TranServ support staff in accordance with normal processing for assigned severity level.

##### **4.1.2.1 Ticket Escalation**

Problem tickets that cannot be resolved in accordance with normal processing for assigned severity level will be escalated to appropriate TranServ management. Customers may request immediate ticket escalation to appropriate TranServ management.

##### **4.1.2.2 Customer Satisfaction**

Customer satisfaction inquiries are automatically sent to customers upon the closing of a ticket. The results of these surveys result in improved performance by customer support staff or changes in business processes.

## **5. Service Modifications**

From time to time Company may require a modification to an existing Service function. Such modifications may be prompted by changes in regulatory compliance requirements, or by a Company request. Minor modifications that require reasonably minimal resource commitment from TranServ staff will be included within a reasonable time period at no cost to Company. Modifications that may have more significant impact on Service design or will impact TranServ staff resource commitments more than minimally will be discussed with Company and may in some instances require additional payment by Company, or likewise, require a decrease in payment by Company. Each of these change requests will be described in a written Change Order. Each Change Order will be scheduled for implementation upon written agreement with Company as to scope, cost and schedule.

### **5.1 Minor Changes**

Any change to an existing Service function that does not have a significant impact on Service design or require TranServ to staff or contract with additional personnel, if even for a brief period of time, to prepare for and/or meet the requirements of the change (a "Minor Change") will be integrated into Company's Service at no cost to Company. A written Change Order will be negotiated and executed between Company and TranServ prior to implementation of any Minor Change.

### **5.2 Major Changes**

Any change to an existing Service function that has a significant impact on Service design or requires TranServ to staff additional or fewer personnel, if even for a brief period of time, in order to prepare for and/or meet the requirements of the change (a "Major Change") will require a written Change Order which must be negotiated and executed between Company and TranServ prior to implementation of any Major Change.

## **6. Reliability Coordination**

TranServ will be required to coordinate its operations with the LG&E/KU designated RC. The RC is responsible for performing certain reliability related tasks for the LG&E/KU system, including acting as the NERC-registered Reliability Coordinator. The RC's responsibilities are detailed in the Reliability Coordinator Agreement and Attachment P to the LG&E/KU OATT.



**ATTACHMENT Q**

**AGREEMENTS BETWEEN THE TRANSMISSION OWNER AND THE ITO  
AND THE RELIABILITY COORDINATOR**

Independent Transmission Organization  
Agreement

Between

Louisville Gas and Electric Company/  
Kentucky Utilities Company

And

TranServ International, Inc.

FINAL

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**Appendix A - Service Specification**

## **INDEPENDENT TRANSMISSION ORGANIZATION AGREEMENT**

This Independent Transmission Organization (“ITO”) Agreement (this “Agreement”) is entered into on September 1, 2017, between Louisville Gas and Electric Company and Kentucky Utilities Company, corporations organized pursuant to the laws of the Commonwealth of Kentucky (collectively, “Company”), and TranServ International, Inc., an entity organized pursuant to the laws of Delaware (“TranServ”). Company and TranServ may sometimes be individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, Company owns, among other things, an integrated electric transmission system (“Transmission System”), over which open access transmission service is provided to customers in the Company’s Balancing Authority Area (as that term is defined by the North American Electric Reliability Corporation (“NERC”));

WHEREAS, the Company has an Open Access Transmission Tariff (“OATT”) on file with the Federal Energy Regulatory Commission (“FERC”)

WHEREAS, Company’s current contract with TranServ is scheduled to expire on August 31, 2017;

WHEREAS, Company desires that, upon expiration of the current contract, TranServ will continue its work under this Agreement, as detailed herein;

WHEREAS, Company remains the owner of its Transmission System and shall be the ultimate provider of transmission services to Eligible Customers (as defined in the OATT), including the sole authority to amend the OATT;

WHEREAS, TranServ: (i) is independent from Company; (ii) possesses the necessary competence and experience to perform the functions provided for hereunder; and (iii) is willing to perform such functions under the terms and conditions agreed upon by the Parties as set forth in this Agreement; and

WHEREAS, as part of Company’s goal to maintain independence in the operation of its Transmission System in order to prevent any exercise of transmission market power, Company entered into a Reliability Coordinator Agreement (the “Reliability Coordinator Agreement”) with the Tennessee Valley Authority, NERC-certified reliability coordinator (the “Reliability Coordinator”), pursuant to which the Reliability Coordinator provides to Company certain required reliability functions.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## Section 1 - Services to be Provided; Standards of Performance

1.1 Services. TranServ shall perform, or cause to be performed, the services described in Appendix A hereto as well as any obligations expressly assigned to the ITO under the OATT (“ITO Services”) during the Term in accordance with the terms and conditions of this Agreement, subject to modification pursuant to Section 1.4 hereto.

1.2 Coordination with Reliability Coordinator. In conjunction with its performance of ITO Services, TranServ shall coordinate and cooperate with the Reliability Coordinator in accordance with the terms of the OATT and all NERC and SERC Reliability Corporation (“SERC”) requirements. TranServ shall provide to the Reliability Coordinator, subject to the terms and conditions of this Agreement, including TranServ’s obligations with respect to Confidential Information in Section 10, any information that the Reliability Coordinator may reasonably request in order to carry out its functions under the Reliability Coordinator Agreement, which agreement is included in the OATT.

1.3 TranServ Performance; Compliance.

1.3.1 Performance. TranServ, TranServ Personnel and any TranServ Designee (as defined in Section 17.5) shall perform TranServ’s obligations (including ITO Services) under this Agreement:

- (a) in an independent, fair, and nondiscriminatory manner; and
- (b) in accordance with:
  - (i) any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition (“Good Utility Practice”). Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act Section 2 14(a)(4);
  - (ii) the terms and conditions of the OATT;
  - (iii) all applicable laws and the requirements of federal and state regulatory authorities, including the Kentucky Public Service Commission (“KPSC”), Department of Energy (“DOE”), FERC, NERC, SERC, and the North American Electric Standards Board (“NAESB”) (collectively, “Regulatory Authorities”); and in fulfilling this requirement in this subsection (iii), TranServ will cooperate with all reasonable requests by Company for information, interviews with TranServ personnel, or other support that may be needed to investigate possible FERC, NERC or other compliance violations or prepare for or respond to compliance-related audits, self-certifications, and other inquiries by Regulatory Authorities (whether internal or external); and
  - (iv) any methodologies, processes, or procedures relating to ITO

Services which Company may develop and which Company determines are necessary or appropriate to ensure safe and reliable system operations and compliance with all applicable laws and the applicable requirements of Regulatory Authorities.

1.4 Changes to ITO Services. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments, as well as Company requests, shall be assessed using a change order process. This process will include a written assessment of impacts to ITO Services consistent with Section 5 of Appendix A. Changes will be implemented only after mutual execution of a change document, which may be titled a Change Order or an Amendment. If the Parties are unable to agree on whether a change constitutes a “Minor Change,” or a “Major Change,” as those terms are used in Section 5 of Appendix A, such Dispute shall be resolved in accordance with Section 3.6.

## **Section 2 - Independence and Standards of Conduct**

2.1 TranServ Personnel. All ITO Services shall be performed by staff members of TranServ (“TranServ Personnel”) or TranServ Designees. No TranServ Personnel or TranServ Designee shall also be employed by Company or any of its Affiliates (as defined in FERC’s regulations, 18 C.F.R. § 35.34(b)(3) (2011)). TranServ, TranServ Employees, and TranServ Designees shall (i) be Independent of and (ii) shall not discriminate against Company, any of its Affiliates, or any Tariff Participant. For purposes of this Agreement: (a) “Independent” shall mean that TranServ, TranServ Personnel, and any TranServ Designees are not subject to the control of Company, its Affiliates or any Tariff Participant, and have full decision-making authority to perform all ITO Services in accordance with the provisions of this Agreement. Any TranServ Personnel or TranServ Designee owning securities in Company, its Affiliates or any Tariff Participant shall divest such securities within six (6) months of first being assigned to perform such ITO Services, provided that nothing in this Section 2.1 shall be interpreted or construed to preclude any such TranServ Personnel or TranServ Designee from indirectly owning securities issued by Company, its Affiliates or any Tariff Participant through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted toward the electric industry or the electric utility industry or any segment thereof) under which the TranServ Personnel or the TranServ Designee does not control the purchase or sale of such securities. Participation by any TranServ Personnel or TranServ Designee in a pension plan of Company, its Affiliates or any Tariff Participant shall not be deemed to be a direct financial interest if the plan is a defined-benefit plan that does not involve the TranServ Personnel’s or TranServ Designee’s ownership of the securities; and (b) “Tariff Participant” shall mean Company Transmission System customers, interconnection customers, wholesale customers, affected transmission providers, any Market Participant (as defined in FERC’s regulations, 18 C.F.R. § 35.34(b)(2) (2011)) and similarly qualified third parties within the Company Balancing Authority Area. For the avoidance of doubt, Company shall have no veto authority over the selection of TranServ Personnel or TranServ Personnel matters, including TranServ’s appointment of a TranServ Project Manager (as provided in Section 8.2) except that the Company and TranServ hereby agree that TranServ shall be prohibited from hiring current or former Company employees until at least one (1) year subsequent to the Company employee’s separation from Company. Likewise, Company is prohibited from hiring current or former TranServ employees until one (1) year subsequent to the TranServ employee’s separation from TranServ.

2.2 Standards of Conduct Treatment. All TranServ Personnel and TranServ Designees

performing work under this Contract shall be treated, for purposes of the FERC's Standards of Conduct (18 C.F.R. Part 358 ), as transmission function employees. All restrictions relating to information sharing and other relationships between marketing function employees and transmission function employees, as those terms are defined in the Standards of Conduct, including the non-discrimination requirements contained therein, shall apply to TranServ Personnel and TranServ Designees performing work under this Contract, or likely to become privy to transmission function information. Said TranServ Personnel and TranServ Designees shall participate in any Standards of Conduct training that the Company may request for compliance purposes. TranServ shall provide prompt notice of new TranServ Personnel or TranServ Designees to Company to assure new persons are trained within the first thirty (30) days of their employment with TranServ.

### **Section 3 - Compensation; Billing and Payment; Performance Review**

3.1 Compensation for Services. Company shall pay to TranServ an annual fee for performance of the ITO Services ("Annual Fee"). The Annual Fee (subject to increases or decreases in accordance with Section 5 of Appendix A) shall be \$2,479,543.56 for the first Contract Year and shall escalate by one and five-tenths percent (1.5%) of the prior year's Annual Fee for each Contract Year thereafter.

3.2 Out-of-Pocket Costs. Company shall reimburse TranServ for actual out-of-pocket third party costs and expenses, without markup, for (a) regulatory legal support that is reasonably allocable to TranServ's performance of ITO Services, provided that in no event shall Company reimburse TranServ for legal fees associated with any actual or potential Dispute under this Agreement, (b) travel and lodging that are reasonably allocable to TranServ's performance of ITO Services and (c) setting up regular stakeholder meetings (collectively, (a), (b) and (c) are "Out-of-Pocket Costs"); provided, however, that all Out-of-Pocket Costs subject to reimbursement under this Section 3.2 must be reviewed and approved by Company prior to TranServ incurring such expense.

3.3 Payment.

3.4.1 Monthly Payment. TranServ shall deliver to Company monthly invoices by regular mail, facsimile, electronic mail or such other means as the Parties agree. Such invoices shall set forth (i) one-twelfth (1/12) of the Annual Fee for each month in advance, and (ii) any Out-of-Pocket costs incurred during the previous month, provided however, that travel expenses occurring on the last three (3) days of each month may be carried over to future invoices for ease of administration. Company shall make payment of the amount invoiced by wire transfer in immediately available funds to an account specified by TranServ not later than the thirtieth (30<sup>th</sup>) day after receipt of the invoice, unless such day is not a business day, in which case on the next business day. All such payments shall be deemed made when said wire transfer is received by TranServ. Overdue payments shall accrue interest calculated at the FERC interest rate as defined in 18 C.F.R. §35.19a(2)(iii)(A) (2011) ("FERC Interest Rate").

3.4 Annual Review.

3.4.1 Annual Review. Commencing at the end of each Contract Year, no later than sixty (60) days after the end of each Contract Year, TranServ shall determine and deliver to

Company a calculation of TranServ's actual labor in providing ITO Services for the preceding Contract Year ("Annual Labor"). The Annual Labor calculation shall detail the job title and number of full-time employees assigned to ITO Services, and the number of hours spent in performing ITO Services. The Annual Labor shall also include the hours for any tasks which TranServ outsourced to TranServ Designees.

3.5 Compensation Disputes. Notwithstanding the Dispute resolution provisions in Section 8.3, for any Disputes concerning compensation under this Section 3, Company shall timely file notice of such Dispute with FERC and request that FERC resolve such Dispute. TranServ retains the authority to file notice with FERC of any such Dispute if it so desires. If either Party in good faith disputes any invoice submitted by the other Party pursuant to this Agreement, then the disputing Party (i) shall timely pay the other Party the entire invoiced amount and (ii) shall furnish the other Party with a written explanation specifying the amount of and the basis for the Dispute. Within twenty (20) days after resolution of such Dispute, the Party owing money shall pay the other Party the amount owed, if any, together with interest calculated at the FERC Interest Rate.

#### **Section 4 - Term and Termination**

4.1 Term. The initial term of this Agreement shall begin on September 1, 2017 ("Commencement Date"), and shall continue for five (5) years thereafter ("Initial Term"). At the conclusion of the Initial Term, this Agreement shall automatically extend for successive one (1) year terms (each a "Subsequent Term"), unless terminated by either Party in accordance with the terms of this Agreement. Three hundred and sixty (360) days prior to the conclusion of the Initial Term either Party may notify the other, in writing, of a desire to amend terms or pricing of this Agreement for the Subsequent Terms. If such amendment is not agreed upon by both parties 180 days prior to the beginning of the first Subsequent Term, the Amendment shall not automatically extend and will terminate on the later of i) the conclusion of the Initial Term, as defined above, or ii) receipt of the regulatory approvals required under Section 4.5. The Initial Term or any Subsequent Terms are each referred to herein as a "Term." For the purposes of this Agreement, a "Contract Year" shall begin on the Commencement Date or anniversary thereof and conclude twelve (12) months thereafter.

4.2 Termination by Either Party. This Agreement may be terminated by either Party at the end of a Term upon prior one hundred eighty (180) days written notice to the other Party, which termination shall be effective upon the later of (i) one hundred eighty (180) days after the date of such written notice, or (ii) receipt of the regulatory approvals required under Section 4.5.

4.3 Immediate Termination.

4.3.1 Termination for Cause. Subject to Section 4.5, either Party may terminate this Agreement upon prior written notice thereof to the other Party if:

- (a) Material Failure or Default. The other Party fails, in any material respect, to comply with, observe or perform, or defaults, in any material respect, in the performance of the terms and conditions of this Agreement, and such failure or default remains uncured for thirty (30) days after written notice thereof, provided that such failure or default is susceptible to cure and the other Party is exercising reasonable diligence to cure such failure or default;

(b) Pattern of Failure. It determines, in its reasonable discretion, that there has been a pattern of failure by the other Party to comply with the standards of performance set forth in Section 1.3.1, whether or not such failure is material;

(c) Gross Negligence, Willful Misconduct or Fraud. The other Party commits gross negligence, willful misconduct or fraud in the performance of its obligations under this Agreement;

(d) Material Misrepresentation. Any representation made by the other Party hereunder shall be false or incorrect in any material respect when made and such misrepresentation is not cured within thirty (30) days of such discovery or written notice thereof, or is incapable of cure;

(e) Bankruptcy. The other Party: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due; or

(f) Dissolution. The other Party dissolves or is dissolved or its legal existence is otherwise terminated.

4.3.2 Immediate Termination Not For Cause. Subject to Section 4.5, Company may terminate this Agreement upon thirty (30) days prior written notice thereof to TranServ if:

(a) Failure to Negotiate Amendment. The Parties are unsuccessful in negotiating an amendment or amendments to this Agreement pursuant to Section 17.9;

(b) Regulatory Changes/Modifications. A Regulatory Authority makes any material changes, modifications, additions, or deletions to this Agreement, unless both Parties agree to such changes, modifications, additions, or deletions;

(c) Failure to Receive Regulatory Approval. Prior to the Commencement Date, FERC rejects this Agreement or Company's selection of TranServ as the ITO;

(d) RTO. Company joins a regional transmission organization ("RTO"); or

(e) Extended Force Majeure. A Party is excused because of Force Majeure (as defined in Section 11) for more than thirty (30) days from performing any of its material obligations under this Agreement.

4.4 Termination for Lack of Independence. Subject to Section 4.5, Company may terminate this Agreement upon prior written notice thereof to TranServ if FERC or the KPSC issues a final



order that declares that TranServ lacks independence from Company and TranServ cannot obtain independence in a reasonable manner or time period.

4.5 Regulatory Approval. No termination of this Agreement shall be effective until approved by FERC and the KPSC. Notice of termination provided pursuant to Sections 4.3 and 4.4 shall become effective immediately upon approval by FERC and the KPSC.

4.6 Return of Materials. Upon any termination of this Agreement TranServ shall timely and in an orderly manner turn over to Company all materials that were prepared or developed pursuant to this Agreement prior to termination, and return or destroy, at the option of Company, all Data and other information supplied by Company to TranServ or created by TranServ on behalf of Company.

4.7 Survival. All provisions of this Agreement which are by their nature or terms intended to survive the termination of this Agreement, including the obligations set forth in Section 7 and Section 10, shall survive termination of this Agreement.

4.8 Compensation for Early Termination.

4.8.1 If Company terminates this Agreement before the end of a Term pursuant to Section 4.3.2 (a), (b), (d) or (e), then Company shall pay to TranServ the Annual Fee(s) through the longer of the end of the Contract Year or for six (6) months subsequent to the date of termination, which fees shall be accelerated hereunder for this purpose, plus any unpaid Out-of-Pocket Costs that TranServ has incurred through the date of any such termination. In the event that this Section 4.8.1 should trigger an acceleration of Annual Fee(s) that would otherwise span multiple years, such fees paid by Company to TranServ shall not include any escalation of one and five-tenths percent (1.5%) as described in Section 3.1 that had not yet been previously applied to the Annual Fee(s).

4.8.2 If Company terminates this agreement before the end of the Term, and such termination is for cause pursuant to Section 4.3.1, then Company shall only be liable for TranServ's Out-of-Pocket Costs incurred pursuant to contracts which extend beyond any early termination date.

4.9 Post-Termination Services. Commencing on the date that any termination becomes effective ("Termination Date") and continuing for up to one hundred eighty (180) days thereafter, TranServ shall (a) provide ITO Services (and any replacements thereof or substitutions therefor), to the extent Company requests such ITO Services to be performed, and (b) cooperate with Company in the transfer of ITO Services (collectively, the "Post-Termination Services") as such services are authorized under a separate agreement between the Parties. TranServ shall, upon Company's request, provide the Post-Termination Services at a cost to be negotiated and mutually agreed to at that time. The quality and level of performance of ITO Services by TranServ shall not diminish. After the expiration of the Post-Termination Services, TranServ shall answer questions from Company regarding ITO Services on an "as needed" basis at TranServ's then-standard billing rates.

4.10 Termination for Guarantee Termination. A guaranty with Open Access Technology International, Inc., in favor of Company and with TranServ as a counterparty was executed (November 29, 2016) (hereinafter "the Guaranty"). Subject to Section 4.5, Company may

terminate this Agreement if the Guaranty is terminated and TranServ does not provide a replacement Guaranty determined, by Company, to be satisfactory.

## **Section 5 - Data Management and Intellectual Property**

5.1 Supply of Data. During the Term, Company shall supply to TranServ, and/or grant TranServ access to all Data that TranServ requests and that TranServ believes is necessary to perform its duties and obligations under this Agreement, including ITO Services. The Parties shall agree upon the initial format and manner in which such Data shall be provided. For purposes of this Agreement, “Data” means all information, text, drawings, diagrams, models, images or sounds which are embodied in any electronic or tangible medium and which (a) are supplied or in respect of which access is granted to TranServ by Company under this Agreement, which shall be Company’s Data, (b) are prepared, stored or transmitted by TranServ solely on behalf of Company, which shall be Company’s Data; or (c) are compiled by TranServ by aggregating Data owned by Company and Data owned by third parties, which shall be TranServ’s Data.

5.2 Property of Each Party. Each Party acknowledges that the other Party’s Data and the other Party’s software, base data models and operating procedures for software or base data models (“Processes”) are the property of such other Party and agrees that it will do nothing inconsistent with such ownership, including preserving all intellectual property and/or proprietary rights in such other Party’s Data and Processes as provided in Section 6.

5.3 Data Integrity. Each Party shall reasonably assist the other Party in establishing measures to preserve the integrity and prevent any corruption or loss of Data, and the Parties shall reasonably assist each other in the recovery of any corrupted or lost Data. Each Party shall reasonably retain and preserve any of the other Party’s Essential Data that are supplied to it during the Term. “Essential Data” means any Data that is reasonably required to perform ITO Services under this Agreement and that must be retained and preserved according to any applicable law, regulation, reliability criteria, or Good Utility Practice. Each Party shall exercise commercially reasonable efforts to preserve the integrity of the other Party’s Data that are supplied to it during the Term, in order to prevent any corruption or loss of the other Party’s Data.

5.4 Confidentiality. Each Party’s Data shall be treated as Confidential Information in accordance with the provisions of Section 10.

## **Section 6 - Intellectual Property.**

6.1 Ownership. All inventions, discoveries, processes, methods, designs, drawings, blueprints, information, works of authorship, or the like, whether or not patentable or copyrightable (collectively, “Intellectual Property”), which TranServ first conceives, develops, or begins to develop, either alone or in conjunction with Company or others, with respect to ITO Services under this Agreement, shall be jointly owned by Company and TranServ, and each party shall have the right to use such intellectual property unless specifically otherwise specified on a change document hereunder.

6.2 Royalties and License Fees. Unless the Parties otherwise agree in writing, TranServ shall

procure and pay all royalties and license fees which may be payable on account of ITO Services or any part thereof. In case any part of ITO Services is held in any suit to constitute infringement and its use is enjoined, TranServ within a reasonable time shall, at the election of Company and as Company's exclusive remedy hereunder, either (a) secure for Company the perpetual right to continue the use of such part of ITO Services by procuring for Company a royalty-free license or such other permission as will enable TranServ to secure the suspension of any injunction, or (b) replace at TranServ's own expense such part of ITO Services with a non-infringing part or modify it so that it becomes non-infringing (in either case with changes in functionality that are acceptable to Company).

## **Section 7 - Indemnification and Limitation of Liability**

7.1 Company Indemnification. Subject to the limitations specified in Section 7.6, Company shall indemnify, release, defend, reimburse and hold harmless TranServ and its directors, officers, employees, principals, representatives and agents (collectively, the "TranServ Indemnified Parties") from and against any and all third party claims (including claims of bodily injury or death of any person or damage to real and/or tangible personal property), demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, costs and expenses, and attorney fees, (each, an "Indemnifiable Loss") asserted against or incurred by any of the TranServ Indemnified Parties arising out of, resulting from or based upon TranServ performing its obligations pursuant to this Agreement, provided, however, that in no event shall Company be obligated to indemnify, release, defend, reimburse or hold harmless the TranServ Indemnified Parties from and against any Indemnified Loss which is caused by the negligence, the gross negligence or willful misconduct of any TranServ Indemnified Party.

7.2 TranServ Indemnification. Subject to the limitations specified in Section 7.6, TranServ shall indemnify, release, defend, reimburse and hold harmless Company and its directors, officers, employees, principals, representatives and agents (collectively, the "Company Indemnified Parties") from and against any and all Indemnifiable Losses asserted against or incurred by any of the Company Indemnified Parties arising out of, resulting from or based upon TranServ's or a TranServ Designee's negligence, gross negligence, or willful misconduct, provided, however, that in no event shall TranServ be obligated to indemnify, release, defend, reimburse or hold harmless any Company Indemnified Parties from and against any Indemnified Loss which is caused by the negligence, gross negligence or willful misconduct of any Company Indemnified Party.

7.3 Regulatory Indemnification. Subject to the limitations specified in Section 7.6, TranServ shall indemnify, release, defend, reimburse and hold harmless any Company Indemnified Parties from and against all regulatory penalties and sanctions (including penalties or sanctions levied by a Regulatory Authority) arising out of, resulting from or based upon TranServ breach of this Agreement, specifically including Section 1.3.1 hereto, provided, however, that in no event shall TranServ be obligated to indemnify, release, defend, reimburse or hold harmless any Company Indemnified Parties from and against any penalty or sanction which is caused by the gross negligence or willful misconduct of any Company Indemnified Party.

7.4 Cooperation Regarding Claims. If an Indemnified Party (which for purposes of this Section 7.4 shall mean an TranServ Indemnified Party or a Company Indemnified Party) receives notice or has knowledge of any Indemnifiable Loss that may result in a claim for indemnification by such Indemnified Party against an Indemnifying Party (which for purposes of this Section 7.4 shall mean Company or TranServ) pursuant to this Section 7, such Indemnified Party shall as

promptly as possible give the Indemnifying Party written notice of such Indemnifiable Loss, including a reasonably detailed description of the facts and circumstances relating to such Indemnifiable Loss, a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its claim for indemnification with respect thereto. Failure to promptly give such written notice or to provide such information and documents shall not relieve the Indemnifying Party from the obligation hereunder to respond to or defend the Indemnified Party against such Indemnifiable Loss unless and only to the extent such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party against such Indemnifiable Loss. Except for indemnification for penalties and sanctions under Section 7.3, the Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party in accordance with this Section 7, shall be entitled to assume the defense or to represent the interest of the Indemnified Party with respect to such Indemnifiable Loss, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost. If and to the extent that the defense or settlement of any Indemnifiable Loss is reasonably likely to involve injunctive, equitable or prospective relief or materially and adversely affect the Indemnified Party's business or operations other than as a result of money damages or other money payments assumed by the Indemnifying Party, then such defense or settlement will be subject to the reasonable approval of the Indemnified Party. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants and participating in its own defense at its own cost and expense.

7.5 Release and Indemnification Regarding Liens. TranServ hereby releases and/or waives for itself and its successors in interest, and for all TranServ Designees and their successors in interest, any and all claims or right of mechanics or any other type of lien to assert and/or file upon Company's or any other party's property or any part thereof as a result of performing ITO Services. TranServ shall execute and deliver to Company such documents as may be required by applicable laws (*i.e.*, partial and/or final waivers of liens and/or affidavits of indemnification) to make this release effective and shall give all required notices to TranServ Designees with respect to ensuring the effectiveness of the foregoing releases against those parties. TranServ shall secure the removal of any lien that TranServ has agreed to release in this Section 7.5 within five (5) working days of receipt of written notice from Company to remove such lien. If not timely removed, Company may remove the lien and charge all costs and expenses including legal fees (for inside and/or outside legal counsel) to TranServ including, without limitation, the costs of bonding off such lien. Company, in its sole discretion, expressly reserves the right to off-set and/or retain any reasonable amount due to TranServ from payment of any one or more of TranServ's invoices upon Company having actual knowledge of any threatened and/or filed liens and/or encumbrances that may be asserted and/or filed by any TranServ Designee and/or third party with respect to the ITO Services, with final payment being made by Company only upon verification that such threatened and/or filed liens and/or encumbrances have been irrevocably satisfied, settled, resolved and/or released (as applicable), and/or that any known payment disputes concerning the ITO Services involving TranServ and any TranServ Designees have been resolved so that no actions, liens and/or encumbrances of any kind or nature will be filed against Company and/or Company's property.

7.6 Limitation of Liability. Other than as provided in Section 7.3, neither Party shall be liable to the other for any special, punitive, or consequential damages arising out of ITO Services, even if advised of the possibility of such damages. Company agrees that ITO Services are not consumer

goods for purposes of international, U.S. Federal or U.S. state warranty laws. Indemnification pursuant to Sections 7.1, 7.2, and 7.3, as well as any direct damages to Company arising out of a material breach of this Agreement shall be limited in the aggregate to the total amount of fees actually paid by Company to TranServ under this Agreement through the date that any penalty or judgment is assessed.

## **Section 8 - Contract Managers; Dispute Resolution**

8.1 Company Contract Manager. Company shall appoint an individual (the “Company Contract Manager”) who shall serve as the primary Company representative under this Agreement. The Company Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of Company’s obligations under this Agreement, and (b) be authorized to act for and on behalf of Company with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the Company Contract Manager may, upon written notice to TranServ, delegate such of his or her responsibilities to other Company employees, as the Company Contract Manager deems appropriate.

8.2 TranServ Project Manager. TranServ shall appoint, among TranServ Personnel, an individual (the “TranServ Project Manager”) who shall serve as the primary TranServ representative under this Agreement. The TranServ Project Manager shall have overall responsibility for managing and coordinating the performance of TranServ obligations under this Agreement. Notwithstanding the foregoing, the TranServ Project Manager may, upon written notice to Company, delegate such of his or her responsibilities to other TranServ Personnel, as the TranServ Project Manager deems appropriate.

8.3 Resolution of Disputes. Any dispute, claim or controversy between the Parties arising out of or relating to this Agreement (each, a “Dispute”) shall be resolved in accordance with the procedures set forth in this Section 8.3; provided, however, that this Section 8.3 shall not apply to Disputes arising from or relating to (a) the amount of compensation to be paid by Company pursuant to Section 3.1, which shall be resolved pursuant to Section 3.6, (b) confidentiality or intellectual property rights, in which case either Party shall be free to seek available legal or equitable remedies, or (c) alleged violations of the OATT, in which case either Party shall be free to bring the Dispute to FERC.

8.3.1 Notice of Dispute. Each Party shall provide written notice to the other party of any Dispute, including a description of the nature of the Dispute.

8.3.2 Dispute Resolution by Contract Managers. Any Dispute shall first be referred to the Company Contract Manager and TranServ Project Manager, who shall negotiate in good faith to resolve the Dispute.

8.3.3 Dispute Resolution by Executive Management Representatives. If the Dispute is not resolved within fifteen (15) calendar days of being referred to the Company Contract Manager and the TranServ Project Manager pursuant to Section 8.3.2, then each Party shall have five (5) calendar days to appoint an executive management representative who shall negotiate in good faith to resolve the Dispute.

8.3.4 Binding Arbitration. If the Dispute is not resolved within ten (10) calendar days of being referred to executive management representatives, and the amount in dispute or

potential damages exceeds \$250,000 USD, the Parties shall proceed in good faith to submit immediately the matter to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) as they may be amended from time to time (the “Arbitration Rules”) subject to the following conditions:

- (a) The Parties shall give due consideration to using the Expedited Procedures under the Arbitration Rules in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration fees and costs.
- (b) The Parties agree that three arbitrators will be used. Each Party will directly appoint one arbitrator of its choosing from a list of members from the National Roster (as that term is used in the Arbitration Rules) provided by the AAA pursuant to R-12, within ten (10) Days after receipt of such names. The two arbitrators so appointed shall select a third arbitrator from the National Roster to serve as chairperson.
- (c) “Baseball” arbitration (in which each Party presents a proposed award or resolution and the actual award must be one of the two submitted), or close variants thereof, shall not be used.
- (d) The arbitrators have no authority to appoint or retain expert witnesses for any purpose unless agreed to by the Parties.
- (e) All arbitration fees and costs shall be borne equally, regardless of which Party prevails.
- (f) Each Party shall bear its own costs of legal representation and witness expenses, unless the arbitrator(s) determines that one Party should bear some or all of the costs of legal representation and witness expenses of the other Party.
- (g) The Parties waive any right of appeal or recourse to any court except to compel arbitration, to compel the appointment of arbitrators, to stay judicial proceedings pending arbitration, for an injunction pending determination by the arbitrators, for disqualification of arbitrators, for aid in furtherance of arbitration, to confirm the award, to enforce any judgment confirming the award, or in circumstances of fraud or failure to disclose information or documents required by the arbitrators.
- (h) The decision or award of a majority of the arbitrators shall govern. The decision or award of the arbitrators shall be final and binding upon the Parties to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and shall be enforceable under the Federal Arbitration Act and applicable states’ laws.

8.3.5 Rights and Remedies. If the Dispute is not resolved within ten (10) calendar days of being referred to executive management representatives, and the amount in dispute or potential damages does not exceed \$250,000 USD, each Party is free to pursue any rights or remedies it may have at law or equity.

8.4 Rights Under FPA Unaffected. Except as provided in Section 17.2 relating to the variation or amendment of this Agreement, nothing in this Agreement is intended to limit or

abridge any rights that Company may have to file or make application before FERC under Section 205 of the Federal Power Act to revise any rates, terms or conditions of the OATT.

8.5 Statute of Limitations; Continued Performance. The Parties agree to waive the applicable statute of limitations during the period of time that the Parties are seeking to resolve a Dispute pursuant to Section 8.3, and the statute of limitations shall be tolled for such period. The Parties shall continue to perform their obligations under this Agreement during the resolution of a Dispute.

## **Section 9 - Insurance**

9.1 TranServ's Insurance Obligation. During the Term, TranServ shall provide and maintain, and shall require TranServ Designees to provide and maintain, the following insurance (and, except with regard to Workers' Compensation, naming Company as additional insured and waiving rights of subrogation against Company and Company's insurance carrier(s)), and TranServ shall submit evidence of such coverage(s) of TranServ and any TranServ Designees to Company prior to the start of ITO Services. Furthermore, TranServ shall notify Company, prior to the commencement of ITO Services, of any threatened, pending and/or paid off claims to third parties, individually or in the aggregate, which otherwise affects the availability of the limits of such coverage(s) inuring to the benefit of Company as hereinafter specified:

9.1.1 Workers' Compensation and Employer's Liability Policy, which shall include provisions required by applicable law in the jurisdiction of location of workers.

9.1.2 Employer's Liability (Coverage B) with limits of One Million Dollars (\$1,000,000) Bodily Injury by Accident, each Accident, \$1,000,000 Bodily Injury by Disease, each Employee, and including:

- (a) a thirty (30) day cancellation clause; and
- (b) broad form all states endorsement.

9.1.3 Commercial General Liability Policy, which shall have minimum limits of One Million Dollars (\$1,000,000) each occurrence; One Million Dollars (\$1,000,000) Products/Completed Operations Aggregate each occurrence; One Million Dollars (\$1,000,000) Personal and Advertising Injury each occurrence, in all cases subject to Two Million Dollars (\$2,000,000) in the General Aggregate for all such claims, and including:

- (a) a thirty (30) day cancellation clause;
- (b) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by TranServ under this Agreement; and
- (c) Broad Form Property Damage.

9.1.4 Commercial Automobile Liability Insurance covering the use of all owned, non-owned, and hired automobiles, with a bodily injury, including death, and property damage combined single minimum limit of One Million Dollars (\$1,000,000) each occurrence with respect to TranServ's vehicles assigned to or used in performance of ITO

Services under this Agreement.

9.1.5 Umbrella/Excess Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) per occurrence; Two Million Dollars (\$2,000,000) aggregate, to apply to employer's liability, commercial general liability, and automobile liability.

9.1.6 To the extent applicable, if engineering or other professional services will be separately provided by TranServ as specified in Appendix A, then Professional Liability Insurance with limits of Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, which insurance shall be either on an occurrence basis or on a claims made basis (with a retroactive date satisfactory to Company).

9.2 Quality of Insurance Coverage. The above policies to be provided by TranServ shall be written by insurance companies which are both licensed to do business in the state where ITO Services will be performed and either satisfactory to Company or having a Best Rating of not less than "A-". These policies shall not be materially changed or canceled except with thirty (30) days written notice to Company from TranServ and the insurance carrier. Evidence of coverage, notification of cancellation or other changes shall be mailed to: Attention: Manager, Supply Chain, LG&E and KU Services Company, P.O. Box 32020, Louisville, Kentucky 40232.

9.3 Implication of Insurance. Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements; however, Company shall not be obligated to review any of TranServ's certificates of insurance, insurance policies, or endorsements, or to advise TranServ of any deficiencies in such documents. Any receipt of such documents or their review by Company shall not relieve TranServ from or be deemed a waiver of Company's rights to insist on strict fulfillment of TranServ's obligations under this Agreement.

9.4 Other Notices. TranServ shall provide written notice of any accidents or claims in connection with ITO Services or this Agreement to Company's Manager, Risk Management at LG&E and KU Services Company, P.O. Box 32030, Louisville, Kentucky 40232.

## **Section 10 - Confidentiality**

10.1 Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean, in respect of each Party, all information and documentation of such Party, whether disclosed to or accessed by the other Party in connection with this Agreement and which is identified as Confidential Information, or which otherwise would be treated as confidential by the recipient, including confidential information provided by third-parties; provided, however, that the term "Confidential Information" shall not include information that: (a) is independently developed by the recipient, as demonstrated by the recipient's written records, without violating the disclosing Party's proprietary rights; (b) is or becomes publicly known (other than through unauthorized disclosure); (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (d) is already known by the recipient at the time of disclosure, as demonstrated by the recipient's written records, and the recipient has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements between the Parties entered into before the Commencement Date; or (e) is rightfully received by a Party free of any obligation of confidentiality.



10.2 Protection of Confidential Information. All Confidential Information shall be held in confidence by the recipient to the same extent and in at least the same manner as the recipient protects its own Confidential Information, and such Confidential Information shall be used only for purposes of performing obligations under this Agreement. Except as otherwise provided in Section 10.3, neither Party shall disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from, the other Party in any form to, or for the use or benefit of, any person or entity without the owner of such information's prior written consent. Each Party shall be permitted to disclose relevant aspects of the other Party's Confidential Information to its officers, directors, agents, professional advisors, contractors, subcontractors (including TranServ Designees) and employees and to the officers, directors, agents, professional advisors, contractors, subcontractors and employees of its Affiliates (collectively, "Representatives"), to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations or the determination, preservation or exercise of its rights and remedies under this Agreement; provided, however, that the recipient shall take all reasonable measures to ensure that Confidential Information is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, directors, agents, professional advisors, contractors, subcontractors and employees. Recipient agrees to be liable for the wrongful actions of its Representatives under this Section 10.2. The obligations in this Section 10 shall not restrict any disclosure pursuant to any Regulatory Authority if such release is necessary to comply with valid laws, governmental regulations or final orders of regulatory bodies or courts; provided that, other than in respect of disclosures pursuant to Section 10.3, the recipient shall give prompt written notice to the disclosing Party in reasonable time to exercise whatever legal rights the disclosing Party may have to prevent or limit such disclosure. Further, the recipient shall cooperate with the disclosing Party in preventing or limiting such disclosure.

10.3 Regulatory Requests for Confidential Information. Notwithstanding anything in this Section 10 to the contrary, if a Regulatory Authority or its staff, during the course of an investigation or otherwise, requests Confidential Information from TranServ, TranServ shall provide the requested Confidential Information to the requesting Regulatory Authority or its staff within the time provided for in the request for information. In providing the Confidential Information to a Regulatory Authority or its staff, TranServ shall, consistent with 18 C.F.R. § 388.112 (2011) or any other applicable confidentiality regulation, request that the Confidential Information be treated as confidential and non-public by the Regulatory Authority and its staff and that the information be withheld from public disclosure. TranServ shall notify Company when it is notified by the Regulatory Authority or its staff that a request for public disclosure of, or decision to publicly disclose, Confidential Information has been received, at which time either TranServ or Company may respond before such Confidential Information is made public, pursuant to 18 C.F.R. § 388.112 or the applicable confidentiality regulation.

## **Section 11 - Force Majeure.**

11.1 Force Majeure. Neither Party shall be liable to the other Party for any failure or delay of performance hereunder due to an event which (i) is not reasonably foreseeable or within the reasonable control of the Party claiming Force Majeure (the "Claiming Party") or any Person over which the Claiming Party has control, (ii) was not caused by the acts, omissions, negligence, fault or delays of the Claiming Party or any person over whom the Claiming Party has control, (iii) is not an act, event or condition the risks or consequences of which the Claiming Party has expressly agreed to assume pursuant to this Agreement, and (iv) by the prompt exercise of due diligence, the

Claiming Party is unable to overcome or avoid or cause to be avoided (collectively, (i) - (iv) are “Force Majeure”). Force Majeure shall include: acts of God; acts of the public enemy, war, hostilities, invasion, insurrection, riot, civil disturbance, or order of any competent civil or military government; explosion or fire; strikes or lockouts or other industrial action (excluding those of the Claiming Party unless such action is part of a wider industrial dispute materially affecting other employers); labor or material shortage; malicious acts, vandalism or sabotage; action or restraint by court order of any public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action). Neither Party shall be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to Force Majeure, except for the obligation to pay any amount when due, provided that the Claiming Party:

11.1.1 gives prompt written notice to the other Party of the event or circumstance giving rise to the event of Force Majeure;

11.1.2 affords the other Party reasonable access to information about the event or circumstances giving rise to the event of Force Majeure;

11.1.3 takes commercially reasonable steps to restore its ability to perform its obligations hereunder as soon as reasonably practicable, provided that the Claiming Party shall not be obligated to take any steps that are not otherwise in accordance with Good Utility Practice; and

11.1.4 exercises commercially reasonable efforts to perform its obligations hereunder.

## **Section 12 - Reporting; Audit.**

### **12.1 Regulatory Reporting.**

12.1.1 TranServ shall have the authority to report in writing to FERC in respect of any compensation-related Dispute that arises between TranServ and Company pursuant to Section 3.6.

12.1.2 TranServ shall report in writing to FERC every six (6) months (commencing on the six (6) month anniversary of the Commencement Date and every six (6) months thereafter during the Term) in respect of (a) any concerns expressed by stakeholders and TranServ’s response to same and (b) any issues or OATT provisions that hinder TranServ from performing its duties and obligations under this Agreement and the OATT.

12.1.3 In addition to the reports provided for above, TranServ shall make such other reports to Regulatory Authorities as may be required by applicable law and regulations or as may be requested by such Regulatory Authorities.

12.2 Books and Records. TranServ shall maintain full and accurate books and records pertinent to this Agreement, and TranServ shall maintain such books and records for a minimum of five (5) years following the expiration or early termination of this Agreement or longer if necessary to resolve a pending Dispute. Company will have the right, at reasonable times and under reasonable conditions, to inspect and audit, or have an independent third party inspect and audit, TranServ’s operations, books, and records (a) to ensure compliance with this Agreement,

including TranServ's performance of ITO Services in accordance with Section 1.3.1, (b) to verify any cost claims or other amounts due hereunder, and (c) to validate TranServ's internal controls with respect to the performance of ITO Services. TranServ shall maintain an audit trail, including all original transaction records and timekeeping records, of all financial and non-financial transactions and activities resulting from or arising in connection with this Agreement as may be necessary to enable Company or the independent third party, as applicable, to perform the foregoing activities. Company shall be responsible for any costs and expenses incurred in connection with any such inspection or audit, unless such inspection or audit discovers that Company was charged inappropriate or incorrect costs and expenses, in which case, TranServ shall be responsible for a percentage of the costs and expenses incurred in connection with such inspection or audit equal to the percentage variance by which Company was charged inappropriate or incorrect costs and expenses. TranServ shall provide reasonable assistance necessary to enable Company or an independent third party, as applicable, to perform the foregoing activities and shall not be entitled to charge Company for any such assistance. Amounts incorrectly or inappropriately invoiced by TranServ to Company, whether discovered prior to or subsequent to payment by Company, shall be adjusted or reimbursed to Company by TranServ within twenty (20) days of notification by Company to TranServ of the error in the invoice.

### **Section 13 - Independent Contractor**

13.1 TranServ, in performing ITO Services, shall not act as an agent or employee of Company, but shall be and act as an independent contractor and, except as established in Section 1.3.1, shall be free to perform ITO Services by such methods and in such manner as TranServ may choose, doing everything necessary to perform such ITO Services properly and safely and having supervision over and responsibility for the safety and actions of its employees and the suitability of its equipment. TranServ Personnel and TranServ Designees shall not be deemed to be employees and/or agents of Company. TranServ agrees that if any portion of ITO Services are subcontracted to TranServ Designees, such TranServ Designees shall be bound by and observe the conditions of this Agreement to the same extent as required of TranServ. In such event, Company strongly encourages the use of Minority Business Enterprises, Women Business Enterprises and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Company recognizes as proper.

13.2 Notwithstanding any provision in this Agreement to the contrary, unless approved in writing by Company, TranServ shall not (and shall not permit any TranServ Personnel or TranServ Designee to):

13.2.1 Sell, lease, pledge, mortgage, encumber, convey, or make any license, exchange or other transfer, assignment or disposition of any property or assets of Company;

13.2.2 Enter into, amend, terminate, modify or supplement any contract or agreement (including any labor or collective bargaining agreement) on behalf, or in the name, of Company;

13.2.3 Except upon the approval of Company or pursuant to the direction of Company, take any action that would, to TranServ's knowledge: (a) invalidate any warranty that runs to Company under any contract or agreement; or (b) release any person or entity from its obligations under any contract or agreement with Company;

13.2.4 Make any warranty or representation on behalf of Company;

13.2.5 Except as contemplated under Section 7.4, settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of any claim, suit, debt, demand or judgment against or due by Company, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to the same;

13.2.6 Pledge the credit of Company in any way in respect of any commitments for which it has not received express written authorization from Company; or

13.2.7 Engage in any other transaction on behalf of Company not permitted under this Agreement.

**Section 14 - Taxes.**

Each Party shall be responsible for the payment of its own taxes, including taxes based on its net income, employment taxes of its employees, taxes on any property it owns or leases, and sales, use, gross receipts, excise, value-added or other transaction taxes. Sales and/or use taxes, that become applicable to services performed within Minnesota, shall be added to TranServ fees and compensation otherwise herein described.

**Section 15 - Notices.**

15.1 Notices. All notices, requests, consents and other communications required or permitted hereunder shall be in writing, signed by the Party giving such notice or communication, and shall be deemed given: (a) upon receipt, when mailed by U.S. certified mail, postage prepaid, return receipt requested; or (b) upon the next business day, when sent by overnight delivery, postage prepaid using a recognized courier service.

If to Company:

LG&E/KU  
VP, Transmission  
220 West Main St  
PO Box 32010  
Louisville, KY 40232

If to TranServ:

TranServ International, Inc.  
Contracts Administration  
3660 Technology Drive NE  
Minneapolis, MN 55418

15.2 Changes. Either Party may, from time to time, change the names, addresses, facsimile numbers or other notice information set out in Section 15.1 by notice to the other Party in accordance with the requirements of Section 15.1.

## **Section 16 - Personnel and Work Conditions; NERC Requirements.**

16.1 Applicable Laws and Safety. TranServ agrees to protect TranServ Personnel and TranServ Designees and be responsible for their performance of the ITO Services, and to protect Company's facilities, property, employees and third parties from damage or injury. TranServ shall at all times be solely responsible for complying with any and all applicable laws and facility rules relating to health and safety, in connection with ITO Services and for obtaining (but only as approved by Company) all permits and approvals necessary to perform ITO Services. Without limiting the foregoing, TranServ agrees to strictly abide by and observe all standards of the Occupational Safety & Health Administration ("OSHA") which are applicable to ITO Services, as well as Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy which are both hereby incorporated by reference (Contractor hereby acknowledges receipt of a copy of such Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy) and any other rules and regulations of the Company, all of which are provided to TranServ in writing and incorporated herein by reference. TranServ also agrees to review in good faith and execute any amendments and/or modifications that may be issued in the future by Company from time to time, with respect to Company's Contractor Code of Business Conduct and/or any of its related policies which are the subject of this Section 16, provided however, that TranServ shall not be obliged by such requirement if the requirements conflicts with an alternate regulatory code of conduct imposed on TranServ. In the event TranServ subcontracts any of ITO Services to a TranServ Designee, TranServ shall notify Company in writing of the identity of TranServ Designee before utilizing TranServ Designee. TranServ shall require any TranServ Designees to complete the safety and health questionnaire and checklists provided by Company and shall provide a copy of such documents to Company upon request. TranServ shall conduct, and require such TranServ Designees to conduct, safety audits and job briefings during performance of ITO Services as applicable. In the event such TranServ Designee has no procedure for conducting safety audits and job briefings, TranServ shall include TranServ Designee in its safety audits and job briefings. All applicable safety audits shall be documented in writing by TranServ and such TranServ Designees. TranServ shall provide documentation of any and all audits identifying safety deficiencies and concerns and corrective action taken as a result of such audits to Company semi-monthly. TranServ further specifically acknowledges, agrees and warrants that TranServ has complied, and shall at all times during the term of this Agreement, comply in all respects with all laws, rules and regulations relating to the employment authorization of TranServ Personnel including, but not limited to, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, whereby TranServ certifies to Company that TranServ has (a) properly maintained, and shall at all times during the term of this Agreement properly maintain all records required by Immigration and Customs Enforcement, such as the completion and maintenance of the Form I-9 for each TranServ employee; (b) that TranServ maintains and follows an established policy to verify the employment authorization of TranServ Personnel; (c) that TranServ has verified the identity and employment eligibility of all TranServ Personnel in compliance with all applicable laws; and (d) that TranServ is without knowledge of any fact that would render any TranServ Personnel or TranServ Designee ineligible to legally work in the United States. TranServ further acknowledges, agrees and

warrants that any TranServ Designee shall be required to agree to these same terms as a condition to being awarded any subcontract for such ITO Services.

16.2 Hazards and Training. TranServ shall furnish adequate numbers of trained, qualified, and experienced TranServ Personnel suitable for performance of ITO Services. Such TranServ Personnel shall be skilled and properly trained to perform ITO Services and recognize all hazards associated with ITO Services. Without limiting the foregoing, TranServ shall participate in any safety orientation or other of Company's familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Company.

16.3 Drug and Alcohol. TranServ shall develop and strictly comply with any and all drug and alcohol testing requirements as required by applicable laws. TranServ shall provide Company with a copy of its drug and alcohol testing requirements.

16.4 NERC Reliability Standards. The following additional provisions shall apply to the extent TranServ's performance of ITO Services requires physical or electronic access to areas or assets which are located within physical security perimeters as defined by NERC's Reliability Standards for the Bulk Electric Systems of North America (collectively, the "NERC Standards"), including without limitation any Company data center or control center. In the event of TranServ's non-compliance with the NERC Standards referenced in this Section 16.4, Company shall notify TranServ in writing of the non-compliance and specify appropriate remedial actions.

16.4.1 Information Protection. Without compromising the confidentiality provisions in Section 10, TranServ shall at all times comply with the Company's information protection program(s) as defined by CIP-003, R4. Among the information protected by this program are: (i) all operational procedures; (ii) lists of critical cyber assets; (iii) network topology or similar diagrams; (iv) floor plans of computing centers that contain critical cyber assets; (v) equipment layouts of critical cyber assets; (vi) disaster recovery plans; (vii) incident response plans; and (viii) security configuration information. TranServ shall protect this protected information from disclosure consistent with the program.

16.4.2 Access Revocation. TranServ shall immediately advise appropriate Company's management if any TranServ Personnel or TranServ Designees who have key card access to a Company restricted area or electronic access to a protected system no longer require such access.

16.4.3 Training. If any TranServ Personnel require key card access to a Company restricted area or electronic access to a protected system, TranServ shall ensure that such personnel complete, and retake as requested, all necessary NERC training as requested by Company.

16.4.4 Personnel Risk Assessment. If any TranServ Personnel require key card access to a Company restricted area or electronic access to a protected system, TranServ shall ensure that Company receives necessary waivers and information from TranServ Personnel to complete, and repeat as necessary, such background checks as requested by Company.

16.4.5 Continuing Obligations. TranServ further acknowledges that its compliance with the NERC Standards referenced in this Section 16.4 is a continuing obligation during and after the Term. Upon written notice to TranServ, Company shall have the absolute right

to audit and inspect any and all information regarding TranServ's compliance with this Section 16.4, and/or to require confirmation of the destruction of any documentation received from or regarding Company. TranServ is encouraged to contact Company's Compliance Department pursuant to Section 16.5 to ensure TranServ understands and complies with this Section 16.4.

16.5 Compliance Department. The Company has a Compliance Department. Should TranServ have actual knowledge of violations of any of the herein stated policies of conduct in this Section 16, or in standards of performance detailed in Section 1.3.1, or have a reasonable basis to believe that such violations have occurred, whether by TranServ Personnel or a TranServ Designee, TranServ has an affirmative obligation to immediately report, at least on an anonymous basis, any such known violations to the Company's Office of Compliance in care of Director, Compliance and Ethics, LG&E/KU Services, 220 West Main Street, Louisville, Kentucky 40202.

16.6 Equal Employment Opportunity. To the extent applicable, TranServ shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 C.F.R. § 60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 C.F.R. § 60-250.4 relating to the employment and advancement of disabled veterans and Vietnam era veterans; (iii) Rehabilitation Act regulations set forth in 41 C.F.R. § 60-741.4 relating to the employment and advancement of qualified disabled employees and applicants for employment; (iv) the clause known as "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" set forth in 15 USC § 637(d)(3); and (v) the subcontracting plan requirement set forth in 15 USC § 637(d).

## **Section 17 - Miscellaneous Provisions.**

17.1 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without giving effect to its conflicts of law rules.

17.2 Amendment. This Agreement shall not be varied or amended unless such variation or amendment is agreed to by the Parties in writing and accepted by applicable Regulatory Authorities. The Parties explicitly agree that neither Party shall unilaterally petition to FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act to amend this Agreement or to request that FERC initiate its own proceeding to amend this Agreement. Nothing in this Section 17.2 shall be construed to limit or affect any other rights that the Parties may have as set forth in Section 8.4, the OATT or otherwise.

17.3 Liability of Affiliates. Any and all liabilities of Company and/or its Affiliates under this Agreement shall be several but not joint.

17.4 Publicity. TranServ shall not issue news releases, publicize or issue advertising pertaining to ITO Services or this Agreement without first obtaining the written approval of Company.

17.5 Assignment. Any assignment of this Agreement or any interest herein or delegation of all or any portion of a Party's obligations, by operation of law or otherwise, by either Party without

the other Party's prior written consent shall be void and of no effect; provided, however, that consent will not be required for Company to assign this Agreement to an Affiliate or a successor entity that acquires all or substantially all of the operational business assets of the assigning entity whether by merger, consolidation, reorganization, sale, spin-off or foreclosure; provided, further, that such Affiliate or successor entity (a) agrees to assume all obligations hereunder from and after the date of such assignment and (b) has the legal authority and operational ability to satisfy the obligations under this Agreement. As a condition to the effectiveness of such assignment (i) the assignor shall promptly notify the other Party of such assignment, (ii) the Affiliate or successor entity shall provide a confirmation to the other Party of its assumption of assignor's obligations hereunder, and (iii) assignor shall promptly reimburse the other Party, upon receipt of an invoice, for any one-time incremental costs reasonably incurred as a result of such assignment. For the avoidance of doubt, nothing herein shall preclude Company from transferring any or all of its transmission facilities to another entity or disposing of or acquiring any other transmission assets. Notwithstanding anything to the contrary contained in this Section 17.5, TranServ shall be entitled to contract with one or more persons (each, an "TranServ Designee") to perform only those ITO Services which the OATT expressly provides for being performed by a "designee" of TranServ (as opposed to TranServ or TranServ Personnel), provided that TranServ shall not be relieved of any of its obligations, responsibilities or liabilities under this Agreement as a result of contracting with one or more TranServ Designees in accordance with this Section 17.5 and shall be responsible and liable for any ITO Services performed by TranServ Designees.

17.6 No Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, this Agreement is made solely for the benefit of the Parties and their successors and permitted assigns and no other person shall have any rights, interest or claims hereunder or otherwise be entitled to any benefits under or on account of this Agreement as third party beneficiary or otherwise.

17.7 Waivers. No waiver of any provision of this Agreement shall be effective unless it is signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights or remedies under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights or remedies, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

17.8 Enforcement of Rights. Each Party shall have the right to recover from the other Party all expenses, including fees for and expenses of inside and/or outside counsel, arising out of the other Party's breach of this Agreement or any other action to enforce or defend rights hereunder.

17.9 Severability; Renegotiation. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision herein. If any provision of this Agreement is found to be invalid, illegal or otherwise unenforceable, the same shall not affect the other provisions hereof or the whole of this Agreement and shall not render invalid, illegal or unenforceable this Agreement or any of the remaining provisions of this Agreement. If any provision of this Agreement or the application thereof to any person, entity or circumstance is held by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, or if a modification or condition to this Agreement is imposed by such court or regulatory authority, the Parties shall in good faith negotiate such amendment or amendments to this Agreement as will restore the relative benefits



and obligations of the Parties immediately prior to such holding, modification or condition.

17.10 Remedies. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy available at law or equity or otherwise. The election of one or more remedies shall not constitute a waiver of the right to pursue any other available remedies.

17.11 Representations and Warranties. Each Party represents and warrants to the other Party as of the date hereof as follows:

17.11.1 Organization. It is duly organized, validly existing and in good standing under the laws of the State in which it was organized, and has all the requisite power and authority to own and operate its material assets and properties and to carry on its business as now being conducted and as proposed to be conducted under this Agreement.

17.11.2 Authority. It has the requisite power and authority to execute and deliver this Agreement and, subject to the procurement of applicable regulatory approvals, to perform its obligations under this Agreement. The execution and delivery of this Agreement by it and the performance of its obligations under this Agreement have been duly authorized by all necessary corporate action required on its part.

17.11.3 Binding Effect. Assuming the due authorization, execution and delivery of this Agreement by the other Party, this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar applicable laws affecting creditors' rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

17.11.4 Regulatory Approval. It has obtained or will obtain by the Commencement Date, any and all approvals of, and acceptances for filing by, and has given or will give any notices to, any applicable federal or state authority, including FERC and the KPSC (as applicable), that are required for it to execute, deliver, and perform its obligations under this Agreement.

17.11.5 No Litigation. There are no actions at law, suits in equity, proceedings, or claims pending or, to its knowledge, threatened against it before or by any federal, state, foreign or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

17.11.6 No Violation or Breach. The execution, delivery and performance by it of its obligations under this Agreement do not and shall not: (a) violate its organizational documents; (b) violate any applicable law, statute, order, rule, regulation or judgment promulgated or entered by any applicable federal or state authority, which violation could reasonably be expected to materially adversely affect the performance of its obligations under this Agreement; or (c) result in a breach of or constitute a default of any material agreement to which it is a party.

17.11.7 No Other Warranties. EXCEPT AS PROVIDED IN THIS AGREEMENT, TRANSERV MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF

## MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17.12 Further Assurances. Each Party agrees that it shall execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the purpose of this Agreement and are not inconsistent with the provisions of this Agreement.

17.13 Entire Agreement. This Agreement and the Attachments hereto set forth the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements, whether oral or written, related to the subject matter of this Agreement. The terms of this Agreement and the Attachments hereto are controlling, and no parole or extrinsic evidence, including to prior drafts and drafts exchanged with any third parties, shall be used to vary, contradict or interpret the express terms and conditions of this Agreement.

17.14 Good Faith Efforts. Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and the other Party to fulfill their obligations under this Agreement. Where the consent, agreement or approval of any Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, delayed or conditioned. Where a Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised, other than where expressly provided for herein. To the extent that the jurisdiction of any federal or state authority applies to any part of this Agreement or the transactions or actions covered by this Agreement, each Party shall cooperate with the other Party to secure any necessary or desirable approval or acceptance of such authorities of such part of this Agreement or such transactions or actions.

17.15 Time of the Essence. With respect to all duties, obligations and rights of the Parties specified by Regulatory Authorities, time shall be of the essence in this Agreement.

17.16 Interpretation. Unless the context of this Agreement otherwise clearly requires:

17.16.1 all defined terms in the singular shall have the same meaning when used in the plural and vice versa;

17.16.2 the terms “hereof,” “herein,” “hereto” and similar words refer to this entire Agreement and not to any particular Section, Attachment or any other subdivision of this Agreement;

17.16.3 references to “Section” or “Appendix” refer to this Agreement, unless specified otherwise;

17.16.4 references to any law, statute, rule, regulation, notification or statutory provision shall be construed as a reference to the same as it applies to this Agreement and may have been, or may from time to time be, amended, modified or re-enacted;

17.16.5 references to “includes,” “including” and similar phrases shall mean “including, without limitation;”

17.16.6 the captions, section numbers and headings in this Agreement are included for convenience of reference only and shall not in any way affect the meaning or

interpretation of this Agreement;

17.16.7 “or” may not be mutually exclusive, and can be construed to mean “and” where the context requires there to be a multiple rather than an alternative obligation; and

17.16.8 references to a particular entity include such entity’s successors and assigns to the extent not prohibited by this Agreement.

17.17 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other and no provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provision. Each Party acknowledges that in executing this Agreement it has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and it has not been influenced by any representation or statement made by the other Party or its counsel not contained in this Agreement.

17.18 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon Company and TranServ, notwithstanding that Company and TranServ may not have executed the same counterpart.

The Parties have caused this Independent Transmission Organization Agreement to be executed by their duly authorized representatives as of the dates shown below.

**LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY**

**/s/ Stephanie R. Pryor**

---

Name: Stephanie R. Pryor  
Title: Manager Supply Chain  
Date: 12/9/2016

**TRANSERV INTERNATIONAL, INC.**

**/s/ Sasan Mokhtari, PhD**

---

Name: Sasan Mokhtari, PhD  
Title: President & CEO  
Date: 12/8/2016

Appendix A  
Louisville Gas and Electric  
Company/

Kentucky Utilities Company

INDEPENDENT TRANSMISSION  
ORGANIZATION

SERVICE SPECIFICATION

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### 1. Overview

This Appendix A is intended to be consistent with the terms and conditions of the

LG&E/KU Open Access Transmission Tariff (OATT), including Attachment P thereto. If there is any conflict between this Appendix A and the OATT, the OATT shall govern. TranServ shall perform its obligations under this Appendix A in accordance with Section 1.3.1 of this Agreement.

The services delegated to TranServ include the administration of the LG&E/KU Open Access Same-time Information System (OASIS), transmission service request evaluation process, Available Transfer Capability (ATC)/ Available Flowgate Capability (AFC) management, study queue administration, study performance, and stakeholder facilitation. TranServ, as the ITO, will administer the OATT granting of service for both short and long-term transmission requests, administer the large generator interconnection request queue, and perform transmission studies. TranServ will facilitate the LG&E/KU long-term transmission planning function and stakeholder processes.

## 2. Definitions

Company - Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU)

ITO - Independent Transmission Organization

ITO Services - The applicable functions to be performed as specified in the ITO Agreement

RC - Reliability Coordinator

Service Interruption - A Service Interruption is the loss of Service function, under the direct control of TRANSERV with no mutually agreed to work around provided within the Service

Normal Business Hours - TranServ normal business hours are between the hours of 0700 and 1700 CT, Monday-Friday on days other than the holidays listed below:

1. New Year's Day
2. Memorial Day
3. Independence Day
4. Labor Day
5. Thanksgiving
6. Day after Thanksgiving
7. Day before Christmas

8. Christmas Day



### **3. Roles and Responsibilities for Providing ITO Services**

#### **3.1 TranServ**

TranServ International, Inc. (TranServ) will provide services to LG&E/KU as the ITO. The services that TranServ will provide include:

##### **3.1.1 Customer Interface**

Responsibility for operating and maintaining OASIS website and keeping it up-to-date with Federal Energy Regulatory Commission (FERC) and North American Energy Standards Board (NAESB) posting requirements, including all Order No. 890 posting requirements (such as study performance metrics, Available Transfer Capability (ATC) calculations, etc.). This includes establishing an interface for customers to submit service requests, and oversight and evaluation of ATC values calculated using software procured from Open Access Technology International, Inc. (OATI) and information from the RC. TranServ's responsibilities and duties in administering OASIS will include the following:

- Performing the duties of a Responsible Party as defined in the Commission's OASIS regulations, 18 C.F.R. § 37.5 and FERC Order No. 676.
- Posting information required to be on the Transmission Provider's OASIS under the Commission's OASIS regulations, 18 C.F.R. § 37.6 and FERC Order No. 676.
- Maintaining and retaining information posted on OASIS in accordance with the Commission's regulations, including 18 C.F.R. Parts 37 and 125.
- Establishing and maintaining queues for processing transmission service requests and generator interconnection (GI) requests.
- Participating in the drafting and posting of Business Practices on the OASIS website, including any FERC or NAESB-required Business Practices. Company shall have final review, ownership, and approval for all Business Practices.
- Participating in periodic reviews of, and providing expertise/comments on, the OATT. Company retains final authority over the OATT's content, including retaining the right and responsibility to file changes to the OATT.
- Participating in stakeholder meetings and/or conference calls as required. These stakeholder meetings will include TranServ, Company, Customers (as appropriate) the RC, and other entities as required, to address concerns regarding Company's system,

administration of the OATT, and related issues.

- Responsibility for coordinating with third-party transmission system owners and operators as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.
- Management of ATC/AFC Calculation and Posting.
- Implementation of certain aspects of the Congestion Management Process (CMP) established by the Midcontinent Independent System Operator, Inc. (MISO), PJM Interconnection LLC (PJM), and TVA.
- Administration of request evaluations for LG&E/KU tariff service.
- Processing of e-Tags as the transmission provider.
- Reviewing software changes requested from OATI, verifying and testing for proper operations before OATI implements those changes.

### **3.1.2 Transmission Service and Generator Interconnection Requests and Studies**

- Receive and process all applications for Point-to-Point, Network Integration Transmission Service (NITS), and for GIs.
- For short-term Point-to-Point Transmission Service requests (i.e., where the request is within the posted ATC horizon), evaluate and approve a request where the posted ATC is sufficient for the requested transaction. If ATC is insufficient, TranServ shall propose conditional service options to the customer in accordance with the OATT, or otherwise deny the service. If the customer accepts conditional service options, TranServ will be responsible for performing biennial reassessments, as provided under the OATT.
- For long-term Point-to-Point Transmission Service requests, NITS, or GI requests:
  - Determine whether a System Impact Study (SIS) is necessary to accommodate the request.
  - Render all study agreements (SIS, Interconnection Feasibility Studies (IFS), Facilities Study (FS), and Feasibility Analysis Studies (FAS)) to customers within the timeframe provided in the OATT.
  - Perform the SIS or FAS in the timeframe provided in the OATT, including clustered SISs when requested by customers and/or Company.

- Perform the SIS or FAS using Company's planning criteria.
  - For any study that TranServ performs that requires information from Company (e.g., good faith construction estimates that are included in the SIS), request such information from Company no less than ten (10) business days before the expiration of the applicable study period.
  - Complete study reports and post on OASIS within the timeframe required under the OATT.
  - Notify the Company and individual customers of completed study reports, and alert the Company to initiate service agreements, if applicable.
  - Receive customer deposits.
  - Bill customers for SIS, IFS, FS, and FAS as required by the OATT, including provision of an itemized bill for services if requested by a customer.
  - Reimburse Company for any study costs incurred in contributing to the study and render payment to any third-party vendors for work performed.
- Responsible for receiving and processing requests to designate or un-designate Network Resources, as provided under the OATT.
  - If a customer requests a modification to its service, or if a customer assigns its transmission service to a third-party who request modification to the service, process those modification requests in accordance with the terms of the OATT.
  - Track all study metrics, including data submittals, input validations, modifications, time and costs associated to perform the study.
  - Track the performance of all studies and alert Company if a FERC filing requirement or penalty payment has been triggered due to late studies, as described under the OATT.

### **3.1.3 ATC Calculation**

- Calculate ATC as provided for in Attachment C to the OATT. This includes receiving initial AFC values from the RC, calculating final AFC values using the algorithms included in Attachment C, and converting the AFC to ATC using OATI software.
- Post on OASIS the mathematical algorithms used to calculate firm and non-firm AFC. TranServ shall also post the results of the AFC calculations on OASIS.

- Daily review of transmission service requests (TSRs) and eTag action and statistics.
- Daily review of posted AFC/ATC information and investigation into any anomalies.
- Review, observation, and validation of the Total Transfer Capability (TTC) development process.

#### **3.1.4 Interchange and Scheduling**

- As the Transmission Service Provider, responsible for the following activities:
  - Confirm that each electronic schedule (e-Tag) has a confirmed transmission service request.
  - Approve the interchange schedules as the transmission service provider.
  - Curtail electronic schedules if requested by the RC or Balancing Authority (BA).
  - Monitor and validate the Net Scheduled Interchange (NSI), as processed by OATI software, to ensure timely creation of the NSI data file with a syntactical quality check on the data set.

#### **3.1.5 Transmission Planning**

- TranServ will participate in Company's transmission planning process as outlined in Attachment K to the OATT, including the following activities:
  - Review and approve Company's long-term (generally one year and beyond) plan for the reliability/adequacy of Company's Transmission System.
  - Review and approve Transmission System models (steady state, dynamics, and short circuit).
  - Develop alternatives to Planning Redispatch service.
  - Notify impacted transmission entities of any planned transmission changes that may influence their facilities.
  - Participate with the SPC and associated SPC working groups, as required.
  - Participate in the overall OATT Attachment K process as observer.
  - The Parties agree that the final annual transmission plan and decision of whether/when to construct and expand the system rests with Company.

- Both parties will communicate openly and in a timely manner; each will perform their respective work; and both will continually work together to improve mutual and individual processes in a joint effort to assure work is completed pursuant to Company standards and deadlines.

### 3.1.6 Compliance

- Establish and adhere to a “culture of compliance” for TranServ Personnel and TranServ Designees consistent with FERC’s Policy Statement on Compliance, 125 FERC ¶ 61,058 (2008) as may be supplemented or amended by further FERC orders. TranServ shall take such reasonable steps requested by the Company in furtherance of such a culture of compliance.
- In accordance with *Louisville Gas and Electric Company*, 114 FERC ¶ 61,282 at P 152 (2006), provide FERC with semi-annual reports “detailing concerns expressed by stakeholders and [ITO’s] response to those concerns as well as any issues or tariff provisions that hinder [ITO] from performing its required duties” as requested.
- Maintain records and provide reports as required by the Kentucky Public Service Commission (KPSC), OATT, Department of Energy (DOE), FERC, NERC, SERC Reliability Corporation (SERC) or NAESB. Without limiting the foregoing, Company may from time-to-time provide TranServ with specific direction as to records that Company expects to support compliance efforts, and TranServ shall maintain such records as directed.
- Assist Company, as requested by Company, in the preparation of applications, audit materials, filings, reports or responses to any Regulatory Authority. Without limiting the foregoing, this assistance may include from time-to-time preparation for (and participation in, if appropriate) FERC or NERC audits and providing event analysis information for FERC, NERC or SERC. TranServ’s support shall be provided in a time frame reasonably requested by Company.
- Monitor FERC, NERC, SERC, and NAESB activities for changes in standards or compliance requirements that may require modification to the ITO Services or other coordination with Company. To the extent possible, TranServ shall notify Company of any proposed or pending modifications prior to their implementation. The Parties shall work together to establish a work plan and timetable for implementation of any such changes. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments as well Company requests, shall be assessed using the change

order process detailed in Section 5 of this Appendix A.

## **3.2 Transmission Planner**

TranServ will provide certain services to LG&E/KU, the Transmission Planner (TP). The services include:

### **3.2.1 Customer Interface**

- TranServ will participate in the drafting of Business Practices; including any FERC or NAESB required Business Practices. Company shall have final review, ownership, and approval for all Business Practices.
- TranServ will participate in periodic reviews of, and provide expertise/comments on the OATT. Company retains final authority over the OATT's content, including retaining the right and responsibility to file changes to the OATT.
- Responsible for planning, coordinating and holding regular stakeholder meetings and/or conference calls. These stakeholder meetings will include TranServ, Company, and the RC, and other entities as required, to address concerns regarding Company's system, administration of the OATT, and related issues. This activity includes (as necessary) performing background checks for stakeholders who desire access to Critical Energy Infrastructure Information (CEII), preparing meeting materials, facilitating the meeting, and preparing post-meeting minutes for posting on OASIS.
- Responsible for coordinating with third-party transmission system owners and operators as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.

## **3.3 LG&E/KU**

TranServ understands that Company has the following responsibilities in support of the ITO Services under this Appendix A:

### **3.3.1 Customer Interface**

- Contracting for the OATI webSmartOASIS service that meets FERC and NAESB requirements.
- Contracting for the OATI webTrans service used to evaluate and take actions on

transmission service requests and e-Tags.

- Continuation of Agreement with the RC to provide necessary data for AFC/ATC calculation and posting processes.
- Final review, ownership, and approval for all Business Practices.
- Final authority over the OATT's content, including the right and responsibility to file changes to the OATT.
- Cooperate in the coordination with third-party systems as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.

### **3.3.2 Compliance**

- From time-to-time provide TranServ with specific direction as to records that Company expects to support compliance efforts, TranServ shall maintain such records as directed in order to provide reports as required by the KPSC, OATT, DOE, FERC, NERC, SERC or NAESB.
- Respond to TranServ notifications of FERC, NERC, SERC, and NAESB activities for changes in standards or compliance requirements that may require modification to the ITO Services or other coordination with Company within requested response timelines. Work together with ITO to establish a work plan and timetable for implementation of any such changes. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments as well Company requests, shall be assessed using the change order process detailed in Section 5 of this Appendix A.

## 4. Customer Support

TranServ will provide support for Service 24-hours per day and 365-days per year by utilizing a single point of contact support staff. During Normal Business Hours the support staff can be contacted by telephone or by e-mail as outlined in published TranServ's ITO Support Information. After Normal Business Hours support is achieved through telephone only. TranServ will take all reasonable effort to ensure that reported problems or other Customer support related events are responded to within 30-minutes of the event notification when ITO Support Procedures are followed.

### 4.1 Problem Resolution

Problems or outages are reported to TranServ by following customer support processes. All problems or questions are assigned a severity level by mutual agreement of the parties. Problems which are considered Critical or High in severity should be reported to TranServ at any time. Problems considered Medium or Low severity should be reported by phone during business hours or by e-mail at any time. The severity level classifications are defined as follows:

- Critical - Problems or issues that are impacting business immediately or impacting grid reliability and action is required prior to next business day.
- High - Problems or issues that affect a key functionality of Service component and there is no work around available but immediate business or grid reliability impact is not present.
- Medium - Business processes are impacted, but satisfactory work around is in place to avoid business interruptions.
- Low - Customer inquiries or reported problems and issues that create nuisances or inconveniences for the customer. Minimal or no business impact is occurring.

Ticket Resolution		
Action	TranServ Responsibility	Time To Remedy



Correct a 'Critical' severity Problem or Issue	During normal business hours TranServ will respond to reported Critical severity problems and begin corrective action immediately until either a satisfactory work around is in place or problem is resolved. Outside of normal business hours TranServ will respond to reported Critical severity problems within 30-minutes of notification. Escalation to responsible TranServ senior management will occur in all cases.	TranServ will work continuously until resolution is in place. This may include a temporary work around until a permanent correction can be implemented. <b>Performance goal is to resolve all Critical severity tickets within 4-hours.</b>
Correct a 'High' severity Problem or Issue	During normal business hours TranServ will respond to reported High severity problems and begin corrective action to resolve with either a satisfactory work around or problem resolution prior to end of business day. Outside of normal business hours TranServ will respond to reported High severity problems within 30-minutes of notification. Escalation to responsible TranServ senior management will occur in all cases.	TranServ will provide an initial problem analysis update within 8-hours at all times. This may include a recommended temporary work around until a permanent correction can be implemented. <b>Performance goal is to resolve all High severity tickets within 24-hours.</b>
Correct a 'Medium' severity Problem or Issue	TranServ will schedule corrective action jointly with Customer. Problems of Medium severity should be reported by telephone during business hours or by e-mail at any time.	TranServ will provide an initial problem analysis update within 3-business days of notification of problem. An appropriate action plan and resolution schedule will be mutually agreed to with the Customer. <b>Performance goal is to resolve all Medium severity tickets by agreed to commitment date.</b>
Correct a 'Low' severity Problem or Issue	TranServ will schedule corrective action jointly with Customer. Problems of Low severity should be reported by telephone during business hours or by e-mail at any time.	TranServ will provide an initial problem analysis update within 5-business days. An appropriate action plan and resolution schedule will be mutually agreed to with the Customer. <b>Performance goal is to resolve all Low severity tickets by agreed to commitment date.</b>

#### **4.1.1 Tickets - OATI webSupport**

To ensure all customers of TranServ receive a high level of customer service all calls or e-mails with questions or reported problems are documented in a Ticket. All TranServ staff members utilize OATI webSupport, an issue reporting and assignment platform allowing tracking and confirmed resolution of all issues reported to TranServ. Upon receiving a communication from a customer, TranServ will open a webSupport Ticket. The Ticket contains customer contact information, data metrics on the type of problem, an identification of the TranServ staff member to whom the Ticket is currently assigned, a detailed description of the problem, and a detailed description of the problem's current status which will eventually include a description of how the issue was resolved. The TranServ staff member provides the Ticket number to the customer for all issues not resolved immediately. If the issue cannot be resolved by the TranServ staff member creating the Ticket, the Ticket is reassigned to another member of the TranServ team. The TranServ staff member who initially created the Ticket is expected to use webSupport's monitoring capability to determine unresolved Tickets, and to reassign or escalate it as necessary at any time to promote prompt resolution within response timing guidelines.

#### **4.1.2 Response Time**

TranServ support staff will answer all calls as received during normal business hours and take all reasonable effort to resolve issues at the time of call. For issues and problems that are not immediately resolved, TranServ will follow normal processing for assigned severity level and notify customer once resolution occurs.

Calls to support staff outside of normal business hours will be answered as received and customer will be notified within 30-minutes on planned actions to be taken by TranServ support staff in accordance with normal processing for assigned severity level.

##### **4.1.2.1 Ticket Escalation**

Problem tickets that cannot be resolved in accordance with normal processing for assigned severity level will be escalated to appropriate TranServ management. Customers may request immediate ticket escalation to appropriate TranServ management.

##### **4.1.2.2 Customer Satisfaction**

Customer satisfaction inquiries are automatically sent to customers upon the closing of a ticket. The results of these surveys result in improved performance by customer support staff or changes in business processes.

## **5. Service Modifications**

From time to time Company may require a modification to an existing Service function. Such modifications may be prompted by changes in regulatory compliance requirements, or by a Company request. Minor modifications that require reasonably minimal resource commitment from TranServ staff will be included within a reasonable time period at no cost to Company. Modifications that may have more significant impact on Service design or will impact TranServ staff resource commitments more than minimally will be discussed with Company and may in some instances require additional payment by Company, or likewise, require a decrease in payment by Company. Each of these change requests will be described in a written Change Order. Each Change Order will be scheduled for implementation upon written agreement with Company as to scope, cost and schedule.

### **5.1 Minor Changes**

Any change to an existing Service function that does not have a significant impact on Service design or require TranServ to staff or contract with additional personnel, if even for a brief period of time, to prepare for and/or meet the requirements of the change (a "Minor Change") will be integrated into Company's Service at no cost to Company. A written Change Order will be negotiated and executed between Company and TranServ prior to implementation of any Minor Change.

### **5.2 Major Changes**

Any change to an existing Service function that has a significant impact on Service design or requires TranServ to staff additional or fewer personnel, if even for a brief period of time, in order to prepare for and/or meet the requirements of the change (a "Major Change") will require a written Change Order which must be negotiated and executed between Company and TranServ prior to implementation of any Major Change.

## **6. Reliability Coordination**

TranServ will be required to coordinate its operations with the LG&E/KU designated RC. The RC is responsible for performing certain reliability related tasks for the LG&E/KU system, including acting as the NERC-registered Reliability Coordinator. The RC's responsibilities are detailed in the Reliability Coordinator Agreement and Attachment P to the LG&E/KU OATT.

**AMENDED AND RESTATED RELIABILITY COORDINATOR AGREEMENT**

**BETWEEN**

**LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY**

**AND**

**TENNESSEE VALLEY AUTHORITY**

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## **RELIABILITY COORDINATOR AGREEMENT**

This Amended and Restated Reliability Coordinator Agreement (this “Agreement”), including all appendices, exhibits, and attachments, appended hereto, is entered into this 25<sup>th</sup> day of August, 2014 (“Execution Date”), between Louisville Gas and Electric Company and Kentucky Utilities Company, corporations organized pursuant to the laws of the State of Kentucky (collectively, “LG&E/KU”), and the Tennessee Valley Authority, a federal government corporation (“TVA” and, in its capacity as reliability coordinator pursuant to this Agreement, the “Reliability Coordinator”) created by and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. §§ 831 *et seq.* (the “TVA Act”). LG&E/KU and the Reliability Coordinator may sometimes be referred to herein individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

WHEREAS, LG&E/KU owns, among other things, an integrated electric transmission system (“Transmission System”), over which they currently provide open access transmission service to customers in the LG&E/KU Balancing Authority Area (as defined in Section 1.5 of LG&E/KU’s Open Access Transmission Tariff, as on file with the Federal Energy Regulatory Commission (“FERC”) and as may be changed from time to time (the “OATT”));

WHEREAS, LG&E/KU desires to have the Reliability Coordinator perform certain key reliability functions under the OATT, including: (i) reliability coordination (as defined in the relevant North American Electric Reliability Council (“NERC”) Standards); (ii) transmission planning and regional coordination; (iii) approving LG&E/KU’s maintenance schedules; (iv) identifying upgrades required to maintain reliability; (v) non-binding recommendations relating to economic transmission system upgrades; and (vi) administration of any seams agreements;

WHEREAS, LG&E/KU desires to have the Reliability Coordinator perform all functions identified for reliability coordinators in NERC’s Standards;

WHEREAS, LG&E/KU will retain all remaining NERC obligations, including obligations associated with its status as a Control Area (including operations as a Balancing Authority and Transmission Operator as defined by NERC) and its obligations to ensure the provision of transmission services under the OATT, and will take action necessary to protect reliability of the Transmission System, including circumstances where such action is necessary to protect, prevent or manage emergency situations;

WHEREAS, the Reliability Coordinator is: (i) a federal government corporation charged with providing electric power, flood control, navigational control, agricultural and industrial development, and other services to a region including Tennessee and parts of six contiguous states; and (ii) recognized by NERC as a reliability coordinator;

WHEREAS, the Reliability Coordinator is independent from LG&E/KU, possesses the necessary competence and experience to perform the functions provided for hereunder and is willing to perform such functions under the terms and conditions agreed upon by the Parties as set forth in this Agreement;

WHEREAS, as part of LG&E/KU’s goal to maintain the requisite level of independence in the operation of its Transmission System to prevent any exercise of transmission market power,

LG&E/KU has entered into an Independent Transmission Organization Agreement (the “Independent Transmission Organization Agreement”) with TranServ International, Inc. (the “Independent Transmission Organization” or “ITO”), pursuant to which the Independent Transmission Organization provides to LG&E/KU certain key transmission-related functions under the OATT;

WHEREAS, LG&E/KU seeks to ensure the full participation of the LG&E/KU Transmission System in the arrangements and protocols included in Congestion Management Process (“CMP”), which is Exhibit 1 hereto;

WHEREAS, through the Joint Reliability Coordination Agreement (“JRCA”) between TVA and PJM Interconnection, L.L.C. (“PJM”), TVA and PJM participate in CMP;

WHEREAS, the Midcontinent Independent Operator, Inc. (“MISO”), through its Joint Operating Agreement with PJM, also participates in the CMP;

WHEREAS, by virtue of the reciprocity requirements found in Section 6.2 of the CMP, TVA will coordinate with MISO in order to manage regional coordination issues applicable under the CMP between the LG&E/KU system and MISO;

WHEREAS, TVA and LG&E/KU may choose to participate in similar reliability coordination agreements with other neighboring reliability coordination areas.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**Section 1 - Designation; Scope of Functions; Standards of Performance; Reliability Coordination Advisory Committee.**

1.1 Designation. LG&E/KU appoints TVA to act as LG&E/KU’s designated Reliability Coordinator pursuant to and in accordance with the terms and conditions of this Agreement. The Reliability Coordinator shall have no responsibility to LG&E/KU, except as specifically set forth in this Agreement.

1.2 Scope of Functions. The Reliability Coordinator shall perform the functions assigned to it and described in Attachment A and Attachment B (the “Functions”) seven days a week, twenty-four hours a day, for the duration of the Term in accordance with the terms and conditions of this Agreement. In accordance with its obligations under this Section 1.2, the Reliability Coordinator is authorized to, and shall, direct and coordinate timely and appropriate actions by LG&E/KU, including curtailing transmission service or energy schedules, redispatching generation, and shedding load, in each case, in order to avoid adverse effects on interregional bulk power reliability.

1.2.1 Relationship Between this Agreement and Attachment L to LG&E/KU's OATT. The Parties recognize that the relationship between LG&E/KU and the Reliability Coordinator and the Functions to be performed by the Reliability Coordinator must be reflected in LG&E/KU's OATT. The Reliability Coordinator relationship and the Functions assigned to the Reliability Coordinator under Attachment A and Attachment B

to this Agreement shall be reflected in Attachment L to LG&E/KU's OATT. To the extent that there is a conflict between Attachment A and/or Attachment B to this Agreement and Attachment L to LG&E/KU's OATT, Attachment L to LG&E/KU's OATT shall govern. Any changes proposed by LG&E/KU to FERC in Attachment L in LG&E/KU's OATT, pursuant to Section 5.3 of Attachment L in LG&E/KU's OATT, regarding the Functions or any other provisions that concern the Reliability Coordinator shall reflect the mutual agreement of the Parties. Notwithstanding this Section 1.2.1, nothing in this Agreement or Attachment L to LG&E/KU's OATT shall grant FERC any additional jurisdiction over TVA.

1.3 Reliability Coordinator Procedures. The Reliability Coordinator shall develop the procedures and guidelines by which it will perform the Functions (the “Reliability Coordinator Procedures”) in coordination with the RCAC (as defined in Section 1.10) and applicable regional reliability councils. The Reliability Coordinator Procedures shall be documented in a NERC-approved reliability plan for the TVA Reliability Coordination Area or in TVA Standard Procedures and Policies. The Reliability Coordinator shall provide LG&E/KU advance written notice of any amendment or change to the Reliability Coordinator Procedures. For purposes of this Agreement, the term “TVA Standard Procedures and Policies” shall mean such procedures and policies related to TVA’s operations as may be promulgated and published by TVA pursuant to its legal authorities and obligations.

1.4 Threat to Reliability. If the Reliability Coordinator determines that an actual or potential threat to transmission system reliability exists, and that such threat may impair the reliability of a transmission system, then the Reliability Coordinator shall direct that LG&E/KU take whatever actions are necessary, consistent with Good Utility Practice (as defined below) and in accordance with the applicable reliability criteria, policies, standards, rules, regulations and other requirements of NERC (collectively, the “NERC Standards”) and any applicable regional reliability councils or their successors (collectively, “Regional Reliability Council Standards”), to avoid or mitigate the effects of the threat to transmission system reliability. For purposes of this Agreement, “Good Utility Practice” shall mean any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in a person’s exercise of reasonable judgment in light of the facts as known to that person at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to include the range of acceptable practices, methods, or acts generally accepted in the region.

1.5 Reliability Coordinator Directives. Except as provided in the immediately succeeding sentence, LG&E/KU shall implement any directive given by the Reliability Coordinator pursuant to Sections 1.2 or 1.4. LG&E/KU shall not be obligated to implement any directive which LG&E/KU determines will violate any state or federal law or the terms of any governmental approval applicable to LG&E/KU. LG&E/KU may review any directive given by the Reliability Coordinator pursuant to Sections 1.2 or 1.4, to determine if it is, in LG&E/KU’s judgment, in accordance with the requirements of Section 1.8. If LG&E/KU determines that any directive is not in accordance with the requirements of Section 1.8, then it shall immediately so notify the Reliability Coordinator; provided, however, that, except as provided in the second sentence in this Section 1.5, LG&E/KU shall continue to implement the directive until the Reliability Coordinator

notifies LG&E/KU otherwise. LG&E/KU's notice to the Reliability Coordinator shall include: (a) information outlining the basis for LG&E/KU's determination that (i) the directive is not in accordance with the requirements of Section 1.8 and, if applicable, (ii) that implementation of the directive will violate one or more state or federal laws or the terms of any governmental approvals applicable to LG&E/KU; and (b) the alternative action that LG&E/KU would prefer to take to alleviate the problem addressed by the Reliability Coordinator's directive. After prompt consideration of such information, the Reliability Coordinator shall issue a directive to LG&E/KU in accordance with its obligations under this Agreement and LG&E/KU will, subject to the second sentence in this Section 1.5, act in accordance with such directive.

1.6 Coordination with Independent Transmission Organization. In conjunction with its performance of the Functions, the Reliability Coordinator shall coordinate and cooperate with the Independent Transmission Organization and provide, subject to the terms and conditions of this Agreement, including the Reliability Coordinator's obligations with respect to Confidential Information in Section 10, any information that the Independent Transmission Organization may reasonably request in order to carry out its functions under the Independent Transmission Organization Agreement.

1.7 Expansion. Nothing in this Agreement is intended to prevent TVA from (a) coordinating, or cooperating in, interregional activities to relieve problems experienced by other transmission systems or (b) entering into other agreements with one or more third party transmission providers or operators to perform functions for such transmission providers or operators that are the same or similar to the Functions performed hereunder; provided, however, that it does not breach any of its obligations under this Agreement (including its obligations with respect to Confidential Information in Section 10) by entering into or performing any of its obligations under such other agreements; provided, further, that (i) any such other agreements shall provide for LG&E/KU to be reimbursed in an equitable manner for any capital expenditures made pursuant to this Agreement as well as for LG&E/KU's ongoing operations and maintenance expenditures to the extent such capital expenditures and operations and maintenance expenditures are used by the Reliability Coordinator in performing functions under such other agreements, (ii) LG&E/KU agrees to reimburse any such third party transmission providers or operators in an equitable manner for any capital expenditures made by such third parties as well as for such third parties' ongoing operations and maintenance expenditures to the extent such capital expenditures and operations and maintenance expenditures are used by the Reliability Coordinator in performing functions under this Agreement, and (iii) to the extent applicable, the Reliability Coordinator shall revise the compensation provided for in Section 3.1 in accordance with the terms therein.

1.8 Reliability Coordinator's Standard of Performance. The Reliability Coordinator shall perform its obligations under this Agreement in accordance with: (a) Good Utility Practice; (b) the NERC Standards and Regional Reliability Council Standards; (c) LG&E/KU's specific reliability requirements and operating guidelines (to the extent these are not inconsistent with other requirements specified in this Section 1.8); (d) TVA Standard Procedures and Policies; and, (e) all state and federal laws, including the TVA Act, and the terms of governmental approvals applicable to one or both of the Parties. In performing its responsibilities under this Agreement, the Reliability Coordinator shall not discriminate against similarly situated persons.

1.9 LG&E/KU's Standard of Performance. LG&E/KU shall perform its obligations under this Agreement in accordance with: (a) Good Utility Practice; (b) the NERC Standards and

Regional Reliability Council Standards; (c) any other LG&E/KU-specific reliability requirements and operating guidelines (to the extent these are not inconsistent with other requirements specified in this Section 1.9); and (d) all state and federal laws and the terms of governmental approvals applicable to LG&E/KU.

#### 1.10 Reliability Coordination Advisory Committee.

1.10.1 Each Party shall designate one representative to serve on a Reliability Coordination Advisory Committee (“RCAC”), which shall be composed of representatives of each Party and representatives from each entity that has executed a similar reliability coordination agreement designating TVA as its reliability coordinator. Each Party may also designate one alternate to act in the absence of its representative on the RCAC. Written notice of each representative and alternate appointment shall be provided to each RCAC entity, and each Party may change its representatives upon written notice to the other RCAC entities.

1.10.2 The RCAC shall assist the Reliability Coordinator in the development of the initial Reliability Coordinator Procedures and the modification of existing Reliability Coordinator Procedures. In connection with these activities, the Reliability Coordinator may provide the other RCAC members with access to necessary data and documents maintained by the Reliability Coordinator, provided that each such RCAC member has signed the NERC Data Confidentiality Agreement and that all Confidential Information is treated as transmission operations and transmission system information pursuant to the NERC Data Confidentiality Agreement.

The RCAC shall meet at least once per Contract Year (as defined below). For purposes of this Agreement, a “Contract Year” shall consist of a twelve (12) month period. “Contract Year 1” shall begin on the Effective Date. Contract Years 2, 3, and 4 shall consist of the next three successive 12-month periods after Contract Year 1.

### **Section 2 - Independence.**

2.1 Key Personnel. All Functions shall be performed by employees of the Reliability Coordinator identified in Attachment C (the “Key Personnel”). The Reliability Coordinator may from time to time change the names of the employees identified as Key Personnel by notice to LG&E/KU in accordance with Section 15.1. No Key Personnel shall also be employed by LG&E/KU or any of its Affiliates (as defined in 18 C.F.R. § 35.34(b)(3) of FERC’s regulations). The Reliability Coordinator and the Key Personnel shall be, and shall remain throughout the Term, Independent (as defined below) of LG&E/KU, its Affiliates and the Independent Transmission Organization. For purposes of this Agreement: “Independent” shall mean that the Reliability Coordinator and the Key Personnel are not subject to the control of LG&E/KU, its Affiliates or the Independent Transmission Organization, and have full decision making authority to perform all Functions in accordance with the provisions of this Agreement. Any Key Personnel owning securities in LG&E/KU, its Affiliates or the Independent Transmission Organization shall divest such securities within six (6) months of first being assigned to perform such Functions, provided that nothing in this Section 2.1 shall be interpreted or construed to preclude any such Key Personnel from indirectly owning securities issued by LG&E/KU, its Affiliates or the Independent Transmission Organization through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted toward the electric industry or the electric utility industry or any segment thereof) under which the Key Personnel does not control the purchase or sale of such

securities. Participation by any Key Personnel in a pension plan of LG&E/KU, its Affiliates or the Independent Transmission Organization shall not be deemed to be a direct financial interest if the plan is a defined-benefit plan that does not involve the Key Personnel's ownership of the securities. For the avoidance of doubt, LG&E/KU shall not have an approval or consent right with respect to the selection of any Key Personnel.

2.2 Standards of Conduct Treatment. All Key Personnel shall be treated, for purposes of FERC's Standards of Conduct, as transmission employees. All restrictions relating to information sharing and other relationships between merchant employees and transmission employees shall apply to the Key Personnel.

### **Section 3 - Compensation, Billing and Payment.**

3.1 Compensation. LG&E/KU shall pay to the Reliability Coordinator as compensation for the performance of the Functions under this Agreement as follows:

<u>Subsequent Term Beginning</u>	<u>Amount</u>
September 1, 2014	\$2,375,000
September 1, 2015	\$2,422,500
September 1, 2016	\$2,470,950
September 1, 2017	\$2,520,369
September 1, 2018	\$2,570,776

The Reliability Coordinator agrees that if at any time during the Term it expands its Reliability Coordination Area by providing similar services to additional Transmission Operators, the Reliability Coordinator will review and revise, as appropriate, the above compensation rate. Such revised compensation shall enable the Reliability Coordinator to recover its incremental costs associated with providing the specific service by allocating the costs among those subscribing to the service in an equitable manner (*e.g.*, costs may be allocated using a load ratio share methodology (a participant's annual non-coincident peak load as a percentage of the total annual non-coincident peak load for those participating in the service)). Costs will be determined by the Reliability Coordinator based on its total cost of providing the service(s) as documented in the Reliability Coordinator's financial systems.

Compensation for Subsequent Terms (as defined in Section 4.2 herein) beyond those delineated above shall be based on the compensation in previous Contract Years and/or the methodology outlined above in this Section 3.1 and shall be negotiated by the Parties in good faith. Such negotiations shall begin not later than six months prior to, and shall be concluded no later than three months prior to, the beginning of the Subsequent Term.

Notwithstanding any provision to the contrary contained in this Agreement, if a Dispute should occur between the Parties with respect to the amount of compensation to be paid by LG&E/KU to the Reliability Coordinator (i) pursuant to this Sections 3.1 or (ii) in respect of additional services (other than the Functions) requested by LG&E/KU that the Reliability Coordinator elects, in its sole discretion, to provide, then, in each case, LG&E/KU shall file notice thereof with FERC. The Parties acknowledge that any FERC order issued with respect to such a dispute is only binding on LG&E/KU, not TVA.

3.2 Compensation After Termination. If LG&E/KU terminates this Agreement

before the end of a Contract Year, then the Reliability Coordinator shall not be obligated to refund any amounts paid by LG&E/KU to the Reliability Coordinator as compensation for services provided by the Reliability Coordinator under this Agreement. If, however, the Reliability Coordinator terminates this Agreement before the end of a Contract Year or LG&E/KU and the Reliability Coordinator mutually agree to terminate this Agreement, then the Reliability Coordinator shall be obligated to refund to LG&E/KU an amount equal to the product of (a) any amounts paid by LG&E/KU to the Reliability Coordinator as compensation for services provided by the Reliability Coordinator under this Agreement during the Contract Year in which this Agreement is terminated and (b) the number of whole or partial months remaining in the Contract Year divided by twelve (12).

**3.3 Reimbursement of Additional Costs.** In addition to the compensation provided for in Section 3.1, LG&E/KU shall reimburse the Reliability Coordinator for (a) any additional costs incurred by the Reliability Coordinator at the request or direction of LG&E/KU or (b) any reasonable additional one-time costs necessarily incurred by Reliability Coordinator related to its activities under this Agreement that are not associated with services provided for in Section 3.1. Any costs under item (b) above shall be appropriately allocated by TVA among the Parties and those other entities that have executed similar reliability coordination agreements designating TVA as their reliability coordinator.

**3.4 Payments.** All payments by LG&E/KU to the Reliability Coordinator shall be made by the FedWire transfer method to the Reliability Coordinator's account at the U.S. Treasury in accordance with the wire instructions indicated below, and all such payments shall be deemed received as of the date the electronic funds transfer to the Reliability Coordinator's account is deemed effective.

Bank Name: TREAS NYC (official abbreviation)

Bank Address: New York Federal Reserve Bank, New York City  
33 Liberty Street  
New York, New York 10045

ABA Number: 021030004

Account No: 0004912

Beneficiary: Tennessee Valley Authority

Taxpayer ID: 62-0474417

OBI: Provide your organization name and invoice number or explanation of payment.

The Reliability Coordinator shall provide LG&E/KU with one or more contact persons for payment purposes and shall update such list of contact persons as necessary.

**Section 4 - Effective Date; Term; Termination; Termination Fees; Transition Assistance Services.**

**4.1 Effective Date.** The Parties acknowledge and agree that the effective date of this Agreement (the "Effective Date") shall be September 1, 2014 or such other date as permitted by

## FERC

4.2 Term. This Agreement shall commence on Effective Date (as provided for in Section 4.1), and shall automatically continue for successive one-year terms (each, a “Subsequent Term”) unless and until terminated pursuant to the termination provisions hereof. All Subsequent Terms, together with the Transition Assistance Period, if any, shall collectively be referred to as the “Term.”

4.3 Mutually-Agreed Termination. This Agreement may be terminated by mutual agreement of the Parties at any time during the Term.

4.4 Termination at End of Term. Either Party may terminate this Agreement at the end of any Subsequent Term upon one (1) year’s prior written notice to the other Party.

4.5 Termination for Cause.

4.5.1 Termination by Either Party. Either Party may terminate this Agreement effective immediately upon thirty (30) days’ prior written notice thereof to the other Party if:

(a) Material Failure or Default. The other Party fails to comply with, observe or perform, or defaults, in any material respect, in the performance of the terms and conditions of this Agreement, and such failure or default remains uncured for thirty (30) days after notice thereof, provided that such failure or default is susceptible to cure and the other Party is exercising reasonable diligence to cure such failure or default;

(b) Pattern of Failure. It determines, in its sole discretion, that there has been a pattern of failure by the other Party to comply with the standards of performance required under this Agreement;

(c) Gross Negligence, Willful Misconduct or Fraud. The other Party commits gross negligence, willful misconduct or fraud in the performance of its obligations under this Agreement;

(d) Material Misrepresentation. Any representation made by the other Party hereunder shall be false or incorrect in any material respect when made and such misrepresentation is not cured within thirty (30) days of such discovery or is incapable of cure;

(e) Bankruptcy. The other Party: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due;



- (f) Dissolution. The other Party dissolves or is dissolved or its legal existence is otherwise terminated;
- (g) Failure to Negotiate Amendment. The Parties are unsuccessful in negotiating an amendment or amendments to this Agreement pursuant to Section 17.6;
- (h) Regulatory Changes/Modifications. FERC, in accepting this Agreement for filing, makes any material changes, modifications, additions, or deletions to this Agreement; or
- (i) Extended Force Majeure. A Party is excused because of Force Majeure (as defined in Section 11 herein) for more than thirty (30) days from performing any of its material obligations under this Agreement.

4.5.2 Termination by LG&E/KU. LG&E/KU may terminate this Agreement effective immediately upon thirty (30) days' prior written notice thereof to the Reliability Coordinator if:

- (a) the Reliability Coordinator loses its NERC certification once obtained; or
- (b) FERC issues an order determining that TVA should no longer serve as LG&E/KU's Reliability Coordinator pursuant to this Agreement.

4.5.3 Termination by the Reliability Coordinator. The Reliability Coordinator may terminate this Agreement effective immediately upon thirty (30) days' prior written notice thereof to LG&E/KU if:

- (a) LG&E/KU determines to cease being a Balancing Authority and/or Transmission Operator, provided that LG&E/KU shall provide the Reliability Coordinator as much advance written notice of such determination as is practicable to allow the Reliability Coordinator to terminate this Agreement on or prior to the time LG&E/KU ceases to be a Balancing Authority or Transmission Operator;
- (b) FERC or any other person or entity takes any action to subject the Reliability Coordinator to FERC's plenary jurisdiction under the Federal Power Act ("FPA"); or
- (c) Effective Date has not occurred within eighteen (18) months of the Execution Date.

4.6 Return of Materials. Upon any termination of this Agreement or the conclusion of any Transition Assistance Period pursuant to Section 4.8.1, whichever is later, the Reliability Coordinator shall timely and orderly turn over to LG&E/KU all materials that were prepared or developed prior thereto pursuant to this Agreement, and return or destroy, at the option of LG&E/KU, all Data and other information supplied by LG&E/KU to the Reliability Coordinator or created by the Reliability Coordinator on behalf of LG&E/KU.

4.7 Survival. All provisions of this Agreement which are by their nature or terms intended to survive the termination of this Agreement, including the obligations set forth in Sections 7 and 10, shall survive termination of this Agreement.

4.8 Transition Assistance Services.

4.8.1 Transition Assistance Period. Commencing on the date this Agreement is terminated and continuing for up to one (1) year thereafter (the “Transition Assistance Period”), the Reliability Coordinator shall (a) provide the Functions (and any replacements thereof or substitutions therefor), to the extent LG&E/KU requests such Functions to be performed during the Transition Assistance Period, and (b) cooperate with LG&E/KU in the transfer of the Functions (collectively, the “Transition Assistance Services”). During the Transition Assistance Period, the Parties shall use good faith efforts to ensure a smooth transition.

4.8.2 Transition Assistance Services. The Reliability Coordinator shall, upon LG&E/KU’s request, provide the Transition Assistance Services during the Transition Assistance Period at the Reliability Coordinator’s actual cost for such services. The quality and level of performance of the Functions by the Reliability Coordinator during the Transition Assistance Period shall not be degraded. After the expiration of the Transition Assistance Period, the Reliability Coordinator shall answer questions from LG&E/KU regarding the Functions on an “as needed” basis at the Reliability Coordinator’s then-standard billing rates.

4.8.3 Key Personnel. During the Transition Assistance Period, the Reliability Coordinator shall not terminate, reassign or otherwise remove any Key Personnel without providing LG&E/KU thirty (30) days’ prior notice of such termination, reassignment or removal unless such employee (a) voluntarily resigns from the Reliability Coordinator, (b) is dismissed by the Reliability Coordinator for cause, or (c) dies or is unable to work due to his or her disability.

4.9 Change in Reliability Entity. This Agreement is based on the existence of NERC and the applicability of the NERC Standards. If NERC ceases to exist in its current form or is replaced with an entity with authority over a Party’s transmission system, the Parties shall promptly meet to determine whether to revise this Agreement to reflect the new reliability entity, if any, and the Parties’ obligations in light of the new reliability entity or to terminate this Agreement in accordance with Section 4.2.

4.10 Prior Obligations and Liabilities Unaffected by Termination. Termination of this Agreement shall not relieve the Parties of any of their respective cost obligations or other obligations and liabilities related to this Agreement that were incurred prior to the effective date of termination of this Agreement.

**Section 5 - Data Management.**

5.1 Supply of Data. During the Term, LG&E/KU shall supply to the Reliability Coordinator, and/or grant the Reliability Coordinator access to all Data that the Reliability Coordinator reasonably requires to perform the Functions. The Parties shall agree upon the initial format and manner in which such Data shall be provided. For purposes of this Agreement, “Data”

means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium and which (a) are supplied or in respect of which access is granted to the Reliability Coordinator by LG&E/KU under this Agreement, which shall be LG&E/KU's Data, (b) are prepared, stored or transmitted by the Reliability Coordinator solely on behalf of LG&E/KU, which shall be LG&E/KU's Data; or (c) are compiled by the Reliability Coordinator by aggregating Data owned by LG&E/KU and Data owned by third parties, which shall be Reliability Coordinator's Data.

5.2 Property of Each Party. Each Party acknowledges that the other Party's Data and the other Party's software, base data models and operating procedures for software or base data models ("Processes") are the property of such other Party and agrees that it will do nothing inconsistent with such ownership, including preserving all intellectual property and/or proprietary rights in such other Party's Data and Processes as provided in Section 6.

5.3 Data Integrity. Each Party shall reasonably assist the other Party in establishing measures to preserve the integrity and prevent any corruption or loss of Data, and the Parties shall reasonably assist each other in the recovery of any corrupted or lost Data. Each Party shall retain and preserve any of the other Party's Data that are supplied to it during the Term, and shall exercise commercially reasonable efforts to preserve the integrity of the other Party's Data that are supplied to it during the Term, in order to prevent any corruption or loss of the other Party's Data.

5.4 Confidentiality. Each Party's Data shall be treated as Confidential Information in accordance with the provisions of Section 10.

## **Section 6 - Intellectual Property.**

6.1 Pre-Existing Intellectual Property. Each Party shall own (and continue to own) all trade secrets, Processes and designs and other intellectual property that it owned prior to entering this Agreement, including any enhancements thereto ("Pre-Existing Intellectual Property"). Each Party acknowledges the ownership of the other Party's Pre-Existing Intellectual Property and agrees that it will do nothing inconsistent with such ownership. Each Party agrees that nothing in this Agreement shall give it any right, title or interest in the other Party's Pre-Existing Intellectual Property, other than the rights set forth in this Agreement. The Reliability Coordinator's Pre-Existing Intellectual Property shall include the Reliability Coordinator Retained Rights set forth in Section 6.3. LG&E/KU's Pre-Existing Intellectual Property shall include LG&E/KU Retained Rights set forth in Section 6.4.

6.1.1 Exclusion. Nothing in this Agreement shall prevent either Party from using general techniques, ideas, concepts and know-how gained by its employees during the performance of its obligations under this Agreement in the furtherance of its normal business, to the extent that it does not result in disclosure of the other Party's Data or any data generated from the other Party's Data or other Confidential Information or an infringement by LG&E/KU or the Reliability Coordinator of any intellectual property right. For the avoidance of doubt, the use by a Party of such general techniques, ideas, concepts and know-how gained by its employees during the performance of its obligations under this Agreement shall not be deemed to be an infringement of the other Party's intellectual property rights so long as such matters are retained in the unaided memories of such employees and any Confidential Information is treated in accordance with the provisions of Section 10.

6.2 Jointly-Owned Intellectual Property. Except for the Data described in Section 5.1, all deliverables, whether software or otherwise, to the extent originated and prepared by the Reliability Coordinator exclusively in connection with the performance of its obligations under this Agreement shall be, upon payment of all amounts that may be due from LG&E/KU to the Reliability Coordinator, jointly owned by LG&E/KU and Reliability Coordinator (“Jointly-Owned Intellectual Property”). Each Party shall have the right to use the Jointly-Owned Intellectual Property without any right or duty or accounting to the other Party, except as provided in this Section 6.2. Upon the Reliability Coordinator using, transferring or licensing Jointly-Owned Intellectual Property for or to a third party, the Reliability Coordinator shall reimburse LG&E/KU in an equitable manner as determined by the Parties in good faith for the actual amounts paid by LG&E/KU to the Reliability Coordinator that relate to such Jointly-Owned Intellectual Property. Except as stated in the foregoing sentence, the Reliability Coordinator shall have no other obligation to account to LG&E/KU for any such use, transfer, license, disclosure, copying, modifying or enhancing of the Jointly-Owned Intellectual Property. Notwithstanding anything herein to the contrary, LG&E/KU may use the Jointly-Owned Intellectual Property for its internal business purposes, including licensing or transferring its interests therein to a third party for purposes of operating or performing functions in connection with LG&E/KU’s transmission business.

6.3 Reliability Coordinator Retained Rights. The Reliability Coordinator shall retain all right, title and interest in its proprietary know-how, concepts, techniques, processes, materials and information that were or are developed entirely independently of this Agreement (“Reliability Coordinator Retained Rights”), whether or not such Reliability Coordinator Retained Rights are embodied in a deliverable, whether software or otherwise originated and prepared by the Reliability Coordinator in connection with the performance of its obligations under this Agreement. With respect to the Reliability Coordinator Retained Rights embodied in any deliverable, whether software or otherwise originated and prepared by the Reliability Coordinator in connection with the performance of its obligations under this Agreement, LG&E/KU is hereby granted a nonexclusive, perpetual, worldwide, royalty-free, fully paid-up license under such Reliability Coordinator Retained Rights to use such deliverable for LG&E/KU’s internal business purposes only, including licensing or transferring its interests therein to an Affiliate of LG&E/KU or a third party for purposes of operating or performing functions in connection with LG&E/KU’s transmission business.

6.4 LG&E/KU Retained Rights. LG&E/KU shall retain all right, title and interest in its proprietary know-how, concepts, techniques, processes, materials and information that were or are developed entirely independently of this Agreement (“LG&E/KU Retained Rights”), whether or not such LG&E/KU Retained Rights are embodied in a deliverable, whether software or otherwise originated and prepared by LG&E/KU in connection with the performance of its obligations under this Agreement. With respect to LG&E/KU Retained Rights embodied in any software or otherwise originated and prepared by LG&E/KU in connection with the performance of its obligations under this Agreement, the Reliability Coordinator is hereby granted a nonexclusive, worldwide, royalty-free, fully paid-up license under such LG&E/KU Retained Rights to use such deliverable for the Reliability Coordinator’s performance of its obligations under this Agreement only; provided that LG&E/KU shall not be liable in any way for the use of or reliance on such Reliability Coordinator Retained Rights by the Reliability Coordinator’s Affiliate or third party for any purpose whatsoever.

6.5 Reliability Coordinator Non-Infringement; Indemnification. The Reliability Coordinator warrants to LG&E/KU that all Reliability Coordinator's Data and Processes, Reliability Coordinator Pre-Existing Intellectual Property, Reliability Coordinator Retained Rights, and deliverables prepared, produced or first developed by the Reliability Coordinator in connection with the performance of its obligations under this Agreement shall not infringe on any third party patent, copyright, trade secret or other third party proprietary rights. The Reliability Coordinator shall defend, hold harmless and indemnify LG&E/KU and its Affiliates and their respective employees, officers, directors, principals, owners, partners, shareholders, agents, representatives, consultants, and subcontractors (collectively, "LG&E/KU Representatives") from and against all claims, lawsuits, penalties, awards, judgments, court arbitration costs, attorneys' fees, and other reasonable out-of-pocket costs incurred in connection with such claims or lawsuits based upon the actual or alleged infringement of any of the foregoing rights; provided that LG&E/KU gives prompt written notice of any such claim or action to the Reliability Coordinator, permits the Reliability Coordinator to control the defense of any such claim or action with counsel of its choice, and cooperates with the Reliability Coordinator in the defense thereof; and further provided that such claim or action is not based on any alteration, modification or combination of the deliverable with any item, information or process not provided by the Reliability Coordinator, where there would be no infringement in the absence of such alteration, modification or combination. If any infringement action results in a final injunction against LG&E/KU or the LG&E/KU Representatives with respect to Reliability Coordinator's Data and Processes, Reliability Coordinator Pre-Existing Intellectual Property, Reliability Coordinator Retained Rights or deliverables prepared, produced or first developed by the Reliability Coordinator in connection with the performance of its obligations under this Agreement or in the event the use of such matters or any part thereof, is, in such lawsuit, held to constitute infringement, the Reliability Coordinator agrees that it shall, at its option and sole expense, either (a) procure for LG&E/KU or the LG&E/KU Representatives the right to continue using the infringing matter, or (b) replace the infringing matter with non-infringing items of equivalent functionality or modify the same so that it becomes non-infringing and retains its full functionality. If the Reliability Coordinator is unable to accomplish (a) or (b) above, the Reliability Coordinator shall reimburse LG&E/KU for all costs and fees paid by LG&E/KU to the Reliability Coordinator for the infringing matter. The above constitutes the Reliability Coordinator's complete liability for claims of infringement relating to any the Reliability Coordinator's Data and Processes, Reliability Coordinator Pre-Existing Intellectual Property, Reliability Coordinator Retained Rights, and deliverables prepared, produced or first developed by the Reliability Coordinator in connection with the performance of its obligations under this Agreement.

6.6 LG&E/KU Non-Infringement; Indemnification. LG&E/KU warrants to the Reliability Coordinator that, to its knowledge, all LG&E/KU's Data (except for Data created by the Reliability Coordinator on behalf of LG&E/KU) and Processes, LG&E/KU Pre-Existing Intellectual Property, and LG&E/KU Retained Rights shall not infringe on any third party patent, copyright, trade secret or other third party proprietary rights. LG&E/KU shall defend, hold harmless and indemnify the Reliability Coordinator and its Affiliates and their respective employees, officers, directors, principals, owners, partners, shareholders, agents, representatives, consultants, and subcontractors against all claims, lawsuits, penalties, awards, judgments, court costs, and arbitration costs, attorneys' fees, and other reasonable out-of-pocket costs incurred in connection with such claims or lawsuits based upon the actual or alleged infringement of any of the foregoing rights; provided that the Reliability Coordinator gives prompt written notice of any such claim or action to LG&E/KU, permits LG&E/KU to control the defense of any such claim or

action with counsel of its choice, and cooperates with LG&E/KU in the defense thereof; and further provided that such claim or action is not based on any alteration, modification or combination of the deliverable with any item, information or process not provided by LG&E/KU to the Reliability Coordinator, where there would be no infringement in the absence of such alteration, modification or combination. The above constitutes LG&E/KU's complete liability for claims of infringement relating to any of the LG&E/KU's Data and Processes, LG&E/KU Pre-Existing Intellectual Property, and LG&E/KU Retained Rights.

## **Section 7 - Indemnification.**

7.1 Indemnification by the Parties. Each Party ("Indemnifying Party") shall indemnify, release, defend, reimburse and hold harmless the other Party and its Affiliates, and their respective directors, officers, employees, principals, representatives and agents (collectively, the "Indemnified Parties") from and against any and all claims, demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, costs and expenses, and attorney fees (each, an "Indemnifiable Loss") asserted against or incurred by any of the Indemnified Parties arising out of, resulting from or based upon (a) a breach by the Indemnifying Party of its obligations under this Agreement, (b) claims of bodily injury or death of any person or damage to real and/or tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party and its Affiliates and their respective directors, officers, employees, principals, representatives, agents or contractors during the Term, or (c) the acts or omissions of the Indemnifying Party and its Affiliates and their respective directors, officers, employees, principals, representatives, agents or contractors during the Term.

7.2 No Consequential Damages. Neither Party shall be liable to the other Party under this Agreement (by way of indemnification, damages or otherwise) for any indirect, incidental, exemplary, punitive, special or consequential damages, except in the case of gross negligence or willful misconduct.

7.3 Cooperation Regarding Claims. If an Indemnified Party receives notice or has knowledge of any Indemnifiable Loss that may result in a claim for indemnification by such Indemnified Party against an Indemnifying Party pursuant to this Section 7, such Indemnified Party shall as promptly as possible give the Indemnifying Party notice of such Indemnifiable Loss, including a reasonably detailed description of the facts and circumstances relating to such Indemnifiable Loss, a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its claim for indemnification with respect thereto. Failure to promptly give such notice or to provide such information and documents shall not relieve the Indemnifying Party from the obligation hereunder to respond to or defend the Indemnified Party against such Indemnifiable Loss unless such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party against such Indemnifiable Loss. The Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party in accordance with this Section 7, shall be entitled to assume the defense or to represent the interest of the Indemnified Party with respect to such Indemnifiable Loss, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost. If and to the extent that any such settlement is reasonably likely to involve injunctive, equitable or prospective relief or materially and adversely affect the Indemnified Party's business or operations other than as a result of money damages or other money payments, then such settlement will be

subject to the reasonable approval of the Indemnified Party. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants and participating in its own defense at its own cost and expense.

## **Section 8 - Contract Managers; Dispute Resolution.**

8.1 LG&E/KU Contract Manager. LG&E/KU shall appoint an individual (the “LG&E/KU Contract Manager”) who shall serve as the primary LG&E/KU representative under this Agreement. The LG&E/KU Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of LG&E/KU’s obligations under this Agreement, and (b) be authorized to act for and on behalf of LG&E/KU with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the LG&E/KU Contract Manager may, upon prior written notice to the Reliability Coordinator, delegate such of his or her responsibilities to other LG&E/KU employees, as the LG&E/KU Contract Manager deems appropriate. LG&E/KU may, upon prior written notice to the Reliability Coordinator, change the LG&E/KU Contract Manager.

8.2 Reliability Coordinator Contract Manager. The Reliability Coordinator shall appoint, among the Key Personnel identified in Attachment C, an individual (the “Reliability Coordinator Contract Manager”) who shall serve as the primary Reliability Coordinator representative under this Agreement. The Reliability Coordinator Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of the Reliability Coordinator’s obligations under this Agreement, and (b) be authorized to act for and on behalf of the Reliability Coordinator with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the Reliability Coordinator Contract Manager may, upon prior written notice to LG&E/KU, delegate such of his or her responsibilities to other Key Personnel, as the Reliability Coordinator Contract Manager deems appropriate. The Reliability Coordinator may, upon prior written notice to LG&E/KU, change the Reliability Coordinator Contract Manager. For the avoidance of doubt, LG&E/KU shall not have an approval or consent right with respect to the selection of the Reliability Coordinator Contract Manager.

8.3 Resolution of Disputes. Any dispute, claim or controversy between the Parties arising out of or relating to this Agreement (each, a “Dispute”) shall be resolved in accordance with the procedures set forth in this Section 8.3; provided, however, that this Section 8.3 shall not apply to Disputes arising from or relating to (a) the amount of compensation to be paid by LG&E/KU pursuant to the last sentence of Section 3.1, which shall be resolved pursuant thereto, or (b) confidentiality or intellectual property rights (in which case either Party shall be free to seek available legal or equitable remedies).

8.3.1 Notice of Dispute. Each Party shall provide written notice to the other party of any Dispute, including a description of the nature of the Dispute.

8.3.2 Dispute Resolution by Contract Managers. Any Dispute shall first be referred to the LG&E/KU Contract Manager and the Reliability Coordinator Contract Manager, who shall negotiate in good faith to resolve the Dispute.

8.3.3 Dispute Resolution by Executive Management Representatives. If the Dispute is not resolved within fifteen (15) days of being referred to the LG&E/KU Contract Manager and the Reliability Coordinator Contract Manager pursuant to Section 8.3.2, then each Party shall have five (5) days to appoint an executive management representative who shall

negotiate in good faith to resolve the Dispute.

8.3.4 Exercise of Remedies at Law or in Equity. If the Parties' executive management representatives are unable to resolve the Dispute within thirty (30) days of their appointment, then each Party shall be free to pursue any remedies available to it and to take any action in law or equity that it believes necessary or convenient in order to enforce its rights or cause to be fulfilled any of the obligations or agreements of the other Party.

8.4 LG&E/KU Rights Under FPA Unaffected. Nothing in this Agreement is intended to limit or abridge any rights that LG&E/KU may have to file or make application before FERC under Section 205 of the FPA to revise any rates, terms or conditions of the OATT or any other FPA jurisdictional agreement.

8.5 Reliability Coordinator Rights Under the TVA Act and FPA Unaffected. Nothing in this Agreement is intended to limit or abridge any rights that the Reliability Coordinator may have under the TVA Act or the FPA, nor to require the Reliability Coordinator to violate the area limitations set forth in the TVA Act.

8.6 Statute of Limitations; Continued Performance. The Parties agree to waive the applicable statute of limitations during the period of time that the Parties are seeking to resolve a Dispute pursuant to Sections 8.3.2 and 8.3.3, and the statute of limitations shall be tolled for such period. The Parties shall continue to perform their obligations under this Agreement during the resolution of a Dispute.

## **Section 9 - Insurance.**

9.1 Requirements. The Reliability Coordinator shall provide and maintain during the Term insurance coverage in the form and with minimum limits of liability as specified below, unless otherwise agreed to by the Parties.

9.1.1 Worker's compensation insurance in accordance with the Federal Employees Compensation Act (FECA).

9.1.2 Commercial general liability or equivalent insurance with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include products/completed operations liability, owners protective, blanket contractual liability, personal injury liability and broad form property damage.

9.2 Insurance Matters. All insurance coverages required pursuant to Section 9.1 shall (a) be provided by insurance companies that have a Best Rating of A or higher, (b) provide that LG&E/KU is an additional insured (other than the workers' compensation insurance), (c) provide that LG&E/KU will receive at least thirty (30) days written notice from the insurer prior to the cancellation or termination of or any material change in any such insurance coverages, and (d) include waivers of any right of subrogation of the insurers thereunder against LG&E/KU. Certificates of insurance evidencing that the insurance required by Section 9.1 is in force shall be delivered by the Reliability Coordinator to LG&E/KU prior to the Effective Date.

9.3 Compliance. The Reliability Coordinator shall not commence performance of any Functions until all of the insurance required pursuant to Section 9.1 is in force, and the necessary



documents have been received by LG&E/KU pursuant to Section 9.2. Compliance with the insurance provisions in Section 9 is expressly made a condition precedent to the obligation of LG&E/KU to make payment for any Functions performed by the Reliability Coordinator under this Agreement. The minimum insurance requirements set forth above shall not vary, limit or waive the Reliability Coordinator's legal or contractual responsibilities or liabilities under this Agreement.

## **Section 10 - Confidentiality.**

10.1 Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean, in respect of each Party, all activities by such Party and information and documentation of such Party, whether disclosed to or accessed by the other Party, in each case, in connection with this Agreement; provided, however, that the term "Confidential Information" shall not include information that: (a) is independently developed by the recipient, as demonstrated by the recipient's written records, without violating the disclosing Party's proprietary rights; (b) is or becomes publicly known (other than through unauthorized disclosure); (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (d) is already known by the recipient at the time of disclosure, as demonstrated by the recipient's written records, and the recipient has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements between the Parties entered into before the Effective Date; or (e) is rightfully received by a Party free of any obligation of confidentiality.

10.2 Protection of Confidential Information. All Confidential Information shall be held in confidence by the recipient to the same extent and in at least the same manner as the recipient protects its own confidential information, and such Confidential Information shall be used only for purposes of performing obligations under this Agreement. Except as otherwise provided in Section 10.4, neither Party shall disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from, the other Party in any form to, or for the use or benefit of, any person or entity without the disclosing Party's prior written consent. Each Party shall be permitted to disclose relevant aspects of the other Party's Confidential Information to its officers, directors, agents, professional advisors, contractors, subcontractors and employees and to the officers, directors, agents, professional advisors, contractors, subcontractors and employees of its Affiliates, to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations or the determination, preservation or exercise of its rights and remedies under this Agreement; provided, however, that the recipient shall take all reasonable measures to ensure that Confidential Information of the disclosing Party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, directors, agents, professional advisors, contractors, subcontractors and employees. The obligations in this Section 10 shall not restrict any disclosure pursuant to any local, state or federal governmental agency or authority if such release is necessary to comply with applicable laws, governmental regulations or orders of regulatory bodies or courts; provided that, other than in respect of disclosures pursuant to Section 10.4, the recipient shall give prompt notice to the disclosing Party in reasonable time to exercise whatever legal rights the disclosing Party may have to prevent or limit such disclosure. Further, the recipient shall cooperate with the disclosing Party in preventing or limiting such disclosure.

10.3 NERC Data Confidentiality Agreement. In addition to, and not in limitation of, the confidentiality restrictions in Section 10.2, each Party shall sign the NERC Data Confidentiality

Agreement and shall treat all Confidential Information as transmission operations and transmission system information pursuant to the NERC Data Confidentiality Agreement.

10.4 FERC Requests for Confidential Information. Notwithstanding anything in this Agreement to the contrary, if FERC or its staff, during the course of an investigation or otherwise, requests information from the Reliability Coordinator related to services provided by the Reliability Coordinator to LG&E/KU that the Reliability Coordinator is otherwise required to maintain in confidence pursuant to this Agreement, the Reliability Coordinator shall provide the requested information to FERC or its staff within the time provided for in the request for information. In providing such information to FERC or its staff, the Reliability Coordinator shall, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. The Reliability Coordinator shall notify LG&E/KU when it is notified by FERC or its staff that a request for public disclosure of, or decision to publicly disclose, confidential information has been received, at which time either the Reliability Coordinator or LG&E/KU may respond before such information is made public, pursuant to 18 C.F.R. § 388.112.

## **Section 11 - Force Majeure.**

11.1 Neither Party shall be liable to the other Party for any failure or delay of performance hereunder due to causes beyond such Party's reasonable control, which by the exercise of reasonable due diligence such Party is unable, in whole or in part, to prevent or overcome (a "Force Majeure"), including acts of God, act of the public enemy, fire, explosion, vandalism, cable cut, storm or other catastrophes, weather impediments, national emergency, insurrections, riots, wars or any law, order, regulation, direction, action or request of any government or authority or instrumentality thereof. Neither Party shall be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure, except for the obligation to pay any amount when due, provided that the affected Party:

11.1.1 gives notice to the other Party of the event or circumstance giving rise to the event of Force Majeure;

11.1.2 affords the other Party reasonable access to information about the event or circumstances giving rise to the event of Force Majeure;

11.1.3 takes commercially reasonable steps to restore its ability to perform its obligations hereunder as soon as reasonably practicable, provided that the affected Party shall not be obligated to take any steps that are not otherwise in accordance with Good Utility Practice; and

11.1.4 exercises commercially reasonable efforts to perform its obligations hereunder.

## **Section 12 - Reporting; Audit.**

12.1 Reporting. The Reliability Coordinator shall make regular reports to FERC and LG&E/KU's retail regulators as may be required by applicable law and regulations or as may be requested by such authorities.

12.2 Books and Records. The Reliability Coordinator shall maintain full and accurate books and records pertinent to this Agreement, and the Reliability Coordinator shall maintain such books and records for three (3) years following the expiration or early termination of this Agreement or longer if necessary to resolve a pending Dispute. LG&E/KU will have the right, at reasonable times and under reasonable conditions, to inspect and audit, or have an independent third party inspect and audit, the Reliability Coordinator's operations and books to (a) ensure compliance with this Agreement, (b) verify any cost claims or other amounts due hereunder, and (c) validate the Reliability Coordinator's internal controls with respect to the performance of the Functions. The Reliability Coordinator shall maintain an audit trail, including all original transaction records, of all financial and non-financial transactions resulting from or arising in connection with this Agreement as may be necessary to enable LG&E/KU or the independent third party, as applicable, to perform the foregoing activities. LG&E/KU shall be responsible for any costs and expenses incurred in connection with any such inspection or audit, unless such inspection or audit discovers that LG&E/KU was charged inappropriate or incorrect costs and expenses, in which case, the Reliability Coordinator shall be responsible for a percentage of the costs and expenses incurred in connection with such inspection or audit equal to the percentage variance by which LG&E/KU was charged inappropriate or incorrect costs and expenses. The Reliability Coordinator shall provide reasonable assistance necessary to enable LG&E/KU or an independent third party, as applicable, and shall not be entitled to charge LG&E/KU for any such assistance. Amounts incorrectly or inappropriately invoiced by the Reliability Coordinator to LG&E/KU, whether discovered prior to or subsequent to payment by LG&E/KU, shall be adjusted or reimbursed to LG&E/KU by the Reliability Coordinator within twenty (20) days of notification by LG&E/KU to the Reliability Coordinator of the error in the invoice.

12.3 Regulatory Compliance. The Reliability Coordinator shall comply with all reasonable requests by LG&E/KU to comply with Section 404 of the Sarbanes-Oxley Act and related regulatory requirements. LG&E/KU may hire, at its expense, or LG&E/KU may direct the Reliability Coordinator to hire, at LG&E/KU expense, an independent auditor to review, audit and prepare audit reports associated with the Reliability Coordinator's controls and systems relating to the Functions and LG&E/KU's financial statements and reports, in accordance with SAS No. 70, Type II. Such reports may not be required more frequently than twice per Contract Year. The Reliability Coordinator shall notify LG&E/KU prior to or at the time of any significant or material change to any internal process or financial control of the Reliability Coordinator that would or might impact the Functions performed for or on behalf of LG&E/KU or that would, or might, have a significant or material effect on such process's mitigation of risk or upon the integrity of LG&E/KU's financial reporting or disclosures and provide sufficient details of the change so as to enable LG&E/KU and/or its independent auditors to review the change and evaluate its impact on its internal controls and financial reporting. The Reliability Coordinator shall cooperate with the independent auditors and LG&E/KU to enable the preparation of the reports necessary to comply with Section 404 of the Sarbanes-Oxley Act, consistent with the other provisions of this Agreement.

### **Section 13 - Independent Contractor.**

The Reliability Coordinator shall be and remain during the Term an independent contractor with respect to LG&E/KU, and nothing contained in this Agreement shall be (a) construed as inconsistent with that status, or (b) deemed or construed to create the relationship of principal and agent or employer and employee, between the Reliability Coordinator and LG&E/KU or to make

either the Reliability Coordinator or LG&E/KU partners, joint ventures, principals, fiduciaries, agents or employees of the other Party for any purpose. Neither Party shall represent itself to be an agent, partner or representative of the other Party. Neither Party shall commit or bind, nor be authorized to commit or bind, the other Party in any manner, without such other Party's prior written consent. Personnel employed, provided or used by any Party in connection herewith will not be employees of the other Party in any respect. Each Party shall have full responsibility for the actions or omissions of its employees and shall be responsible for their supervision, direction and control.

**Section 14 - Taxes.**

Each Party shall be responsible for the payment of its own taxes, including taxes based on its net income, employment taxes of its employees, taxes on any property it owns or leases, and sales, use, gross receipts, excise, value-added or other transaction taxes.

**Section 15 - Notices.**

15.1 Notices. Except as otherwise specified herein, any notice required or authorized by this Agreement shall be deemed properly given to a Party when sent to its designated representative by facsimile or other electronic means (with a confirmation copy sent by United States mail, first-class postage prepaid), by hand delivery, or by United States mail, first-class postage prepaid. The Parties' designated representatives are as follows:

If to LG&E/KU:

Louisville Gas and Electric Company  
220 West Main St.  
Louisville, Kentucky 40202  
Facsimile: (502) 627-4002

And

Kentucky Utilities Company  
220 West Main St.  
Louisville, Kentucky 40202  
Facsimile: (502) 627-4002

If to the Reliability Coordinator:

Tennessee Valley Authority  
1101 Market Street, PCC 2A  
Chattanooga, Tennessee 37402-2801  
Facsimile: (423) 697-4120

15.2 Changes. Either Party may, from time to time, change the names, addresses, facsimile numbers or other notice information set out in Section 15.1 by notice to the other Party in accordance with the requirements of Section 15.1.

**Section 16 - Key Personnel; Work Conditions.**

16.1 Key Personnel. All Key Personnel shall be properly certified and licensed, if required by law, and be qualified and competent to perform the Functions. The Reliability Coordinator shall provide LG&E/KU prior written notice of the replacement of any Key Personnel.

16.2 Conduct of Key Personnel and Reporting. The Reliability Coordinator agrees to require that the Key Personnel comply with the Reliability Coordinator's employee code of conduct, a current copy of which has been provided to LG&E/KU. The Reliability Coordinator may amend its employee code of conduct at any time, provided that the Reliability Coordinator shall promptly provide the LG&E/KU Contract Manager with a copy of the amended employee code of conduct. If any Key Personnel commits fraud or engages in material violation of the Reliability Coordinator's employee code of conduct, the Reliability Coordinator shall promptly notify LG&E/KU as provided above and promptly remove any such Key Personnel from the performance of the Functions.

16.3 Personnel Screening. The Reliability Coordinator shall be responsible for conducting, in accordance with applicable law (including the Fair Credit Reporting Act, The Fair and Accurate Credit Transactions Act, and Title VII of the Civil Rights Act of 1964), adequate pre-deployment screening of the Key Personnel prior to commencing performance of the Functions. By deploying Key Personnel under this Agreement, the Reliability Coordinator represents that it has completed the Screening Measures (as defined below) with respect to such Key Personnel. To the extent permitted by applicable law, the term "Screening Measures" shall include, at a minimum, a background check including: (a) a Terrorist Watch Database Search; (b) a Social Security Number trace; (c) motor vehicle license and driving record check; and (d) a criminal history check, including, a criminal record check for each county/city and state/country in the employee's residence history for the maximum number of years permitted by law, up to seven (7) years. Unless prohibited by law, if, prior to or after assigning a Key Personnel to perform the Functions, the Reliability Coordinator learns of any information that the Reliability Coordinator considers would adversely affect such Key Personnel's suitability for the performance of the Functions (including based on information discovered from the Screening Measures), the Reliability Coordinator shall not assign the Key Personnel to the Functions or, if already assigned, promptly remove such Key Personnel from performing the Functions and immediately notify LG&E/KU of such action.

16.4 Security. LG&E/KU shall have the option of barring from LG&E/KU's property any Key Personnel whom LG&E/KU determines is not suitable in accordance with the applicable laws pursuant to Sections 16.1 through 16.3.

## **Section 17 - Miscellaneous Provisions.**

17.1 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with applicable state and federal laws, without regard to the laws requiring the applicability of the laws of another jurisdiction.

17.2 Amendment. This Agreement shall not be varied or amended unless such variation or amendment is agreed to by the Parties in writing.

17.3 Assignment. Neither Party shall sell, assign, or otherwise transfer any or all of its respective rights hereunder, or delegate any or all of its respective obligations under this

Agreement.

17.4 No Third Party Beneficiaries. Nothing in this Agreement is intended to confer any benefits upon any person or entity not a Party to this Agreement. This Agreement is made solely for the benefit of the Parties and nothing herein shall be construed as a stipulation for the benefit of others, and no third party shall be entitled to enforce this Agreement against any Party hereto.

17.5 Waivers. No waiver of any provision of this Agreement shall be effective unless it is signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

17.6 Severability; Renegotiation. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision herein. If any provision of this Agreement is found to be invalid, illegal or otherwise unenforceable, the same shall not affect the other provisions hereof or the whole of this Agreement and shall not render invalid, illegal or unenforceable this Agreement or any of the remaining provisions of this Agreement. If any provision of this Agreement or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, or if a modification, condition or other change to this Agreement is imposed by a court or regulatory authority of competent jurisdiction which materially affects the benefits or obligations of the Parties, then the Parties shall in good faith negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligation of the Parties immediately prior to such holding, modification or condition. If such negotiations are unsuccessful, then either Party may terminate this Agreement pursuant to Section 4.5.1.

17.7 Representations and Warranties. Each Party represents and warrants to the other Party as of the Execution Date and the Effective Date as follows:

17.7.1 Organization. It is duly organized, validly existing and in good standing under the laws of the State in which it was organized or applicable Federal law, and has all the requisite power and authority to own and operate its material assets and properties and to carry on its business as now being conducted and as proposed to be conducted under this Agreement.

17.7.2 Authority. It has the requisite power and authority to execute and deliver this Agreement and, subject to the procurement of applicable regulatory approvals, to perform its obligations under this Agreement. The execution and delivery of this Agreement by it and the performance of its obligations under this Agreement have been duly authorized by all necessary corporate action required on its part.

17.7.3 Binding Effect. Assuming the due authorization, execution and delivery of this Agreement by the other Party, this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar applicable laws affecting creditors' rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

17.7.4 Regulatory Approval. It has obtained or will obtain by the Effective Date, any and all approvals of, and acceptances for filing by, and has given or will give any notices to, any applicable federal or state authority, that are required for it to execute, deliver, and perform its obligations under this Agreement.

17.7.5 No Litigation. There are no actions at law, suits in equity, proceedings, or claims pending or, to its knowledge, threatened against it before or by any federal, state, foreign or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

17.7.6 No Violation or Breach. The execution, delivery and performance by it of its obligations under this Agreement do not and shall not: (a) violate its organizational documents; (b) violate any applicable law, statute, order, rule, regulation or judgment promulgated or entered by any applicable federal or state authority, which violation could reasonably be expected to materially adversely affect the performance of its obligations under this Agreement; or (c) result in a breach of or constitute a default of any material agreement to which it is a party.

17.8 Further Assurances. Each Party agrees that it shall execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the purpose of this Agreement and are not inconsistent with the provisions of this Agreement.

17.9 Entire Agreement. This Agreement and the Attachments hereto set forth the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements, whether oral or written, related to the subject matter of this Agreement, including that certain Reliability Coordinator Agreement, dated as of January 10, 2006, between the Parties. The terms of this Agreement and the Attachments hereto are controlling, and no parole or extrinsic evidence, including to prior drafts and drafts exchanged with any third parties, shall be used to vary, contradict or interpret the express terms, and conditions of this Agreement.

17.10 Good Faith Efforts. Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and the other Party to fulfill their obligations under this Agreement. Where the consent, agreement or approval of any Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, delayed or conditioned. Where a Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. To the extent that the jurisdiction of any federal or state authority applies to any part of this Agreement or the transactions or actions covered by this Agreement, each Party shall cooperate with the other Party to secure any necessary or desirable approval or acceptance of such authorities of such part of this Agreement or such transactions or actions.

17.11 Time of the Essence. With respect to all duties, obligations and rights of the Parties, time shall be of the essence in this Agreement.

17.12 Interpretation. Unless the context of this Agreement otherwise clearly requires:

17.12.1 all defined terms in the singular shall have the same meaning when used in the plural and vice versa;

17.12.2 the terms “hereof,” “herein,” “hereto” and similar words refer to this entire Agreement and not to any particular Section, Attachment or any other subdivision of this Agreement;

17.12.3 references to “Section” or “Attachment” refer to this Agreement, unless specified otherwise;

17.12.4 references to any law, statute, rule, regulation, notification or statutory provision shall be construed as a reference to the same as it applies to this Agreement and may have been, or may from time to time be, amended, modified or re-enacted;

17.12.5 references to “includes,” “including” and similar phrases shall mean “including, without limitation;”

17.12.6 the captions, section numbers and headings in this Agreement are included for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement;

17.12.7 “or” may not be mutually exclusive, and can be construed to mean “and” where the context requires there to be a multiple rather than an alternative obligation; and

17.12.8 references to a particular entity include such entity’s successors and assigns to the extent not prohibited by this Agreement.

17.12.9 any capitalized terms used in this Agreement, including the Appendices, that are not defined in this Agreement or in the Appendices, shall have the meaning established in the applicable NERC documentation.

17.13 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other and no provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provision. Each Party acknowledges that in executing this Agreement its has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and it has not been influenced by any representation or statement made by the other Party or its counsel not contained in this Agreement.

17.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon LG&E/KU and the Reliability Coordinator, notwithstanding that LG&E/KU and the Reliability Coordinator may not have executed the same counterpart.

**Section 18 - Confidential Critical Infrastructure Information Protection.** Notwithstanding any other applicable confidentiality provisions in this RC Agreement including Section 10 above, the following provisions of this Section 18 shall apply with respect to LG&E/KU’s Protected Assets and Information. “LG&E/KU’s Protected Assets and Information” is defined as: (i) LG&E/KU’s Critical Cyber Assets, (ii) LG&E/KU’s Cyber Assets used in access control and monitoring of Company’s Electronic Security Perimeter(s), (iii) LG&E/KU’s Cyber Assets that authorize or log access to LG&E/KU’s Physical Security Perimeter(s) or (iv) any information relating to LG&E/KU’s Critical Cyber Assets, including, without limitation, operational



procedures, Critical Asset lists, Critical Cyber Asset lists, network topology or similar diagrams, floor plans of computer centers that contain Critical Cyber Assets, equipment layouts of Critical Cyber Assets, disaster recovery plans, incident response plans, security configuration information, and any other confidential information relating to the reliability or operability of the Bulk Electric System and information generated or otherwise developed by the Reliability Coordinator in connection with its performance of the Reliability Coordinator functions that constitute or are otherwise related to LG&E/KU's Protected Assets and Information (collectively, "Confidential Critical Infrastructure Information"). The Reliability Coordinator shall not disclose any Confidential Critical Infrastructure Information (which will be clearly marked or otherwise identified by LG&E/KU as Confidential Critical Infrastructure Information) to any person or entity, except strictly on a need-to-know basis, and shall take all necessary actions to protect the Confidential Critical Infrastructure Information, including, without limitation, ensuring that appropriate electronic and/or password access controls are in place if such Confidential Critical Infrastructure Information is stored on shared drives or systems, encrypting all such information stored on laptops or removable media (such as a USB drive), and maintaining any such hard copy information in a secure, locked storage container and not permitting any unauthorized individual to view, handle or possess such information. The Reliability Coordinator shall provide to LG&E/KU a list of all the Reliability Coordinator employees, subcontractors or other persons associated with the Reliability Coordinator with access to any Confidential Critical Infrastructure Information when and as requested by LG&E/KU. The Reliability Coordinator will provide notification by contacting the LG&E/KU's NERC Compliance representative identified below immediately upon becoming aware that it has disclosed any Confidential Critical Infrastructure Information in violation of this Section 18. The Reliability Coordinator shall ensure that each recipient of any Confidential Critical Infrastructure Information understands and complies with the requirements to protect Confidential Critical Infrastructure Information from inappropriate disclosure as set forth in this Section 18. Notwithstanding anything to the contrary in the Contract, with respect to any Confidential Critical Infrastructure Information, the restrictions set forth in this Section 18 shall remain in effect indefinitely from the date such Confidential Critical Infrastructure Information was first disclosed to or obtained or discovered by the Reliability Coordinator. The Reliability Coordinator shall, upon request and as directed by LG&E/KU, promptly return to LG&E/KU, or otherwise properly dispose of, any and all Confidential Critical Infrastructure Information that is in the possession of the Reliability Coordinator or any of its employees or subcontractors.

The parties have caused this Reliability Coordinator Agreement to be executed by their duly authorized representatives as of the dates shown below.

**LOUISVILLE GAS AND ELECTRIC COMPANY**

*/s/ Tom Jessee*

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Name: Tom Jessee  
Title: Vice President, Transmission  
Date: 8/25/14

**KENTUCKY UTILITIES COMPANY**

*/s/ Tom Jessee*

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Name: Tom Jessee  
Title: Vice President, Transmission  
Date: 8/25/14

**TENNESSEE VALLEY AUTHORITY**

*/s/ Timothy E. Ponseti*

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Name: Timothy E. Ponseti  
Title: Vice President, Transmission Operations & Power Supply  
Date: 8-25-2014

**ATTACHMENT A  
TO THE RELIABILITY COORDINATOR AGREEMENT**

**DESCRIPTION OF THE PRIMARY FUNCTIONS**

The Reliability Coordinator is responsible for bulk transmission reliability and power supply reliability functions. Bulk transmission reliability functions include reliability analysis, loading relief procedures, re-dispatch of generation and ordering curtailment of transactions and/or load. Power supply reliability functions include monitoring Balancing Authority Area performance and ordering the Balancing Authority to take actions, including load curtailment and increasing/decreasing generation in situations where an imbalance between generation and load places the system in jeopardy. The procedures to be followed by the Reliability Coordinator shall be consistent with those of NERC and are spelled out in the NERC Approved Reliability Plan for the TVA Reliability Coordination Area and TVA Standard Procedures and Policies.

**I. Reliability Coordinator General Functions:**

The Reliability Coordinator shall perform the following functions:

- a) Serving as NERC designated reliability coordinator and represent the TVA Reliability Area at the NERC and Regional Reliability Council level.
- b) Implementing applicable NERC and regional reliability criteria initiatives, such as maintaining a connection to NERC's Interregional Security Network ("ISN"), day-ahead load-flow analysis, transmission loading relief procedures, and information exchange.
- c) Developing and coordinating with the Reliability Coordination Advisory Committee ("RCAC") new Reliability Coordinator Procedures and revisions to existing Reliability Coordinator Procedures.
- d) Exchanging timely, accurate, and relevant Transmission System information with LG&E/KU, the ITO, and with other reliability coordinators.
- e) Developing and maintaining system models and tools needed to perform analysis needed to develop operational plans.
- f) Coordinating with neighboring reliability coordinators and other operating entities as appropriate to ensure regional reliability.
- g) All other reliability coordinator functions as required for compliance with applicable NERC Reliability Standards and Regional Reliability Council standards, as the same may be amended or modified from time to time.

**II. Real-time Operations:**

**A. Reliability Coordinator Functions:**

The Reliability Coordinator shall perform the following functions:

- a) Monitoring, analyzing, and coordinating the reliability of LG&E/KU's facilities and interfaces with other Balancing Authorities, Transmission Operators, and other reliability coordinators.
- b) Performing analyses to develop an evaluation of system conditions. LG&E/KU will provide necessary information (e.g., outages and transactions) and Transmission System conditions, as applicable, to the Reliability Coordinator in accordance with applicable NERC Reliability Standards. The results of these analyses will be provided to LG&E/KU and neighboring reliability coordinators in accordance with applicable NERC Standards and Regional Reliability Council Standards.
- c) Determining, directing, and documenting appropriate actions to be taken by LG&E/KU, the ITO and Reliability Coordinator in accordance with the NERC Reliability Standards, including curtailment of transmission service or energy schedules, re-dispatch of generation and load shedding as necessary to alleviate facility overloads and abnormal voltage conditions, and other circumstances that affect interregional bulk power reliability.
- d) Coordinating transmission loading relief and voltage correction actions with LG&E/KU and with other reliability coordinators.

**B. LG&E/KU Responsibilities:**

LG&E/KU shall have the following responsibilities:

- a) Ensuring appropriate telemetry and providing Reliability Coordinator real-time operational information for monitoring.
- b) Receiving from the Reliability Coordinator all reliability alerts for TVA Reliability Area and neighboring reliability coordinators.
- c) Following Reliability Coordinator directives for corrective actions (e.g., curtailments or load shedding) during system emergencies or to implement TLR procedures.
- d) Receiving from Reliability Coordinator all notices regarding Transmission System limitations or other reliability issues, as appropriate.

**III. Forward Operations:**

**A. Reliability Coordinator Functions:**

The Reliability Coordinator shall perform the following functions:

- a) Performing analyses and develop an evaluation of the expected next-day Transmission System operations. The results of these analyses shall be provided to LG&E/KU, the ITO and neighboring reliability coordinators in accordance with applicable NERC Reliability Standards and Regional Reliability Council Standards.

- b) Performing analysis of planned transmission and generation outages and coordination of outages with NERC, participants in reliability coordination agreements, and other reliability coordinators as appropriate and as required by NERC. This entails analysis and coordination of planned outages which are beyond next day and intra-day outages.
- c) Analyzing and approving all planned maintenance schedules on facilities 100kV and above and planned maintenance of generation facilities submitted by LG&E/KU in conjunction with other work on the regional transmission grid to determine the impact of LG&E/KU's planned maintenance schedule on the reliability of the facilities under TVA's purview as Reliability Coordinator, and the purview of neighboring reliability coordinators, and any other relevant effects; and coordinate impacts on available transfer capability with the ITO.
- d) Coordinating, as required by either NERC or other agreements, planned maintenance schedules with all adjacent reliability coordination areas and/or Balancing Authority Areas and Transmission Providers; as well as the ITO.

**B. LG&E/KU Responsibilities:**

LG&E/KU shall have the following responsibilities:

- a) Providing generation-related information (e.g., outages and transactions) and expected Transmission System conditions (e.g., transmission facility outages and transactions), as applicable, to the Reliability Coordinator for the next-day operation in accordance with applicable NERC Reliability Standards and Regional Reliability Council standards.
- b) Submitting facility ratings and operational data for all generators and transmission facilities in the LG&E/KU footprint.
- c) Coordinating with the ITO and submitting to the Reliability Coordinator generation dispatch information for the LG&E/KU footprint and following Reliability Coordinator directives regarding dispatch adjustments to mitigate congestion.
- d) Submitting to the Reliability Coordinator generation operation plans and commitments for reliability analysis.
- e) Submitting to the Reliability Coordinator transmission maintenance plans for reliability analysis.
- f) Following Reliability Coordinator directives to revise transmission maintenance plans as required to ensure grid reliability.
- g) Receiving from Reliability Coordinator all notices regarding reliability analyses for the TVA Reliability Area as well as neighboring reliability coordinators.
- h) Representing LG&E/KU on the RCAC and in all RCAC deliberations.

**IV. Regional Congestion Management**

For the purposes of this section IV, capitalized terms will have the definitions used in the Congestion Management Process (“CMP”), unless otherwise noted in this section IV.

**A. Reliability Coordinator Functions:**

The following functions to be performed by the Reliability Coordinator shall be performed in conjunction with the functions to be performed by the Independent Transmission Operator under the Independent Transmission Organization Agreement and will fully incorporate the LG&E/KU operations into the procedures and protocols governing other facilities in the Reliability Coordinator’s Reliability Area in accordance with the CMP:

- a) Identifying Coordinated Flowgates and determination of flowgates requiring Reciprocal Coordination (twice annually).
- b) Performing Historic Firm Flow Calculations -- implement transmission service reservation set and designated resources provided by LG&E/KU for established freeze date; calculate historic firm flow values and ratios for all coordinated flowgates on LG&E/KU’s system (bi-annually).
- c) Developing reciprocal coordination agreements that establish how each Operating Entity will consider its own flowgates as well as the usage of other Operating Entities when it determines the amount of flowgate or constraint capacity remaining. This process will include both operating horizon determination as well as forward looking capacity allocation.
- d) Implementing AFC Process -- determine AFC attribute requirements; obtain NNL Impact Data; implement Allocation Calculation Process; implement AFC calculation process.
- e) The Reliability Coordinator will provide the ITO flowgate AFCs on an hourly basis and flowgate allocations on a daily basis.

**B. LG&E/KU Responsibilities:**

LG&E/KU is obligated to uphold the terms and conditions of the CMP, and providing the Reliability Coordinator with the information and support it needs in order to carry out its duties as LG&E/KU 's Reliability Coordinator. LG&E/KU shall have the following responsibilities. LG&E/KU will be responsible for coordinating with the ITO and providing Transmission System data to the Reliability Coordinator including, but not limited to:

Operating information:

- (i) Transmission Service Reservations;
- (ii) Load forecast requirements;
- (iii) Flowgates requirements;
- (iv) AFC data requirements;
- (v) PSSE Models Requirements;
- (vi) Designated Network Resources requirements;

- (vii) Jointly owned units;
- (viii) Dynamic schedules;
- (ix) NNL allocations requirements; and,
- (x) NNL Evaluator Requirements.

Projected operating information:

- (i) Unit commitment/merit order;
- (ii) Firm purchase and sales (including grandfathered agreements);
- (iii) Independent power producer information including current operating level, projected operating levels, Scheduled Outage start and end dates;
- (iv) Planned and actual operational start-up dates for any permanently added, removed, or significantly altered transmission segments; and
- (v) Planned and actual start-up testing and operational start-up dates for any permanently added, removed, or significantly altered generation units.

**C. ITO Responsibilities:**

The ITO shall have the following responsibilities in support of the Congestion Management Process (“CMP”):

- a) Providing to the Reliability Coordinator all transmission facility plans and facility upgrade schedules.
- b) Providing to the Reliability Coordinator the status of all transmission service requests and all new transmission service agreements.
- c) Receiving from the Reliability Coordinator all flowgate AFCs on an hourly basis and flowgate allocations on a daily basis.
- d) Converting flowgate information provided by the Reliability Coordinator to ATC values for posting on OASIS and for analyzing TSRs.
- e) Implementing CMP business rules for AFC vs. ASTFC.
- f) Honoring all AFC allocations and AFC over-rides from other CMP participants in the evaluation and granting of transmission service.

**V. Reliability Coordination**

**A. Reliability Coordinator Functions:**

The Reliability Coordinator will ensure a long-term (one year and beyond) plan is available for adequate resources and transmission within the TVA Reliability Area. The Reliability Coordinator will integrate the Annual Plan provided by the ITO with plans of other operating entities in the Reliability Coordination Area and assess the plans to ensure those plans meet reliability standards.

The Reliability Coordinator will advise the ITO of solutions to plans that do not meet those standards. The Reliability Coordinator will then coordinate the Reliability Area Plan with those of neighboring reliability coordinators and Planning Coordinators to ensure wide-area grid reliability.

These functions include:

- a) Integrating the transmission and resource (demand and capacity) system models provided by the ITO with those of other Reliability Coordinator Area operating entities to ensure Transmission System reliability and resource adequacy.
- b) Applying methodologies and tools to assess and analyze the Transmission System's expansion plans and the resource adequacy plans.
- c) Collecting all information and data required for modeling and evaluation purposes.
- d) Integrating and verifying that the respective plans of the Resource Planners and Transmission Planners within the TVA Reliability Area meet reliability standards.
- e) Coordinating the Reliability Coordinator Area plan with neighboring Reliability Coordinators for review, as appropriate.
- f) Integrating the Reliability Coordinator Area plan with neighboring Planning Coordinators/reliability coordinators' plans to provide a broad multi-regional bulk system planning view.

**B. LG&E/KU Responsibilities:**

LG&E/KU shall have the following responsibilities:

- a) Providing to the Reliability Coordinator demand and energy end-use customer forecasts, capacity resources, and demand response programs.
- b) Providing to the Reliability Coordinator generator unit performance characteristics and capabilities.
- c) Providing to Reliability Coordinator long-term capacity purchases and sales.



## ATTACHMENT B

### DIVISION OF RESPONSIBILITIES FOR THE PLANNING FUNCTION

#### Overview

This Attachment B to the Reliability Coordinator Agreement is designed to provide a division of responsibilities between LG&E/KU, the ITO and the Reliability Coordinator. Long-term Transmission Planning for LG&E/KU's footprint will be conducted as an iterative process as follows: 1) LG&E/KU will develop the long-term Annual Transmission Plan ("Annual Plan") and submit the Annual Plan to the ITO for initial approval; 2) The ITO will review and conduct an engineering assessment of the Annual Plan; and if it is approved, the ITO will submit the Annual Plan to the Reliability Coordinator; 3) The Reliability Coordinator will conduct a regional assessment of the Annual Plan, subject to the conditions below; 4) The Reliability Coordinator will submit any changes based on its regional assessment to the ITO for final review and approval. The ITO will ensure that transmission planning on the Transmission Owner's system is done on an independent, non-discriminatory basis. This process is further detailed below.

#### 1. Plan Development by LG&E/KU

LG&E/KU will be responsible for the following tasks:

- 1.1 System Models for Transmission Planning.** LG&E/KU will develop and maintain all transmission and resource (demand and capacity) system models, to evaluate Transmission System performance and resource adequacy. As part of these duties LG&E/KU is responsible for:
  - 1.1.1** Creating the Base Case Model for the Transmission System. This Model will include all existing long-term, firm uses of the Transmission System, including: (i) Network Integration Transmission Service; (ii) firm transmission service for LG&E/KU's Native Load; (iii) Long-Term Point-to-Point Transmission Service; and (iv) firm transmission service provided in accordance with grandfathered agreements. The Base Case Model will be developed pursuant to the modeling procedures used in developing the NERC multi-regional and Reliability *First* regional models.
  - 1.1.2** Providing the Base Case Model to the ITO for review and approval according to the iterative process outlined in the overview to this Attachment B.
  - 1.1.3** Maintaining other transmission models including, but not limited to steady-state, dynamic and short circuit models.
- 1.2 Assess, develop, and document Resource and Transmission Expansion plans.** LG&E/KU will assess, develop, and document Resource and Transmission Expansion plans including the Annual Plan. These plans include the following responsibilities:
  - 1.2.1** Maintaining and apply methodologies and appropriate tools for the

development, analysis and simulation of the Transmission System in the assessment and development of transmission expansion plans and the analysis and development of resource adequacy plans.

- 1.2.2 Developing a long-term (generally one year and beyond) plan for the reliability (adequacy) of the Transmission System.
- 1.2.3 Defining system protection and control needs and requirements, including special protection systems (remedial action schemes), to meet reliability standards.
- 1.2.4 Developing and report, as appropriate, on the Annual Plan for assessment and compliance with reliability standards.
- 1.2.5 Monitoring and report, as appropriate, its Annual Plan implementation.

**1.3 Information.** LG&E/KU will define, collect and develop information required for planning purposes, including:

**1.3.1 Transmission facility characteristics and ratings.** Collect and maintain specific transmission information regarding characteristics of transmission facilities, lines, equipment, and methodologies, for determining the appropriate thermal ratings of circuits and transformers, including information on transmission line design temperature, voltage and stability limits and other transformer test data.

**1.3.2 Demand and energy end-use customer forecasts, capacity resources, and demand response programs.** Including:

- i. Load forecasts for all existing delivery points for the following ten years, including transmission (wholesale and retail) connected substations and distribution substations, and coincident and noncoincident peak demands and power factor at each delivery point;
- ii. Plans for new delivery points for the following ten years;
- iii. Resource plans for the following 10 years;
- iv. Expectations for market access to on- and off-system generation resources;
- v. All planned on-system distributed generation resources; and
- vi. Information on all interruptible loads.

**1.3.3 Generator unit performance characteristics and capabilities.**

LG&E/KU shall provide the ITO with all necessary data, information, and applicable requirements that govern the operation of any generating facilities interconnected with the Transmission System, as the ITO may

require for performance of its various functions. LG&E/KU shall submit and coordinate generator unit schedules as necessary to permit the ITO to assess transmission transfer capability and to permit the Reliability Coordinator to assess transmission reliability. LG&E/KU shall submit, on an annual basis, data concerning projected loads, designated network resources, generation and transmission maintenance schedules, and other such operating data as the ITO may require for performance its various functions.

- 1.3.4 Long-term capacity purchases and sales.** LG&E/KU will maintain a list of all long-term capacity purchases and sales and include this information in its model development and the Annual Plan.

## **2 ITO Review and Assessment**

The ITO will be responsible for the following tasks:

- 2.1** Independently reviewing and approving LG&E/KU's Planning Guidelines. If the ITO concludes that additional explanatory detail is required, LG&E/KU will modify the appropriate business practice documents to include the additional detail. The ITO will ensure that the final versions of the Planning Criteria are posted on OASIS;
- 2.2** Reviewing and approving LG&E/KU's Base Case Model; reviewing, evaluating, and commenting on the Annual Plan as developed by LG&E/KU. This review and evaluation will be based on all applicable planning criteria and statewide or multi-state transmission planning requirements;
- 2.3** Monitoring LG&E/KU's transmission facility ratings based on access to data necessary to evaluate such ratings;
- 2.4** Performing an Independent assessment of the Transmission System using the Planning Guidelines and the Base Case Model. As part of this assessment, the ITO will independently evaluate whether: (i) LG&E/KU's Annual Plan complies with the Planning Guidelines and the Base Case Model; and (ii) whether there are upgrade projects in the Annual Plan that are not necessary to meet the Planning Guidelines and the Base Case Model;
- 2.5** Holding a Transmission Planning Conference to gather input and consider the planning process and LG&E/KU's Annual Plan; and
- 2.6** Providing LG&E/KU with its conclusions regarding the reliability assessment and evaluation of the Annual Plan, including any outstanding issues that the ITO believes LG&E/KU should address. LG&E/KU will have the opportunity to review the ITO's conclusions and may submit a revised Annual Plan and supporting documentation to the ITO to address any outstanding issues. Once the Annual Plan has been finalized by LG&E/KU, the ITO will submit the Annual Plan to the Reliability Coordinator for regional coordination.

### **3 Regional Coordination**

The Reliability Coordinator will be responsible for the following tasks:

- 3.1** Integrating and verifying that the respective plans for the regional area meet reliability standards.
- 3.2** Identifying and reporting on potential Transmission System and resource adequacy deficiencies in the regional area, and provide alternate plans that mitigate these deficiencies.
- 3.3** Reviewing and reporting, as appropriate, on LG&E/KU's Annual Plan for assessment and compliance with reliability standards within their regional area.
- 3.4** Notifying impacted transmission entities within their regional area of any planned transmission changes that may impact their facilities.
- 3.5** Submitting Annual Plan, including any changes based on the regional coordination, to the ITO for final approval.

### **4 Final Review and Assessment**

- 4.1** The ITO shall have final review and assessment of all plans. If the ITO cannot approve a plan after regional coordination, then the ITO will return the plan to LG&E/KU for further development as appropriate. The process for final approval of any previously rejected plan will follow the same iterative process as outlined above.
- 4.2** The ITO will post LG&E/KU's finalized Annual Plan on OASIS.

### **5 Implementation of Plan and Construction of Upgrades**

- 5.1** LG&E/KU is responsible for the implementation of the Annual Plan. LG&E/KU will make a good faith effort to design, certify, and build facilities approved by the ITO in the Annual Plan.
- 5.2** In the case where the Reliability Coordinator or the ITO does not agree with the Annual Plan, nothing in this Attachment B shall prevent LG&E/KU from constructing those facilities it deems necessary to reliably meet its obligation to serve its Transmission Customers, point-to-point, Network Integration Service, and Native Load Customers.

**ATTACHMENT C  
TO THE RELIABILITY COORDINATOR AGREEMENT**

**LIST OF KEY PERSONNEL  
TVA Reliability Coordination Services**

**August 2014**

**Reliability Authority & Regional Operations**

Armando Rodriguez - Senior Manager, Reliability Authority & Regional Operations

Roy Mathai - Project Manager, Operations Readiness

**Reliability Operations**

Nathan Schweighart - Manager, Reliability Operations

Terry Williams - Specialist Reliability Analysis Operator

Julio Bolano - Specialist Reliability Analysis Operator

Richard Brent Fuller - Specialist Reliability Analysis Operator

Timothy Gleason - Specialist Reliability Analysis Operator

Donald Herring - Specialist Reliability Analysis Operator

Daniel Kehoe - Specialist Reliability Analysis Operator

Thomas Wilk - Specialist Reliability Analysis Operator

William C. Dunn - Reliability Coordinator System Operator

Kevin Grooms - Reliability Coordinator System Operator

Darrell Jones - Reliability Coordinator System Operator

Thomas C. Nance - Reliability Coordinator System Operator

Travis Rackley - Reliability Coordinator System Operator

Brent Taylor - Reliability Coordinator System Operator

**Reliability Analysis**

Scott Walker - Manager, Reliability Analysis

Timothy Fritch - Electrical Engineer Planning

Marshalia Green - Electrical Engineer Planning

Gary Kobet - Electrical Engineer Planning

Shaun McFarland - Electrical Engineer Planning

Charles Michael McAmis - Electrical Engineer Planning

Jonathan Prater - Electrical Engineer Planning

Matthew Scott Schebler - Electrical Engineer Planning

Joshua Shultz - Electrical Engineer Planning

Justin Baier - Engineering Intern

Ulyana Pugina - Engineering Intern

**Advanced Power Applications**

Gregory Dooley - Electrical Engineer Power Systems

Alden Bost Jr. - Electrical Engineer Power Systems

Joey Burke - Electrical Engineer Power Systems

Brian Scott - Electrical Engineer Power Systems

David Nordy Jr. - Electrical Engineer Power Systems

Thomas Scott - Engineering Intern

Cyril Shircel - Engineering Intern

Karlee Winkelman - Engineering Intern

**EXHIBIT 1  
TO THE RELIABILITY COORDINATOR AGREEMENT**

LG&E and KU hereby incorporate the Baseline Congestion Management Process (Version 1.2), which is attached hereto.

~~ATTACHMENT Q~~  
AGREEMENTS BETWEEN THE TRANSMISSION OWNER AND THE ITO  
AND THE RELIABILITY COORDINATOR

Independent Transmission Organization  
Agreement

Between

Louisville Gas and Electric Company/  
Kentucky Utilities Company

And

TranServ International, Inc.

FINAL

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## INDEPENDENT TRANSMISSION ORGANIZATION AGREEMENT

This Independent Transmission Organization (“ITO”) Agreement (this “Agreement”) is entered into on ~~August 29, 2011~~, September 1, 2017, between Louisville Gas and Electric Company and Kentucky Utilities Company, corporations organized pursuant to the laws of the Commonwealth of Kentucky (collectively, “Company”), and TranServ International, Inc., an entity organized pursuant to the laws of Delaware (“TranServ”). Company and TranServ may sometimes be individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, Company owns, among other things, an integrated electric transmission system (“Transmission System”), over which open access transmission service is provided to customers in the Company’s Balancing Authority Area (as that term is defined by the North American Electric Reliability Corporation (“NERC”));

WHEREAS, the Company has an Open Access Transmission Tariff (“OATT”) on file with the Federal Energy Regulatory Commission (“FERC”)

WHEREAS, Company ~~currently operates its Transmission System with certain services provided by Southwest Power Pool, Inc. (“SPP”);~~ WHEREAS, Company’s current contract with SPPTranServ is scheduled to expire on August 31, ~~2012~~2017;

WHEREAS, Company desires that, upon expiration of the current contract ~~with SPP~~, TranServ will ~~assume certain duties with regard to Company’s Transmission System~~ continue its work under this Agreement, as detailed herein;

WHEREAS, Company remains the owner of its Transmission System and shall be the ultimate provider of transmission services to Eligible Customers (as defined in the OATT), including the sole authority to amend the OATT;

WHEREAS, TranServ: (i) is independent from Company; (ii) possesses the necessary competence and experience to perform the functions provided for hereunder; and (iii) is willing to perform such functions under the terms and conditions agreed upon by the Parties as set forth in this Agreement; and

WHEREAS, as part of Company’s goal to maintain independence in the operation of its Transmission System in order to prevent any exercise of transmission market power, Company entered into a Reliability Coordinator Agreement (the “Reliability Coordinator Agreement”) with the Tennessee Valley Authority, NERC-certified reliability coordinator (the “Reliability Coordinator”), pursuant to which the Reliability Coordinator provides to Company certain required reliability functions.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## Section 1 - Services to be Provided; Standards of Performance

1.1 Services. TranServ shall perform, or cause to be performed, the services described in Appendix A hereto as well as any obligations expressly assigned to the ITO under the OATT (“ITO Services”) during the Term in accordance with the terms and conditions of this Agreement, subject to modification pursuant to Section 1.4 hereto.

1.2 Coordination with Reliability Coordinator. In conjunction with its performance of ITO Services, TranServ shall coordinate and cooperate with the Reliability Coordinator in accordance with the terms of the OATT and all NERC and SERC Reliability Corporation (“SERC”) requirements. TranServ shall provide to the Reliability Coordinator, subject to the terms and conditions of this Agreement, including TranServ’s obligations with respect to Confidential Information in Section 10, any information that the Reliability Coordinator may reasonably request in order to carry out its functions under the Reliability Coordinator Agreement, which agreement is included in the OATT.

### 1.3 TranServ Performance; Compliance.

1.3.1 Performance. TranServ, TranServ Personnel and any TranServ Designee (as defined in Section 17.5) shall perform TranServ’s obligations (including ITO Services) under this Agreement:

- (a) in an independent, fair, and nondiscriminatory manner; and
- (b) in accordance with:

- (i) any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition (“Good Utility Practice”). Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act Section 2 14(a)(4);

- (ii) the terms and conditions of the OATT;

- (iii) all applicable laws and the requirements of federal and state regulatory authorities, including the Kentucky Public Service Commission (“KPSC”), Department of Energy (“DOE”), FERC, NERC, SERC, and the North American Electric Standards Board (“NAESB”) (collectively, “Regulatory Authorities”); and in fulfilling this requirement in this subsection (iii), TranServ will cooperate with all reasonable requests by Company for information, interviews with TranServ personnel, or other support that may be needed to investigate possible FERC, NERC or other compliance violations or prepare for or respond to compliance-related audits, self-certifications, and other inquiries by Regulatory Authorities (whether internal or external); and

- (iv) any methodologies, processes, or procedures relating to

ITO Services which Company may develop and which Company determines are necessary or appropriate to ensure safe and reliable system operations and compliance with all applicable laws and the applicable requirements of Regulatory Authorities.

1.4 Changes to ITO Services. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments, as well as Company requests, shall be assessed using a change order process. This process will include a written assessment of impacts to ITO Services consistent with Section 5 of Appendix A. Changes will be implemented only after mutual execution of a change document, which may be titled a Change Order or an Amendment. If the Parties are unable to agree on whether a change constitutes a “Minor Change,” or a “Major Change,” as those terms are used in Section 5 of Appendix A, such Dispute shall be resolved in accordance with Section 3.6.

## **Section 2 - Independence and Standards of Conduct**

2.1 TranServ Personnel. All ITO Services shall be performed by staff members of TranServ (“TranServ Personnel”) or TranServ Designees. No TranServ Personnel or TranServ Designee shall also be employed by Company or any of its Affiliates (as defined in FERC’s regulations, 18 C.F.R. § 35.34(b)(3) (2011)). TranServ, TranServ Employees, and TranServ Designees shall (i) be Independent of and (ii) shall not discriminate against Company, any of its Affiliates, or any Tariff Participant. For purposes of this Agreement: (a) “Independent” shall mean that TranServ, TranServ Personnel, and any TranServ Designees are not subject to the control of Company, its Affiliates or any Tariff Participant, and have full decision-making authority to perform all ITO Services in accordance with the provisions of this Agreement. Any TranServ Personnel or TranServ Designee owning securities in Company, its Affiliates or any Tariff Participant shall divest such securities within six (6) months of first being assigned to perform such ITO Services, provided that nothing in this Section 2.1 shall be interpreted or construed to preclude any such TranServ Personnel or TranServ Designee from indirectly owning securities issued by Company, its Affiliates or any Tariff Participant through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted toward the electric industry or the electric utility industry or any segment thereof) under which the TranServ Personnel or the TranServ Designee does not control the purchase or sale of such securities. Participation by any TranServ Personnel or TranServ Designee in a pension plan of Company, its Affiliates or any Tariff Participant shall not be deemed to be a direct financial interest if the plan is a defined-benefit plan that does not involve the TranServ Personnel’s or TranServ Designee’s ownership of the securities; and (b) “Tariff Participant” shall mean Company Transmission System customers, interconnection customers, wholesale customers, affected transmission providers, any Market Participant (as defined in FERC’s regulations, 18 C.F.R. § 35.34(b)(2) (2011)) and similarly qualified third parties within the Company Balancing Authority Area. For the avoidance of doubt, Company shall have no veto authority over the selection of TranServ Personnel or TranServ Personnel matters, including TranServ’s appointment of a TranServ Project Manager (as provided in Section 8.2)— except that the Company and TranServ hereby agree that TranServ shall be prohibited from hiring current or former Company employees until at least one (1) year subsequent to the Company employee’s separation from Company. Likewise, Company is prohibited from hiring current or former TranServ employees until one (1) year subsequent to the TranServ employee’s separation from TranServ.

2.2 Standards of Conduct Treatment. All TranServ Personnel and TranServ Designees

performing work under this Contract shall be treated, for purposes of the FERC's Standards of Conduct (18 C.F.R. Part 358 (2011)), as transmission function employees. All restrictions relating to information sharing and other relationships between marketing function employees and transmission function employees, as those terms are defined in the Standards of Conduct, including the non-discrimination requirements contained therein, shall apply to TranServ Personnel and TranServ Designees—performing work under this Contract, or likely to become privy to transmission function information. Said TranServ Personnel and TranServ Designees shall participate in any Standards of Conduct training that the Company may request for compliance purposes. TranServ shall provide prompt notice of new TranServ Personnel or TranServ Designees to Company to assure new persons are trained within the first thirty (30) days of their employment with TranServ.

### **Section 3 - Compensation; Billing and Payment; Performance Review**

3.1 Compensation for Services. Company shall pay to TranServ an annual fee for performance of the ITO Services (“Annual Fee”). The Annual Fee ~~shall be \$2,495,938~~(subject to increases or decreases in accordance with Section 5 of Appendix A) shall be \$2,479,543.56 for the first Contract Year; and shall escalate by ~~two~~one and five/tenths percent (~~2.5~~1.5%) of the prior year's Annual Fee for each Contract Year thereafter.

3.2 Out-of-Pocket Costs. Company shall reimburse TranServ for actual out-of-pocket third party costs and expenses, without markup, for (a) regulatory legal support that is reasonably allocable to TranServ's performance of ITO Services, provided that in no event shall Company reimburse TranServ for legal fees associated with any actual or potential Dispute under this Agreement, (b) travel and lodging that are reasonably allocable to TranServ's performance of ITO Services and (c) setting up regular stakeholder meetings (collectively, (a), (b) and (c) are “Out-of-Pocket Costs”); provided, however, that all Out-of-Pocket Costs subject to reimbursement under this Section 3.2 must be reviewed and approved by Company prior to TranServ incurring such expense.

~~3.3 Transmission Study Revenue. During the Term, TranServ expects that it will receive \$225,000 USD annually in System Impact Study (“SIS”) and Interconnection Feasibility Study (as performed under the generator interconnection processes under the OATT, “IFS”) (collectively, SIS and IFS are “Transmission Studies”) revenue from customers requesting service under the OATT. If TranServ fails to receive this amount during any Contract Year, then the Company shall pay TranServ an annual “true up” payment equal to the difference between the amount TranServ did receive in Transmission Studies revenue and \$225,000 during the applicable Contract Year (“Transmission Study True Up Payment”); provided that TranServ shall be obligated to refund to Company any Transmission Study True Up Payment to the extent TranServ subsequently collects revenue from customers thereafter for Transmission Studies performed in the previous Contract Year; and provided further, that Company shall not be obligated to pay any Transmission Study True Up Payment to the extent that TranServ's inability to receive the full \$225,000 USD during any Contract Year is due to either (a) TranServ's failure to bill customers for Transmission Studies, or (b) a customer's failure to pay for Transmission Studies TranServ has performed. Additionally, to the extent that TranServ's failure to perform System Impact Studies within the timeframe required under Sections 19.3 or 32.3 of the OATT (as applicable) results in Company being subject to penalties pursuant to Sections 19.10 or 32.5 of the OATT (as applicable), when such penalties are assessed such amount shall be deducted~~

~~from the Transmission Study True-Up payment or any other payments due to TranServ under this Agreement, in partial satisfaction of TranServ's obligation to indemnify Company pursuant to Section 7.3; provided that in no event shall Company withhold a Transmission Study True-Up Payment or other payment due to TranServ while a possible penalty determination is pending; and provided further, that the limitations included in Section 7.6 shall apply.~~ 3.4 Payment.

3.4.1 Monthly Payment. TranServ shall deliver to Company monthly invoices by regular mail, facsimile, electronic mail or such other means as the Parties agree. Such invoices shall set forth (i) one-twelfth (1/12) of the Annual Fee for each month in advance, and (ii) any Out-of-Pocket costs incurred during the previous month, provided however, that travel expenses occurring on the last three (3) days of each month may be carried over to future invoices for ease of administration. Company shall make payment of the amount invoiced by wire transfer in immediately available funds to an account specified by TranServ not later than the thirtieth (30<sup>th</sup>) day after receipt of the invoice, unless such day is not a business day, in which case on the next business day. All such payments shall be deemed made when said wire transfer is received by TranServ. Overdue payments shall accrue interest calculated at the FERC interest rate as defined in 18 C.F.R. §35.19a(2)(iii)(A) (2011) ("FERC Interest Rate").

~~3.5.3.4~~ Annual Review and True-Up Payments.

~~3.5.13.4.1~~ Annual Review. Commencing at the end of ~~the second~~each Contract Year, no later than sixty (60) days after the end of each Contract Year, TranServ shall determine and deliver to Company a calculation of TranServ's actual labor in providing ITO Services for the preceding Contract Year ("Annual Labor"). The Annual Labor calculation shall detail the job title and number of full-time employees assigned to ITO Services, and the number of hours spent in performing ITO Services. The Annual Labor shall also include the hours for any tasks which TranServ outsourced to TranServ Designees.

~~3.5.2 Transmission Study True-Up Payment Calculation and Payment.~~ No later than sixty (60) days after the end of each Contract Year, TranServ shall determine and deliver to Company a calculation of the Transmission Study True-Up Payment, if any. Such calculation shall include the aggregate amount of Transmission Study revenues invoiced by TranServ for the applicable year. No later than ten (10) days after the calculation the Transmission Study True-Up Payment, TranServ shall send an invoice to the Company reflecting the sum of the Transmission Study True-Up Payment. Company shall make payment of the amount invoiced by wire transfer in immediately available funds to an account specified by TranServ not later than the thirtieth (30<sup>th</sup>) day after receipt of the invoice, unless such day is not a business day, in which case on the next business day. All such payments shall be deemed made when said wire transfer is received by TranServ. Overdue payments shall accrue interest calculated at FERC Interest Rate.

~~3.6.3.5~~ Compensation Disputes. Notwithstanding the Dispute resolution provisions in Section 8.3, for any Disputes concerning compensation under this Section 3, Company shall timely file notice of such Dispute with FERC and request that FERC resolve such Dispute. TranServ retains the authority to file notice with FERC of any such Dispute if it so desires. If either Party in good faith disputes any invoice submitted by the other Party pursuant to this Agreement, then the

disputing Party (i) shall timely pay the other Party the entire invoiced amount and (ii) shall furnish the other Party with a written explanation specifying the amount of and the basis for the Dispute. Within twenty (20) days after resolution of such Dispute, the Party owing money shall pay the other Party the amount owed, if any, together with interest calculated at the FERC Interest Rate.

#### Section 4 - Term and Termination

4.1 Term. The initial term of this Agreement shall begin on ~~the later of (a) September 1, 2012 or (b) such date approved by applicable Regulatory Authorities for TranServ to begin performing IFO Services (either (a) or (b) being the September 1, 2017~~ (“Commencement Date”), and shall continue for ~~three five (35)~~ years thereafter (“Initial Term”). At the conclusion of the Initial Term, this Agreement shall automatically extend for ~~two (2)~~ successive one (1) year terms (each a “Subsequent Term”), unless terminated by either Party in accordance with the terms of this Agreement. Three hundred and sixty (360) days prior to the conclusion of the Initial Term either Party may notify the other, in writing, of a desire to amend terms or pricing of this Agreement for the Subsequent Terms. If such amendment is not agreed upon by both parties 180 days prior to the beginning of the first Subsequent Term, the Amendment shall not automatically extend and will terminate on the later of i) the conclusion of the Initial Term, as defined above, or ii) receipt of the regulatory approvals required under Section 4.5. The Initial Term or any Subsequent Terms are each referred to herein as a “Term.” For the purposes of this Agreement, a “Contract Year” shall begin on the Commencement Date or anniversary thereof and conclude twelve (12) months thereafter.

4.2 Termination by Either Party. This Agreement may be terminated by either Party at the end of a Term upon prior one hundred eighty (180) days written notice to the other Party, which termination shall be effective upon the later of (i) one hundred eighty (180) days after the date of such written notice, or (ii) receipt of the regulatory approvals required under Section 4.6.4.5.

4.3 ~~Termination at End of Term. Unless previously terminated in accordance with this Section 4, and subject to Section 4.6, this Agreement shall terminate on the fifth (5<sup>th</sup>) anniversary of the Commencement Date.~~ 4.4 Immediate Termination.

4.4.14.3.1 Termination for Cause. Subject to Section 4.6.4.5, either Party may terminate this Agreement upon prior written notice thereof to the other Party if:

- (a) Material Failure or Default. The other Party fails, in any material respect, to comply with, observe or perform, or defaults, in any material respect, in the performance of the terms and conditions of this Agreement, and such failure or default remains uncured for thirty (30) days after written notice thereof, provided that such failure or default is susceptible to cure and the other Party is exercising reasonable diligence to cure such failure or default;
- (b) Pattern of Failure. It determines, in its reasonable discretion, that there has been a pattern of failure by the other Party to comply with the standards of performance set forth in Section 1.3.1, whether or not such failure is material;
- (c) Gross Negligence, Willful Misconduct or Fraud. The other Party commits gross negligence, willful misconduct or fraud in the performance of its obligations

under this Agreement;

(d) Material Misrepresentation. Any representation made by the other Party hereunder shall be false or incorrect in any material respect when made and such misrepresentation is not cured within thirty (30) days of such discovery or written notice thereof, or is incapable of cure;

(e) Bankruptcy. The other Party: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due; or

(f) Dissolution. The other Party dissolves or is dissolved or its legal existence is otherwise terminated.

4.4.24.3.2 Immediate Termination Not For Cause. Subject to Section 4.6,4.5, Company may terminate this Agreement upon thirty (30) days prior written notice thereof to TranServ if:

(a) Failure to Negotiate Amendment. The Parties are unsuccessful in negotiating an amendment or amendments to this Agreement pursuant to Section 17.9;

(b) Regulatory Changes/Modifications. A Regulatory Authority makes any material changes, modifications, additions, or deletions to this Agreement, unless both Parties agree to such changes, modifications, additions, or deletions;

(c) Failure to Receive Regulatory Approval. Prior to the Commencement Date, FERC rejects this Agreement or Company's selection of TranServ as the ITO;

(d) RTO. ~~A Regulatory Authority requires~~ Company ~~to join~~ joins a regional transmission organization ("RTO"); or

(e) Extended Force Majeure. A Party is excused because of Force Majeure (as defined in Section 11) for more than thirty (30) days from performing any of its material obligations under this Agreement.

4.54.4 Termination for Lack of Independence. Subject to Section 4.6,4.5, Company may terminate this Agreement upon prior written notice thereof to TranServ if FERC or the KPSC issues a final order that declares that TranServ lacks independence from Company and TranServ cannot obtain independence in a reasonable manner or time period.

4.64.5 Regulatory Approval. No termination of this Agreement shall be effective until approved

by FERC and the KPSC. Notice of termination provided pursuant to [Sections 4.4.3](#) and [4.5.4](#) shall become effective immediately upon approval by FERC and the KPSC.

[4.7.6](#) Return of Materials. Upon any termination of this Agreement TranServ shall timely and in an orderly manner turn over to Company all materials that were prepared or developed pursuant to this Agreement prior to termination, and return or destroy, at the option of Company, all Data and other information supplied by Company to TranServ or created by TranServ on behalf of Company.

[4.8.7](#) Survival. All provisions of this Agreement which are by their nature or terms intended to survive the termination of this Agreement, including the obligations set forth in [Section 7](#) and [Section 10](#), shall survive termination of this Agreement.

[4.9.8](#) Compensation for Early Termination.

[4.9.14.8.1](#) If Company terminates this Agreement before the end of a Term pursuant to [Section 4.4.24.3.2](#) (a), (b), (d) or (e), then Company shall pay to TranServ the Annual Fee(s) through the longer of the end of the ~~then-current Term~~ Contract Year or for six (6) months subsequent to the date of termination, which fees shall be accelerated hereunder for this purpose, plus any unpaid Out-of-Pocket Costs that TranServ has incurred through the date of any such termination. In the event that this [Section 4.9.14.8.1](#) should trigger an acceleration of Annual Fee(s) that would otherwise span multiple years, such fees paid by Company to TranServ shall not include any escalation of ~~two~~ one and five-tenths percent (~~2.5~~ 1.5%) as described in [Section 3.1](#) that had not yet been previously applied to the Annual Fee(s).

[4.9.24.8.2](#) If Company terminates this agreement before the end of the Term, and such termination is for cause pursuant to [Section 4.4.1,4.3.1](#), then Company shall only be liable for TranServ's Out-of-Pocket Costs incurred pursuant to contracts which extend beyond any early termination date.

[4.10.4.9](#) Post-Termination Services. Commencing on the date that any termination becomes effective ("Termination Date") and continuing for up to one hundred eighty (180) days thereafter, TranServ shall (a) provide ITO Services (and any replacements thereof or substitutions therefor), to the extent Company requests such ITO Services to be performed, and (b) cooperate with Company in the transfer of ITO Services (collectively, the "Post-Termination Services") as such services are authorized under a separate agreement between the Parties. TranServ shall, upon Company's request, provide the Post-Termination Services at a cost to be negotiated and mutually agreed to at that time. The quality and level of performance of ITO Services by TranServ shall not diminish. After the expiration of the Post-Termination Services, TranServ shall answer questions from Company regarding ITO Services on an "as needed" basis at TranServ's then-standard billing rates.

[4.10](#) Termination for Guaranty Termination. A guaranty with Open Access Technology International, Inc., in favor of Company and with TranServ as a counterparty was executed (November 29, 2016) (hereinafter "the Guaranty"). Subject to Section 4.5, Company may terminate this Agreement if the Guaranty is terminated and TranServ does not provide a replacement Guaranty determined, by Company, to be satisfactory.



## Section 5 - Data Management and Intellectual Property

5.1 Supply of Data. During the Term, Company shall supply to TranServ, and/or grant TranServ access to all Data that TranServ requests and that TranServ believes is necessary to perform its duties and obligations under this Agreement, including ITO Services. The Parties shall agree upon the initial format and manner in which such Data shall be provided. For purposes of this Agreement, “Data” means all information, text, drawings, diagrams, models, images or sounds which are embodied in any electronic or tangible medium and which (a) are supplied or in respect of which access is granted to TranServ by Company under this Agreement, which shall be Company’s Data, (b) are prepared, stored or transmitted by TranServ solely on behalf of Company, which shall be Company’s Data; or (c) are compiled by TranServ by aggregating Data owned by Company and Data owned by third parties, which shall be TranServ’s Data.

5.2 Property of Each Party. Each Party acknowledges that the other Party’s Data and the other Party’s software, base data models and operating procedures for software or base data models (“Processes”) are the property of such other Party and agrees that it will do nothing inconsistent with such ownership, including preserving all intellectual property and/or proprietary rights in such other Party’s Data and Processes as provided in Section 6.

5.3 Data Integrity. Each Party shall reasonably assist the other Party in establishing measures to preserve the integrity and prevent any corruption or loss of Data, and the Parties shall reasonably assist each other in the recovery of any corrupted or lost Data. Each Party shall reasonably retain and preserve any of the other Party’s Essential Data that are supplied to it during the Term. “Essential Data” means any Data that is reasonably required to perform ITO Services under this Agreement and that must be retained and preserved according to any applicable law, regulation, reliability criteria, or Good Utility Practice. Each Party shall exercise commercially reasonable efforts to preserve the integrity of the other Party’s Data that are supplied to it during the Term, in order to prevent any corruption or loss of the other Party’s Data.

5.4 Confidentiality. Each Party’s Data shall be treated as Confidential Information in accordance with the provisions of Section 10.

## Section 6 - Intellectual Property.

6.1 Ownership. All inventions, discoveries, processes, methods, designs, drawings, blueprints, information, ~~software~~, works of authorship, or the like, whether or not patentable or copyrightable (collectively, “Intellectual Property”), which TranServ first conceives, develops, or begins to develop, either alone or in conjunction with Company or others, with respect to ITO Services under this Agreement, shall be jointly owned by Company and TranServ, and each party shall have the right to use such intellectual property unless specifically otherwise specified on a change document hereunder.

6.2 Royalties and License Fees. Unless the Parties otherwise agree in writing, TranServ shall procure and pay all royalties and license fees which may be payable on account of ITO Services or any part thereof. In case any part of ITO Services is held in any suit to constitute infringement

and its use is enjoined, TranServ within a reasonable time shall, at the election of Company and as Company's exclusive remedy hereunder, either (a) secure for Company the perpetual right to continue the use of such part of ITO Services by procuring for Company a royalty-free license or such other permission as will enable TranServ to secure the suspension of any injunction, or (b) replace at TranServ's own expense such part of ITO Services with a non-infringing part or modify it so that it becomes non-infringing (in either case with changes in functionality that are acceptable to Company).

## **Section 7 - Indemnification and Limitation of Liability**

7.1 Company Indemnification. Subject to the limitations specified in Section 7.6, Company shall indemnify, release, defend, reimburse and hold harmless TranServ and its directors, officers, employees, principals, representatives and agents (collectively, the "TranServ Indemnified Parties") from and against any and all third party claims (including claims of bodily injury or death of any person or damage to real and/or tangible personal property), demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, costs and expenses, and attorney fees, (each, an "Indemnifiable Loss") asserted against or incurred by any of the TranServ Indemnified Parties arising out of, resulting from or based upon TranServ performing its obligations pursuant to this Agreement, provided, however, that in no event shall Company be obligated to indemnify, release, defend, reimburse or hold harmless the TranServ Indemnified Parties from and against any Indemnified Loss which is caused by the negligence, the gross negligence or willful misconduct of any TranServ Indemnified Party.

7.2 TranServ Indemnification. Subject to the limitations specified in Section 7.6, TranServ shall indemnify, release, defend, reimburse and hold harmless Company and its directors, officers, employees, principals, representatives and agents (collectively, the "Company Indemnified Parties") from and against any and all Indemnifiable Losses asserted against or incurred by any of the Company Indemnified Parties arising out of, resulting from or based upon TranServ's or a TranServ Designee's negligence, gross negligence, or willful misconduct, provided, however, that in no event shall TranServ be obligated to indemnify, release, defend, reimburse or hold harmless any Company Indemnified Parties from and against any Indemnified Loss which is caused by the negligence, gross negligence or willful misconduct of any Company Indemnified Party.

7.3 Regulatory Indemnification. Subject to the limitations specified in Section 7.6, TranServ shall indemnify, release, defend, reimburse and hold harmless any Company Indemnified Parties from and against all regulatory penalties and sanctions (including penalties or sanctions levied by a Regulatory Authority) arising out of, resulting from or based upon TranServ breach of this Agreement, specifically including Section 1.3.1 hereto, provided, however, that in no event shall TranServ be obligated to indemnify, release, defend, reimburse or hold harmless any Company Indemnified Parties from and against any penalty or sanction which is caused by the gross negligence or willful misconduct of any Company Indemnified Party.

7.4 Cooperation Regarding Claims. If an Indemnified Party (which for purposes of this Section 7.4 shall mean an TranServ Indemnified Party or a Company Indemnified Party) receives notice or has knowledge of any Indemnifiable Loss that may result in a claim for indemnification by such Indemnified Party against an Indemnifying Party (which for purposes of this Section 7.4

shall mean Company or TranServ) pursuant to this Section 7, such Indemnified Party shall as promptly as possible give the Indemnifying Party written notice of such Indemnifiable Loss, including a reasonably detailed description of the facts and circumstances relating to such Indemnifiable Loss, a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its claim for indemnification with respect thereto. Failure to promptly give such written notice or to provide such information and documents shall not relieve the Indemnifying Party from the obligation hereunder to respond to or defend the Indemnified Party against such Indemnifiable Loss unless and only to the extent such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party against such Indemnifiable Loss. Except for indemnification for penalties and sanctions under Section 7.3, the Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party in accordance with this Section 7, shall be entitled to assume the defense or to represent the interest of the Indemnified Party with respect to such Indemnifiable Loss, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost. If and to the extent that the defense or settlement of any Indemnifiable Loss is reasonably likely to involve injunctive, equitable or prospective relief or materially and adversely affect the Indemnified Party's business or operations other than as a result of money damages or other money payments assumed by the Indemnifying Party, then such defense or settlement will be subject to the reasonable approval of the Indemnified Party. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants and participating in its own defense at its own cost and expense.

7.5 Release and Indemnification Regarding Liens. TranServ hereby releases and/or waives for itself and its successors in interest, and for all TranServ Designees and their successors in interest, any and all claims or right of mechanics or any other type of lien to assert and/or file upon Company's or any other party's property or any part thereof as a result of performing ITO Services. TranServ shall execute and deliver to Company such documents as may be required by applicable laws (*i.e.*, partial and/or final waivers of liens and/or affidavits of indemnification) to make this release effective and shall give all required notices to TranServ Designees with respect to ensuring the effectiveness of the foregoing releases against those parties. TranServ shall secure the removal of any lien that TranServ has agreed to release in this Section 7.5 within five (5) working days of receipt of written notice from Company to remove such lien. If not timely removed, Company may remove the lien and charge all costs and expenses including legal fees (for inside and/or outside legal counsel) to TranServ including, without limitation, the costs of bonding off such lien. Company, in its sole discretion, expressly reserves the right to off-set and/or retain any reasonable amount due to TranServ from payment of any one or more of TranServ's invoices upon Company having actual knowledge of any threatened and/or filed liens and/or encumbrances that may be asserted and/or filed by any TranServ Designee and/or third party with respect to the ITO Services, with final payment being made by Company only upon verification that such threatened and/or filed liens and/or encumbrances have been irrevocably satisfied, settled, resolved and/or released (as applicable), and/or that any known payment disputes concerning the ITO Services involving TranServ and any TranServ Designees have been resolved so that no actions, liens and/or encumbrances of any kind or nature will be filed against Company and/or Company's property.

7.6 Limitation of Liability. Other than as provided in Section 7.3, neither Party shall be liable to the other for any special, punitive, or consequential damages arising out of ITO Services, even

if advised of the possibility of such damages. Company agrees that ITO Services are not consumer goods for purposes of international, U.S. Federal or U.S. state warranty laws. Indemnification pursuant to Sections 7.1, 7.2, and 7.3, as well as any direct damages to Company arising out of a material breach of this Agreement shall be limited in the aggregate to the total amount of fees actually paid by Company to TranServ under this Agreement through the date that any penalty or judgment is assessed.

## **Section 8 - Contract Managers; Dispute Resolution**

8.1 Company Contract Manager. Company shall appoint an individual (the “Company Contract Manager”) who shall serve as the primary Company representative under this Agreement. The Company Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of Company’s obligations under this Agreement, and (b) be authorized to act for and on behalf of Company with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the Company Contract Manager may, upon written notice to TranServ, delegate such of his or her responsibilities to other Company employees, as the Company Contract Manager deems appropriate.

8.2 TranServ Project Manager. TranServ shall appoint, among TranServ Personnel, an individual (the “TranServ Project Manager”) who shall serve as the primary TranServ representative under this Agreement. The TranServ Project Manager shall have overall responsibility for managing and coordinating the performance of TranServ obligations under this Agreement. Notwithstanding the foregoing, the TranServ Project Manager may, upon written notice to Company, delegate such of his or her responsibilities to other TranServ Personnel, as the TranServ Project Manager deems appropriate.

8.3 Resolution of Disputes. Any dispute, claim or controversy between the Parties arising out of or relating to this Agreement (each, a “Dispute”) shall be resolved in accordance with the procedures set forth in this Section 8.3; provided, however, that this Section 8.3 shall not apply to Disputes arising from or relating to (a) the amount of compensation to be paid by Company pursuant to Section 3.1, which shall be resolved pursuant to Section 3.6, (b) confidentiality or intellectual property rights, in which case either Party shall be free to seek available legal or equitable remedies, or (c) alleged violations of the OATT, in which case either Party shall be free to bring the Dispute to FERC.

8.3.1 Notice of Dispute. Each Party shall provide written notice to the other party of any Dispute, including a description of the nature of the Dispute.

8.3.2 Dispute Resolution by Contract Managers. Any Dispute shall first be referred to the Company Contract Manager and TranServ Project Manager, who shall negotiate in good faith to resolve the Dispute.

8.3.3 Dispute Resolution by Executive Management Representatives. If the Dispute is not resolved within fifteen (15) calendar days of being referred to the Company Contract Manager and the TranServ Project Manager pursuant to Section 8.3.2, then each Party shall have five (5) calendar days to appoint an executive management representative who shall negotiate in good faith to resolve the Dispute.

8.3.4 Binding Arbitration. If the Dispute is not resolved within ten (10) calendar days

of being referred to executive management representatives, and the amount in dispute or potential damages exceeds \$250,000 USD, the Parties shall proceed in good faith to submit immediately the matter to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) as they may be amended from time to time (the “Arbitration Rules”) subject to the following conditions:

(a) The Parties shall give due consideration to using the Expedited Procedures under the Arbitration Rules in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration fees and costs.

(b) The Parties agree that three arbitrators will be used. Each Party will directly appoint one arbitrator of its choosing from a list of members from the National Roster (as that term is used in the Arbitration Rules) provided by the AAA pursuant to R-12, within ten (10) Days after receipt of such names. The two arbitrators so appointed shall select a third arbitrator from the National Roster to serve as chairperson.

(c) “Baseball” arbitration (in which each Party presents a proposed award or resolution and the actual award must be one of the two submitted), or close variants thereof, shall not be used.

(d) The arbitrators have no authority to appoint or retain expert witnesses for any purpose unless agreed to by the Parties.

(e) All arbitration fees and costs shall be borne equally, regardless of which Party prevails.

(f) Each Party shall bear its own costs of legal representation and witness expenses, unless the arbitrator(s) determines that one Party should bear some or all of the costs of legal representation and witness expenses of the other Party.

(g) The Parties waive any right of appeal or recourse to any court except to compel arbitration, to compel the appointment of arbitrators, to stay judicial proceedings pending arbitration, for an injunction pending determination by the arbitrators, for disqualification of arbitrators, for aid in furtherance of arbitration, to confirm the award, to enforce any judgment confirming the award, or in circumstances of fraud or failure to disclose information or documents required by the arbitrators.

(h) The decision or award of a majority of the arbitrators shall govern. The decision or award of the arbitrators shall be final and binding upon the Parties to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and shall be enforceable under the Federal Arbitration Act and applicable states<sup>2?</sup> laws.

8.3.5 Rights and Remedies. If the Dispute is not resolved within ten (10) calendar days of being referred to executive management representatives, and the amount in dispute or potential damages does not exceed \$250,000 USD, each Party is free to pursue any rights or remedies it may have at law or equity.

8.4 Rights Under FPA Unaffected. Except as provided in Section 17.2 relating to the

variation or amendment of this Agreement, nothing in this Agreement is intended to limit or abridge any rights that Company may have to file or make application before FERC under Section 205 of the Federal Power Act to revise any rates, terms or conditions of the OATT.

8.5 Statute of Limitations; Continued Performance. The Parties agree to waive the applicable statute of limitations during the period of time that the Parties are seeking to resolve a Dispute pursuant to Section 8.3, and the statute of limitations shall be tolled for such period. The Parties shall continue to perform their obligations under this Agreement during the resolution of a Dispute.

## **Section 9 - Insurance**

9.1 TranServ's Insurance Obligation. During the Term, TranServ shall provide and maintain, and shall require TranServ Designees to provide and maintain, the following insurance (and, except with regard to Workers' Compensation, naming Company as additional insured and waiving rights of subrogation against Company and Company's insurance carrier(s)), and TranServ shall submit evidence of such coverage(s) of TranServ and any TranServ Designees to Company prior to the start of ITO Services. Furthermore, TranServ shall notify Company, prior to the commencement of ITO Services, of any threatened, pending and/or paid off claims to third parties, individually or in the aggregate, which otherwise affects the availability of the limits of such coverage(s) inuring to the benefit of Company as hereinafter specified:

9.1.1 Workers' Compensation and Employer's Liability Policy, which shall include provisions required by applicable law in the jurisdiction of location of workers.

9.1.2 Employer's Liability (Coverage B) with limits of One Million Dollars (\$1,000,000) Bodily Injury by Accident, each Accident, \$1,000,000 Bodily Injury by Disease, each Employee, and including:

- (a) a thirty (30) day cancellation clause; and
- (b) broad form all states endorsement.

9.1.3 Commercial General Liability Policy, which shall have minimum limits of One Million Dollars (\$1,000,000) each occurrence; One Million Dollars (\$1,000,000) Products/Completed Operations Aggregate each occurrence; One Million Dollars (\$1,000,000) Personal and Advertising Injury each occurrence, in all cases subject to Two Million Dollars (\$2,000,000) in the General Aggregate for all such claims, and including:

- (a) a thirty (30) day cancellation clause;
- (b) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by TranServ under this Agreement; and
- (c) Broad Form Property Damage.

9.1.4 Commercial Automobile Liability Insurance covering the use of all owned, non-owned, and hired automobiles, with a bodily injury, including death, and property damage combined single minimum limit of One Million Dollars (\$1,000,000) each

occurrence with respect to TranServ's vehicles assigned to or used in performance of ITO Services under this Agreement.

9.1.5 Umbrella/Excess Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) per occurrence; Two Million Dollars (\$2,000,000) aggregate, to apply to employer's liability, commercial general liability, and automobile liability.

9.1.6 To the extent applicable, if engineering or other professional services will be separately provided by TranServ as specified in Appendix A, then Professional Liability Insurance with limits of Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, which insurance shall be either on an occurrence basis or on a claims made basis (with a retroactive date satisfactory to Company).

9.2 Quality of Insurance Coverage. The above policies to be provided by TranServ shall be written by insurance companies which are both licensed to do business in the state where ITO Services will be performed and either satisfactory to Company or having a Best Rating of not less than "A-". These policies shall not be materially changed or canceled except with thirty (30) days written notice to Company from TranServ and the insurance carrier. Evidence of coverage, notification of cancellation or other changes shall be mailed to: Attention: Manager, Supply Chain, LG&E and KU Services Company, P.O. Box 32020, Louisville, Kentucky 40232.

9.3 Implication of Insurance. Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements; however, Company shall not be obligated to review any of TranServ's certificates of insurance, insurance policies, or endorsements, or to advise TranServ of any deficiencies in such documents. Any receipt of such documents or their review by Company shall not relieve TranServ from or be deemed a waiver of Company's rights to insist on strict fulfillment of TranServ's obligations under this Agreement.

9.4 Other Notices. TranServ shall provide written notice of any accidents or claims in connection with ITO Services or this Agreement to Company's Manager, Risk Management at LG&E and KU Services Company, P.O. Box 32030, Louisville, Kentucky 40232.

## **Section 10 - Confidentiality**

10.1 Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean, in respect of each Party, all information and documentation of such Party, whether disclosed to or accessed by the other Party in connection with this Agreement and which is identified as Confidential Information, or which otherwise would be treated as confidential by the recipient, including confidential information provided by third-parties; provided, however, that the term "Confidential Information" shall not include information that: (a) is independently developed by the recipient, as demonstrated by the recipient's written records, without violating the disclosing Party's proprietary rights; (b) is or becomes publicly known (other than through unauthorized disclosure); (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (d) is already known by the recipient at the time of disclosure, as demonstrated by the recipient's written records, and the recipient has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements between the Parties entered into before the Commencement Date; or (e) is rightfully received by a Party free of any obligation of confidentiality.

**10.2 Protection of Confidential Information.** All Confidential Information shall be held in confidence by the recipient to the same extent and in at least the same manner as the recipient protects its own Confidential Information, and such Confidential Information shall be used only for purposes of performing obligations under this Agreement. Except as otherwise provided in Section 10.3, neither Party shall disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from, the other Party in any form to, or for the use or benefit of, any person or entity without the owner of such information's prior written consent. Each Party shall be permitted to disclose relevant aspects of the other Party's Confidential Information to its officers, directors, agents, professional advisors, contractors, subcontractors (including TranServ Designees) and employees and to the officers, directors, agents, professional advisors, contractors, subcontractors and employees of its Affiliates (collectively, "Representatives"), to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations or the determination, preservation or exercise of its rights and remedies under this Agreement; provided, however, that the recipient shall take all reasonable measures to ensure that Confidential Information is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, directors, agents, professional advisors, contractors, subcontractors and employees. Recipient agrees to be liable for the wrongful actions of its Representatives under this Section 10.2. The obligations in this Section 10 shall not restrict any disclosure pursuant to any Regulatory Authority if such release is necessary to comply with valid laws, governmental regulations or final orders of regulatory bodies or courts; provided that, other than in respect of disclosures pursuant to Section 10.3, the recipient shall give prompt written notice to the disclosing Party in reasonable time to exercise whatever legal rights the disclosing Party may have to prevent or limit such disclosure. Further, the recipient shall cooperate with the disclosing Party in preventing or limiting such disclosure.

**10.3 Regulatory Requests for Confidential Information.** Notwithstanding anything in this Section 10 to the contrary, if a Regulatory Authority or its staff, during the course of an investigation or otherwise, requests Confidential Information from TranServ, TranServ shall provide the requested Confidential Information to the requesting Regulatory Authority or its staff within the time provided for in the request for information. In providing the Confidential Information to a Regulatory Authority or its staff, TranServ shall, consistent with 18 C.F.R. § 388.112 (2011) or any other applicable confidentiality regulation, request that the Confidential Information be treated as confidential and non-public by the Regulatory Authority and its staff and that the information be withheld from public disclosure. TranServ shall notify Company when it is notified by the Regulatory Authority or its staff that a request for public disclosure of, or decision to publicly disclose, Confidential Information has been received, at which time either TranServ or Company may respond before such Confidential Information is made public, pursuant to 18 C.F.R. § 388.112 or the applicable confidentiality regulation.

## **Section 11 - Force Majeure.**

**11.1 Force Majeure.** Neither Party shall be liable to the other Party for any failure or delay of performance hereunder due to an event which (i) is not reasonably foreseeable or within the reasonable control of the Party claiming Force Majeure (the "Claiming Party") or any Person over which the Claiming Party has control, (ii) was not caused by the acts, omissions, negligence, fault or delays of the Claiming Party or any person over whom the Claiming Party has control, (iii) is not an act, event or condition the risks or consequences of which the Claiming Party has expressly agreed to assume pursuant to this Agreement, and (iv) by the prompt exercise of due



diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided (collectively, (i) - (iv) are “Force Majeure”). Force Majeure shall include: acts of God; acts of the public enemy, war, hostilities, invasion, insurrection, riot, civil disturbance, or order of any competent civil or military government; explosion or fire; strikes or lockouts or other industrial action (excluding those of the Claiming Party unless such action is part of a wider industrial dispute materially affecting other employers); labor or material shortage; malicious acts, vandalism or sabotage; action or restraint by court order of any public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action). Neither Party shall be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to Force Majeure, except for the obligation to pay any amount when due, provided that the Claiming Party:

11.1.1 gives prompt written notice to the other Party of the event or circumstance giving rise to the event of Force Majeure;

11.1.2 affords the other Party reasonable access to information about the event or circumstances giving rise to the event of Force Majeure;

11.1.3 takes commercially reasonable steps to restore its ability to perform its obligations hereunder as soon as reasonably practicable, provided that the Claiming Party shall not be obligated to take any steps that are not otherwise in accordance with Good Utility Practice; and

11.1.4 exercises commercially reasonable efforts to perform its obligations hereunder.

## **Section 12 - Reporting; Audit.**

### 12.1 Regulatory Reporting.

12.1.1 TranServ shall have the authority to report in writing to FERC in respect of any compensation-related Dispute that arises between TranServ and Company pursuant to Section 3.6.

12.1.2 TranServ shall report in writing to FERC every six (6) months (commencing on the six (6) month anniversary of the Commencement Date and every six (6) months thereafter during the Term) in respect of (a) any concerns expressed by stakeholders and TranServ’s response to same and (b) any issues or OATT provisions that hinder TranServ from performing its duties and obligations under this Agreement and the OATT.

12.1.3 In addition to the reports provided for above, TranServ shall make such other reports to Regulatory Authorities as may be required by applicable law and regulations or as may be requested by such Regulatory Authorities.

12.2 Books and Records. TranServ shall maintain full and accurate books and records pertinent to this Agreement, and TranServ shall maintain such books and records for a minimum of five (5) years following the expiration or early termination of this Agreement or longer if necessary to resolve a pending Dispute. Company will have the right, at reasonable times and

under reasonable conditions, to inspect and audit, or have an independent third party inspect and audit, TranServ's operations, books, and records (a) to ensure compliance with this Agreement, including TranServ's performance of ITO Services in accordance with Section 1.3.1, (b) to verify any cost claims or other amounts due hereunder, and (c) to validate TranServ's internal controls with respect to the performance of ITO Services. TranServ shall maintain an audit trail, including all original transaction records and timekeeping records, of all financial and non-financial transactions and activities resulting from or arising in connection with this Agreement as may be necessary to enable Company or the independent third party, as applicable, to perform the foregoing activities. Company shall be responsible for any costs and expenses incurred in connection with any such inspection or audit, unless such inspection or audit discovers that Company was charged inappropriate or incorrect costs and expenses, in which case, TranServ shall be responsible for a percentage of the costs and expenses incurred in connection with such inspection or audit equal to the percentage variance by which Company was charged inappropriate or incorrect costs and expenses. TranServ shall provide reasonable assistance necessary to enable Company or an independent third party, as applicable, to perform the foregoing activities and shall not be entitled to charge Company for any such assistance. Amounts incorrectly or inappropriately invoiced by TranServ to Company, whether discovered prior to or subsequent to payment by Company, shall be adjusted or reimbursed to Company by TranServ within twenty (20) days of notification by Company to TranServ of the error in the invoice.

### **Section 13 - Independent Contractor**

13.1 TranServ, in performing ITO Services, shall not act as an agent or employee of Company, but shall be and act as an independent contractor and, except as established in Section 1.3.1, shall be free to perform ITO Services by such methods and in such manner as TranServ may choose, doing everything necessary to perform such ITO Services properly and safely and having supervision over and responsibility for the safety and actions of its employees and the suitability of its equipment. TranServ Personnel and TranServ Designees shall not be deemed to be employees and/or agents of Company. TranServ agrees that if any portion of ITO Services are subcontracted to TranServ Designees, such TranServ Designees shall be bound by and observe the conditions of this Agreement to the same extent as required of TranServ. In such event, Company strongly encourages the use of Minority Business Enterprises, Women Business Enterprises and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Company recognizes as proper.

13.2 Notwithstanding any provision in this Agreement to the contrary, unless approved in writing by Company, TranServ shall not (and shall not permit any TranServ Personnel or TranServ Designee to):

13.2.1 Sell, lease, pledge, mortgage, encumber, convey, or make any license, exchange or other transfer, assignment or disposition of any property or assets of Company;

13.2.2 Enter into, amend, terminate, modify or supplement any contract or agreement (including any labor or collective bargaining agreement) on behalf, or in the name, of Company;

13.2.3 Except upon the approval of Company or pursuant to the direction of Company, take any action that would, to TranServ's knowledge: (a) invalidate any warranty that

runs to Company under any contract or agreement; or (b) release any person or entity from its obligations under any contract or agreement with Company;

13.2.4 Make any warranty or representation on behalf of Company;

13.2.5 Except as contemplated under Section 7.4, settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of any claim, suit, debt, demand or judgment against or due by Company, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to the same;

13.2.6 Pledge the credit of Company in any way in respect of any commitments for which it has not received express written authorization from Company; or

13.2.7 Engage in any other transaction on behalf of Company not permitted under this Agreement.

**Section 14 - Taxes.**

Each Party shall be responsible for the payment of its own taxes, including taxes based on its net income, employment taxes of its employees, taxes on any property it owns or leases, and sales, use, gross receipts, excise, value-added or other transaction taxes. Sales and/or use taxes, that become applicable to services performed within Minnesota, shall be added to TranServ fees and compensation otherwise herein described.

**Section 15 - Notices.**

15.1 Notices. All notices, requests, consents and other communications required or permitted hereunder shall be in writing, signed by the Party giving such notice or communication, and shall be deemed given: (a) upon receipt, when mailed by U.S. certified mail, postage prepaid, return receipt requested; or (b) upon the next business day, when sent by overnight delivery, postage prepaid using a recognized courier service.

If to Company:

LG&E/KU  
VP, Transmission  
220 West Main St  
PO Box 32010  
Louisville, KY 40232

If to TranServ:

TranServ International, Inc.  
~~General Counsel~~ [Contracts Administration](#)  
3660 Technology Drive NE  
Minneapolis, MN 55418

15.2 Changes. Either Party may, from time to time, change the names, addresses, facsimile numbers or other notice information set out in Section 15.1 by notice to the other Party in accordance with the requirements of Section 15.1.

## **Section 16 - Personnel and Work Conditions; NERC Requirements.**

16.1 Applicable Laws and Safety. TranServ agrees to protect TranServ Personnel and TranServ Designees and be responsible for their performance of the ITO Services, and to protect Company's facilities, property, employees and third parties from damage or injury. TranServ shall at all times be solely responsible for complying with any and all applicable laws and facility rules relating to health and safety, in connection with ITO Services and for obtaining (but only as approved by Company) all permits and approvals necessary to perform ITO Services. Without limiting the foregoing, TranServ agrees to strictly abide by and observe all standards of the Occupational Safety & Health Administration ("OSHA") which are applicable to ITO Services, as well as Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy which are both hereby incorporated by reference (Contractor hereby acknowledges receipt of a copy of such Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy) and any other rules and regulations of the Company, all of which are provided to TranServ in writing and incorporated herein by reference. TranServ also agrees to review in good faith and execute any amendments and/or modifications that may be issued in the future by Company from time to time, with respect to Company's Contractor Code of Business Conduct and/or any of its related policies which are the subject of this Section 16, provided however, that TranServ shall not be obliged by such requirement if the requirements conflicts with an alternate regulatory code of conduct imposed on TranServ. In the event TranServ subcontracts any of ITO Services to a TranServ Designee, TranServ shall notify Company in writing of the identity of TranServ Designee before utilizing TranServ Designee. TranServ shall require any TranServ Designees to complete the safety and health questionnaire and checklists provided by Company and shall provide a copy of such documents to Company upon request. TranServ shall conduct, and require such TranServ Designees to conduct, safety audits and job briefings during performance of ITO Services as applicable. In the event such TranServ Designee has no procedure for conducting safety audits and job briefings, TranServ shall include TranServ Designee in its safety audits and job briefings. All applicable safety audits shall be documented in writing by TranServ and such TranServ Designees. TranServ shall provide documentation of any and all audits identifying safety deficiencies and concerns and corrective action taken as a result of such audits to Company semi-monthly. TranServ further specifically acknowledges, agrees and warrants that TranServ has complied, and shall at all times during the term of this Agreement, comply in all respects with all laws, rules and regulations relating to the employment authorization of TranServ Personnel including, but not limited to, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, whereby TranServ certifies to Company that TranServ has (a) properly maintained, and shall at all times during the term of this Agreement properly maintain all records required by Immigration and Customs Enforcement, such as the completion and maintenance of the Form I-9 for each TranServ employee; (b) that TranServ maintains and follows an established policy to verify the employment authorization of TranServ Personnel; (c) that TranServ has verified the

identity and employment eligibility of all TranServ Personnel in compliance with all applicable laws; and (d) that TranServ is without knowledge of any fact that would render any TranServ Personnel or TranServ Designee ineligible to legally work in the United States. TranServ further acknowledges, agrees and warrants that any TranServ Designee shall be required to agree to these same terms as a condition to being awarded any subcontract for such ITO Services.

16.2 Hazards and Training. TranServ shall furnish adequate numbers of trained, qualified, and experienced TranServ Personnel suitable for performance of ITO Services. Such TranServ Personnel shall be skilled and properly trained to perform ITO Services and recognize all hazards associated with ITO Services. Without limiting the foregoing, TranServ shall participate in any safety orientation or other of Company's familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Company.

16.3 Drug and Alcohol. TranServ shall develop and strictly comply with any and all drug and alcohol testing requirements as required by applicable laws. TranServ shall provide Company with a copy of its drug and alcohol testing requirements.

16.4 NERC Reliability Standards. The following additional provisions shall apply to the extent TranServ's performance of ITO Services requires physical or electronic access to areas or assets which are located within physical security perimeters as defined by NERC's Reliability Standards for the Bulk Electric Systems of North America (collectively, the "NERC Standards"), including without limitation any Company data center or control center. In the event of TranServ's non-compliance with the NERC Standards referenced in this Section 16.4, Company shall notify TranServ in writing of the non-compliance and specify appropriate remedial actions.

16.4.1 Information Protection. Without compromising the confidentiality provisions in Section 10, TranServ shall at all times comply with the Company's information protection program(s) as defined by CIP-003, R4. Among the information protected by this program are: (i) all operational procedures; (ii) lists of critical cyber assets; (iii) network topology or similar diagrams; (iv) floor plans of computing centers that contain critical cyber assets; (v) equipment layouts of critical cyber assets; (vi) disaster recovery plans; (vii) incident response plans; and (viii) security configuration information. TranServ shall protect this protected information from disclosure consistent with the program.

16.4.2 Access Revocation. TranServ shall immediately advise appropriate Company's management if any TranServ Personnel or TranServ Designees who have key card access to a Company restricted area or electronic access to a protected system no longer require such access.

16.4.3 Training. If any TranServ Personnel require key card access to a Company restricted area or electronic access to a protected system, TranServ shall ensure that such personnel complete, and retake as requested, all necessary NERC training as requested by Company.

16.4.4 Personnel Risk Assessment. If any TranServ Personnel require key card access to a Company restricted area or electronic access to a protected system, TranServ shall ensure that Company receives necessary waivers and information from TranServ Personnel to complete, and repeat as necessary, such background checks as requested by

Company.

**16.4.5 Continuing Obligations.** TranServ further acknowledges that its compliance with the NERC Standards referenced in this Section 16.4 is a continuing obligation during and after the Term. Upon written notice to TranServ, Company shall have the absolute right to audit and inspect any and all information regarding TranServ's compliance with this Section 16.4, and/or to require confirmation of the destruction of any documentation received from or regarding Company. TranServ is encouraged to contact Company's Compliance Department pursuant to Section 16.5 to ensure TranServ understands and complies with this Section 16.4.

**16.5 Compliance Department.** The Company has a Compliance Department. Should TranServ have actual knowledge of violations of any of the herein stated policies of conduct in this Section 16, or in standards of performance detailed in Section 1.3.1, or have a reasonable basis to believe that such violations have occurred, whether by TranServ Personnel or a TranServ Designee, TranServ has an affirmative obligation to immediately report, at least on an anonymous basis, any such known violations to the Company's Office of Compliance in care of Director, Compliance and Ethics, LG&E/KU Services, 220 West Main Street, Louisville, Kentucky 40202.

**16.6 Equal Employment Opportunity.** To the extent applicable, TranServ shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 C.F.R. § 60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 C.F.R. § 60-250.4 relating to the employment and advancement of disabled veterans and Vietnam era veterans; (iii) Rehabilitation Act regulations set forth in 41 C.F.R. § 60-741.4 relating to the employment and advancement of qualified disabled employees and applicants for employment; (iv) the clause known as "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" set forth in 15 USC § 637(d)(3); and (v) the subcontracting plan requirement set forth in 15 USC § 637(d).

## **Section 17 - Miscellaneous Provisions.**

**17.1 Governing Law.** This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without giving effect to its conflicts of law rules.

**17.2 Amendment.** This Agreement shall not be varied or amended unless such variation or amendment is agreed to by the Parties in writing and accepted by applicable Regulatory Authorities. The Parties explicitly agree that neither Party shall unilaterally petition to FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act to amend this Agreement or to request that FERC initiate its own proceeding to amend this Agreement. Nothing in this Section 17.2 shall be construed to limit or affect any other rights that the Parties may have as set forth in Section 8.4, the OATT or otherwise.

**17.3 Liability of Affiliates.** Any and all liabilities of Company and/or its Affiliates under this Agreement shall be several but not joint.

17.4 Publicity. TranServ shall not issue news releases, publicize or issue advertising pertaining to ITO Services or this Agreement without first obtaining the written approval of Company.

17.5 Assignment. Any assignment of this Agreement or any interest herein or delegation of all or any portion of a Party's obligations, by operation of law or otherwise, by either Party without the other Party's prior written consent shall be void and of no effect; provided, however, that consent will not be required for Company to assign this Agreement to an Affiliate or a successor entity that acquires all or substantially all of the operational business assets of the assigning entity whether by merger, consolidation, reorganization, sale, spin-off or foreclosure; provided, further, that such Affiliate or successor entity (a) agrees to assume all obligations hereunder from and after the date of such assignment and (b) has the legal authority and operational ability to satisfy the obligations under this Agreement. As a condition to the effectiveness of such assignment (i) the assignor shall promptly notify the other Party of such assignment, (ii) the Affiliate or successor entity shall provide a confirmation to the other Party of its assumption of assignor's obligations hereunder, and (iii) assignor shall promptly reimburse the other Party, upon receipt of an invoice, for any one-time incremental costs reasonably incurred as a result of such assignment. For the avoidance of doubt, nothing herein shall preclude Company from transferring any or all of its transmission facilities to another entity or disposing of or acquiring any other transmission assets. Notwithstanding anything to the contrary contained in this Section 17.5, TranServ shall be entitled to contract with one or more persons (each, an "TranServ Designee") to perform only those ITO Services which the OATT expressly provides for being performed by a "designee" of TranServ (as opposed to TranServ or TranServ Personnel), provided that TranServ shall not be relieved of any of its obligations, responsibilities or liabilities under this Agreement as a result of contracting with one or more TranServ Designees in accordance with this Section 17.5 and shall be responsible and liable for any ITO Services performed by TranServ Designees.

17.6 No Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, this Agreement is made solely for the benefit of the Parties and their successors and permitted assigns and no other person shall have any rights, interest or claims hereunder or otherwise be entitled to any benefits under or on account of this Agreement as third party beneficiary or otherwise.

17.7 Waivers. No waiver of any provision of this Agreement shall be effective unless it is signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights or remedies under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights or remedies, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

17.8 Enforcement of Rights. Each Party shall have the right to recover from the other Party all expenses, including fees for and expenses of inside and/or outside counsel, arising out of the other Party's breach of this Agreement or any other action to enforce or defend rights hereunder.

17.9 Severability; Renegotiation. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision herein. If any provision of this Agreement is found to be invalid, illegal or

otherwise unenforceable, the same shall not affect the other provisions hereof or the whole of this Agreement and shall not render invalid, illegal or unenforceable this Agreement or any of the remaining provisions of this Agreement. If any provision of this Agreement or the application thereof to any person, entity or circumstance is held by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, or if a modification or condition to this Agreement is imposed by such court or regulatory authority, the Parties shall in good faith negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the Parties immediately prior to such holding, modification or condition.

17.10 Remedies. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy available at law or equity or otherwise. The election of one or more remedies shall not constitute a waiver of the right to pursue any other available remedies.

17.11 Representations and Warranties. Each Party represents and warrants to the other Party as of the date hereof as follows:

17.11.1 Organization. It is duly organized, validly existing and in good standing under the laws of the State in which it was organized, and has all the requisite power and authority to own and operate its material assets and properties and to carry on its business as now being conducted and as proposed to be conducted under this Agreement.

17.11.2 Authority. It has the requisite power and authority to execute and deliver this Agreement and, subject to the procurement of applicable regulatory approvals, to perform its obligations under this Agreement. The execution and delivery of this Agreement by it and the performance of its obligations under this Agreement have been duly authorized by all necessary corporate action required on its part.

17.11.3 Binding Effect. Assuming the due authorization, execution and delivery of this Agreement by the other Party, this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar applicable laws affecting creditors' rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

17.11.4 Regulatory Approval. It has obtained or will obtain by the Commencement Date, any and all approvals of, and acceptances for filing by, and has given or will give any notices to, any applicable federal or state authority, including FERC and the KPSC (as applicable), that are required for it to execute, deliver, and perform its obligations under this Agreement.

17.11.5 No Litigation. There are no actions at law, suits in equity, proceedings, or claims pending or, to its knowledge, threatened against it before or by any federal, state, foreign or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

17.11.6 No Violation or Breach. The execution, delivery and performance by it of its obligations under this Agreement do not and shall not: (a) violate its organizational documents; (b) violate any applicable law, statute, order, rule, regulation or judgment promulgated or entered by any applicable federal or state authority, which violation could



reasonably be expected to materially adversely affect the performance of its obligations under this Agreement; or (c) result in a breach of or constitute a default of any material agreement to which it is a party.

17.11.7 No Other Warranties. EXCEPT AS PROVIDED IN THIS AGREEMENT, TRANSERV MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17.12 Further Assurances. Each Party agrees that it shall execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the purpose of this Agreement and are not inconsistent with the provisions of this Agreement.

17.13 Entire Agreement. This Agreement and the Attachments hereto set forth the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements, whether oral or written, related to the subject matter of this Agreement. The terms of this Agreement and the Attachments hereto are controlling, and no parole or extrinsic evidence, including to prior drafts and drafts exchanged with any third parties, shall be used to vary, contradict or interpret the express terms and conditions of this Agreement.

17.14 Good Faith Efforts. Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and the other Party to fulfill their obligations under this Agreement. Where the consent, agreement or approval of any Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, delayed or conditioned. Where a Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised, other than where expressly provided for herein. To the extent that the jurisdiction of any federal or state authority applies to any part of this Agreement or the transactions or actions covered by this Agreement, each Party shall cooperate with the other Party to secure any necessary or desirable approval or acceptance of such authorities of such part of this Agreement or such transactions or actions.

17.15 Time of the Essence. With respect to all duties, obligations and rights of the Parties specified by Regulatory Authorities, time shall be of the essence in this Agreement.

17.16 Interpretation. Unless the context of this Agreement otherwise clearly requires:

17.16.1 all defined terms in the singular shall have the same meaning when used in the plural and vice versa;

17.16.2 the terms “hereof,” “herein,” “hereto” and similar words refer to this entire Agreement and not to any particular Section, Attachment or any other subdivision of this Agreement;

17.16.3 references to “Section” or “Appendix” refer to this Agreement, unless specified otherwise;

17.16.4 references to any law, statute, rule, regulation, notification or statutory provision shall be construed as a reference to the same as it applies to this Agreement and

may have been, or may from time to time be, amended, modified or re-enacted;

17.16.5 references to “includes,” “including” and similar phrases shall mean “including, without limitation;”

17.16.6 the captions, section numbers and headings in this Agreement are included for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement;

17.16.7 “or” may not be mutually exclusive, and can be construed to mean “and” where the context requires there to be a multiple rather than an alternative obligation; and

17.16.8 references to a particular entity include such entity's successors and assigns to the extent not prohibited by this Agreement.

17.17 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other and no provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provision. Each Party acknowledges that in executing this Agreement it has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and it has not been influenced by any representation or statement made by the other Party or its counsel not contained in this Agreement.

17.18 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon Company and TranServ, notwithstanding that Company and TranServ may not have executed the same counterpart.

The Parties have caused this Independent Transmission Organization Agreement to be executed by their duly authorized representatives as of the dates shown below.

**LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY**

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

Title:

Date:

**TRANSERV INTERNATIONAL, INC.**

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

Title:

Date:

**Appendix A**  
**Louisville Gas and Electric**  
**Company/**

**Kentucky Utilities Company**

**INDEPENDENT TRANSMISSION**  
**ORGANIZATION**

**SERVICE SPECIFICATION**

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## 1. ~~4.~~ Overview

This Appendix A is intended to be consistent with the terms and conditions of the LG&E/KU Open Access Transmission Tariff (OATT), including Attachment P thereto. If there is any conflict between this Appendix A and the OATT, the OATT shall govern. TranServ shall perform its obligations under this Appendix A in accordance with Section 1.3.1 of this Agreement.

The services delegated to TranServ include the administration of the LG&E/KU Open Access Same-time Information System (OASIS), transmission service request evaluation process, Available Transfer Capability (ATC)/ Available Flowgate Capability (AFC) management, study queue administration, study performance, and stakeholder facilitation. TranServ, as the ITO, will administer the OATT granting of service for both short and long-term transmission requests, administer the large generator interconnection request queue, and perform transmission studies. TranServ will facilitate the LG&E/KU long-term transmission planning function and stakeholder processes.

## 2. Definitions

Company - Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU)

ITO - Independent Transmission Organization

ITO Services - The applicable functions to be performed as specified in the ITO Agreement

RC - Reliability Coordinator

Service Interruption - A Service Interruption is the loss of Service function, under the direct control of TRANSERV with no mutually agreed to work around provided within the Service

Normal Business Hours - TranServ normal business hours are between the hours of 0700 and 1700 CT, Monday-Friday on days other than the holidays listed below:

1. New Year's Day
2. Memorial Day
3. Independence Day
4. Labor Day
5. Thanksgiving
6. Day after Thanksgiving
7. Day before Christmas
8. Christmas Day

### 3. Roles and Responsibilities for Providing ITO Services

#### 3.1 TranServ

TranServ International, Inc. (TranServ) will provide services to LG&E/KU as the ITO. The services that TranServ will provide include:

##### 3.1.1 Customer Interface

Responsibility for operating and maintaining OASIS website and keeping it up-to-date with Federal Energy Regulatory Commission (FERC) and North American Energy Standards Board (NAESB) posting requirements, including all Order No. 890 posting requirements (such as study performance metrics, Available Transfer Capability (ATC) calculations, etc.). This includes establishing an interface for customers to submit service requests, and oversight and evaluation of ATC values calculated using software procured from Open Access Technology International, Inc. (OATI) and information from the RC. TranServ's responsibilities and duties in administering OASIS will include the following:

- Performing the duties of a Responsible Party as defined in the Commission's OASIS regulations, 18 C.F.R. § 37.5 and FERC Order No. 676.
- Posting information required to be on the Transmission Provider's OASIS under the Commission's OASIS regulations, 18 C.F.R. § 37.6 and FERC Order No. 676.
- Maintaining and retaining information posted on OASIS in accordance with the Commission's regulations, including 18 C.F.R. Parts 37 and 125.
- Establishing and maintaining queues for processing transmission service requests and generator interconnection (GI) requests.
- Participating in the drafting and posting of Business Practices on the OASIS website, including any FERC or NAESB-required Business Practices. Company shall have final review, ownership, and approval for all Business Practices.
- Participating in periodic reviews of, and providing expertise/comments on, the OATT. Company retains final authority over the OATT's content, including retaining the right and responsibility to file changes to the OATT.
- Participating in stakeholder meetings and/or conference calls as required. These stakeholder meetings will include TranServ, Company, Customers (as appropriate) the



RC, and other entities as required, to address concerns regarding Company's system, administration of the OATT, and related issues.

- Responsibility for coordinating with third-party transmission system owners and operators as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.
- Management of ATC/AFC Calculation and Posting.
- Implementation of certain aspects of the Congestion Management Process (CMP) established by the Midcontinent Independent System Operator, Inc. (MISO), PJM Interconnection LLC (PJM), and TVA.
- Administration of request evaluations for LG&E/KU tariff service.
- Processing of e-Tags as the transmission provider.
- Reviewing software changes requested from OATI, verifying and testing for proper operations before OATI implements those changes.

### **3.1.2 Transmission Service and Generator Interconnection Requests and Studies**

- Receive and process all applications for Point-to-Point, Network Integration Transmission Service (NITS), and for GIs.
- For short-term Point-to-Point Transmission Service requests (i.e., where the request is within the posted ATC horizon), evaluate and approve a request where the posted ATC is sufficient for the requested transaction. If ATC is insufficient, TranServ shall propose conditional service options to the customer in accordance with the OATT, or otherwise deny the service. If the customer accepts conditional service options, TranServ will be responsible for performing biennial reassessments, as provided under the OATT.
- For long-term Point-to-Point Transmission Service requests, NITS, or GI requests:
  - Determine whether a System Impact Study (SIS) is necessary to accommodate the request.
  - Render all study agreements (SIS, Interconnection Feasibility Studies (IFS), Facilities Study (FS), and Feasibility Analysis Studies (FAS)) to customers within the timeframe provided in the OATT.
  - Perform the SIS or FAS in the timeframe provided in the OATT, including

clustered SISs when requested by customers and/or Company.

- Perform the SIS or FAS using Company's planning criteria.
  - For any study that TranServ performs that requires information from Company (e.g., good faith construction estimates that are included in the SIS), request such information from Company no less than ten (10) business days before the expiration of the applicable study period.
  - Complete study reports and post on OASIS within the timeframe required under the OATT.
  - Notify the Company and individual customers of completed study reports, and alert the Company to initiate service agreements, if applicable.
  - Receive customer deposits.
  - Bill customers for SIS, IFS, FS, and FAS as required by the OATT, including provision of an itemized bill for services if requested by a customer.
  - Reimburse Company for any study costs incurred in contributing to the study and render payment to any third-party vendors for work performed.
- Responsible for receiving and processing requests to designate or un-designate Network Resources, as provided under the OATT.
  - If a customer requests a modification to its service, or if a customer assigns its transmission service to a third-party who request modification to the service, process those modification requests in accordance with the terms of the OATT.
  - Track all study metrics, including data submittals, input validations, modifications, time and costs associated to perform the study.
  - Track the performance of all studies and alert Company if a FERC filing requirement or penalty payment has been triggered due to late studies, as described under the OATT.

### 3.1.3 ATC Calculation

- Calculate ATC as provided for in Attachment C to the OATT. This includes receiving initial AFC values from the RC, calculating final AFC values using the algorithms included in Attachment C, and converting the AFC to ATC using OATI software.
- Post on OASIS the mathematical algorithms used to calculate firm and non-firm AFC.

TranServ shall also post the results of the AFC calculations on OASIS.

- Daily review of transmission service requests (TSRs) and eTag action and statistics.
- Daily review of posted AFC/ATC information and investigation into any anomalies.
- Review, observation, and validation of the Total Transfer Capability (TTC) development process.

### 3.1.4 Interchange and Scheduling

- As the Transmission Service Provider, responsible for the following activities:
  - Confirm that each electronic schedule (e-Tag) has a confirmed transmission service request.
  - Approve the interchange schedules as the transmission service provider.
  - Curtail electronic schedules if requested by the RC or Balancing Authority (BA).
  - Monitor and validate the Net Scheduled Interchange (NSI), as processed by OATI software, to ensure timely creation of the NSI data file with a syntactical quality check on the data set.

### 3.1.5 Transmission Planning

- TranServ will participate in Company's transmission planning process as outlined in Attachment K to the OATT, including the following activities:
  - Review and approve Company's long-term (generally one year and beyond) plan for the reliability/adequacy of Company's Transmission System.
  - Review and approve Transmission System models (steady state, dynamics, and short circuit).
  - Develop alternatives to Planning Redispatch service.
  - Notify impacted transmission entities of any planned transmission changes that may influence their facilities.
  - Participate with the SPC and associated SPC working groups, as required.
  - Participate in the overall OATT Attachment K process as observer.

- The Parties agree that the final annual transmission plan and decision of whether/when to construct and expand the system rests with Company.
- Both parties will communicate openly and in a timely manner; each will perform their respective work; and both will continually work together to improve mutual and individual processes in a joint effort to assure work is completed pursuant to Company standards and deadlines.

### 3.1.6 Compliance

- Establish and adhere to a “culture of compliance” for TranServ Personnel and TranServ Designees consistent with FERC’s Policy Statement on Compliance, 125 FERC ¶ 61,058 (2008) as may be supplemented or amended by further FERC orders. TranServ shall take such reasonable steps requested by the Company in furtherance of such a culture of compliance.
- In accordance with *Louisville Gas and Electric Company*, 114 FERC ¶ 61,282 at P 152 (2006), provide FERC with semi-annual reports “detailing concerns expressed by stakeholders and [ITO’s] response to those concerns as well as any issues or tariff provisions that hinder [ITO] from performing its required duties” as requested.
- Maintain records and provide reports as required by the Kentucky Public Service Commission (KPSC), OATT, Department of Energy (DOE), FERC, NERC, SERC Reliability Corporation (SERC) or NAESB. Without limiting the foregoing, Company may from time-to-time provide TranServ with specific direction as to records that Company expects to support compliance efforts, and TranServ shall maintain such records as directed.
- Assist Company, as requested by Company, in the preparation of applications, audit materials, filings, reports or responses to any Regulatory Authority. Without limiting the foregoing, this assistance may include from time-to-time preparation for (and participation in, if appropriate) FERC or NERC audits and providing event analysis information for FERC, NERC or SERC. TranServ’s support shall be provided in a time frame reasonably requested by Company.
- Monitor FERC, NERC, SERC, and NAESB activities for changes in standards or compliance requirements that may require modification to the ITO Services or other coordination with Company. To the extent possible, TranServ shall notify Company of any proposed or pending modifications prior to their implementation. The Parties shall work together to establish a work plan and timetable for implementation of any such

changes. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments as well Company requests, shall be assessed using the change order process detailed in Section 5 of this Appendix A.

## 3.2 Transmission Planner

TranServ will provide certain services to LG&E/KU, the Transmission Planner (TP). The services include:

### 3.2.1 Customer Interface

- TranServ will participate in the drafting of Business Practices; including any FERC or NAESB required Business Practices. Company shall have final review, ownership, and approval for all Business Practices.
- TranServ will participate in periodic reviews of, and provide expertise/comments on the OATT. Company retains final authority over the OATT's content, including retaining the right and responsibility to file changes to the OATT.
- Responsible for planning, coordinating and holding regular stakeholder meetings and/or conference calls. These stakeholder meetings will include TranServ, Company, and the RC, and other entities as required, to address concerns regarding Company's system, administration of the OATT, and related issues. This activity includes (as necessary) performing background checks for stakeholders who desire access to Critical Energy Infrastructure Information (CEII), preparing meeting materials, facilitating the meeting, and preparing post-meeting minutes for posting on OASIS.
- Responsible for coordinating with third-party transmission system owners and operators as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.

## 3.3 LG&E/KU

TranServ understands that Company has the following responsibilities in support of the ITO Services under this Appendix A:

### 3.3.1 Customer Interface

- Contracting for the OATI ~~webOASIS~~[webSmartOASIS](#) service that meets FERC and NAESB requirements.

- Contracting for the OATI webTrans service used to evaluate and take actions on transmission service requests and e-Tags.
- Continuation of Agreement with the RC to provide necessary data for AFC/ATC calculation and posting processes.
- Final review, ownership, and approval for all Business Practices.
- Final authority over the OATT's content, including the right and responsibility to file changes to the OATT.
- Cooperate in the coordination with third-party systems as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.

### **3.3.2 Compliance**

- From time-to-time provide TranServ with specific direction as to records that Company expects to support compliance efforts, TranServ shall maintain such records as directed in order to provide reports as required by the KPSC, OATT, DOE, FERC, NERC, SERC or NAESB.
- Respond to TranServ notifications of FERC, NERC, SERC, and NAESB activities for changes in standards or compliance requirements that may require modification to the ITO Services or other coordination with Company within requested response timelines. Work together with ITO to establish a work plan and timetable for implementation of any such changes. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments as well Company requests, shall be assessed using the change order process detailed in Section 5 of this Appendix A.

## 4. Customer Support

TranServ will provide support for Service 24-hours per day and 365-days per year by utilizing a single point of contact support staff. During Normal Business Hours the support staff can be contacted by telephone or by e-mail as outlined in published TranServ's ITO Support Information. After Normal Business Hours support is achieved through telephone only. TranServ will take all reasonable effort to ensure that reported problems or other Customer support related events are responded to within 30-minutes of the event notification when ITO Support Procedures are followed.

### 4.1 Problem Resolution

Problems or outages are reported to TranServ by following customer support processes. All problems or questions are assigned a severity level by mutual agreement of the parties. Problems which are considered Critical or High in severity should be reported to TranServ at any time. Problems considered Medium or Low severity should be reported by phone during business hours or by e-mail at any time. The severity level classifications are defined as follows:

- Critical - Problems or issues that are impacting business immediately or impacting grid reliability and action is required prior to next business day.
- High - Problems or issues that affect a key functionality of Service component and there is no work around available but immediate business or grid reliability impact is not present.
- Medium - Business processes are impacted, but satisfactory work around is in place to avoid business interruptions.
- Low - Customer inquiries or reported problems and issues that create nuisances or inconveniences for the customer. Minimal or no business impact is occurring.

<b>Ticket Resolution</b>		
<b>Action</b>	<b>TranServ Responsibility</b>	<b>Time To Remedy</b>
Correct a <b>“Critical”</b> severity Problem or Issue	During normal business hours TranServ will respond to reported Critical severity problems and begin corrective action immediately until either a satisfactory work around is in place or problem is resolved. Outside of normal business hours TranServ will respond to reported Critical severity problems within 30-minutes of notification. Escalation to responsible TranServ senior management will occur in all cases.	TranServ will work continuously until resolution is in place. This may include a temporary work around until a permanent correction can be implemented. <b>Performance goal is to resolve all Critical severity tickets within 4-hours.</b>
Correct a <b>“High”</b> severity Problem or Issue	During normal business hours TranServ will respond to reported High severity problems and begin corrective action to resolve with either a satisfactory work around or problem resolution prior to end of business day. Outside of normal business hours TranServ will respond to reported High severity problems within 30-minutes of notification. Escalation to responsible TranServ senior management will occur in all cases.	TranServ will provide an initial problem analysis update within 8-hours at all times. This may include a recommended temporary work around until a permanent correction can be implemented. <b>Performance goal is to resolve all High severity tickets within 24-hours.</b>
Correct a <b>“Medium”</b> severity Problem or Issue	TranServ will schedule corrective action jointly with Customer. Problems of Medium severity should be reported by telephone during business hours or by e-mail at any time.	TranServ will provide an initial problem analysis update within 3-business days of notification of problem. An appropriate action plan and resolution schedule will be mutually agreed to with the Customer. <b>Performance goal is to resolve all Medium severity tickets by agreed to commitment date.</b>
Correct a <b>“Low”</b> severity Problem or Issue	TranServ will schedule corrective action jointly with Customer. Problems of Low severity should be reported by telephone during business hours or by e-mail at any time.	TranServ will provide an initial problem analysis update within 5-business days. An appropriate action plan and resolution schedule will be mutually agreed to with the Customer. <b>Performance goal is to resolve all Low severity tickets by agreed to commitment date.</b>



**4.1.1 Tickets - OATI webSupport**

To ensure all customers of TranServ receive a high level of customer service all calls or e-mails with questions or reported problems are documented in a Ticket. All TranServ staff members utilize OATI webSupport, an issue reporting and assignment platform allowing tracking and confirmed resolution of all issues reported to TranServ. Upon receiving a communication from a customer, TranServ will open a webSupport Ticket. The Ticket contains customer contact information, data metrics on the type of problem, an identification of the TranServ staff member to whom the Ticket is currently assigned, a detailed description of the problem, and a detailed description of the problem's current status which will eventually include a description of how the issue was resolved. The TranServ staff member provides the Ticket number to the customer for all issues not resolved immediately. If the issue cannot be resolved by the TranServ staff member creating the Ticket, the Ticket is reassigned to another member of the TranServ team. The TranServ staff member who initially created the Ticket is expected to use webSupport's monitoring capability to determine unresolved Tickets, and to reassign or escalate it as necessary at any time to promote prompt resolution within response timing guidelines.

**4.1.2 Response Time**

TranServ support staff will answer all calls as received during normal business hours and take all reasonable effort to resolve issues at the time of call. For issues and problems that are not immediately resolved, TranServ will follow normal processing for assigned severity level and notify customer once resolution occurs.

Calls to support staff outside of normal business hours will be answered as received and customer will be notified within 30-minutes on planned actions to be taken by TranServ support staff in accordance with normal processing for assigned severity level.

**4.1.2.1 Ticket Escalation**

Problem tickets that cannot be resolved in accordance with normal processing for assigned severity level will be escalated to appropriate TranServ management. Customers may request immediate ticket escalation to appropriate TranServ management.

**4.1.2.2 Customer Satisfaction**

Customer satisfaction inquiries are automatically sent to customers upon the closing of a ticket. The results of these surveys result in improved performance by customer support staff or changes in business processes.

## 5. Service Modifications

From time to time Company may require a modification to an existing Service function. Such modifications may be prompted by changes in regulatory compliance requirements, or by a Company request. Minor modifications that require reasonably minimal resource commitment from TranServ staff will be included within a reasonable time period at no cost to Company. Modifications that may have more significant impact on Service design or will impact TranServ staff resource commitments more than minimally will be discussed with Company and may in some instances require additional payment by Company, or likewise, require a decrease in payment by Company. Each of these change requests will be described in a written Change Order. Each Change Order will be scheduled for implementation upon written agreement with Company as to scope, cost and schedule.

### 5.1 Minor Changes

Any change to an existing Service function that does not have a significant impact on Service design or require TranServ to staff or contract with additional personnel, if even for a brief period of time, to prepare for and/or meet the requirements of the change (a “Minor Change”) will be integrated into Company’s Service at no cost to Company. A written Change Order will be negotiated and executed between Company and TranServ prior to implementation of any Minor Change.

### 5.2 Major Changes

Any change to an existing Service function that has a significant impact on Service design or requires TranServ to staff additional or fewer personnel, if even for a brief period of time, in order to prepare for and/or meet the requirements of the change (a “Major Change”) will require a written Change Order which must be negotiated and executed between Company and TranServ prior to implementation of any Major Change.

**6. Reliability Coordination**

TranServ will be required to coordinate its operations with the LG&E/KU designated RC. The RC is responsible for performing certain reliability related tasks for the LG&E/KU system, including acting as the NERC-registered Reliability Coordinator. The RC's responsibilities are detailed in the Reliability Coordinator Agreement and Attachment P to the LG&E/KU OATT.

Document comparison by Workshare Professional on Monday, December 19, 2016 9:18:58 AM

Input:	
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Description	2014 Agreement
Document 2 ID	file://C:\Users\nallscm\Documents\LGE-KU\ITO - TransServ Agreement\ITO (TranServ) Contract - Final 12-1-2016 (2).docx
Description	ITO (TranServ) Contract - Final 12-1-2016 (2)
Rendering set	Standard

Legend:	
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<a href="#">Moved to</a>	
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Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Moved to	0
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Total changes	522



FERC rendition of the electronically filed tariff records in Docket No. ER17-00850-000

Filing Data:

CID: C000553

Filing Title: ITO Agreement 2017-2022 Att. Q

Company Filing Identifier: 147

Type of Filing Code: 10

Associated Filing Identifier:

Tariff Title: Transmission

Tariff ID: 3

Payment Confirmation:

Suspension Motion:

Tariff Record Data:

Record Content Description, Tariff Record Title, Record Version Number, Option Code:

Part V\_ATTACH Q, Part V\_ATTACH Q Agts btw TO and ITO and RC, 12.0.0, A

Record Narrative Name:

Tariff Record ID: 70

Tariff Record Collation Value: 3155968 Tariff Record Parent Identifier: 2

Proposed Date: 2017-09-01

Priority Order: 1000000000

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier:

## **ATTACHMENT Q**

### **AGREEMENTS BETWEEN THE TRANSMISSION OWNER AND THE ITO AND THE RELIABILITY COORDINATOR**

## Independent Transmission Organization Agreement

Between

Louisville Gas and Electric Company/  
Kentucky Utilities Company

And

TranServ International, Inc.

# FINAL

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## Appendix A - Service Specification

### **INDEPENDENT TRANSMISSION ORGANIZATION AGREEMENT**

This Independent Transmission Organization (“ITO”) Agreement (this “Agreement”) is entered into on September 1, 2017, between Louisville Gas and Electric Company and Kentucky Utilities Company, corporations organized pursuant to the laws of the Commonwealth of Kentucky (collectively, “Company”), and TranServ International, Inc., an entity organized pursuant to the laws of Delaware (“TranServ”). Company and TranServ may sometimes be individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, Company owns, among other things, an integrated electric transmission system (“Transmission System”), over which open access transmission service is provided to customers in the Company’s Balancing Authority Area (as that term is defined by the North American Electric Reliability Corporation (“NERC”));

WHEREAS, the Company has an Open Access Transmission Tariff (“OATT”) on file with the Federal Energy Regulatory Commission (“FERC”)

WHEREAS, Company’s current contract with TranServ is scheduled to expire on August 31, 2017;

WHEREAS, Company desires that, upon expiration of the current contract, TranServ will continue its work under this Agreement, as detailed herein;



WHEREAS, Company remains the owner of its Transmission System and shall be the ultimate provider of transmission services to Eligible Customers (as defined in the OATT), including the sole authority to amend the OATT;

WHEREAS, TranServ: (i) is independent from Company; (ii) possesses the necessary competence and experience to perform the functions provided for hereunder; and (iii) is willing to perform such functions under the terms and conditions agreed upon by the Parties as set forth in this Agreement; and

WHEREAS, as part of Company's goal to maintain independence in the operation of its Transmission System in order to prevent any exercise of transmission market power, Company entered into a Reliability Coordinator Agreement (the "Reliability Coordinator Agreement") with the Tennessee Valley Authority, NERC-certified reliability coordinator (the "Reliability Coordinator"), pursuant to which the Reliability Coordinator provides to Company certain required reliability functions.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **Section 1 - Services to be Provided; Standards of Performance**

1.1 Services. TranServ shall perform, or cause to be performed, the services described in Appendix A hereto as well as any obligations expressly assigned to the ITO under the OATT ("ITO Services") during the Term in accordance with the terms and conditions of this Agreement, subject to modification pursuant to Section 1.4 hereto.

1.2 Coordination with Reliability Coordinator. In conjunction with its performance of ITO Services, TranServ shall coordinate and cooperate with the Reliability Coordinator in accordance with the terms of the OATT and all NERC and SERC Reliability Corporation ("SERC") requirements. TranServ shall provide to the Reliability Coordinator, subject to the terms and conditions of this Agreement, including TranServ's obligations with respect to Confidential Information in Section 10, any information that the Reliability Coordinator may reasonably request in order to carry out its functions under the Reliability Coordinator Agreement, which agreement is included in the OATT.

1.3 TranServ Performance; Compliance.

1.3.1 Performance. TranServ, TranServ Personnel and any TranServ Designee (as defined in Section 17.5) shall perform TranServ's obligations (including ITO Services) under this Agreement:

- (a) in an independent, fair, and nondiscriminatory manner; and
- (b) in accordance with:

(i) any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition (“Good Utility Practice”). Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act Section 2 14(a)(4);

(ii) the terms and conditions of the OATT;

(iii) all applicable laws and the requirements of federal and state regulatory authorities, including the Kentucky Public Service Commission (“KPSC”), Department of Energy (“DOE”), FERC, NERC, SERC, and the North American Electric Standards Board (“NAESB”) (collectively, “Regulatory Authorities”); and in fulfilling this requirement in this subsection (iii), TranServ will cooperate with all reasonable requests by Company for information, interviews with TranServ personnel, or other support that may be needed to investigate possible FERC, NERC or other compliance violations or prepare for or respond to compliance-related audits, self-certifications, and other inquiries by Regulatory Authorities (whether internal or external); and

(iv) any methodologies, processes, or procedures relating to ITO Services which Company may develop and which Company determines are necessary or appropriate to ensure safe and reliable system operations and compliance with all applicable laws and the applicable requirements of Regulatory Authorities.

1.4 Changes to ITO Services. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments, as well as Company requests, shall be assessed using a change order process. This process will include a written assessment of impacts to ITO Services consistent with Section 5 of Appendix A. Changes will be implemented only after mutual execution of a change document, which may be titled a Change Order or an Amendment. If the Parties are unable to agree on whether a change constitutes a “Minor Change,” or a “Major Change,” as those terms are used in Section 5 of Appendix A, such Dispute shall be resolved in accordance with Section 3.6.

## **Section 2 - Independence and Standards of Conduct**

2.1 TranServ Personnel. All ITO Services shall be performed by staff members of TranServ (“TranServ Personnel”) or TranServ Designees. No TranServ Personnel or TranServ Designee shall also be employed by Company or any of its Affiliates (as defined in FERC’s regulations, 18 C.F.R. § 35.34(b)(3) (2011)). TranServ, TranServ Employees, and TranServ Designees shall (i) be Independent of and (ii) shall not discriminate against Company, any of its Affiliates, or any Tariff Participant. For purposes of this Agreement: (a) “Independent” shall mean that TranServ, TranServ Personnel, and any TranServ Designees are not subject to the control of Company, its Affiliates or any Tariff Participant, and have full decision-making authority to perform all ITO Services in accordance with the provisions of this Agreement. Any TranServ Personnel or

TranServ Designee owning securities in Company, its Affiliates or any Tariff Participant shall divest such securities within six (6) months of first being assigned to perform such ITO Services, provided that nothing in this Section 2.1 shall be interpreted or construed to preclude any such TranServ Personnel or TranServ Designee from indirectly owning securities issued by Company, its Affiliates or any Tariff Participant through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted toward the electric industry or the electric utility industry or any segment thereof) under which the TranServ Personnel or the TranServ Designee does not control the purchase or sale of such securities. Participation by any TranServ Personnel or TranServ Designee in a pension plan of Company, its Affiliates or any Tariff Participant shall not be deemed to be a direct financial interest if the plan is a defined-benefit plan that does not involve the TranServ Personnel's or TranServ Designee's ownership of the securities; and (b) "Tariff Participant" shall mean Company Transmission System customers, interconnection customers, wholesale customers, affected transmission providers, any Market Participant (as defined in FERC's regulations, 18 C.F.R. § 35.34(b)(2) (2011)) and similarly qualified third parties within the Company Balancing Authority Area. For the avoidance of doubt, Company shall have no veto authority over the selection of TranServ Personnel or TranServ Personnel matters, including TranServ's appointment of a TranServ Project Manager (as provided in Section 8.2) except that the Company and TranServ hereby agree that TranServ shall be prohibited from hiring current or former Company employees until at least one (1) year subsequent to the Company employee's separation from Company. Likewise, Company is prohibited from hiring current or former TranServ employees until one (1) year subsequent to the TranServ employee's separation from TranServ.

2.2 Standards of Conduct Treatment. All TranServ Personnel and TranServ Designees performing work under this Contract shall be treated, for purposes of the FERC's Standards of Conduct (18 C.F.R. Part 358 ), as transmission function employees. All restrictions relating to information sharing and other relationships between marketing function employees and transmission function employees, as those terms are defined in the Standards of Conduct, including the non-discrimination requirements contained therein, shall apply to TranServ Personnel and TranServ Designees performing work under this Contract, or likely to become privy to transmission function information. Said TranServ Personnel and TranServ Designees shall participate in any Standards of Conduct training that the Company may request for compliance purposes. TranServ shall provide prompt notice of new TranServ Personnel or TranServ Designees to Company to assure new persons are trained within the first thirty (30) days of their employment with TranServ.

### **Section 3 - Compensation; Billing and Payment; Performance Review**

3.1 Compensation for Services. Company shall pay to TranServ an annual fee for performance of the ITO Services ("Annual Fee"). The Annual Fee (subject to increases or decreases in accordance with Section 5 of Appendix A) shall be \$2,479,543.56 for the first Contract Year and shall escalate by one and five-tenths percent (1.5%) of the prior year's Annual Fee for each Contract Year thereafter.

3.2 Out-of-Pocket Costs. Company shall reimburse TranServ for actual out-of-pocket third party costs and expenses, without markup, for (a) regulatory legal support that is reasonably allocable to TranServ's performance of ITO Services, provided that in no event shall Company

reimburse TranServ for legal fees associated with any actual or potential Dispute under this Agreement, (b) travel and lodging that are reasonably allocable to TranServ's performance of ITO Services and (c) setting up regular stakeholder meetings (collectively, (a), (b) and (c) are "Out-of-Pocket Costs"); provided, however, that all Out-of-Pocket Costs subject to reimbursement under this Section 3.2 must be reviewed and approved by Company prior to TranServ incurring such expense.

### 3.3 Payment.

3.4.1 Monthly Payment. TranServ shall deliver to Company monthly invoices by regular mail, facsimile, electronic mail or such other means as the Parties agree. Such invoices shall set forth (i) one-twelfth (1/12) of the Annual Fee for each month in advance, and (ii) any Out-of-Pocket costs incurred during the previous month, provided however, that travel expenses occurring on the last three (3) days of each month may be carried over to future invoices for ease of administration. Company shall make payment of the amount invoiced by wire transfer in immediately available funds to an account specified by TranServ not later than the thirtieth (30<sup>th</sup>) day after receipt of the invoice, unless such day is not a business day, in which case on the next business day. All such payments shall be deemed made when said wire transfer is received by TranServ. Overdue payments shall accrue interest calculated at the FERC interest rate as defined in 18 C.F.R. §35.19a(2)(iii)(A) (2011) ("FERC Interest Rate").

### 3.4 Annual Review.

3.4.1 Annual Review. Commencing at the end of each Contract Year, no later than sixty (60) days after the end of each Contract Year, TranServ shall determine and deliver to Company a calculation of TranServ's actual labor in providing ITO Services for the preceding Contract Year ("Annual Labor"). The Annual Labor calculation shall detail the job title and number of full-time employees assigned to ITO Services, and the number of hours spent in performing ITO Services. The Annual Labor shall also include the hours for any tasks which TranServ outsourced to TranServ Designees.

3.5 Compensation Disputes. Notwithstanding the Dispute resolution provisions in Section 8.3, for any Disputes concerning compensation under this Section 3, Company shall timely file notice of such Dispute with FERC and request that FERC resolve such Dispute. TranServ retains the authority to file notice with FERC of any such Dispute if it so desires. If either Party in good faith disputes any invoice submitted by the other Party pursuant to this Agreement, then the disputing Party (i) shall timely pay the other Party the entire invoiced amount and (ii) shall furnish the other Party with a written explanation specifying the amount of and the basis for the Dispute. Within twenty (20) days after resolution of such Dispute, the Party owing money shall pay the other Party the amount owed, if any, together with interest calculated at the FERC Interest Rate.

## **Section 4 - Term and Termination**

4.1 Term. The initial term of this Agreement shall begin on September 1, 2017 ("Commencement Date"), and shall continue for five (5) years thereafter ("Initial Term"). At the conclusion of the Initial Term, this Agreement shall automatically extend for successive one

(1) year terms (each a “Subsequent Term”), unless terminated by either Party in accordance with the terms of this Agreement. Three hundred and sixty (360) days prior to the conclusion of the Initial Term either Party may notify the other, in writing, of a desire to amend terms or pricing of this Agreement for the Subsequent Terms. If such amendment is not agreed upon by both parties 180 days prior to the beginning of the first Subsequent Term, the Amendment shall not automatically extend and will terminate on the later of i) the conclusion of the Initial Term, as defined above, or ii) receipt of the regulatory approvals required under Section 4.5. The Initial Term or any Subsequent Terms are each referred to herein as a “Term.” For the purposes of this Agreement, a “Contract Year” shall begin on the Commencement Date or anniversary thereof and conclude twelve (12) months thereafter.

4.2 Termination by Either Party. This Agreement may be terminated by either Party at the end of a Term upon prior one hundred eighty (180) days written notice to the other Party, which termination shall be effective upon the later of (i) one hundred eighty (180) days after the date of such written notice, or (ii) receipt of the regulatory approvals required under Section 4.5.

4.3 Immediate Termination.

4.3.1 Termination for Cause. Subject to Section 4.5, either Party may terminate this Agreement upon prior written notice thereof to the other Party if:

- (a) Material Failure or Default. The other Party fails, in any material respect, to comply with, observe or perform, or defaults, in any material respect, in the performance of the terms and conditions of this Agreement, and such failure or default remains uncured for thirty (30) days after written notice thereof, provided that such failure or default is susceptible to cure and the other Party is exercising reasonable diligence to cure such failure or default;
- (b) Pattern of Failure. It determines, in its reasonable discretion, that there has been a pattern of failure by the other Party to comply with the standards of performance set forth in Section 1.3.1, whether or not such failure is material;
- (c) Gross Negligence, Willful Misconduct or Fraud. The other Party commits gross negligence, willful misconduct or fraud in the performance of its obligations under this Agreement;
- (d) Material Misrepresentation. Any representation made by the other Party hereunder shall be false or incorrect in any material respect when made and such misrepresentation is not cured within thirty (30) days of such discovery or written notice thereof, or is incapable of cure;
- (e) Bankruptcy. The other Party: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any

substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due; or

(f) Dissolution. The other Party dissolves or is dissolved or its legal existence is otherwise terminated.

4.3.2 Immediate Termination Not For Cause. Subject to Section 4.5, Company may terminate this Agreement upon thirty (30) days prior written notice thereof to TranServ if:

(a) Failure to Negotiate Amendment. The Parties are unsuccessful in negotiating an amendment or amendments to this Agreement pursuant to Section 17.9;

(b) Regulatory Changes/Modifications. A Regulatory Authority makes any material changes, modifications, additions, or deletions to this Agreement, unless both Parties agree to such changes, modifications, additions, or deletions;

(c) Failure to Receive Regulatory Approval. Prior to the Commencement Date, FERC rejects this Agreement or Company's selection of TranServ as the ITO;

(d) RTO. Company joins a regional transmission organization ("RTO"); or

(e) Extended Force Majeure. A Party is excused because of Force Majeure (as defined in Section 11) for more than thirty (30) days from performing any of its material obligations under this Agreement.

4.4 Termination for Lack of Independence. Subject to Section 4.5, Company may terminate this Agreement upon prior written notice thereof to TranServ if FERC or the KPSC issues a final order that declares that TranServ lacks independence from Company and TranServ cannot obtain independence in a reasonable manner or time period.

4.5 Regulatory Approval. No termination of this Agreement shall be effective until approved by FERC and the KPSC. Notice of termination provided pursuant to Sections 4.3 and 4.4 shall become effective immediately upon approval by FERC and the KPSC.

4.6 Return of Materials. Upon any termination of this Agreement TranServ shall timely and in an orderly manner turn over to Company all materials that were prepared or developed pursuant to this Agreement prior to termination, and return or destroy, at the option of Company, all Data and other information supplied by Company to TranServ or created by TranServ on behalf of Company.

4.7 Survival. All provisions of this Agreement which are by their nature or terms intended to survive the termination of this Agreement, including the obligations set forth in Section 7 and Section 10, shall survive termination of this Agreement.

4.8 Compensation for Early Termination.

4.8.1 If Company terminates this Agreement before the end of a Term pursuant to Section 4.3.2 (a), (b), (d) or (e), then Company shall pay to TranServ the Annual Fee(s) through the longer of the end of the Contract Year or for six (6) months subsequent to the date of termination, which fees shall be accelerated hereunder for this purpose, plus any unpaid Out-of-Pocket Costs that TranServ has incurred through the date of any such termination. In the event that this Section 4.8.1 should trigger an acceleration of Annual Fee(s) that would otherwise span multiple years, such fees paid by Company to TranServ shall not include any escalation of one and five-tenths percent (1.5%) as described in Section 3.1 that had not yet been previously applied to the Annual Fee(s).

4.8.2 If Company terminates this agreement before the end of the Term, and such termination is for cause pursuant to Section 4.3.1, then Company shall only be liable for TranServ's Out-of-Pocket Costs incurred pursuant to contracts which extend beyond any early termination date.

4.9 Post-Termination Services. Commencing on the date that any termination becomes effective ("Termination Date") and continuing for up to one hundred eighty (180) days thereafter, TranServ shall (a) provide ITO Services (and any replacements thereof or substitutions therefor), to the extent Company requests such ITO Services to be performed, and (b) cooperate with Company in the transfer of ITO Services (collectively, the "Post-Termination Services") as such services are authorized under a separate agreement between the Parties. TranServ shall, upon Company's request, provide the Post-Termination Services at a cost to be negotiated and mutually agreed to at that time. The quality and level of performance of ITO Services by TranServ shall not diminish. After the expiration of the Post-Termination Services, TranServ shall answer questions from Company regarding ITO Services on an "as needed" basis at TranServ's then-standard billing rates.

4.10 Termination for Guaranty Termination. A guaranty with Open Access Technology International, Inc., in favor of Company and with TranServ as a counterparty was executed (November 29, 2016) (hereinafter "the Guaranty"). Subject to Section 4.5, Company may terminate this Agreement if the Guaranty is terminated and TranServ does not provide a replacement Guaranty determined, by Company, to be satisfactory.

## **Section 5 - Data Management and Intellectual Property**

5.1 Supply of Data. During the Term, Company shall supply to TranServ, and/or grant TranServ access to all Data that TranServ requests and that TranServ believes is necessary to perform its duties and obligations under this Agreement, including ITO Services. The Parties shall agree upon the initial format and manner in which such Data shall be provided. For purposes of this Agreement, "Data" means all information, text, drawings, diagrams, models, images or sounds which are embodied in any electronic or tangible medium and which (a) are supplied or in respect of which access is granted to TranServ by Company under this Agreement, which shall be Company's Data, (b) are prepared, stored or transmitted by TranServ solely on behalf of Company, which shall be Company's Data; or (c) are compiled by TranServ by aggregating Data owned by Company and Data owned by third parties, which shall be

TranServ's Data.

5.2 Property of Each Party. Each Party acknowledges that the other Party's Data and the other Party's software, base data models and operating procedures for software or base data models ("Processes") are the property of such other Party and agrees that it will do nothing inconsistent with such ownership, including preserving all intellectual property and/or proprietary rights in such other Party's Data and Processes as provided in Section 6.

5.3 Data Integrity. Each Party shall reasonably assist the other Party in establishing measures to preserve the integrity and prevent any corruption or loss of Data, and the Parties shall reasonably assist each other in the recovery of any corrupted or lost Data. Each Party shall reasonably retain and preserve any of the other Party's Essential Data that are supplied to it during the Term. "Essential Data" means any Data that is reasonably required to perform ITO Services under this Agreement and that must be retained and preserved according to any applicable law, regulation, reliability criteria, or Good Utility Practice. Each Party shall exercise commercially reasonable efforts to preserve the integrity of the other Party's Data that are supplied to it during the Term, in order to prevent any corruption or loss of the other Party's Data.

5.4 Confidentiality. Each Party's Data shall be treated as Confidential Information in accordance with the provisions of Section 10.

## **Section 6 - Intellectual Property.**

6.1 Ownership. All inventions, discoveries, processes, methods, designs, drawings, blueprints, information, works of authorship, or the like, whether or not patentable or copyrightable (collectively, "Intellectual Property"), which TranServ first conceives, develops, or begins to develop, either alone or in conjunction with Company or others, with respect to ITO Services under this Agreement, shall be jointly owned by Company and TranServ, and each party shall have the right to use such intellectual property unless specifically otherwise specified on a change document hereunder.

6.2 Royalties and License Fees. Unless the Parties otherwise agree in writing, TranServ shall procure and pay all royalties and license fees which may be payable on account of ITO Services or any part thereof. In case any part of ITO Services is held in any suit to constitute infringement and its use is enjoined, TranServ within a reasonable time shall, at the election of Company and as Company's exclusive remedy hereunder, either (a) secure for Company the perpetual right to continue the use of such part of ITO Services by procuring for Company a royalty-free license or such other permission as will enable TranServ to secure the suspension of any injunction, or (b) replace at TranServ's own expense such part of ITO Services with a non-infringing part or modify it so that it becomes non-infringing (in either case with changes in functionality that are acceptable to Company).

## **Section 7 - Indemnification and Limitation of Liability**

7.1 Company Indemnification. Subject to the limitations specified in Section 7.6, Company shall indemnify, release, defend, reimburse and hold harmless TranServ and its directors, officers, employees, principals, representatives and agents (collectively, the "TranServ



Indemnified Parties”) from and against any and all third party claims (including claims of bodily injury or death of any person or damage to real and/or tangible personal property), demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, costs and expenses, and attorney fees, (each, an “Indemnifiable Loss”) asserted against or incurred by any of the TranServ Indemnified Parties arising out of, resulting from or based upon TranServ performing its obligations pursuant to this Agreement, provided, however, that in no event shall Company be obligated to indemnify, release, defend, reimburse or hold harmless the TranServ Indemnified Parties from and against any Indemnifiable Loss which is caused by the negligence, the gross negligence or willful misconduct of any TranServ Indemnified Party.

7.2 TranServ Indemnification. Subject to the limitations specified in Section 7.6, TranServ shall indemnify, release, defend, reimburse and hold harmless Company and its directors, officers, employees, principals, representatives and agents (collectively, the “Company Indemnified Parties”) from and against any and all Indemnifiable Losses asserted against or incurred by any of the Company Indemnified Parties arising out of, resulting from or based upon TranServ’s or a TranServ Designee’s negligence, gross negligence, or willful misconduct, provided, however, that in no event shall TranServ be obligated to indemnify, release, defend, reimburse or hold harmless any Company Indemnified Parties from and against any Indemnifiable Loss which is caused by the negligence, gross negligence or willful misconduct of any Company Indemnified Party.

7.3 Regulatory Indemnification. Subject to the limitations specified in Section 7.6, TranServ shall indemnify, release, defend, reimburse and hold harmless any Company Indemnified Parties from and against all regulatory penalties and sanctions (including penalties or sanctions levied by a Regulatory Authority) arising out of, resulting from or based upon TranServ breach of this Agreement, specifically including Section 1.3.1 hereto, provided, however, that in no event shall TranServ be obligated to indemnify, release, defend, reimburse or hold harmless any Company Indemnified Parties from and against any penalty or sanction which is caused by the gross negligence or willful misconduct of any Company Indemnified Party.

7.4 Cooperation Regarding Claims. If an Indemnified Party (which for purposes of this Section 7.4 shall mean an TranServ Indemnified Party or a Company Indemnified Party) receives notice or has knowledge of any Indemnifiable Loss that may result in a claim for indemnification by such Indemnified Party against an Indemnifying Party (which for purposes of this Section 7.4 shall mean Company or TranServ) pursuant to this Section 7, such Indemnified Party shall as promptly as possible give the Indemnifying Party written notice of such Indemnifiable Loss, including a reasonably detailed description of the facts and circumstances relating to such Indemnifiable Loss, a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its claim for indemnification with respect thereto. Failure to promptly give such written notice or to provide such information and documents shall not relieve the Indemnifying Party from the obligation hereunder to respond to or defend the Indemnified Party against such Indemnifiable Loss unless and only to the extent such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party against such Indemnifiable Loss. Except for indemnification for penalties and sanctions under Section 7.3, the Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party in accordance with this Section 7, shall be

entitled to assume the defense or to represent the interest of the Indemnified Party with respect to such Indemnifiable Loss, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost. If and to the extent that the defense or settlement of any Indemnifiable Loss is reasonably likely to involve injunctive, equitable or prospective relief or materially and adversely affect the Indemnified Party's business or operations other than as a result of money damages or other money payments assumed by the Indemnifying Party, then such defense or settlement will be subject to the reasonable approval of the Indemnified Party. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants and participating in its own defense at its own cost and expense.

**7.5 Release and Indemnification Regarding Liens.** TranServ hereby releases and/or waives for itself and its successors in interest, and for all TranServ Designees and their successors in interest, any and all claims or right of mechanics or any other type of lien to assert and/or file upon Company's or any other party's property or any part thereof as a result of performing ITO Services. TranServ shall execute and deliver to Company such documents as may be required by applicable laws (*i.e.*, partial and/or final waivers of liens and/or affidavits of indemnification) to make this release effective and shall give all required notices to TranServ Designees with respect to ensuring the effectiveness of the foregoing releases against those parties. TranServ shall secure the removal of any lien that TranServ has agreed to release in this Section 7.5 within five (5) working days of receipt of written notice from Company to remove such lien. If not timely removed, Company may remove the lien and charge all costs and expenses including legal fees (for inside and/or outside legal counsel) to TranServ including, without limitation, the costs of bonding off such lien. Company, in its sole discretion, expressly reserves the right to off-set and/or retain any reasonable amount due to TranServ from payment of any one or more of TranServ's invoices upon Company having actual knowledge of any threatened and/or filed liens and/or encumbrances that may be asserted and/or filed by any TranServ Designee and/or third party with respect to the ITO Services, with final payment being made by Company only upon verification that such threatened and/or filed liens and/or encumbrances have been irrevocably satisfied, settled, resolved and/or released (as applicable), and/or that any known payment disputes concerning the ITO Services involving TranServ and any TranServ Designees have been resolved so that no actions, liens and/or encumbrances of any kind or nature will be filed against Company and/or Company's property.

**7.6 Limitation of Liability.** Other than as provided in Section 7.3, neither Party shall be liable to the other for any special, punitive, or consequential damages arising out of ITO Services, even if advised of the possibility of such damages. Company agrees that ITO Services are not consumer goods for purposes of international, U.S. Federal or U.S. state warranty laws. Indemnification pursuant to Sections 7.1, 7.2, and 7.3, as well as any direct damages to Company arising out of a material breach of this Agreement shall be limited in the aggregate to the total amount of fees actually paid by Company to TranServ under this Agreement through the date that any penalty or judgment is assessed.

## **Section 8 - Contract Managers; Dispute Resolution**

**8.1 Company Contract Manager.** Company shall appoint an individual (the "Company Contract Manager") who shall serve as the primary Company representative under this

Agreement. The Company Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of Company's obligations under this Agreement, and (b) be authorized to act for and on behalf of Company with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the Company Contract Manager may, upon written notice to TranServ, delegate such of his or her responsibilities to other Company employees, as the Company Contract Manager deems appropriate.

8.2 TranServ Project Manager. TranServ shall appoint, among TranServ Personnel, an individual (the "TranServ Project Manager") who shall serve as the primary TranServ representative under this Agreement. The TranServ Project Manager shall have overall responsibility for managing and coordinating the performance of TranServ obligations under this Agreement. Notwithstanding the foregoing, the TranServ Project Manager may, upon written notice to Company, delegate such of his or her responsibilities to other TranServ Personnel, as the TranServ Project Manager deems appropriate.

8.3 Resolution of Disputes. Any dispute, claim or controversy between the Parties arising out of or relating to this Agreement (each, a "Dispute") shall be resolved in accordance with the procedures set forth in this Section 8.3; provided, however, that this Section 8.3 shall not apply to Disputes arising from or relating to (a) the amount of compensation to be paid by Company pursuant to Section 3.1, which shall be resolved pursuant to Section 3.6, (b) confidentiality or intellectual property rights, in which case either Party shall be free to seek available legal or equitable remedies, or (c) alleged violations of the OATT, in which case either Party shall be free to bring the Dispute to FERC.

8.3.1 Notice of Dispute. Each Party shall provide written notice to the other party of any Dispute, including a description of the nature of the Dispute.

8.3.2 Dispute Resolution by Contract Managers. Any Dispute shall first be referred to the Company Contract Manager and TranServ Project Manager, who shall negotiate in good faith to resolve the Dispute.

8.3.3 Dispute Resolution by Executive Management Representatives. If the Dispute is not resolved within fifteen (15) calendar days of being referred to the Company Contract Manager and the TranServ Project Manager pursuant to Section 8.3.2, then each Party shall have five (5) calendar days to appoint an executive management representative who shall negotiate in good faith to resolve the Dispute.

8.3.4 Binding Arbitration. If the Dispute is not resolved within ten (10) calendar days of being referred to executive management representatives, and the amount in dispute or potential damages exceeds \$250,000 USD, the Parties shall proceed in good faith to submit immediately the matter to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") as they may be amended from time to time (the "Arbitration Rules") subject to the following conditions:

(a) The Parties shall give due consideration to using the Expedited Procedures under the Arbitration Rules in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration fees and costs.

(b) The Parties agree that three arbitrators will be used. Each Party will directly appoint one arbitrator of its choosing from a list of members from the National Roster (as that term is used in the Arbitration Rules) provided by the AAA pursuant to R-12, within ten (10) Days after receipt of such names. The two arbitrators so appointed shall select a third arbitrator from the National Roster to serve as chairperson.

(c) “Baseball” arbitration (in which each Party presents a proposed award or resolution and the actual award must be one of the two submitted), or close variants thereof, shall not be used.

(d) The arbitrators have no authority to appoint or retain expert witnesses for any purpose unless agreed to by the Parties.

(e) All arbitration fees and costs shall be borne equally, regardless of which Party prevails.

(f) Each Party shall bear its own costs of legal representation and witness expenses, unless the arbitrator(s) determines that one Party should bear some or all of the costs of legal representation and witness expenses of the other Party.

(g) The Parties waive any right of appeal or recourse to any court except to compel arbitration, to compel the appointment of arbitrators, to stay judicial proceedings pending arbitration, for an injunction pending determination by the arbitrators, for disqualification of arbitrators, for aid in furtherance of arbitration, to confirm the award, to enforce any judgment confirming the award, or in circumstances of fraud or failure to disclose information or documents required by the arbitrators.

(h) The decision or award of a majority of the arbitrators shall govern. The decision or award of the arbitrators shall be final and binding upon the Parties to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and shall be enforceable under the Federal Arbitration Act and applicable states’ laws.

8.3.5 Rights and Remedies. If the Dispute is not resolved within ten (10) calendar days of being referred to executive management representatives, and the amount in dispute or potential damages does not exceed \$250,000 USD, each Party is free to pursue any rights or remedies it may have at law or equity.

8.4 Rights Under FPA Unaffected. Except as provided in Section 17.2 relating to the variation or amendment of this Agreement, nothing in this Agreement is intended to limit or abridge any rights that Company may have to file or make application before FERC under Section 205 of the Federal Power Act to revise any rates, terms or conditions of the OATT.

8.5 Statute of Limitations; Continued Performance. The Parties agree to waive the applicable statute of limitations during the period of time that the Parties are seeking to resolve a Dispute pursuant to Section 8.3, and the statute of limitations shall be tolled for such period. The Parties shall continue to perform their obligations under this Agreement during the resolution of a Dispute.

## Section 9 - Insurance

9.1 TranServ's Insurance Obligation. During the Term, TranServ shall provide and maintain, and shall require TranServ Designees to provide and maintain, the following insurance (and, except with regard to Workers' Compensation, naming Company as additional insured and waiving rights of subrogation against Company and Company's insurance carrier(s)), and TranServ shall submit evidence of such coverage(s) of TranServ and any TranServ Designees to Company prior to the start of ITO Services. Furthermore, TranServ shall notify Company, prior to the commencement of ITO Services, of any threatened, pending and/or paid off claims to third parties, individually or in the aggregate, which otherwise affects the availability of the limits of such coverage(s) inuring to the benefit of Company as hereinafter specified:

9.1.1 Workers' Compensation and Employer's Liability Policy, which shall include provisions required by applicable law in the jurisdiction of location of workers.

9.1.2 Employer's Liability (Coverage B) with limits of One Million Dollars (\$1,000,000) Bodily Injury by Accident, each Accident, \$1,000,000 Bodily Injury by Disease, each Employee, and including:

- (a) a thirty (30) day cancellation clause; and
- (b) broad form all states endorsement.

9.1.3 Commercial General Liability Policy, which shall have minimum limits of One Million Dollars (\$1,000,000) each occurrence; One Million Dollars (\$1,000,000) Products/Completed Operations Aggregate each occurrence; One Million Dollars (\$1,000,000) Personal and Advertising Injury each occurrence, in all cases subject to Two Million Dollars (\$2,000,000) in the General Aggregate for all such claims, and including:

- (a) a thirty (30) day cancellation clause;
- (b) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by TranServ under this Agreement; and
- (c) Broad Form Property Damage.

9.1.4 Commercial Automobile Liability Insurance covering the use of all owned, non-owned, and hired automobiles, with a bodily injury, including death, and property damage combined single minimum limit of One Million Dollars (\$1,000,000) each occurrence with respect to TranServ's vehicles assigned to or used in performance of ITO Services under this Agreement.

9.1.5 Umbrella/Excess Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) per occurrence; Two Million Dollars (\$2,000,000) aggregate, to apply to employer's liability, commercial general liability, and automobile liability.

9.1.6 To the extent applicable, if engineering or other professional services will be

separately provided by TranServ as specified in Appendix A, then Professional Liability Insurance with limits of Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, which insurance shall be either on an occurrence basis or on a claims made basis (with a retroactive date satisfactory to Company).

9.2 Quality of Insurance Coverage. The above policies to be provided by TranServ shall be written by insurance companies which are both licensed to do business in the state where ITO Services will be performed and either satisfactory to Company or having a Best Rating of not less than "A-". These policies shall not be materially changed or canceled except with thirty (30) days written notice to Company from TranServ and the insurance carrier. Evidence of coverage, notification of cancellation or other changes shall be mailed to: Attention: Manager, Supply Chain, LG&E and KU Services Company, P.O. Box 32020, Louisville, Kentucky 40232.

9.3 Implication of Insurance. Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements; however, Company shall not be obligated to review any of TranServ's certificates of insurance, insurance policies, or endorsements, or to advise TranServ of any deficiencies in such documents. Any receipt of such documents or their review by Company shall not relieve TranServ from or be deemed a waiver of Company's rights to insist on strict fulfillment of TranServ's obligations under this Agreement.

9.4 Other Notices. TranServ shall provide written notice of any accidents or claims in connection with ITO Services or this Agreement to Company's Manager, Risk Management at LG&E and KU Services Company, P.O. Box 32030, Louisville, Kentucky 40232.

## **Section 10 - Confidentiality**

10.1 Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean, in respect of each Party, all information and documentation of such Party, whether disclosed to or accessed by the other Party in connection with this Agreement and which is identified as Confidential Information, or which otherwise would be treated as confidential by the recipient, including confidential information provided by third-parties; provided, however, that the term "Confidential Information" shall not include information that: (a) is independently developed by the recipient, as demonstrated by the recipient's written records, without violating the disclosing Party's proprietary rights; (b) is or becomes publicly known (other than through unauthorized disclosure); (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (d) is already known by the recipient at the time of disclosure, as demonstrated by the recipient's written records, and the recipient has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements between the Parties entered into before the Commencement Date; or (e) is rightfully received by a Party free of any obligation of confidentiality.

10.2 Protection of Confidential Information. All Confidential Information shall be held in confidence by the recipient to the same extent and in at least the same manner as the recipient protects its own Confidential Information, and such Confidential Information shall be used only for purposes of performing obligations under this Agreement. Except as otherwise provided in

Section 10.3, neither Party shall disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from, the other Party in any form to, or for the use or benefit of, any person or entity without the owner of such information's prior written consent. Each Party shall be permitted to disclose relevant aspects of the other Party's Confidential Information to its officers, directors, agents, professional advisors, contractors, subcontractors (including TranServ Designees) and employees and to the officers, directors, agents, professional advisors, contractors, subcontractors and employees of its Affiliates (collectively, "Representatives"), to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations or the determination, preservation or exercise of its rights and remedies under this Agreement; provided, however, that the recipient shall take all reasonable measures to ensure that Confidential Information is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, directors, agents, professional advisors, contractors, subcontractors and employees. Recipient agrees to be liable for the wrongful actions of its Representatives under this Section 10.2. The obligations in this Section 10 shall not restrict any disclosure pursuant to any Regulatory Authority if such release is necessary to comply with valid laws, governmental regulations or final orders of regulatory bodies or courts; provided that, other than in respect of disclosures pursuant to Section 10.3, the recipient shall give prompt written notice to the disclosing Party in reasonable time to exercise whatever legal rights the disclosing Party may have to prevent or limit such disclosure. Further, the recipient shall cooperate with the disclosing Party in preventing or limiting such disclosure.

10.3 Regulatory Requests for Confidential Information. Notwithstanding anything in this Section 10 to the contrary, if a Regulatory Authority or its staff, during the course of an investigation or otherwise, requests Confidential Information from TranServ, TranServ shall provide the requested Confidential Information to the requesting Regulatory Authority or its staff within the time provided for in the request for information. In providing the Confidential Information to a Regulatory Authority or its staff, TranServ shall, consistent with 18 C.F.R. § 388.112 (2011) or any other applicable confidentiality regulation, request that the Confidential Information be treated as confidential and non-public by the Regulatory Authority and its staff and that the information be withheld from public disclosure. TranServ shall notify Company when it is notified by the Regulatory Authority or its staff that a request for public disclosure of, or decision to publicly disclose, Confidential Information has been received, at which time either TranServ or Company may respond before such Confidential Information is made public, pursuant to 18 C.F.R. § 388.112 or the applicable confidentiality regulation.

## **Section 11 - Force Majeure.**

11.1 Force Majeure. Neither Party shall be liable to the other Party for any failure or delay of performance hereunder due to an event which (i) is not reasonably foreseeable or within the reasonable control of the Party claiming Force Majeure (the "Claiming Party") or any Person over which the Claiming Party has control, (ii) was not caused by the acts, omissions, negligence, fault or delays of the Claiming Party or any person over whom the Claiming Party has control, (iii) is not an act, event or condition the risks or consequences of which the Claiming Party has expressly agreed to assume pursuant to this Agreement, and (iv) by the prompt exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided (collectively, (i) - (iv) are "Force Majeure"). Force Majeure shall include: acts of God; acts of the public enemy, war, hostilities, invasion, insurrection, riot, civil disturbance, or order of any

competent civil or military government; explosion or fire; strikes or lockouts or other industrial action (excluding those of the Claiming Party unless such action is part of a wider industrial dispute materially affecting other employers); labor or material shortage; malicious acts, vandalism or sabotage; action or restraint by court order of any public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action). Neither Party shall be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to Force Majeure, except for the obligation to pay any amount when due, provided that the Claiming Party:

11.1.1 gives prompt written notice to the other Party of the event or circumstance giving rise to the event of Force Majeure;

11.1.2 affords the other Party reasonable access to information about the event or circumstances giving rise to the event of Force Majeure;

11.1.3 takes commercially reasonable steps to restore its ability to perform its obligations hereunder as soon as reasonably practicable, provided that the Claiming Party shall not be obligated to take any steps that are not otherwise in accordance with Good Utility Practice; and

11.1.4 exercises commercially reasonable efforts to perform its obligations hereunder.

## **Section 12 - Reporting; Audit.**

### 12.1 Regulatory Reporting.

12.1.1 TranServ shall have the authority to report in writing to FERC in respect of any compensation-related Dispute that arises between TranServ and Company pursuant to Section 3.6.

12.1.2 TranServ shall report in writing to FERC every six (6) months (commencing on the six (6) month anniversary of the Commencement Date and every six (6) months thereafter during the Term) in respect of (a) any concerns expressed by stakeholders and TranServ's response to same and (b) any issues or OATT provisions that hinder TranServ from performing its duties and obligations under this Agreement and the OATT.

12.1.3 In addition to the reports provided for above, TranServ shall make such other reports to Regulatory Authorities as may be required by applicable law and regulations or as may be requested by such Regulatory Authorities.

12.2 Books and Records. TranServ shall maintain full and accurate books and records pertinent to this Agreement, and TranServ shall maintain such books and records for a minimum of five (5) years following the expiration or early termination of this Agreement or longer if necessary to resolve a pending Dispute. Company will have the right, at reasonable times and under reasonable conditions, to inspect and audit, or have an independent third party inspect and audit, TranServ's operations, books, and records (a) to ensure compliance with this Agreement, including TranServ's performance of ITO Services in accordance with Section 1.3.1, (b) to



verify any cost claims or other amounts due hereunder, and (c) to validate TranServ's internal controls with respect to the performance of ITO Services. TranServ shall maintain an audit trail, including all original transaction records and timekeeping records, of all financial and non-financial transactions and activities resulting from or arising in connection with this Agreement as may be necessary to enable Company or the independent third party, as applicable, to perform the foregoing activities. Company shall be responsible for any costs and expenses incurred in connection with any such inspection or audit, unless such inspection or audit discovers that Company was charged inappropriate or incorrect costs and expenses, in which case, TranServ shall be responsible for a percentage of the costs and expenses incurred in connection with such inspection or audit equal to the percentage variance by which Company was charged inappropriate or incorrect costs and expenses. TranServ shall provide reasonable assistance necessary to enable Company or an independent third party, as applicable, to perform the foregoing activities and shall not be entitled to charge Company for any such assistance. Amounts incorrectly or inappropriately invoiced by TranServ to Company, whether discovered prior to or subsequent to payment by Company, shall be adjusted or reimbursed to Company by TranServ within twenty (20) days of notification by Company to TranServ of the error in the invoice.

### **Section 13 - Independent Contractor**

13.1 TranServ, in performing ITO Services, shall not act as an agent or employee of Company, but shall be and act as an independent contractor and, except as established in Section 1.3.1, shall be free to perform ITO Services by such methods and in such manner as TranServ may choose, doing everything necessary to perform such ITO Services properly and safely and having supervision over and responsibility for the safety and actions of its employees and the suitability of its equipment. TranServ Personnel and TranServ Designees shall not be deemed to be employees and/or agents of Company. TranServ agrees that if any portion of ITO Services are subcontracted to TranServ Designees, such TranServ Designees shall be bound by and observe the conditions of this Agreement to the same extent as required of TranServ. In such event, Company strongly encourages the use of Minority Business Enterprises, Women Business Enterprises and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Company recognizes as proper.

13.2 Notwithstanding any provision in this Agreement to the contrary, unless approved in writing by Company, TranServ shall not (and shall not permit any TranServ Personnel or TranServ Designee to):

13.2.1 Sell, lease, pledge, mortgage, encumber, convey, or make any license, exchange or other transfer, assignment or disposition of any property or assets of Company;

13.2.2 Enter into, amend, terminate, modify or supplement any contract or agreement (including any labor or collective bargaining agreement) on behalf, or in the name, of Company;

13.2.3 Except upon the approval of Company or pursuant to the direction of Company, take any action that would, to TranServ's knowledge: (a) invalidate any warranty that runs to Company under any contract or agreement; or (b) release any person or entity

from its obligations under any contract or agreement with Company;

13.2.4 Make any warranty or representation on behalf of Company;

13.2.5 Except as contemplated under Section 7.4, settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of any claim, suit, debt, demand or judgment against or due by Company, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to the same;

13.2.6 Pledge the credit of Company in any way in respect of any commitments for which it has not received express written authorization from Company; or

13.2.7 Engage in any other transaction on behalf of Company not permitted under this Agreement.

**Section 14 - Taxes.**

Each Party shall be responsible for the payment of its own taxes, including taxes based on its net income, employment taxes of its employees, taxes on any property it owns or leases, and sales, use, gross receipts, excise, value-added or other transaction taxes. Sales and/or use taxes, that become applicable to services performed within Minnesota, shall be added to TranServ fees and compensation otherwise herein described.

**Section 15 - Notices.**

15.1 Notices. All notices, requests, consents and other communications required or permitted hereunder shall be in writing, signed by the Party giving such notice or communication, and shall be deemed given: (a) upon receipt, when mailed by U.S. certified mail, postage prepaid, return receipt requested; or (b) upon the next business day, when sent by overnight delivery, postage prepaid using a recognized courier service.

If to Company:

LG&E/KU  
VP, Transmission  
220 West Main St  
PO Box 32010  
Louisville, KY 40232

If to TranServ:

TranServ International, Inc.  
Contracts Administration  
3660 Technology Drive NE  
Minneapolis, MN 55418

15.2 Changes. Either Party may, from time to time, change the names, addresses, facsimile numbers or other notice information set out in Section 15.1 by notice to the other Party in accordance with the requirements of Section 15.1.

## **Section 16 - Personnel and Work Conditions; NERC Requirements.**

16.1 Applicable Laws and Safety. TranServ agrees to protect TranServ Personnel and TranServ Designees and be responsible for their performance of the ITO Services, and to protect Company's facilities, property, employees and third parties from damage or injury. TranServ shall at all times be solely responsible for complying with any and all applicable laws and facility rules relating to health and safety, in connection with ITO Services and for obtaining (but only as approved by Company) all permits and approvals necessary to perform ITO Services. Without limiting the foregoing, TranServ agrees to strictly abide by and observe all standards of the Occupational Safety & Health Administration ("OSHA") which are applicable to ITO Services, as well as Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy which are both hereby incorporated by reference (Contractor hereby acknowledges receipt of a copy of such Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy) and any other rules and regulations of the Company, all of which are provided to TranServ in writing and incorporated herein by reference. TranServ also agrees to review in good faith and execute any amendments and/or modifications that may be issued in the future by Company from time to time, with respect to Company's Contractor Code of Business Conduct and/or any of its related policies which are the subject of this Section 16, provided however, that TranServ shall not be obliged by such requirement if the requirements conflicts with an alternate regulatory code of conduct imposed on TranServ. In the event TranServ subcontracts any of ITO Services to a TranServ Designee, TranServ shall notify Company in writing of the identity of TranServ Designee before utilizing TranServ Designee. TranServ shall require any TranServ Designees to complete the safety and health questionnaire and checklists provided by Company and shall provide a copy of such documents to Company upon request. TranServ shall conduct, and require such TranServ Designees to conduct, safety audits and job briefings during performance of ITO Services as applicable. In the event such TranServ Designee has no procedure for conducting safety audits and job briefings, TranServ shall include TranServ Designee in its safety audits and job briefings. All applicable safety audits shall be documented in writing by TranServ and such TranServ Designees. TranServ shall provide documentation of any and all audits identifying safety deficiencies and concerns and corrective action taken as a result of such audits to Company semi-monthly. TranServ further specifically acknowledges, agrees and warrants that TranServ has complied, and shall at all times during the term of this Agreement, comply in all respects with all laws, rules and regulations relating to the employment authorization of TranServ Personnel including, but not limited to, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, whereby TranServ certifies to Company that TranServ has (a) properly maintained, and shall at all times during the term of this Agreement properly maintain all records required by Immigration and Customs Enforcement, such as the completion and maintenance of the Form I-9 for each TranServ employee; (b) that TranServ maintains and

follows an established policy to verify the employment authorization of TranServ Personnel; (c) that TranServ has verified the identity and employment eligibility of all TranServ Personnel in compliance with all applicable laws; and (d) that TranServ is without knowledge of any fact that would render any TranServ Personnel or TranServ Designee ineligible to legally work in the United States. TranServ further acknowledges, agrees and warrants that any TranServ Designee shall be required to agree to these same terms as a condition to being awarded any subcontract for such ITO Services.

16.2 Hazards and Training. TranServ shall furnish adequate numbers of trained, qualified, and experienced TranServ Personnel suitable for performance of ITO Services. Such TranServ Personnel shall be skilled and properly trained to perform ITO Services and recognize all hazards associated with ITO Services. Without limiting the foregoing, TranServ shall participate in any safety orientation or other of Company's familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Company.

16.3 Drug and Alcohol. TranServ shall develop and strictly comply with any and all drug and alcohol testing requirements as required by applicable laws. TranServ shall provide Company with a copy of its drug and alcohol testing requirements.

16.4 NERC Reliability Standards. The following additional provisions shall apply to the extent TranServ's performance of ITO Services requires physical or electronic access to areas or assets which are located within physical security perimeters as defined by NERC's Reliability Standards for the Bulk Electric Systems of North America (collectively, the "NERC Standards"), including without limitation any Company data center or control center. In the event of TranServ's non-compliance with the NERC Standards referenced in this Section 16.4, Company shall notify TranServ in writing of the non-compliance and specify appropriate remedial actions.

16.4.1 Information Protection. Without compromising the confidentiality provisions in Section 10, TranServ shall at all times comply with the Company's information protection program(s) as defined by CIP-003, R4. Among the information protected by this program are: (i) all operational procedures; (ii) lists of critical cyber assets; (iii) network topology or similar diagrams; (iv) floor plans of computing centers that contain critical cyber assets; (v) equipment layouts of critical cyber assets; (vi) disaster recovery plans; (vii) incident response plans; and (viii) security configuration information. TranServ shall protect this protected information from disclosure consistent with the program.

16.4.2 Access Revocation. TranServ shall immediately advise appropriate Company's management if any TranServ Personnel or TranServ Designees who have key card access to a Company restricted area or electronic access to a protected system no longer require such access.

16.4.3 Training. If any TranServ Personnel require key card access to a Company restricted area or electronic access to a protected system, TranServ shall ensure that such personnel complete, and retake as requested, all necessary NERC training as requested by Company.

16.4.4 Personnel Risk Assessment. If any TranServ Personnel require key card access to a Company restricted area or electronic access to a protected system, TranServ shall ensure that Company receives necessary waivers and information from TranServ Personnel to complete, and repeat as necessary, such background checks as requested by Company.

16.4.5 Continuing Obligations. TranServ further acknowledges that its compliance with the NERC Standards referenced in this Section 16.4 is a continuing obligation during and after the Term. Upon written notice to TranServ, Company shall have the absolute right to audit and inspect any and all information regarding TranServ's compliance with this Section 16.4, and/or to require confirmation of the destruction of any documentation received from or regarding Company. TranServ is encouraged to contact Company's Compliance Department pursuant to Section 16.5 to ensure TranServ understands and complies with this Section 16.4.

16.5 Compliance Department. The Company has a Compliance Department. Should TranServ have actual knowledge of violations of any of the herein stated policies of conduct in this Section 16, or in standards of performance detailed in Section 1.3.1, or have a reasonable basis to believe that such violations have occurred, whether by TranServ Personnel or a TranServ Designee, TranServ has an affirmative obligation to immediately report, at least on an anonymous basis, any such known violations to the Company's Office of Compliance in care of Director, Compliance and Ethics, LG&E/KU Services, 220 West Main Street, Louisville, Kentucky 40202.

16.6 Equal Employment Opportunity. To the extent applicable, TranServ shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 C.F.R. § 60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 C.F.R. § 60-250.4 relating to the employment and advancement of disabled veterans and Vietnam era veterans; (iii) Rehabilitation Act regulations set forth in 41 C.F.R. § 60-741.4 relating to the employment and advancement of qualified disabled employees and applicants for employment; (iv) the clause known as "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" set forth in 15 USC § 637(d)(3); and (v) the subcontracting plan requirement set forth in 15 USC § 637(d).

## **Section 17 - Miscellaneous Provisions.**

17.1 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without giving effect to its conflicts of law rules.

17.2 Amendment. This Agreement shall not be varied or amended unless such variation or amendment is agreed to by the Parties in writing and accepted by applicable Regulatory Authorities. The Parties explicitly agree that neither Party shall unilaterally petition to FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act to amend this Agreement or to request that FERC initiate its own proceeding to amend this Agreement.

Nothing in this Section 17.2 shall be construed to limit or affect any other rights that the Parties may have as set forth in Section 8.4, the OATT or otherwise.

17.3 Liability of Affiliates. Any and all liabilities of Company and/or its Affiliates under this Agreement shall be several but not joint.

17.4 Publicity. TranServ shall not issue news releases, publicize or issue advertising pertaining to ITO Services or this Agreement without first obtaining the written approval of Company.

17.5 Assignment. Any assignment of this Agreement or any interest herein or delegation of all or any portion of a Party's obligations, by operation of law or otherwise, by either Party without the other Party's prior written consent shall be void and of no effect; provided, however, that consent will not be required for Company to assign this Agreement to an Affiliate or a successor entity that acquires all or substantially all of the operational business assets of the assigning entity whether by merger, consolidation, reorganization, sale, spin-off or foreclosure; provided, further, that such Affiliate or successor entity (a) agrees to assume all obligations hereunder from and after the date of such assignment and (b) has the legal authority and operational ability to satisfy the obligations under this Agreement. As a condition to the effectiveness of such assignment (i) the assignor shall promptly notify the other Party of such assignment, (ii) the Affiliate or successor entity shall provide a confirmation to the other Party of its assumption of assignor's obligations hereunder, and (iii) assignor shall promptly reimburse the other Party, upon receipt of an invoice, for any one-time incremental costs reasonably incurred as a result of such assignment. For the avoidance of doubt, nothing herein shall preclude Company from transferring any or all of its transmission facilities to another entity or disposing of or acquiring any other transmission assets. Notwithstanding anything to the contrary contained in this Section 17.5, TranServ shall be entitled to contract with one or more persons (each, an "TranServ Designee") to perform only those ITO Services which the OATT expressly provides for being performed by a "designee" of TranServ (as opposed to TranServ or TranServ Personnel), provided that TranServ shall not be relieved of any of its obligations, responsibilities or liabilities under this Agreement as a result of contracting with one or more TranServ Designees in accordance with this Section 17.5 and shall be responsible and liable for any ITO Services performed by TranServ Designees.

17.6 No Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, this Agreement is made solely for the benefit of the Parties and their successors and permitted assigns and no other person shall have any rights, interest or claims hereunder or otherwise be entitled to any benefits under or on account of this Agreement as third party beneficiary or otherwise.

17.7 Waivers. No waiver of any provision of this Agreement shall be effective unless it is signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights or remedies under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights or remedies, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

17.8 Enforcement of Rights. Each Party shall have the right to recover from the other Party all expenses, including fees for and expenses of inside and/or outside counsel, arising out of the other Party's breach of this Agreement or any other action to enforce or defend rights hereunder.

17.9 Severability; Renegotiation. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision herein. If any provision of this Agreement is found to be invalid, illegal or otherwise unenforceable, the same shall not affect the other provisions hereof or the whole of this Agreement and shall not render invalid, illegal or unenforceable this Agreement or any of the remaining provisions of this Agreement. If any provision of this Agreement or the application thereof to any person, entity or circumstance is held by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, or if a modification or condition to this Agreement is imposed by such court or regulatory authority, the Parties shall in good faith negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the Parties immediately prior to such holding, modification or condition.

17.10 Remedies. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy available at law or equity or otherwise. The election of one or more remedies shall not constitute a waiver of the right to pursue any other available remedies.

17.11 Representations and Warranties. Each Party represents and warrants to the other Party as of the date hereof as follows:

17.11.1 Organization. It is duly organized, validly existing and in good standing under the laws of the State in which it was organized, and has all the requisite power and authority to own and operate its material assets and properties and to carry on its business as now being conducted and as proposed to be conducted under this Agreement.

17.11.2 Authority. It has the requisite power and authority to execute and deliver this Agreement and, subject to the procurement of applicable regulatory approvals, to perform its obligations under this Agreement. The execution and delivery of this Agreement by it and the performance of its obligations under this Agreement have been duly authorized by all necessary corporate action required on its part.

17.11.3 Binding Effect. Assuming the due authorization, execution and delivery of this Agreement by the other Party, this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar applicable laws affecting creditors' rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

17.11.4 Regulatory Approval. It has obtained or will obtain by the Commencement Date, any and all approvals of, and acceptances for filing by, and has given or will give any notices to, any applicable federal or state authority, including FERC and the KPSC (as applicable), that are required for it to execute, deliver, and perform its obligations under this Agreement.

17.11.5 No Litigation. There are no actions at law, suits in equity, proceedings, or claims pending or, to its knowledge, threatened against it before or by any federal, state, foreign or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

17.11.6 No Violation or Breach. The execution, delivery and performance by it of its obligations under this Agreement do not and shall not: (a) violate its organizational documents; (b) violate any applicable law, statute, order, rule, regulation or judgment promulgated or entered by any applicable federal or state authority, which violation could reasonably be expected to materially adversely affect the performance of its obligations under this Agreement; or (c) result in a breach of or constitute a default of any material agreement to which it is a party.

17.11.7 No Other Warranties. EXCEPT AS PROVIDED IN THIS AGREEMENT, TRANSERV MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17.12 Further Assurances. Each Party agrees that it shall execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the purpose of this Agreement and are not inconsistent with the provisions of this Agreement.

17.13 Entire Agreement. This Agreement and the Attachments hereto set forth the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements, whether oral or written, related to the subject matter of this Agreement. The terms of this Agreement and the Attachments hereto are controlling, and no parole or extrinsic evidence, including to prior drafts and drafts exchanged with any third parties, shall be used to vary, contradict or interpret the express terms and conditions of this Agreement.

17.14 Good Faith Efforts. Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and the other Party to fulfill their obligations under this Agreement. Where the consent, agreement or approval of any Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, delayed or conditioned. Where a Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised, other than where expressly provided for herein. To the extent that the jurisdiction of any federal or state authority applies to any part of this Agreement or the transactions or actions covered by this Agreement, each Party shall cooperate with the other Party to secure any necessary or desirable approval or acceptance of such authorities of such part of this Agreement or such transactions or actions.

17.15 Time of the Essence. With respect to all duties, obligations and rights of the Parties specified by Regulatory Authorities, time shall be of the essence in this Agreement.

17.16 Interpretation. Unless the context of this Agreement otherwise clearly requires:



17.16.1 all defined terms in the singular shall have the same meaning when used in the plural and vice versa;

17.16.2 the terms “hereof,” “herein,” “hereto” and similar words refer to this entire Agreement and not to any particular Section, Attachment or any other subdivision of this Agreement;

17.16.3 references to “Section” or “Appendix” refer to this Agreement, unless specified otherwise;

17.16.4 references to any law, statute, rule, regulation, notification or statutory provision shall be construed as a reference to the same as it applies to this Agreement and may have been, or may from time to time be, amended, modified or re-enacted;

17.16.5 references to “includes,” “including” and similar phrases shall mean “including, without limitation;”

17.16.6 the captions, section numbers and headings in this Agreement are included for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement;

17.16.7 “or” may not be mutually exclusive, and can be construed to mean “and” where the context requires there to be a multiple rather than an alternative obligation; and

17.16.8 references to a particular entity include such entity’s successors and assigns to the extent not prohibited by this Agreement.

17.17 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other and no provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provision. Each Party acknowledges that in executing this Agreement it has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and it has not been influenced by any representation or statement made by the other Party or its counsel not contained in this Agreement.

17.18 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon Company and TranServ, notwithstanding that Company and TranServ may not have executed the same counterpart.

The Parties have caused this Independent Transmission Organization Agreement to be executed by their duly authorized representatives as of the dates shown below.

**LOUISVILLE GAS AND ELECTRIC COMPANY/  
KENTUCKY UTILITIES COMPANY**

**/s/ Stephanie R. Pryor**

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Name: Stephanie R. Pryor  
Title: Manager Supply Chain  
Date: 12/9/2016

**TRANSERV INTERNATIONAL, INC.**

**/s/ Sasan Mokhtari, PhD**

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Name: Sasan Mokhtari, PhD  
Title: President & CEO  
Date: 12/8/2016

Appendix A  
Louisville Gas and Electric  
Company/  
Kentucky Utilities Company

# INDEPENDENT TRANSMISSION ORGANIZATION SERVICE SPECIFICATION

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## **1. Overview**

This Appendix A is intended to be consistent with the terms and conditions of the LG&E/KU Open Access Transmission Tariff (OATT), including Attachment P thereto. If there is any conflict between this Appendix A and the OATT, the OATT shall govern. TranServ shall perform its obligations under this Appendix A in accordance with Section 1.3.1 of this Agreement.

The services delegated to TranServ include the administration of the LG&E/KU Open Access Same-time Information System (OASIS), transmission service request evaluation process, Available Transfer Capability (ATC)/ Available Flowgate Capability (AFC) management, study queue administration, study performance, and stakeholder facilitation. TranServ, as the ITO, will administer the OATT granting of service for both short and long-term transmission requests, administer the large generator interconnection request queue, and perform transmission studies. TranServ will facilitate the LG&E/KU long-term transmission planning function and stakeholder processes.

## 2. Definitions

Company - Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU)

ITO - Independent Transmission Organization

ITO Services - The applicable functions to be performed as specified in the ITO Agreement

RC - Reliability Coordinator

Service Interruption - A Service Interruption is the loss of Service function, under the direct control of TRANSERV with no mutually agreed to work around provided within the Service

Normal Business Hours - TranServ normal business hours are between the hours of 0700 and 1700 CT, Monday-Friday on days other than the holidays listed below:

1. New Year's Day
2. Memorial Day
3. Independence Day
4. Labor Day
5. Thanksgiving
6. Day after Thanksgiving
7. Day before Christmas
8. Christmas Day

### **3. Roles and Responsibilities for Providing ITO Services**

#### **3.1 TranServ**

TranServ International, Inc. (TranServ) will provide services to LG&E/KU as the ITO. The services that TranServ will provide include:

##### **3.1.1 Customer Interface**

Responsibility for operating and maintaining OASIS website and keeping it up-to-date with Federal Energy Regulatory Commission (FERC) and North American Energy Standards Board (NAESB) posting requirements, including all Order No. 890 posting requirements (such as study performance metrics, Available Transfer Capability (ATC) calculations, etc.). This includes establishing an interface for customers to submit service requests, and oversight and evaluation of ATC values calculated using software procured from Open Access Technology International, Inc. (OATI) and information from the RC. TranServ's responsibilities and duties in administering OASIS will include the following:

- Performing the duties of a Responsible Party as defined in the Commission's OASIS regulations, 18 C.F.R. § 37.5 and FERC Order No. 676.
- Posting information required to be on the Transmission Provider's OASIS under the Commission's OASIS regulations, 18 C.F.R. § 37.6 and FERC Order No. 676.
- Maintaining and retaining information posted on OASIS in accordance with the Commission's regulations, including 18 C.F.R. Parts 37 and 125.
- Establishing and maintaining queues for processing transmission service requests and generator interconnection (GI) requests.
- Participating in the drafting and posting of Business Practices on the OASIS website, including any FERC or NAESB-required Business Practices. Company shall have final review, ownership, and approval for all Business Practices.
- Participating in periodic reviews of, and providing expertise/comments on, the OATT. Company retains final authority over the OATT's content, including retaining the right and responsibility to file changes to the OATT.
- Participating in stakeholder meetings and/or conference calls as required. These

stakeholder meetings will include TranServ, Company, Customers (as appropriate) the RC, and other entities as required, to address concerns regarding Company's system, administration of the OATT, and related issues.

- Responsibility for coordinating with third-party transmission system owners and operators as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.
- Management of ATC/AFC Calculation and Posting.
- Implementation of certain aspects of the Congestion Management Process (CMP) established by the Midcontinent Independent System Operator, Inc. (MISO), PJM Interconnection LLC (PJM), and TVA.
- Administration of request evaluations for LG&E/KU tariff service.
- Processing of e-Tags as the transmission provider.
- Reviewing software changes requested from OATI, verifying and testing for proper operations before OATI implements those changes.

### **3.1.2 Transmission Service and Generator Interconnection Requests and Studies**

- Receive and process all applications for Point-to-Point, Network Integration Transmission Service (NITS), and for GIs.
- For short-term Point-to-Point Transmission Service requests (i.e., where the request is within the posted ATC horizon), evaluate and approve a request where the posted ATC is sufficient for the requested transaction. If ATC is insufficient, TranServ shall propose conditional service options to the customer in accordance with the OATT, or otherwise deny the service. If the customer accepts conditional service options, TranServ will be responsible for performing biennial reassessments, as provided under the OATT.
- For long-term Point-to-Point Transmission Service requests, NITS, or GI requests:
  - Determine whether a System Impact Study (SIS) is necessary to accommodate the request.
  - Render all study agreements (SIS, Interconnection Feasibility Studies (IFS), Facilities Study (FS), and Feasibility Analysis Studies (FAS)) to customers within the timeframe provided in the OATT.



- Perform the SIS or FAS in the timeframe provided in the OATT, including clustered SISs when requested by customers and/or Company.
  - Perform the SIS or FAS using Company's planning criteria.
  - For any study that TranServ performs that requires information from Company (e.g., good faith construction estimates that are included in the SIS), request such information from Company no less than ten (10) business days before the expiration of the applicable study period.
  - Complete study reports and post on OASIS within the timeframe required under the OATT.
  - Notify the Company and individual customers of completed study reports, and alert the Company to initiate service agreements, if applicable.
  - Receive customer deposits.
  - Bill customers for SIS, IFS, FS, and FAS as required by the OATT, including provision of an itemized bill for services if requested by a customer.
  - Reimburse Company for any study costs incurred in contributing to the study and render payment to any third-party vendors for work performed.
- Responsible for receiving and processing requests to designate or un-designate Network Resources, as provided under the OATT.
  - If a customer requests a modification to its service, or if a customer assigns its transmission service to a third-party who request modification to the service, process those modification requests in accordance with the terms of the OATT.
  - Track all study metrics, including data submittals, input validations, modifications, time and costs associated to perform the study.
  - Track the performance of all studies and alert Company if a FERC filing requirement or penalty payment has been triggered due to late studies, as described under the OATT.

### **3.1.3 ATC Calculation**

- Calculate ATC as provided for in Attachment C to the OATT. This includes receiving initial AFC values from the RC, calculating final AFC values using the algorithms

included in Attachment C, and converting the AFC to ATC using OATI software.

- Post on OASIS the mathematical algorithms used to calculate firm and non-firm AFC. TranServ shall also post the results of the AFC calculations on OASIS.
- Daily review of transmission service requests (TSRs) and eTag action and statistics.
- Daily review of posted AFC/ATC information and investigation into any anomalies.
- Review, observation, and validation of the Total Transfer Capability (TTC) development process.

#### **3.1.4 Interchange and Scheduling**

- As the Transmission Service Provider, responsible for the following activities:
  - Confirm that each electronic schedule (e-Tag) has a confirmed transmission service request.
  - Approve the interchange schedules as the transmission service provider.
  - Curtail electronic schedules if requested by the RC or Balancing Authority (BA).
  - Monitor and validate the Net Scheduled Interchange (NSI), as processed by OATI software, to ensure timely creation of the NSI data file with a syntactical quality check on the data set.

#### **3.1.5 Transmission Planning**

- TranServ will participate in Company's transmission planning process as outlined in Attachment K to the OATT, including the following activities:
  - Review and approve Company's long-term (generally one year and beyond) plan for the reliability/adequacy of Company's Transmission System.
  - Review and approve Transmission System models (steady state, dynamics, and short circuit).
  - Develop alternatives to Planning Redispatch service.
  - Notify impacted transmission entities of any planned transmission changes that may influence their facilities.

- Participate with the SPC and associated SPC working groups, as required.
- Participate in the overall OATT Attachment K process as observer.
- The Parties agree that the final annual transmission plan and decision of whether/when to construct and expand the system rests with Company.
- Both parties will communicate openly and in a timely manner; each will perform their respective work; and both will continually work together to improve mutual and individual processes in a joint effort to assure work is completed pursuant to Company standards and deadlines.

### 3.1.6 Compliance

- Establish and adhere to a “culture of compliance” for TranServ Personnel and TranServ Designees consistent with FERC’s Policy Statement on Compliance, 125 FERC ¶ 61,058 (2008) as may be supplemented or amended by further FERC orders. TranServ shall take such reasonable steps requested by the Company in furtherance of such a culture of compliance.
- In accordance with *Louisville Gas and Electric Company*, 114 FERC ¶ 61,282 at P 152 (2006), provide FERC with semi-annual reports “detailing concerns expressed by stakeholders and [ITO’s] response to those concerns as well as any issues or tariff provisions that hinder [ITO] from performing its required duties” as requested.
- Maintain records and provide reports as required by the Kentucky Public Service Commission (KPSC), OATT, Department of Energy (DOE), FERC, NERC, SERC Reliability Corporation (SERC) or NAESB. Without limiting the foregoing, Company may from time-to-time provide TranServ with specific direction as to records that Company expects to support compliance efforts, and TranServ shall maintain such records as directed.
- Assist Company, as requested by Company, in the preparation of applications, audit materials, filings, reports or responses to any Regulatory Authority. Without limiting the foregoing, this assistance may include from time-to-time preparation for (and participation in, if appropriate) FERC or NERC audits and providing event analysis information for FERC, NERC or SERC. TranServ’s support shall be provided in a time frame reasonably requested by Company.
- Monitor FERC, NERC, SERC, and NAESB activities for changes in standards or compliance requirements that may require modification to the ITO Services or other

coordination with Company. To the extent possible, TranServ shall notify Company of any proposed or pending modifications prior to their implementation. The Parties shall work together to establish a work plan and timetable for implementation of any such changes. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments as well Company requests, shall be assessed using the change order process detailed in Section 5 of this Appendix A.

### **3.2 Transmission Planner**

TranServ will provide certain services to LG&E/KU, the Transmission Planner (TP). The services include:

#### **3.2.1 Customer Interface**

- TranServ will participate in the drafting of Business Practices; including any FERC or NAESB required Business Practices. Company shall have final review, ownership, and approval for all Business Practices.
- TranServ will participate in periodic reviews of, and provide expertise/comments on the OATT. Company retains final authority over the OATT's content, including retaining the right and responsibility to file changes to the OATT.
- Responsible for planning, coordinating and holding regular stakeholder meetings and/or conference calls. These stakeholder meetings will include TranServ, Company, and the RC, and other entities as required, to address concerns regarding Company's system, administration of the OATT, and related issues. This activity includes (as necessary) performing background checks for stakeholders who desire access to Critical Energy Infrastructure Information (CEII), preparing meeting materials, facilitating the meeting, and preparing post-meeting minutes for posting on OASIS.
- Responsible for coordinating with third-party transmission system owners and operators as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.

### **3.3 LG&E/KU**

TranServ understands that Company has the following responsibilities in support of the ITO Services under this Appendix A:

### **3.3.1 Customer Interface**

- Contracting for the OATI webSmartOASIS service that meets FERC and NAESB requirements.
- Contracting for the OATI webTrans service used to evaluate and take actions on transmission service requests and e-Tags.
- Continuation of Agreement with the RC to provide necessary data for AFC/ATC calculation and posting processes.
- Final review, ownership, and approval for all Business Practices.
- Final authority over the OATT's content, including the right and responsibility to file changes to the OATT.
- Cooperate in the coordination with third-party systems as necessary to support customer service requests. This includes coordinating the provision of any data from Company to the third-party system.

### **3.3.2 Compliance**

- From time-to-time provide TranServ with specific direction as to records that Company expects to support compliance efforts, TranServ shall maintain such records as directed in order to provide reports as required by the KPSC, OATT, DOE, FERC, NERC, SERC or NAESB.
- Respond to TranServ notifications of FERC, NERC, SERC, and NAESB activities for changes in standards or compliance requirements that may require modification to the ITO Services or other coordination with Company within requested response timelines. Work together with ITO to establish a work plan and timetable for implementation of any such changes. The Parties agree that all changes to ITO Services resulting from legal and regulatory developments as well Company requests, shall be assessed using the change order process detailed in Section 5 of this Appendix A.

## 4. Customer Support

TranServ will provide support for Service 24-hours per day and 365-days per year by utilizing a single point of contact support staff. During Normal Business Hours the support staff can be contacted by telephone or by e-mail as outlined in published TranServ's ITO Support Information. After Normal Business Hours support is achieved through telephone only. TranServ will take all reasonable effort to ensure that reported problems or other Customer support related events are responded to within 30-minutes of the event notification when ITO Support Procedures are followed.

### 4.1 Problem Resolution

Problems or outages are reported to TranServ by following customer support processes. All problems or questions are assigned a severity level by mutual agreement of the parties. Problems which are considered Critical or High in severity should be reported to TranServ at any time. Problems considered Medium or Low severity should be reported by phone during business hours or by e-mail at any time. The severity level classifications are defined as follows:

- Critical - Problems or issues that are impacting business immediately or impacting grid reliability and action is required prior to next business day.
- High - Problems or issues that affect a key functionality of Service component and there is no work around available but immediate business or grid reliability impact is not present.
- Medium - Business processes are impacted, but satisfactory work around is in place to avoid business interruptions.
- Low - Customer inquiries or reported problems and issues that create nuisances or inconveniences for the customer. Minimal or no business impact is occurring.

<b>Ticket Resolution</b>		
<b>Action</b>	<b>TranServ Responsibility</b>	<b>Time To Remedy</b>
Correct a 'Critical' severity Problem or Issue	During normal business hours TranServ will respond to reported Critical severity problems and begin corrective action immediately until either a satisfactory work around is in place or problem is resolved. Outside of normal business hours TranServ will respond to reported Critical severity problems within 30-minutes of notification. Escalation to responsible TranServ senior management will occur in all cases.	TranServ will work continuously until resolution is in place. This may include a temporary work around until a permanent correction can be implemented. <b>Performance goal is to resolve all Critical severity tickets within 4-hours.</b>
Correct a 'High' severity Problem or Issue	During normal business hours TranServ will respond to reported High severity problems and begin corrective action to resolve with either a satisfactory work around or problem resolution prior to end of business day. Outside of normal business hours TranServ will respond to reported High severity problems within 30-minutes of notification. Escalation to responsible TranServ senior management will occur in all cases.	TranServ will provide an initial problem analysis update within 8-hours at all times. This may include a recommended temporary work around until a permanent correction can be implemented. <b>Performance goal is to resolve all High severity tickets within 24-hours.</b>
Correct a 'Medium' severity Problem or Issue	TranServ will schedule corrective action jointly with Customer. Problems of Medium severity should be reported by telephone during business hours or by e-mail at any time.	TranServ will provide an initial problem analysis update within 3-business days of notification of problem. An appropriate action plan and resolution schedule will be mutually agreed to with the Customer. <b>Performance goal is to resolve all Medium severity tickets by agreed to commitment date.</b>
Correct a 'Low' severity Problem or Issue	TranServ will schedule corrective action jointly with Customer. Problems of Low severity should be reported by telephone during business hours or by e-mail at any time.	TranServ will provide an initial problem analysis update within 5-business days. An appropriate action plan and resolution schedule will be mutually agreed to with the Customer. <b>Performance goal is to resolve all Low severity</b>

		<b>tickets by agreed to commitment date.</b>
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#### **4.1.1 Tickets - OATI webSupport**

To ensure all customers of TranServ receive a high level of customer service all calls or e-mails with questions or reported problems are documented in a Ticket. All TranServ staff members utilize OATI webSupport, an issue reporting and assignment platform allowing tracking and confirmed resolution of all issues reported to TranServ. Upon receiving a communication from a customer, TranServ will open a webSupport Ticket. The Ticket contains customer contact information, data metrics on the type of problem, an identification of the TranServ staff member to whom the Ticket is currently assigned, a detailed description of the problem, and a detailed description of the problem's current status which will eventually include a description of how the issue was resolved. The TranServ staff member provides the Ticket number to the customer for all issues not resolved immediately. If the issue cannot be resolved by the TranServ staff member creating the Ticket, the Ticket is reassigned to another member of the TranServ team. The TranServ staff member who initially created the Ticket is expected to use webSupport's monitoring capability to determine unresolved Tickets, and to reassign or escalate it as necessary at any time to promote prompt resolution within response timing guidelines.

#### **4.1.2 Response Time**

TranServ support staff will answer all calls as received during normal business hours and take all reasonable effort to resolve issues at the time of call. For issues and problems that are not immediately resolved, TranServ will follow normal processing for assigned severity level and notify customer once resolution occurs.

Calls to support staff outside of normal business hours will be answered as received and customer will be notified within 30-minutes on planned actions to be taken by TranServ support staff in accordance with normal processing for assigned severity level.

##### **4.1.2.1 Ticket Escalation**

Problem tickets that cannot be resolved in accordance with normal processing for assigned severity level will be escalated to appropriate TranServ management. Customers may request immediate ticket escalation to appropriate TranServ management.

##### **4.1.2.2 Customer Satisfaction**

Customer satisfaction inquiries are automatically sent to customers upon the closing of a ticket. The results of these surveys result in improved performance by customer support staff or changes in business processes.

## **5. Service Modifications**

From time to time Company may require a modification to an existing Service function. Such modifications may be prompted by changes in regulatory compliance requirements, or by a Company request. Minor modifications that require reasonably minimal resource commitment from TranServ staff will be included within a reasonable time period at no cost to Company. Modifications that may have more significant impact on Service design or will impact TranServ staff resource commitments more than minimally will be discussed with Company and may in some instances require additional payment by Company, or likewise, require a decrease in payment by Company. Each of these change requests will be described in a written Change Order. Each Change Order will be scheduled for implementation upon written agreement with Company as to scope, cost and schedule.

### **5.1 Minor Changes**

Any change to an existing Service function that does not have a significant impact on Service design or require TranServ to staff or contract with additional personnel, if even for a brief period of time, to prepare for and/or meet the requirements of the change (a "Minor Change") will be integrated into Company's Service at no cost to Company. A written Change Order will be negotiated and executed between Company and TranServ prior to implementation of any Minor Change.

### **5.2 Major Changes**

Any change to an existing Service function that has a significant impact on Service design or requires TranServ to staff additional or fewer personnel, if even for a brief period of time, in order to prepare for and/or meet the requirements of the change (a "Major Change") will require a written Change Order which must be negotiated and executed between Company and TranServ prior to implementation of any Major Change.

## **6. Reliability Coordination**

TranServ will be required to coordinate its operations with the LG&E/KU designated RC. The RC is responsible for performing certain reliability related tasks for the LG&E/KU system, including acting as the NERC-registered Reliability Coordinator. The RC's responsibilities are detailed in the Reliability Coordinator Agreement and Attachment P to the LG&E/KU OATT.

## **AMENDED AND RESTATED RELIABILITY COORDINATOR AGREEMENT**

**BETWEEN**

**LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY**

AND

TENNESSEE VALLEY AUTHORITY

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## Exhibit 1 - Congestion Management Process

## RELIABILITY COORDINATOR AGREEMENT

This Amended and Restated Reliability Coordinator Agreement (this "Agreement"), including all appendices, exhibits, and attachments, appended hereto, is entered into this 25<sup>th</sup> day of August, 2014 ("Execution Date"), between Louisville Gas and Electric Company and Kentucky Utilities Company, corporations organized pursuant to the laws of the State of Kentucky (collectively, "LG&E/KU"), and the Tennessee Valley Authority, a federal government corporation ("TVA" and, in its capacity as reliability coordinator pursuant to this Agreement, the "Reliability Coordinator") created by and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. §§ 831 *et seq.* (the "TVA Act"). LG&E/KU and the Reliability Coordinator may sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, LG&E/KU owns, among other things, an integrated electric transmission system ("Transmission System"), over which they currently provide open access transmission service to customers in the LG&E/KU Balancing Authority Area (as defined in Section 1.5 of LG&E/KU's Open Access Transmission Tariff, as on file with the Federal Energy Regulatory Commission ("FERC") and as may be changed from time to time (the "OATT"));

WHEREAS, LG&E/KU desires to have the Reliability Coordinator perform certain key reliability functions under the OATT, including: (i) reliability coordination (as defined in the relevant North American Electric Reliability Council ("NERC") Standards); (ii) transmission planning and regional coordination; (iii) approving LG&E/KU's maintenance schedules; (iv) identifying upgrades required to maintain reliability; (v) non-binding recommendations relating to economic transmission system upgrades; and (vi) administration of any seams agreements;

WHEREAS, LG&E/KU desires to have the Reliability Coordinator perform all functions identified for reliability coordinators in NERC's Standards;

WHEREAS, LG&E/KU will retain all remaining NERC obligations, including obligations associated with its status as a Control Area (including operations as a Balancing Authority and Transmission Operator as defined by NERC) and its obligations to ensure the provision of transmission services under the OATT, and will take action necessary to protect reliability of the Transmission System, including circumstances where such action is necessary to protect, prevent or manage emergency situations;

WHEREAS, the Reliability Coordinator is: (i) a federal government corporation charged with providing electric power, flood control, navigational control, agricultural and industrial development, and other services to a region including Tennessee and parts of six contiguous states; and (ii) recognized by NERC as a reliability coordinator;

WHEREAS, the Reliability Coordinator is independent from LG&E/KU, possesses the necessary competence and experience to perform the functions provided for hereunder and is willing to perform such functions under the terms and conditions agreed upon by the Parties as set forth in this Agreement;



WHEREAS, as part of LG&E/KU's goal to maintain the requisite level of independence in the operation of its Transmission System to prevent any exercise of transmission market power, LG&E/KU has entered into an Independent Transmission Organization Agreement (the "Independent Transmission Organization Agreement") with TranServ International, Inc. (the "Independent Transmission Organization" or "ITO"), pursuant to which the Independent Transmission Organization provides to LG&E/KU certain key transmission-related functions under the OATT;

WHEREAS, LG&E/KU seeks to ensure the full participation of the LG&E/KU Transmission System in the arrangements and protocols included in Congestion Management Process ("CMP"), which is Exhibit 1 hereto;

WHEREAS, through the Joint Reliability Coordination Agreement ("JRCA") between TVA and PJM Interconnection, L.L.C. ("PJM"), TVA and PJM participate in CMP;

WHEREAS, the Midcontinent Independent Operator, Inc. ("MISO"), through its Joint Operating Agreement with PJM, also participates in the CMP;

WHEREAS, by virtue of the reciprocity requirements found in Section 6.2 of the CMP, TVA will coordinate with MISO in order to manage regional coordination issues applicable under the CMP between the LG&E/KU system and MISO;

WHEREAS, TVA and LG&E/KU may choose to participate in similar reliability coordination agreements with other neighboring reliability coordination areas.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**Section 1 - Designation; Scope of Functions; Standards of Performance; Reliability Coordination Advisory Committee.**

1.1 Designation. LG&E/KU appoints TVA to act as LG&E/KU's designated Reliability Coordinator pursuant to and in accordance with the terms and conditions of this Agreement. The Reliability Coordinator shall have no responsibility to LG&E/KU, except as specifically set forth in this Agreement.

1.2 Scope of Functions. The Reliability Coordinator shall perform the functions assigned to it and described in Attachment A and Attachment B (the "Functions") seven days a week, twenty-four hours a day, for the duration of the Term in accordance with the terms and conditions of this Agreement. In accordance with its obligations under this Section 1.2, the Reliability Coordinator is authorized to, and shall, direct and coordinate timely and appropriate actions by LG&E/KU, including curtailing transmission service or energy schedules, redispatching generation, and shedding load, in each case, in order to avoid adverse effects on interregional bulk power reliability.

1.2.1 Relationship Between this Agreement and Attachment L to LG&E/KU's OATT. The Parties recognize that the relationship between LG&E/KU

and the Reliability Coordinator and the Functions to be performed by the Reliability Coordinator must be reflected in LG&E/KU's OATT. The Reliability Coordinator relationship and the Functions assigned to the Reliability Coordinator under Attachment A and Attachment B to this Agreement shall be reflected in Attachment L to LG&E/KU's OATT. To the extent that there is a conflict between Attachment A and/or Attachment B to this Agreement and Attachment L to LG&E/KU's OATT, Attachment L to LG&E/KU's OATT shall govern. Any changes proposed by LG&E/KU to FERC in Attachment L in LG&E/KU's OATT, pursuant to Section 5.3 of Attachment L in LG&E/KU's OATT, regarding the Functions or any other provisions that concern the Reliability Coordinator shall reflect the mutual agreement of the Parties. Notwithstanding this Section 1.2.1, nothing in this Agreement or Attachment L to LG&E/KU's OATT shall grant FERC any additional jurisdiction over TVA.

1.3 Reliability Coordinator Procedures. The Reliability Coordinator shall develop the procedures and guidelines by which it will perform the Functions (the "Reliability Coordinator Procedures") in coordination with the RCAC (as defined in Section 1.10) and applicable regional reliability councils. The Reliability Coordinator Procedures shall be documented in a NERC-approved reliability plan for the TVA Reliability Coordination Area or in TVA Standard Procedures and Policies. The Reliability Coordinator shall provide LG&E/KU advance written notice of any amendment or change to the Reliability Coordinator Procedures. For purposes of this Agreement, the term "TVA Standard Procedures and Policies" shall mean such procedures and policies related to TVA's operations as may be promulgated and published by TVA pursuant to its legal authorities and obligations.

1.4 Threat to Reliability. If the Reliability Coordinator determines that an actual or potential threat to transmission system reliability exists, and that such threat may impair the reliability of a transmission system, then the Reliability Coordinator shall direct that LG&E/KU take whatever actions are necessary, consistent with Good Utility Practice (as defined below) and in accordance with the applicable reliability criteria, policies, standards, rules, regulations and other requirements of NERC (collectively, the "NERC Standards") and any applicable regional reliability councils or their successors (collectively, "Regional Reliability Council Standards"), to avoid or mitigate the effects of the threat to transmission system reliability. For purposes of this Agreement, "Good Utility Practice" shall mean any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in a person's exercise of reasonable judgment in light of the facts as known to that person at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to include the range of acceptable practices, methods, or acts generally accepted in the region.

1.5 Reliability Coordinator Directives. Except as provided in the immediately succeeding sentence, LG&E/KU shall implement any directive given by the Reliability Coordinator pursuant to Sections 1.2 or 1.4. LG&E/KU shall not be obligated to

implement any directive which LG&E/KU determines will violate any state or federal law or the terms of any governmental approval applicable to LG&E/KU. LG&E/KU may review any directive given by the Reliability Coordinator pursuant to Sections 1.2 or 1.4, to determine if it is, in LG&E/KU's judgment, in accordance with the requirements of Section 1.8. If LG&E/KU determines that any directive is not in accordance with the requirements of Section 1.8, then it shall immediately so notify the Reliability Coordinator; provided, however, that, except as provided in the second sentence in this Section 1.5, LG&E/KU shall continue to implement the directive until the Reliability Coordinator notifies LG&E/KU otherwise. LG&E/KU's notice to the Reliability Coordinator shall include: (a) information outlining the basis for LG&E/KU's determination that (i) the directive is not in accordance with the requirements of Section 1.8 and, if applicable, (ii) that implementation of the directive will violate one or more state or federal laws or the terms of any governmental approvals applicable to LG&E/KU; and (b) the alternative action that LG&E/KU would prefer to take to alleviate the problem addressed by the Reliability Coordinator's directive. After prompt consideration of such information, the Reliability Coordinator shall issue a directive to LG&E/KU in accordance with its obligations under this Agreement and LG&E/KU will, subject to the second sentence in this Section 1.5, act in accordance with such directive.

1.6 Coordination with Independent Transmission Organization. In conjunction with its performance of the Functions, the Reliability Coordinator shall coordinate and cooperate with the Independent Transmission Organization and provide, subject to the terms and conditions of this Agreement, including the Reliability Coordinator's obligations with respect to Confidential Information in Section 10, any information that the Independent Transmission Organization may reasonably request in order to carry out its functions under the Independent Transmission Organization Agreement.

1.7 Expansion. Nothing in this Agreement is intended to prevent TVA from (a) coordinating, or cooperating in, interregional activities to relieve problems experienced by other transmission systems or (b) entering into other agreements with one or more third party transmission providers or operators to perform functions for such transmission providers or operators that are the same or similar to the Functions performed hereunder; provided, however, that it does not breach any of its obligations under this Agreement (including its obligations with respect to Confidential Information in Section 10) by entering into or performing any of its obligations under such other agreements; provided, further, that (i) any such other agreements shall provide for LG&E/KU to be reimbursed in an equitable manner for any capital expenditures made pursuant to this Agreement as well as for LG&E/KU's ongoing operations and maintenance expenditures to the extent such capital expenditures and operations and maintenance expenditures are used by the Reliability Coordinator in performing functions under such other agreements, (ii) LG&E/KU agrees to reimburse any such third party transmission providers or operators in an equitable manner for any capital expenditures made by such third parties as well as for such third parties' ongoing operations and maintenance expenditures to the extent such capital expenditures and operations and maintenance expenditures are used by the Reliability Coordinator in performing functions under this Agreement, and (iii) to the extent applicable, the Reliability Coordinator shall revise the compensation provided for in Section 3.1 in

accordance with the terms therein.

1.8 Reliability Coordinator's Standard of Performance. The Reliability Coordinator shall perform its obligations under this Agreement in accordance with: (a) Good Utility Practice; (b) the NERC Standards and Regional Reliability Council Standards; (c) LG&E/KU's specific reliability requirements and operating guidelines (to the extent these are not inconsistent with other requirements specified in this Section 1.8); (d) TVA Standard Procedures and Policies; and, (e) all state and federal laws, including the TVA Act, and the terms of governmental approvals applicable to one or both of the Parties. In performing its responsibilities under this Agreement, the Reliability Coordinator shall not discriminate against similarly situated persons.

1.9 LG&E/KU's Standard of Performance. LG&E/KU shall perform its obligations under this Agreement in accordance with: (a) Good Utility Practice; (b) the NERC Standards and Regional Reliability Council Standards; (c) any other LG&E/KU-specific reliability requirements and operating guidelines (to the extent these are not inconsistent with other requirements specified in this Section 1.9); and (d) all state and federal laws and the terms of governmental approvals applicable to LG&E/KU.

1.10 Reliability Coordination Advisory Committee.

1.10.1 Each Party shall designate one representative to serve on a Reliability Coordination Advisory Committee ("RCAC"), which shall be composed of representatives of each Party and representatives from each entity that has executed a similar reliability coordination agreement designating TVA as its reliability coordinator. Each Party may also designate one alternate to act in the absence of its representative on the RCAC. Written notice of each representative and alternate appointment shall be provided to each RCAC entity, and each Party may change its representatives upon written notice to the other RCAC entities.

1.10.2 The RCAC shall assist the Reliability Coordinator in the development of the initial Reliability Coordinator Procedures and the modification of existing Reliability Coordinator Procedures. In connection with these activities, the Reliability Coordinator may provide the other RCAC members with access to necessary data and documents maintained by the Reliability Coordinator, provided that each such RCAC member has signed the NERC Data Confidentiality Agreement and that all Confidential Information is treated as transmission operations and transmission system information pursuant to the NERC Data Confidentiality Agreement.

The RCAC shall meet at least once per Contract Year (as defined below). For purposes of this Agreement, a "Contract Year" shall consist of a twelve (12) month period. "Contract Year 1" shall begin on the Effective Date. Contract Years 2, 3, and 4 shall consist of the next three successive 12-month periods after Contract Year 1.

## **Section 2 - Independence.**

2.1 Key Personnel. All Functions shall be performed by employees of the Reliability Coordinator identified in Attachment C (the "Key Personnel"). The Reliability

Coordinator may from time to time change the names of the employees identified as Key Personnel by notice to LG&E/KU in accordance with Section 15.1. No Key Personnel shall also be employed by LG&E/KU or any of its Affiliates (as defined in 18 C.F.R. § 35.34(b)(3) of FERC's regulations). The Reliability Coordinator and the Key Personnel shall be, and shall remain throughout the Term, Independent (as defined below) of LG&E/KU, its Affiliates and the Independent Transmission Organization. For purposes of this Agreement: "Independent" shall mean that the Reliability Coordinator and the Key Personnel are not subject to the control of LG&E/KU, its Affiliates or the Independent Transmission Organization, and have full decision making authority to perform all Functions in accordance with the provisions of this Agreement. Any Key Personnel owning securities in LG&E/KU, its Affiliates or the Independent Transmission Organization shall divest such securities within six (6) months of first being assigned to perform such Functions, provided that nothing in this Section 2.1 shall be interpreted or construed to preclude any such Key Personnel from indirectly owning securities issued by LG&E/KU, its Affiliates or the Independent Transmission Organization through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted toward the electric industry or the electric utility industry or any segment thereof) under which the Key Personnel does not control the purchase or sale of such securities. Participation by any Key Personnel in a pension plan of LG&E/KU, its Affiliates or the Independent Transmission Organization shall not be deemed to be a direct financial interest if the plan is a defined-benefit plan that does not involve the Key Personnel's ownership of the securities. For the avoidance of doubt, LG&E/KU shall not have an approval or consent right with respect to the selection of any Key Personnel.

2.2 Standards of Conduct Treatment. All Key Personnel shall be treated, for purposes of FERC's Standards of Conduct, as transmission employees. All restrictions relating to information sharing and other relationships between merchant employees and transmission employees shall apply to the Key Personnel.

### Section 3 - Compensation, Billing and Payment.

3.1 Compensation. LG&E/KU shall pay to the Reliability Coordinator as compensation for the performance of the Functions under this Agreement as follows:

<u>Subsequent Term Beginning</u>	<u>Amount</u>
September 1, 2014	\$2,375,000
September 1, 2015	\$2,422,500
September 1, 2016	\$2,470,950
September 1, 2017	\$2,520,369
September 1, 2018	\$2,570,776

The Reliability Coordinator agrees that if at any time during the Term it expands its Reliability Coordination Area by providing similar services to additional Transmission Operators, the Reliability Coordinator will review and revise, as appropriate, the above compensation rate. Such revised compensation shall enable the Reliability Coordinator to recover its incremental costs associated with providing the specific service by allocating the costs among those subscribing to the service in an equitable manner (*e.g.*, costs may be allocated using a load ratio share methodology (a participant's

annual non-coincident peak load as a percentage of the total annual non-coincident peak load for those participating in the service)). Costs will be determined by the Reliability Coordinator based on its total cost of providing the service(s) as documented in the Reliability Coordinator's financial systems.

Compensation for Subsequent Terms (as defined in Section 4.2 herein) beyond those delineated above shall be based on the compensation in previous Contract Years and/or the methodology outlined above in this Section 3.1 and shall be negotiated by the Parties in good faith. Such negotiations shall begin not later than six months prior to, and shall be concluded no later than three months prior to, the beginning of the Subsequent Term.

Notwithstanding any provision to the contrary contained in this Agreement, if a Dispute should occur between the Parties with respect to the amount of compensation to be paid by LG&E/KU to the Reliability Coordinator (i) pursuant to this Sections 3.1 or (ii) in respect of additional services (other than the Functions) requested by LG&E/KU that the Reliability Coordinator elects, in its sole discretion, to provide, then, in each case, LG&E/KU shall file notice thereof with FERC. The Parties acknowledge that any FERC order issued with respect to such a dispute is only binding on LG&E/KU, not TVA.

3.2 Compensation After Termination. If LG&E/KU terminates this Agreement before the end of a Contract Year, then the Reliability Coordinator shall not be obligated to refund any amounts paid by LG&E/KU to the Reliability Coordinator as compensation for services provided by the Reliability Coordinator under this Agreement. If, however, the Reliability Coordinator terminates this Agreement before the end of a Contract Year or LG&E/KU and the Reliability Coordinator mutually agree to terminate this Agreement, then the Reliability Coordinator shall be obligated to refund to LG&E/KU an amount equal to the product of (a) any amounts paid by LG&E/KU to the Reliability Coordinator as compensation for services provided by the Reliability Coordinator under this Agreement during the Contract Year in which this Agreement is terminated and (b) the number of whole or partial months remaining in the Contract Year divided by twelve (12).

3.3 Reimbursement of Additional Costs. In addition to the compensation provided for in Section 3.1, LG&E/KU shall reimburse the Reliability Coordinator for (a) any additional costs incurred by the Reliability Coordinator at the request or direction of LG&E/KU or (b) any reasonable additional one-time costs necessarily incurred by Reliability Coordinator related to its activities under this Agreement that are not associated with services provided for in Section 3.1. Any costs under item (b) above shall be appropriately allocated by TVA among the Parties and those other entities that have executed similar reliability coordination agreements designating TVA as their reliability coordinator.

3.4 Payments. All payments by LG&E/KU to the Reliability Coordinator shall be made by the FedWire transfer method to the Reliability Coordinator's account at the U.S. Treasury in accordance with the wire instructions indicated below, and all such payments shall be deemed received as of the date the electronic funds transfer to the Reliability Coordinator's account is deemed effective.

Bank Name: TREAS NYC (official abbreviation)

Bank Address: New York Federal Reserve Bank, New York City  
33 Liberty Street  
New York, New York 10045

ABA Number: 021030004

Account No: 0004912

Beneficiary: Tennessee Valley Authority

Taxpayer ID: 62-0474417

OBI: Provide your organization name and invoice number or explanation of payment.

The Reliability Coordinator shall provide LG&E/KU with one or more contact persons for payment purposes and shall update such list of contact persons as necessary.

**Section 4 - Effective Date; Term; Termination; Termination Fees; Transition Assistance Services.**

4.1 Effective Date. The Parties acknowledge and agree that the effective date of this Agreement (the "Effective Date") shall be September 1, 2014 or such other date as permitted by FERC

4.2 Term. This Agreement shall commence on Effective Date (as provided for in Section 4.1), and shall automatically continue for successive one-year terms (each, a "Subsequent Term") unless and until terminated pursuant to the termination provisions hereof. All Subsequent Terms, together with the Transition Assistance Period, if any, shall collectively be referred to as the "Term."

4.3 Mutually-Agreed Termination. This Agreement may be terminated by mutual agreement of the Parties at any time during the Term.

4.4 Termination at End of Term. Either Party may terminate this Agreement at the end of any Subsequent Term upon one (1) year's prior written notice to the other Party.

4.5 Termination for Cause.

4.5.1 Termination by Either Party. Either Party may terminate this Agreement effective immediately upon thirty (30) days' prior written notice thereof to the other Party if:

(a) Material Failure or Default. The other Party fails to comply with, observe or perform, or defaults, in any material respect, in the performance of the terms and conditions of this Agreement, and such failure or default remains uncured for thirty (30) days after notice thereof,

provided that such failure or default is susceptible to cure and the other Party is exercising reasonable diligence to cure such failure or default;

(b) Pattern of Failure. It determines, in its sole discretion, that there has been a pattern of failure by the other Party to comply with the standards of performance required under this Agreement;

(c) Gross Negligence, Willful Misconduct or Fraud. The other Party commits gross negligence, willful misconduct or fraud in the performance of its obligations under this Agreement;

(d) Material Misrepresentation. Any representation made by the other Party hereunder shall be false or incorrect in any material respect when made and such misrepresentation is not cured within thirty (30) days of such discovery or is incapable of cure;

(e) Bankruptcy. The other Party: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due;

(f) Dissolution. The other Party dissolves or is dissolved or its legal existence is otherwise terminated;

(g) Failure to Negotiate Amendment. The Parties are unsuccessful in negotiating an amendment or amendments to this Agreement pursuant to Section 17.6;

(h) Regulatory Changes/Modifications. FERC, in accepting this Agreement for filing, makes any material changes, modifications, additions, or deletions to this Agreement; or

(i) Extended Force Majeure. A Party is excused because of Force Majeure (as defined in Section 11 herein) for more than thirty (30) days from performing any of its material obligations under this Agreement.

4.5.2 Termination by LG&E/KU. LG&E/KU may terminate this Agreement effective immediately upon thirty (30) days' prior written notice thereof to the Reliability Coordinator if:

(a) the Reliability Coordinator loses its NERC certification once obtained; or



(b) FERC issues an order determining that TVA should no longer serve as LG&E/KU's Reliability Coordinator pursuant to this Agreement.

4.5.3 Termination by the Reliability Coordinator. The Reliability Coordinator may terminate this Agreement effective immediately upon thirty (30) days' prior written notice thereof to LG&E/KU if:

(a) LG&E/KU determines to cease being a Balancing Authority and/or Transmission Operator, provided that LG&E/KU shall provide the Reliability Coordinator as much advance written notice of such determination as is practicable to allow the Reliability Coordinator to terminate this Agreement on or prior to the time LG&E/KU ceases to be a Balancing Authority or Transmission Operator;

(b) FERC or any other person or entity takes any action to subject the Reliability Coordinator to FERC's plenary jurisdiction under the Federal Power Act ("FPA"); or

(c) Effective Date has not occurred within eighteen (18) months of the Execution Date.

4.6 Return of Materials. Upon any termination of this Agreement or the conclusion of any Transition Assistance Period pursuant to Section 4.8.1, whichever is later, the Reliability Coordinator shall timely and orderly turn over to LG&E/KU all materials that were prepared or developed prior thereto pursuant to this Agreement, and return or destroy, at the option of LG&E/KU, all Data and other information supplied by LG&E/KU to the Reliability Coordinator or created by the Reliability Coordinator on behalf of LG&E/KU.

4.7 Survival. All provisions of this Agreement which are by their nature or terms intended to survive the termination of this Agreement, including the obligations set forth in Sections 7 and 10, shall survive termination of this Agreement.

4.8 Transition Assistance Services.

4.8.1 Transition Assistance Period. Commencing on the date this Agreement is terminated and continuing for up to one (1) year thereafter (the "Transition Assistance Period"), the Reliability Coordinator shall (a) provide the Functions (and any replacements thereof or substitutions therefor), to the extent LG&E/KU requests such Functions to be performed during the Transition Assistance Period, and (b) cooperate with LG&E/KU in the transfer of the Functions (collectively, the "Transition Assistance Services"). During the Transition Assistance Period, the Parties shall use good faith efforts to ensure a smooth transition.

4.8.2 Transition Assistance Services. The Reliability Coordinator shall, upon LG&E/KU's request, provide the Transition Assistance Services during the Transition Assistance Period at the Reliability Coordinator's actual cost for such

services. The quality and level of performance of the Functions by the Reliability Coordinator during the Transition Assistance Period shall not be degraded. After the expiration of the Transition Assistance Period, the Reliability Coordinator shall answer questions from LG&E/KU regarding the Functions on an "as needed" basis at the Reliability Coordinator's then-standard billing rates.

4.8.3 Key Personnel. During the Transition Assistance Period, the Reliability Coordinator shall not terminate, reassign or otherwise remove any Key Personnel without providing LG&E/KU thirty (30) days' prior notice of such termination, reassignment or removal unless such employee (a) voluntarily resigns from the Reliability Coordinator, (b) is dismissed by the Reliability Coordinator for cause, or (c) dies or is unable to work due to his or her disability.

4.9 Change in Reliability Entity. This Agreement is based on the existence of NERC and the applicability of the NERC Standards. If NERC ceases to exist in its current form or is replaced with an entity with authority over a Party's transmission system, the Parties shall promptly meet to determine whether to revise this Agreement to reflect the new reliability entity, if any, and the Parties' obligations in light of the new reliability entity or to terminate this Agreement in accordance with Section 4.2.

4.10 Prior Obligations and Liabilities Unaffected by Termination. Termination of this Agreement shall not relieve the Parties of any of their respective cost obligations or other obligations and liabilities related to this Agreement that were incurred prior to the effective date of termination of this Agreement.

## **Section 5 - Data Management.**

5.1 Supply of Data. During the Term, LG&E/KU shall supply to the Reliability Coordinator, and/or grant the Reliability Coordinator access to all Data that the Reliability Coordinator reasonably requires to perform the Functions. The Parties shall agree upon the initial format and manner in which such Data shall be provided. For purposes of this Agreement, "Data" means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium and which (a) are supplied or in respect of which access is granted to the Reliability Coordinator by LG&E/KU under this Agreement, which shall be LG&E/KU's Data, (b) are prepared, stored or transmitted by the Reliability Coordinator solely on behalf of LG&E/KU, which shall be LG&E/KU's Data; or (c) are compiled by the Reliability Coordinator by aggregating Data owned by LG&E/KU and Data owned by third parties, which shall be Reliability Coordinator's Data.

5.2 Property of Each Party. Each Party acknowledges that the other Party's Data and the other Party's software, base data models and operating procedures for software or base data models ("Processes") are the property of such other Party and agrees that it will do nothing inconsistent with such ownership, including preserving all intellectual property and/or proprietary rights in such other Party's Data and Processes as provided in Section 6.

5.3 Data Integrity. Each Party shall reasonably assist the other Party in establishing

measures to preserve the integrity and prevent any corruption or loss of Data, and the Parties shall reasonably assist each other in the recovery of any corrupted or lost Data. Each Party shall retain and preserve any of the other Party's Data that are supplied to it during the Term, and shall exercise commercially reasonable efforts to preserve the integrity of the other Party's Data that are supplied to it during the Term, in order to prevent any corruption or loss of the other Party's Data.

5.4 Confidentiality. Each Party's Data shall be treated as Confidential Information in accordance with the provisions of Section 10.

## **Section 6 - Intellectual Property.**

6.1 Pre-Existing Intellectual Property. Each Party shall own (and continue to own) all trade secrets, Processes and designs and other intellectual property that it owned prior to entering this Agreement, including any enhancements thereto ("Pre-Existing Intellectual Property"). Each Party acknowledges the ownership of the other Party's Pre-Existing Intellectual Property and agrees that it will do nothing inconsistent with such ownership. Each Party agrees that nothing in this Agreement shall give it any right, title or interest in the other Party's Pre-Existing Intellectual Property, other than the rights set forth in this Agreement. The Reliability Coordinator's Pre-Existing Intellectual Property shall include the Reliability Coordinator Retained Rights set forth in Section 6.3. LG&E/KU's Pre-Existing Intellectual Property shall include LG&E/KU Retained Rights set forth in Section 6.4.

6.1.1 Exclusion. Nothing in this Agreement shall prevent either Party from using general techniques, ideas, concepts and know-how gained by its employees during the performance of its obligations under this Agreement in the furtherance of its normal business, to the extent that it does not result in disclosure of the other Party's Data or any data generated from the other Party's Data or other Confidential Information or an infringement by LG&E/KU or the Reliability Coordinator of any intellectual property right. For the avoidance of doubt, the use by a Party of such general techniques, ideas, concepts and know-how gained by its employees during the performance of its obligations under this Agreement shall not be deemed to be an infringement of the other Party's intellectual property rights so long as such matters are retained in the unaided memories of such employees and any Confidential Information is treated in accordance with the provisions of Section 10.

6.2 Jointly-Owned Intellectual Property. Except for the Data described in Section 5.1, all deliverables, whether software or otherwise, to the extent originated and prepared by the Reliability Coordinator exclusively in connection with the performance of its obligations under this Agreement shall be, upon payment of all amounts that may be due from LG&E/KU to the Reliability Coordinator, jointly owned by LG&E/KU and Reliability Coordinator ("Jointly-Owned Intellectual Property"). Each Party shall have the right to use the Jointly-Owned Intellectual Property without any right or duty or accounting to the other Party, except as provided in this Section 6.2. Upon the Reliability Coordinator using, transferring or licensing Jointly-Owned Intellectual Property for or to a third party, the Reliability Coordinator shall reimburse LG&E/KU in an equitable

manner as determined by the Parties in good faith for the actual amounts paid by LG&E/KU to the Reliability Coordinator that relate to such Jointly- Owned Intellectual Property. Except as stated in the foregoing sentence, the Reliability Coordinator shall have no other obligation to account to LG&E/KU for any such use, transfer, license, disclosure, copying, modifying or enhancing of the Jointly-Owned Intellectual Property. Notwithstanding anything herein to the contrary, LG&E/KU may use the Jointly-Owned Intellectual Property for its internal business purposes, including licensing or transferring its interests therein to a third party for purposes of operating or performing functions in connection with LG&E/KU's transmission business.

6.3 Reliability Coordinator Retained Rights. The Reliability Coordinator shall retain all right, title and interest in its proprietary know-how, concepts, techniques, processes, materials and information that were or are developed entirely independently of this Agreement ("Reliability Coordinator Retained Rights"), whether or not such Reliability Coordinator Retained Rights are embodied in a deliverable, whether software or otherwise originated and prepared by the Reliability Coordinator in connection with the performance of its obligations under this Agreement. With respect to the Reliability Coordinator Retained Rights embodied in any deliverable, whether software or otherwise originated and prepared by the Reliability Coordinator in connection with the performance of its obligations under this Agreement, LG&E/KU is hereby granted a nonexclusive, perpetual, worldwide, royalty-free, fully paid-up license under such Reliability Coordinator Retained Rights to use such deliverable for LG&E/KU's internal business purposes only, including licensing or transferring its interests therein to an Affiliate of LG&E/KU or a third party for purposes of operating or performing functions in connection with LG&E/KU's transmission business.

6.4 LG&E/KU Retained Rights. LG&E/KU shall retain all right, title and interest in its proprietary know-how, concepts, techniques, processes, materials and information that were or are developed entirely independently of this Agreement ("LG&E/KU Retained Rights"), whether or not such LG&E/KU Retained Rights are embodied in a deliverable, whether software or otherwise originated and prepared by LG&E/KU in connection with the performance of its obligations under this Agreement. With respect to LG&E/KU Retained Rights embodied in any software or otherwise originated and prepared by LG&E/KU in connection with the performance of its obligations under this Agreement, the Reliability Coordinator is hereby granted a nonexclusive, worldwide, royalty-free, fully paid-up license under such LG&E/KU Retained Rights to use such deliverable for the Reliability Coordinator's performance of its obligations under this Agreement only; provided that LG&E/KU shall not be liable in any way for the use of or reliance on such Reliability Coordinator Retained Rights by the Reliability Coordinator's Affiliate or third party for any purpose whatsoever.

6.5 Reliability Coordinator Non-Infringement; Indemnification. The Reliability Coordinator warrants to LG&E/KU that all Reliability Coordinator's Data and Processes, Reliability Coordinator Pre-Existing Intellectual Property, Reliability Coordinator Retained Rights, and deliverables prepared, produced or first developed by the Reliability Coordinator in connection with the performance of its obligations under this Agreement shall not infringe on any third party patent, copyright, trade secret or other third party proprietary rights. The Reliability Coordinator shall defend, hold harmless and

indemnify LG&E/KU and its Affiliates and their respective employees, officers, directors, principals, owners, partners, shareholders, agents, representatives, consultants, and subcontractors (collectively, "LG&E/KU Representatives") from and against all claims, lawsuits, penalties, awards, judgments, court arbitration costs, attorneys' fees, and other reasonable out-of-pocket costs incurred in connection with such claims or lawsuits based upon the actual or alleged infringement of any of the foregoing rights; provided that LG&E/KU gives prompt written notice of any such claim or action to the Reliability Coordinator, permits the Reliability Coordinator to control the defense of any such claim or action with counsel of its choice, and cooperates with the Reliability Coordinator in the defense thereof; and further provided that such claim or action is not based on any alteration, modification or combination of the deliverable with any item, information or process not provided by the Reliability Coordinator, where there would be no infringement in the absence of such alteration, modification or combination. If any infringement action results in a final injunction against LG&E/KU or the LG&E/KU Representatives with respect to Reliability Coordinator's Data and Processes, Reliability Coordinator Pre-Existing Intellectual Property, Reliability Coordinator Retained Rights or deliverables prepared, produced or first developed by the Reliability Coordinator in connection with the performance of its obligations under this Agreement or in the event the use of such matters or any part thereof, is, in such lawsuit, held to constitute infringement, the Reliability Coordinator agrees that it shall, at its option and sole expense, either (a) procure for LG&E/KU or the LG&E/KU Representatives the right to continue using the infringing matter, or (b) replace the infringing matter with non-infringing items of equivalent functionality or modify the same so that it becomes non-infringing and retains its full functionality. If the Reliability Coordinator is unable to accomplish (a) or (b) above, the Reliability Coordinator shall reimburse LG&E/KU for all costs and fees paid by LG&E/KU to the Reliability Coordinator for the infringing matter. The above constitutes the Reliability Coordinator's complete liability for claims of infringement relating to any the Reliability Coordinator's Data and Processes, Reliability Coordinator Pre-Existing Intellectual Property, Reliability Coordinator Retained Rights, and deliverables prepared, produced or first developed by the Reliability Coordinator in connection with the performance of its obligations under this Agreement.

6.6 LG&E/KU Non-Infringement; Indemnification. LG&E/KU warrants to the Reliability Coordinator that, to its knowledge, all LG&E/KU's Data (except for Data created by the Reliability Coordinator on behalf of LG&E/KU) and Processes, LG&E/KU Pre-Existing Intellectual Property, and LG&E/KU Retained Rights shall not infringe on any third party patent, copyright, trade secret or other third party proprietary rights. LG&E/KU shall defend, hold harmless and indemnify the Reliability Coordinator and its Affiliates and their respective employees, officers, directors, principals, owners, partners, shareholders, agents, representatives, consultants, and subcontractors against all claims, lawsuits, penalties, awards, judgments, court costs, and arbitration costs, attorneys' fees, and other reasonable out-of-pocket costs incurred in connection with such claims or lawsuits based upon the actual or alleged infringement of any of the foregoing rights; provided that the Reliability Coordinator gives prompt written notice of any such claim or action to LG&E/KU, permits LG&E/KU to control the defense of any such claim or action with counsel of its choice, and cooperates with LG&E/KU in the defense thereof; and further provided that such claim or action is not based on any

alteration, modification or combination of the deliverable with any item, information or process not provided by LG&E/KU to the Reliability Coordinator, where there would be no infringement in the absence of such alteration, modification or combination. The above constitutes LG&E/KU's complete liability for claims of infringement relating to any of the LG&E/KU's Data and Processes, LG&E/KU Pre-Existing Intellectual Property, and LG&E/KU Retained Rights.

## **Section 7 - Indemnification.**

7.1 Indemnification by the Parties. Each Party ("Indemnifying Party") shall indemnify, release, defend, reimburse and hold harmless the other Party and its Affiliates, and their respective directors, officers, employees, principals, representatives and agents (collectively, the "Indemnified Parties") from and against any and all claims, demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, costs and expenses, and attorney fees (each, an "Indemnifiable Loss") asserted against or incurred by any of the Indemnified Parties arising out of, resulting from or based upon (a) a breach by the Indemnifying Party of its obligations under this Agreement, (b) claims of bodily injury or death of any person or damage to real and/or tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party and its Affiliates and their respective directors, officers, employees, principals, representatives, agents or contractors during the Term, or (c) the acts or omissions of the Indemnifying Party and its Affiliates and their respective directors, officers, employees, principals, representatives, agents or contractors during the Term.

7.2 No Consequential Damages. Neither Party shall be liable to the other Party under this Agreement (by way of indemnification, damages or otherwise) for any indirect, incidental, exemplary, punitive, special or consequential damages, except in the case of gross negligence or willful misconduct.

7.3 Cooperation Regarding Claims. If an Indemnified Party receives notice or has knowledge of any Indemnifiable Loss that may result in a claim for indemnification by such Indemnified Party against an Indemnifying Party pursuant to this Section 7, such Indemnified Party shall as promptly as possible give the Indemnifying Party notice of such Indemnifiable Loss, including a reasonably detailed description of the facts and circumstances relating to such Indemnifiable Loss, a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its claim for indemnification with respect thereto. Failure to promptly give such notice or to provide such information and documents shall not relieve the Indemnifying Party from the obligation hereunder to respond to or defend the Indemnified Party against such Indemnifiable Loss unless such failure shall materially diminish the ability of the Indemnifying Party to respond to or to defend the Indemnified Party against such Indemnifiable Loss. The Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party in accordance with this Section 7, shall be entitled to assume the defense or to represent the interest of the Indemnified Party with respect to such Indemnifiable Loss, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole

cost. If and to the extent that any such settlement is reasonably likely to involve injunctive, equitable or prospective relief or materially and adversely affect the Indemnified Party's business or operations other than as a result of money damages or other money payments, then such settlement will be subject to the reasonable approval of the Indemnified Party. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants and participating in its own defense at its own cost and expense.

## **Section 8 - Contract Managers; Dispute Resolution.**

8.1 LG&E/KU Contract Manager. LG&E/KU shall appoint an individual (the "LG&E/KU Contract Manager") who shall serve as the primary LG&E/KU representative under this Agreement. The LG&E/KU Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of LG&E/KU's obligations under this Agreement, and (b) be authorized to act for and on behalf of LG&E/KU with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the LG&E/KU Contract Manager may, upon prior written notice to the Reliability Coordinator, delegate such of his or her responsibilities to other LG&E/KU employees, as the LG&E/KU Contract Manager deems appropriate. LG&E/KU may, upon prior written notice to the Reliability Coordinator, change the LG&E/KU Contract Manager.

8.2 Reliability Coordinator Contract Manager. The Reliability Coordinator shall appoint, among the Key Personnel identified in Attachment C, an individual (the "Reliability Coordinator Contract Manager") who shall serve as the primary Reliability Coordinator representative under this Agreement. The Reliability Coordinator Contract Manager shall (a) have overall responsibility for managing and coordinating the performance of the Reliability Coordinator's obligations under this Agreement, and (b) be authorized to act for and on behalf of the Reliability Coordinator with respect to all matters relating to this Agreement. Notwithstanding the foregoing, the Reliability Coordinator Contract Manager may, upon prior written notice to LG&E/KU, delegate such of his or her responsibilities to other Key Personnel, as the Reliability Coordinator Contract Manager deems appropriate. The Reliability Coordinator may, upon prior written notice to LG&E/KU, change the Reliability Coordinator Contract Manager. For the avoidance of doubt, LG&E/KU shall not have an approval or consent right with respect to the selection of the Reliability Coordinator Contract Manager.

8.3 Resolution of Disputes. Any dispute, claim or controversy between the Parties arising out of or relating to this Agreement (each, a "Dispute") shall be resolved in accordance with the procedures set forth in this Section 8.3; provided, however, that this Section 8.3 shall not apply to Disputes arising from or relating to (a) the amount of compensation to be paid by LG&E/KU pursuant to the last sentence of Section 3.1, which shall be resolved pursuant thereto, or (b) confidentiality or intellectual property rights (in which case either Party shall be free to seek available legal or equitable remedies).

8.3.1 Notice of Dispute. Each Party shall provide written notice to the other party of any Dispute, including a description of the nature of the Dispute.

8.3.2 Dispute Resolution by Contract Managers. Any Dispute shall first be referred to the LG&E/KU Contract Manager and the Reliability Coordinator Contract Manager, who shall negotiate in good faith to resolve the Dispute.

8.3.3 Dispute Resolution by Executive Management Representatives. If the Dispute is not resolved within fifteen (15) days of being referred to the LG&E/KU Contract Manager and the Reliability Coordinator Contract Manager pursuant to Section 8.3.2, then each Party shall have five (5) days to appoint an executive management representative who shall negotiate in good faith to resolve the Dispute.

8.3.4 Exercise of Remedies at Law or in Equity. If the Parties' executive management representatives are unable to resolve the Dispute within thirty (30) days of their appointment, then each Party shall be free to pursue any remedies available to it and to take any action in law or equity that it believes necessary or convenient in order to enforce its rights or cause to be fulfilled any of the obligations or agreements of the other Party.

8.4 LG&E/KU Rights Under FPA Unaffected. Nothing in this Agreement is intended to limit or abridge any rights that LG&E/KU may have to file or make application before FERC under Section 205 of the FPA to revise any rates, terms or conditions of the OATT or any other FPA jurisdictional agreement.

8.5 Reliability Coordinator Rights Under the TVA Act and FPA Unaffected. Nothing in this Agreement is intended to limit or abridge any rights that the Reliability Coordinator may have under the TVA Act or the FPA, nor to require the Reliability Coordinator to violate the area limitations set forth in the TVA Act.

8.6 Statute of Limitations; Continued Performance. The Parties agree to waive the applicable statute of limitations during the period of time that the Parties are seeking to resolve a Dispute pursuant to Sections 8.3.2 and 8.3.3, and the statute of limitations shall be tolled for such period. The Parties shall continue to perform their obligations under this Agreement during the resolution of a Dispute.

## **Section 9 - Insurance.**

9.1 Requirements. The Reliability Coordinator shall provide and maintain during the Term insurance coverage in the form and with minimum limits of liability as specified below, unless otherwise agreed to by the Parties.

9.1.1 Worker's compensation insurance in accordance with the Federal Employees Compensation Act (FECA).

9.1.2 Commercial general liability or equivalent insurance with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include products/completed operations liability, owners protective, blanket contractual liability, personal injury liability and broad form property damage.



9.2 Insurance Matters. All insurance coverages required pursuant to Section 9.1 shall (a) be provided by insurance companies that have a Best Rating of A or higher, (b) provide that LG&E/KU is an additional insured (other than the workers' compensation insurance), (c) provide that LG&E/KU will receive at least thirty (30) days written notice from the insurer prior to the cancellation or termination of or any material change in any such insurance coverages, and (d) include waivers of any right of subrogation of the insurers thereunder against LG&E/KU. Certificates of insurance evidencing that the insurance required by Section 9.1 is in force shall be delivered by the Reliability Coordinator to LG&E/KU prior to the Effective Date.

9.3 Compliance. The Reliability Coordinator shall not commence performance of any Functions until all of the insurance required pursuant to Section 9.1 is in force, and the necessary documents have been received by LG&E/KU pursuant to Section 9.2. Compliance with the insurance provisions in Section 9 is expressly made a condition precedent to the obligation of LG&E/KU to make payment for any Functions performed by the Reliability Coordinator under this Agreement. The minimum insurance requirements set forth above shall not vary, limit or waive the Reliability Coordinator's legal or contractual responsibilities or liabilities under this Agreement.

## **Section 10 - Confidentiality.**

10.1 Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean, in respect of each Party, all activities by such Party and information and documentation of such Party, whether disclosed to or accessed by the other Party, in each case, in connection with this Agreement; provided, however, that the term "Confidential Information" shall not include information that: (a) is independently developed by the recipient, as demonstrated by the recipient's written records, without violating the disclosing Party's proprietary rights; (b) is or becomes publicly known (other than through unauthorized disclosure); (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (d) is already known by the recipient at the time of disclosure, as demonstrated by the recipient's written records, and the recipient has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements between the Parties entered into before the Effective Date; or (e) is rightfully received by a Party free of any obligation of confidentiality.

10.2 Protection of Confidential Information. All Confidential Information shall be held in confidence by the recipient to the same extent and in at least the same manner as the recipient protects its own confidential information, and such Confidential Information shall be used only for purposes of performing obligations under this Agreement. Except as otherwise provided in Section 10.4, neither Party shall disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from, the other Party in any form to, or for the use or benefit of, any person or entity without the disclosing Party's prior written consent. Each Party shall be permitted to disclose relevant aspects of the other Party's Confidential Information to its officers, directors, agents, professional advisors, contractors, subcontractors and employees and to the officers, directors, agents, professional advisors, contractors, subcontractors and employees of its Affiliates, to the extent that such disclosure is reasonably necessary for

the performance of its duties and obligations or the determination, preservation or exercise of its rights and remedies under this Agreement; provided, however, that the recipient shall take all reasonable measures to ensure that Confidential Information of the disclosing Party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, directors, agents, professional advisors, contractors, subcontractors and employees. The obligations in this Section 10 shall not restrict any disclosure pursuant to any local, state or federal governmental agency or authority if such release is necessary to comply with applicable laws, governmental regulations or orders of regulatory bodies or courts; provided that, other than in respect of disclosures pursuant to Section 10.4, the recipient shall give prompt notice to the disclosing Party in reasonable time to exercise whatever legal rights the disclosing Party may have to prevent or limit such disclosure. Further, the recipient shall cooperate with the disclosing Party in preventing or limiting such disclosure.

10.3 NERC Data Confidentiality Agreement. In addition to, and not in limitation of, the confidentiality restrictions in Section 10.2, each Party shall sign the NERC Data Confidentiality Agreement and shall treat all Confidential Information as transmission operations and transmission system information pursuant to the NERC Data Confidentiality Agreement.

10.4 FERC Requests for Confidential Information. Notwithstanding anything in this Agreement to the contrary, if FERC or its staff, during the course of an investigation or otherwise, requests information from the Reliability Coordinator related to services provided by the Reliability Coordinator to LG&E/KU that the Reliability Coordinator is otherwise required to maintain in confidence pursuant to this Agreement, the Reliability Coordinator shall provide the requested information to FERC or its staff within the time provided for in the request for information. In providing such information to FERC or its staff, the Reliability Coordinator shall, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. The Reliability Coordinator shall notify LG&E/KU when it is notified by FERC or its staff that a request for public disclosure of, or decision to publicly disclose, confidential information has been received, at which time either the Reliability Coordinator or LG&E/KU may respond before such information is made public, pursuant to 18 C.F.R. § 388.112.

## **Section 11 - Force Majeure.**

11.1 Neither Party shall be liable to the other Party for any failure or delay of performance hereunder due to causes beyond such Party's reasonable control, which by the exercise of reasonable due diligence such Party is unable, in whole or in part, to prevent or overcome (a "Force Majeure"), including acts of God, act of the public enemy, fire, explosion, vandalism, cable cut, storm or other catastrophes, weather impediments, national emergency, insurrections, riots, wars or any law, order, regulation, direction, action or request of any government or authority or instrumentality thereof. Neither Party shall be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure, except for the obligation to pay any amount when due, provided that the affected Party:

11.1.1 gives notice to the other Party of the event or circumstance giving rise to the event of Force Majeure;

11.1.2 affords the other Party reasonable access to information about the event or circumstances giving rise to the event of Force Majeure;

11.1.3 takes commercially reasonable steps to restore its ability to perform its obligations hereunder as soon as reasonably practicable, provided that the affected Party shall not be obligated to take any steps that are not otherwise in accordance with Good Utility Practice; and

11.1.4 exercises commercially reasonable efforts to perform its obligations hereunder.

## **Section 12 - Reporting; Audit.**

12.1 Reporting. The Reliability Coordinator shall make regular reports to FERC and LG&E/KU's retail regulators as may be required by applicable law and regulations or as may be requested by such authorities.

12.2 Books and Records. The Reliability Coordinator shall maintain full and accurate books and records pertinent to this Agreement, and the Reliability Coordinator shall maintain such books and records for three (3) years following the expiration or early termination of this Agreement or longer if necessary to resolve a pending Dispute. LG&E/KU will have the right, at reasonable times and under reasonable conditions, to inspect and audit, or have an independent third party inspect and audit, the Reliability Coordinator's operations and books to (a) ensure compliance with this Agreement, (b) verify any cost claims or other amounts due hereunder, and (c) validate the Reliability Coordinator's internal controls with respect to the performance of the Functions. The Reliability Coordinator shall maintain an audit trail, including all original transaction records, of all financial and non-financial transactions resulting from or arising in connection with this Agreement as may be necessary to enable LG&E/KU or the independent third party, as applicable, to perform the foregoing activities. LG&E/KU shall be responsible for any costs and expenses incurred in connection with any such inspection or audit, unless such inspection or audit discovers that LG&E/KU was charged inappropriate or incorrect costs and expenses, in which case, the Reliability Coordinator shall be responsible for a percentage of the costs and expenses incurred in connection with such inspection or audit equal to the percentage variance by which LG&E/KU was charged inappropriate or incorrect costs and expenses. The Reliability Coordinator shall provide reasonable assistance necessary to enable LG&E/KU or an independent third party, as applicable, and shall not be entitled to charge LG&E/KU for any such assistance. Amounts incorrectly or inappropriately invoiced by the Reliability Coordinator to LG&E/KU, whether discovered prior to or subsequent to payment by LG&E/KU, shall be adjusted or reimbursed to LG&E/KU by the Reliability Coordinator within twenty (20) days of notification by LG&E/KU to the Reliability Coordinator of the error in the invoice.

12.3 Regulatory Compliance. The Reliability Coordinator shall comply with all

reasonable requests by LG&E/KU to comply with Section 404 of the Sarbanes-Oxley Act and related regulatory requirements. LG&E/KU may hire, at its expense, or LG&E/KU may direct the Reliability Coordinator to hire, at LG&E/KU expense, an independent auditor to review, audit and prepare audit reports associated with the Reliability Coordinator's controls and systems relating to the Functions and LG&E/KU's financial statements and reports, in accordance with SAS No. 70, Type II. Such reports may not be required more frequently than twice per Contract Year. The Reliability Coordinator shall notify LG&E/KU prior to or at the time of any significant or material change to any internal process or financial control of the Reliability Coordinator that would or might impact the Functions performed for or on behalf of LG&E/KU or that would, or might, have a significant or material effect on such process's mitigation of risk or upon the integrity of LG&E/KU's financial reporting or disclosures and provide sufficient details of the change so as to enable LG&E/KU and/or its independent auditors to review the change and evaluate its impact on its internal controls and financial reporting. The Reliability Coordinator shall cooperate with the independent auditors and LG&E/KU to enable the preparation of the reports necessary to comply with Section 404 of the Sarbanes-Oxley Act, consistent with the other provisions of this Agreement.

### **Section 13 - Independent Contractor.**

The Reliability Coordinator shall be and remain during the Term an independent contractor with respect to LG&E/KU, and nothing contained in this Agreement shall be (a) construed as inconsistent with that status, or (b) deemed or construed to create the relationship of principal and agent or employer and employee, between the Reliability Coordinator and LG&E/KU or to make either the Reliability Coordinator or LG&E/KU partners, joint ventures, principals, fiduciaries, agents or employees of the other Party for any purpose. Neither Party shall represent itself to be an agent, partner or representative of the other Party. Neither Party shall commit or bind, nor be authorized to commit or bind, the other Party in any manner, without such other Party's prior written consent. Personnel employed, provided or used by any Party in connection herewith will not be employees of the other Party in any respect. Each Party shall have full responsibility for the actions or omissions of its employees and shall be responsible for their supervision, direction and control.

### **Section 14 - Taxes.**

Each Party shall be responsible for the payment of its own taxes, including taxes based on its net income, employment taxes of its employees, taxes on any property it owns or leases, and sales, use, gross receipts, excise, value-added or other transaction taxes.

### **Section 15 - Notices.**

15.1 Notices. Except as otherwise specified herein, any notice required or authorized by this Agreement shall be deemed properly given to a Party when sent to its designated representative by facsimile or other electronic means (with a confirmation copy sent by United States mail, first-class postage prepaid), by hand delivery, or by United States mail, first-class postage prepaid. The Parties' designated representatives

are as follows:

If to LG&E/KU:

Louisville Gas and Electric Company  
220 West Main St.  
Louisville, Kentucky 40202  
Facsimile: (502) 627-4002

And

Kentucky Utilities Company  
220 West Main St.  
Louisville, Kentucky 40202  
Facsimile: (502) 627-4002

If to the Reliability Coordinator:

Tennessee Valley Authority  
1101 Market Street, PCC 2A  
Chattanooga, Tennessee 37402-2801  
Facsimile: (423) 697-4120

15.2 Changes. Either Party may, from time to time, change the names, addresses, facsimile numbers or other notice information set out in Section 15.1 by notice to the other Party in accordance with the requirements of Section 15.1.

## **Section 16 - Key Personnel; Work Conditions.**

16.1 Key Personnel. All Key Personnel shall be properly certified and licensed, if required by law, and be qualified and competent to perform the Functions. The Reliability Coordinator shall provide LG&E/KU prior written notice of the replacement of any Key Personnel.

16.2 Conduct of Key Personnel and Reporting. The Reliability Coordinator agrees to require that the Key Personnel comply with the Reliability Coordinator's employee code of conduct, a current copy of which has been provided to LG&E/KU. The Reliability Coordinator may amend its employee code of conduct at any time, provided that the Reliability Coordinator shall promptly provide the LG&E/KU Contract Manager with a copy of the amended employee code of conduct. If any Key Personnel commits fraud or engages in material violation of the Reliability Coordinator's employee code of conduct, the Reliability Coordinator shall promptly notify LG&E/KU as provided above and promptly remove any such Key Personnel from the performance of the Functions.

16.3 Personnel Screening. The Reliability Coordinator shall be responsible for conducting, in accordance with applicable law (including the Fair Credit Reporting Act, The Fair and Accurate Credit Transactions Act, and Title VII of the Civil Rights Act of 1964), adequate pre-deployment screening of the Key Personnel prior to commencing

performance of the Functions. By deploying Key Personnel under this Agreement, the Reliability Coordinator represents that it has completed the Screening Measures (as defined below) with respect to such Key Personnel. To the extent permitted by applicable law, the term "Screening Measures" shall include, at a minimum, a background check including: (a) a Terrorist Watch Database Search; (b) a Social Security Number trace; (c) motor vehicle license and driving record check; and (d) a criminal history check, including, a criminal record check for each county/city and state/country in the employee's residence history for the maximum number of years permitted by law, up to seven (7) years. Unless prohibited by law, if, prior to or after assigning a Key Personnel to perform the Functions, the Reliability Coordinator learns of any information that the Reliability Coordinator considers would adversely affect such Key Personnel's suitability for the performance of the Functions (including based on information discovered from the Screening Measures), the Reliability Coordinator shall not assign the Key Personnel to the Functions or, if already assigned, promptly remove such Key Personnel from performing the Functions and immediately notify LG&E/KU of such action.

16.4 Security. LG&E/KU shall have the option of barring from LG&E/KU's property any Key Personnel whom LG&E/KU determines is not suitable in accordance with the applicable laws pursuant to Sections 16.1 through 16.3.

## **Section 17 - Miscellaneous Provisions.**

17.1 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with applicable state and federal laws, without regard to the laws requiring the applicability of the laws of another jurisdiction.

17.2 Amendment. This Agreement shall not be varied or amended unless such variation or amendment is agreed to by the Parties in writing.

17.3 Assignment. Neither Party shall sell, assign, or otherwise transfer any or all of its respective rights hereunder, or delegate any or all of its respective obligations under this Agreement.

17.4 No Third Party Beneficiaries. Nothing in this Agreement is intended to confer any benefits upon any person or entity not a Party to this Agreement. This Agreement is made solely for the benefit of the Parties and nothing herein shall be construed as a stipulation for the benefit of others, and no third party shall be entitled to enforce this Agreement against any Party hereto.

17.5 Waivers. No waiver of any provision of this Agreement shall be effective unless it is signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

17.6 Severability; Renegotiation. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision herein. If any provision of this Agreement is found to be invalid, illegal or otherwise unenforceable, the same shall not affect the other provisions hereof or the whole of this Agreement and shall not render invalid, illegal or unenforceable this Agreement or any of the remaining provisions of this Agreement. If any provision of this Agreement or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, or if a modification, condition or other change to this Agreement is imposed by a court or regulatory authority of competent jurisdiction which materially affects the benefits or obligations of the Parties, then the Parties shall in good faith negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligation of the Parties immediately prior to such holding, modification or condition. If such negotiations are unsuccessful, then either Party may terminate this Agreement pursuant to Section 4.5.1.

17.7 Representations and Warranties. Each Party represents and warrants to the other Party as of the Execution Date and the Effective Date as follows:

17.7.1 Organization. It is duly organized, validly existing and in good standing under the laws of the State in which it was organized or applicable Federal law, and has all the requisite power and authority to own and operate its material assets and properties and to carry on its business as now being conducted and as proposed to be conducted under this Agreement.

17.7.2 Authority. It has the requisite power and authority to execute and deliver this Agreement and, subject to the procurement of applicable regulatory approvals, to perform its obligations under this Agreement. The execution and delivery of this Agreement by it and the performance of its obligations under this Agreement have been duly authorized by all necessary corporate action required on its part.

17.7.3 Binding Effect. Assuming the due authorization, execution and delivery of this Agreement by the other Party, this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar applicable laws affecting creditors' rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

17.7.4 Regulatory Approval. It has obtained or will obtain by the Effective Date, any and all approvals of, and acceptances for filing by, and has given or will give any notices to, any applicable federal or state authority, that are required for it to execute, deliver, and perform its obligations under this Agreement.

17.7.5 No Litigation. There are no actions at law, suits in equity, proceedings, or claims pending or, to its knowledge, threatened against it before or by any federal, state, foreign or local court, tribunal, or governmental agency or authority

that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

17.7.6 No Violation or Breach. The execution, delivery and performance by it of its obligations under this Agreement do not and shall not: (a) violate its organizational documents; (b) violate any applicable law, statute, order, rule, regulation or judgment promulgated or entered by any applicable federal or state authority, which violation could reasonably be expected to materially adversely affect the performance of its obligations under this Agreement; or (c) result in a breach of or constitute a default of any material agreement to which it is a party.

17.8 Further Assurances. Each Party agrees that it shall execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the purpose of this Agreement and are not inconsistent with the provisions of this Agreement.

17.9 Entire Agreement. This Agreement and the Attachments hereto set forth the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements, whether oral or written, related to the subject matter of this Agreement, including that certain Reliability Coordinator Agreement, dated as of January 10, 2006, between the Parties. The terms of this Agreement and the Attachments hereto are controlling, and no parole or extrinsic evidence, including to prior drafts and drafts exchanged with any third parties, shall be used to vary, contradict or interpret the express terms, and conditions of this Agreement.

17.10 Good Faith Efforts. Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and the other Party to fulfill their obligations under this Agreement. Where the consent, agreement or approval of any Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, delayed or conditioned. Where a Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. To the extent that the jurisdiction of any federal or state authority applies to any part of this Agreement or the transactions or actions covered by this Agreement, each Party shall cooperate with the other Party to secure any necessary or desirable approval or acceptance of such authorities of such part of this Agreement or such transactions or actions.

17.11 Time of the Essence. With respect to all duties, obligations and rights of the Parties, time shall be of the essence in this Agreement.

17.12 Interpretation. Unless the context of this Agreement otherwise clearly requires:

17.12.1 all defined terms in the singular shall have the same meaning when used in the plural and vice versa;

17.12.2 the terms "hereof," "herein," "hereto" and similar words refer to this entire Agreement and not to any particular Section, Attachment or any other subdivision of this Agreement;



17.12.3 references to "Section" or "Attachment" refer to this Agreement, unless specified otherwise;

17.12.4 references to any law, statute, rule, regulation, notification or statutory provision shall be construed as a reference to the same as it applies to this Agreement and may have been, or may from time to time be, amended, modified or re-enacted;

17.12.5 references to "includes," "including" and similar phrases shall mean "including, without limitation;"

17.12.6 the captions, section numbers and headings in this Agreement are included for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement;

17.12.7 "or" may not be mutually exclusive, and can be construed to mean "and" where the context requires there to be a multiple rather than an alternative obligation; and

17.12.8 references to a particular entity include such entity's successors and assigns to the extent not prohibited by this Agreement.

17.12.9 any capitalized terms used in this Agreement, including the Appendices, that are not defined in this Agreement or in the Appendices, shall have the meaning established in the applicable NERC documentation.

17.13 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other and no provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provision. Each Party acknowledges that in executing this Agreement it has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and it has not been influenced by any representation or statement made by the other Party or its counsel not contained in this Agreement.

17.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon LG&E/KU and the Reliability Coordinator, notwithstanding that LG&E/KU and the Reliability Coordinator may not have executed the same counterpart.

### **Section 18 - Confidential Critical Infrastructure Information Protection.**

Notwithstanding any other applicable confidentiality provisions in this RC Agreement including Section 10 above, the following provisions of this Section 18 shall apply with respect to LG&E/KU's Protected Assets and Information. "LG&E/KU's Protected Assets and Information" is defined as: (i) LG&E/KU's Critical Cyber Assets, (ii) LG&E/KU's Cyber Assets used in access control and monitoring of Company's Electronic Security Perimeter(s), (iii) LG&E/KU's Cyber Assets that authorize or log access to LG&E/KU's

Physical Security Perimeter(s) or (iv) any information relating to LG&E/KU's Critical Cyber Assets, including, without limitation, operational procedures, Critical Asset lists, Critical Cyber Asset lists, network topology or similar diagrams, floor plans of computer centers that contain Critical Cyber Assets, equipment layouts of Critical Cyber Assets, disaster recovery plans, incident response plans, security configuration information, and any other confidential information relating to the reliability or operability of the Bulk Electric System and information generated or otherwise developed by the Reliability Coordinator in connection with its performance of the Reliability Coordinator functions that constitute or are otherwise related to LG&E/KU's Protected Assets and Information (collectively, "Confidential Critical Infrastructure Information"). The Reliability Coordinator shall not disclose any Confidential Critical Infrastructure Information (which will be clearly marked or otherwise identified by LG&E/KU as Confidential Critical Infrastructure Information) to any person or entity, except strictly on a need-to-know basis, and shall take all necessary actions to protect the Confidential Critical Infrastructure Information, including, without limitation, ensuring that appropriate electronic and/or password access controls are in place if such Confidential Critical Infrastructure Information is stored on shared drives or systems, encrypting all such information stored on laptops or removable media (such as a USB drive), and maintaining any such hard copy information in a secure, locked storage container and not permitting any unauthorized individual to view, handle or possess such information. The Reliability Coordinator shall provide to LG&E/KU a list of all the Reliability Coordinator employees, subcontractors or other persons associated with the Reliability Coordinator with access to any Confidential Critical Infrastructure Information when and as requested by LG&E/KU. The Reliability Coordinator will provide notification by contacting the LG&E/KU's NERC Compliance representative identified below immediately upon becoming aware that it has disclosed any Confidential Critical Infrastructure Information in violation of this Section 18. The Reliability Coordinator shall ensure that each recipient of any Confidential Critical Infrastructure Information understands and complies with the requirements to protect Confidential Critical Infrastructure Information from inappropriate disclosure as set forth in this Section 18. Notwithstanding anything to the contrary in the Contract, with respect to any Confidential Critical Infrastructure Information, the restrictions set forth in this Section 18 shall remain in effect indefinitely from the date such Confidential Critical Infrastructure Information was first disclosed to or obtained or discovered by the Reliability Coordinator. The Reliability Coordinator shall, upon request and as directed by LG&E/KU, promptly return to LG&E/KU, or otherwise properly dispose of, any and all Confidential Critical Infrastructure Information that is in the possession of the Reliability Coordinator or any of its employees or subcontractors.

The parties have caused this Reliability Coordinator Agreement to be executed by their duly authorized representatives as of the dates shown below.

**LOUISVILLE GAS AND ELECTRIC COMPANY**

*/s/ Tom Jessee*

---

Name: Tom Jessee  
Title: Vice President, Transmission  
Date: 8/25/14

**KENTUCKY UTILITIES COMPANY**

*/s/ Tom Jessee*

---

Name: Tom Jessee  
Title: Vice President, Transmission  
Date: 8/25/14

**TENNESSEE VALLEY AUTHORITY**

*/s/ Timothy E. Ponseti*

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Name: Timothy E. Ponseti  
Title: Vice President, Transmission Operations & Power Supply  
Date: 8-25-2014

## ATTACHMENT A TO THE RELIABILITY COORDINATOR AGREEMENT

### DESCRIPTION OF THE PRIMARY FUNCTIONS

The Reliability Coordinator is responsible for bulk transmission reliability and power supply reliability functions. Bulk transmission reliability functions include reliability analysis, loading relief procedures, re-dispatch of generation and ordering curtailment of transactions and/or load.

Power supply reliability functions include monitoring Balancing Authority Area performance and ordering the Balancing Authority to take actions, including load curtailment and increasing/decreasing generation in situations where an imbalance between generation and load places the system in jeopardy. The procedures to be followed by the Reliability Coordinator shall be consistent with those of NERC and are spelled out in the NERC Approved Reliability Plan for the TVA Reliability Coordination Area and TVA Standard Procedures and Policies.

#### **I. Reliability Coordinator General Functions:**

The Reliability Coordinator shall perform the following functions:

- a) Serving as NERC designated reliability coordinator and represent the TVA Reliability Area at the NERC and Regional Reliability Council level.
- b) Implementing applicable NERC and regional reliability criteria initiatives, such as maintaining a connection to NERC's Interregional Security Network ("ISN"), day-ahead load-flow analysis, transmission loading relief procedures, and information exchange.
- c) Developing and coordinating with the Reliability Coordination Advisory Committee ("RCAC") new Reliability Coordinator Procedures and revisions to existing Reliability Coordinator Procedures.
- d) Exchanging timely, accurate, and relevant Transmission System information with LG&E/KU, the ITO, and with other reliability coordinators.
- e) Developing and maintaining system models and tools needed to perform analysis needed to develop operational plans.
- f) Coordinating with neighboring reliability coordinators and other operating entities as appropriate to ensure regional reliability.
- g) All other reliability coordinator functions as required for compliance with applicable NERC Reliability Standards and Regional Reliability Council standards, as the same may be amended or modified from time to time.

#### **II. Real-time Operations:**

##### **A. Reliability Coordinator Functions:**

The Reliability Coordinator shall perform the following functions:

- a) Monitoring, analyzing, and coordinating the reliability of LG&E/KU's facilities and interfaces with other Balancing Authorities, Transmission Operators, and other reliability coordinators.
- b) Performing analyses to develop an evaluation of system conditions. LG&E/KU will provide necessary information (e.g., outages and transactions) and Transmission System conditions, as applicable, to the Reliability Coordinator in accordance with applicable NERC Reliability Standards. The results of these analyses will be provided to LG&E/KU and neighboring reliability coordinators in accordance with applicable NERC Standards and Regional Reliability Council Standards.
- c) Determining, directing, and documenting appropriate actions to be taken by LG&E/KU, the ITO and Reliability Coordinator in accordance with the NERC Reliability Standards, including curtailment of transmission service or energy schedules, re-dispatch of generation and load shedding as necessary to alleviate facility overloads and abnormal voltage conditions, and other circumstances that affect interregional bulk power reliability.
- d) Coordinating transmission loading relief and voltage correction actions with LG&E/KU and with other reliability coordinators.

**B. LG&E/KU Responsibilities:**

LG&E/KU shall have the following responsibilities:

- a) Ensuring appropriate telemetry and providing Reliability Coordinator real-time operational information for monitoring.
- b) Receiving from the Reliability Coordinator all reliability alerts for TVA Reliability Area and neighboring reliability coordinators.
- c) Following Reliability Coordinator directives for corrective actions (e.g., curtailments or load shedding) during system emergencies or to implement TLR procedures.
- d) Receiving from Reliability Coordinator all notices regarding Transmission System limitations or other reliability issues, as appropriate.

**III. Forward Operations:**

**A. Reliability Coordinator Functions:**

The Reliability Coordinator shall perform the following functions:

- a) Performing analyses and develop an evaluation of the expected next-day Transmission System operations. The results of these analyses shall be provided to LG&E/KU, the ITO and neighboring reliability coordinators in

accordance with applicable NERC Reliability Standards and Regional Reliability Council Standards.

- b) Performing analysis of planned transmission and generation outages and coordination of outages with NERC, participants in reliability coordination agreements, and other reliability coordinators as appropriate and as required by NERC. This entails analysis and coordination of planned outages which are beyond next day and intra-day outages.
- c) Analyzing and approving all planned maintenance schedules on facilities 100kV and above and planned maintenance of generation facilities submitted by LG&E/KU in conjunction with other work on the regional transmission grid to determine the impact of LG&E/KU's planned maintenance schedule on the reliability of the facilities under TVA's purview as Reliability Coordinator, and the purview of neighboring reliability coordinators, and any other relevant effects; and coordinate impacts on available transfer capability with the ITO.
- d) Coordinating, as required by either NERC or other agreements, planned maintenance schedules with all adjacent reliability coordination areas and/or Balancing Authority Areas and Transmission Providers; as well as the ITO.

**B. LG&E/KU Responsibilities:**

LG&E/KU shall have the following responsibilities:

- a) Providing generation-related information (e.g., outages and transactions) and expected Transmission System conditions (e.g., transmission facility outages and transactions), as applicable, to the Reliability Coordinator for the next-day operation in accordance with applicable NERC Reliability Standards and Regional Reliability Council standards.
- b) Submitting facility ratings and operational data for all generators and transmission facilities in the LG&E/KU footprint.
- c) Coordinating with the ITO and submitting to the Reliability Coordinator generation dispatch information for the LG&E/KU footprint and following Reliability Coordinator directives regarding dispatch adjustments to mitigate congestion.
- d) Submitting to the Reliability Coordinator generation operation plans and commitments for reliability analysis.
- e) Submitting to the Reliability Coordinator transmission maintenance plans for reliability analysis.
- f) Following Reliability Coordinator directives to revise transmission maintenance plans as required to ensure grid reliability.

- g) Receiving from Reliability Coordinator all notices regarding reliability analyses for the TVA Reliability Area as well as neighboring reliability coordinators.
- h) Representing LG&E/KU on the RCAC and in all RCAC deliberations.

#### IV. Regional Congestion Management

For the purposes of this section IV, capitalized terms will have the definitions used in the Congestion Management Process ("CMP"), unless otherwise noted in this section IV.

##### A. Reliability Coordinator Functions:

The following functions to be performed by the Reliability Coordinator shall be performed in conjunction with the functions to be performed by the Independent Transmission Operator under the Independent Transmission Organization Agreement and will fully incorporate the LG&E/KU operations into the procedures and protocols governing other facilities in the Reliability Coordinator's Reliability Area in accordance with the CMP:

- a) Identifying Coordinated Flowgates and determination of flowgates requiring Reciprocal Coordination (twice annually).
- b) Performing Historic Firm Flow Calculations -- implement transmission service reservation set and designated resources provided by LG&E/KU for established freeze date; calculate historic firm flow values and ratios for all coordinated flowgates on LG&E/KU's system (bi-annually).
- c) Developing reciprocal coordination agreements that establish how each Operating Entity will consider its own flowgates as well as the usage of other Operating Entities when it determines the amount of flowgate or constraint capacity remaining. This process will include both operating horizon determination as well as forward looking capacity allocation.
- d) Implementing AFC Process -- determine AFC attribute requirements; obtain NNL Impact Data; implement Allocation Calculation Process; implement AFC calculation process.
- e) The Reliability Coordinator will provide the ITO flowgate AFCs on an hourly basis and flowgate allocations on a daily basis.

##### B. LG&E/KU Responsibilities:

LG&E/KU is obligated to uphold the terms and conditions of the CMP, and providing the Reliability Coordinator with the information and support it needs in order to carry out its duties as LG&E/KU's Reliability Coordinator. LG&E/KU shall have the following responsibilities. LG&E/KU will be responsible for coordinating with the ITO and providing

Transmission System data to the Reliability Coordinator including, but not limited to:

Operating information:

- (i) Transmission Service Reservations;
- (ii) Load forecast requirements;
- (iii) Flowgates requirements;
- (iv) AFC data requirements;
- (v) PSSE Models Requirements;
- (vi) Designated Network Resources requirements;
- (vii) Jointly owned units;
- (viii) Dynamic schedules;
- (ix) NNL allocations requirements; and,
- (x) NNL Evaluator Requirements.

Projected operating information:

- (i) Unit commitment/merit order;
- (ii) Firm purchase and sales (including grandfathered agreements);
- (iii) Independent power producer information including current operating level, projected operating levels, Scheduled Outage start and end dates;
- (iv) Planned and actual operational start-up dates for any permanently added, removed, or significantly altered transmission segments; and
- (v) Planned and actual start-up testing and operational start-up dates for any permanently added, removed, or significantly altered generation units.

**C. ITO Responsibilities:**

The ITO shall have the following responsibilities in support of the Congestion Management Process ("CMP"):

- a) Providing to the Reliability Coordinator all transmission facility plans and facility upgrade schedules.
- b) Providing to the Reliability Coordinator the status of all transmission service requests and all new transmission service agreements.
- c) Receiving from the Reliability Coordinator all flowgate AFCs on an hourly basis and flowgate allocations on a daily basis.
- d) Converting flowgate information provided by the Reliability Coordinator to ATC values for posting on OASIS and for analyzing TSRs.



- e) Implementing CMP business rules for AFC vs. ASTFC.
- f) Honoring all AFC allocations and AFC over-rides from other CMP participants in the evaluation and granting of transmission service.

**V. Reliability Coordination**

**A. Reliability Coordinator Functions:**

The Reliability Coordinator will ensure a long-term (one year and beyond) plan is available for adequate resources and transmission within the TVA Reliability Area. The Reliability Coordinator will integrate the Annual Plan provided by the ITO with plans of other operating entities in the Reliability Coordination Area and assess the plans to ensure those plans meet reliability standards. The Reliability Coordinator will advise the ITO of solutions to plans that do not meet those standards. The Reliability Coordinator will then coordinate the Reliability Area Plan with those of neighboring reliability coordinators and Planning Coordinators to ensure wide-area grid reliability.

These functions include:

- a) Integrating the transmission and resource (demand and capacity) system models provided by the ITO with those of other Reliability Coordinator Area operating entities to ensure Transmission System reliability and resource adequacy.
- b) Applying methodologies and tools to assess and analyze the Transmission System's expansion plans and the resource adequacy plans.
- c) Collecting all information and data required for modeling and evaluation purposes.
- d) Integrating and verifying that the respective plans of the Resource Planners and Transmission Planners within the TVA Reliability Area meet reliability standards.
- e) Coordinating the Reliability Coordinator Area plan with neighboring Reliability Coordinators for review, as appropriate.
- f) Integrating the Reliability Coordinator Area plan with neighboring Planning Coordinators/reliability coordinators' plans to provide a broad multi-regional bulk system planning view.

**B. LG&E/KU Responsibilities:**

LG&E/KU shall have the following responsibilities:

- a) Providing to the Reliability Coordinator demand and energy end-use customer forecasts, capacity resources, and demand response programs.
- b) Providing to the Reliability Coordinator generator unit performance

characteristics and capabilities.

- c) Providing to Reliability Coordinator long-term capacity purchases and sales.

## ATTACHMENT B

### DIVISION OF RESPONSIBILITIES FOR THE PLANNING FUNCTION

#### Overview

This Attachment B to the Reliability Coordinator Agreement is designed to provide a division of responsibilities between LG&E/KU, the ITO and the Reliability Coordinator. Long-term Transmission Planning for LG&E/KU's footprint will be conducted as an iterative process as follows: 1) LG&E/KU will develop the long-term Annual Transmission Plan ("Annual Plan") and submit the Annual Plan to the ITO for initial approval; 2) The ITO will review and conduct an engineering assessment of the Annual Plan; and if it is approved, the ITO will submit the Annual Plan to the Reliability Coordinator; 3) The Reliability Coordinator will conduct a regional assessment of the Annual Plan, subject to the conditions below; 4) The Reliability Coordinator will submit any changes based on its regional assessment to the ITO for final review and approval. The ITO will ensure that transmission planning on the Transmission Owner's system is done on an independent, non-discriminatory basis. This process is further detailed below.

#### 1. Plan Development by LG&E/KU

LG&E/KU will be responsible for the following tasks:

**1.1 System Models for Transmission Planning.** LG&E/KU will develop and maintain all transmission and resource (demand and capacity) system models, to evaluate Transmission System performance and resource adequacy. As part of these duties LG&E/KU is responsible for:

**1.1.1** Creating the Base Case Model for the Transmission System. This Model will include all existing long-term, firm uses of the Transmission System, including: (i) Network Integration Transmission Service; (ii) firm transmission service for LG&E/KU's Native Load; (iii) Long-Term Point-to-Point Transmission Service; and (iv) firm transmission service provided in accordance with grandfathered agreements. The Base Case Model will be developed pursuant to the modeling procedures used in developing the NERC multi-regional and Reliability *First* regional models.

**1.1.2** Providing the Base Case Model to the ITO for review and approval according to the iterative process outlined in the overview to this Attachment B.

**1.1.3** Maintaining other transmission models including, but not limited to steady-state, dynamic and short circuit models.

**1.2 Assess, develop, and document Resource and Transmission Expansion**

**plans.** LG&E/KU will assess, develop, and document Resource and Transmission Expansion plans including the Annual Plan. These plans include the following responsibilities:

- 1.2.1 Maintaining and apply methodologies and appropriate tools for the development, analysis and simulation of the Transmission System in the assessment and development of transmission expansion plans and the analysis and development of resource adequacy plans.
  - 1.2.2 Developing a long-term (generally one year and beyond) plan for the reliability (adequacy) of the Transmission System.
  - 1.2.3 Defining system protection and control needs and requirements, including special protection systems (remedial action schemes), to meet reliability standards.
  - 1.2.4 Developing and report, as appropriate, on the Annual Plan for assessment and compliance with reliability standards.
  - 1.2.5 Monitoring and report, as appropriate, its Annual Plan implementation.
- 1.3 **Information.** LG&E/KU will define, collect and develop information required for planning purposes, including:
- 1.3.1 **Transmission facility characteristics and ratings.** Collect and maintain specific transmission information regarding characteristics of transmission facilities, lines, equipment, and methodologies, for determining the appropriate thermal ratings of circuits and transformers, including information on transmission line design temperature, voltage and stability limits and other transformer test data.
  - 1.3.2 **Demand and energy end-use customer forecasts, capacity resources, and demand response programs.** Including:
    - i. Load forecasts for all existing delivery points for the following ten years, including transmission (wholesale and retail) connected substations and distribution substations, and coincident and noncoincident peak demands and power factor at each delivery point;
    - ii. Plans for new delivery points for the following ten years;
    - iii. Resource plans for the following 10 years;
    - iv. Expectations for market access to on- and off-system generation resources;

- v. All planned on-system distributed generation resources; and
- vi. Information on all interruptible loads.

### **1.3.3 Generator unit performance characteristics and capabilities.**

LG&E/KU shall provide the ITO with all necessary data, information, and applicable requirements that govern the operation of any generating facilities interconnected with the Transmission System, as the ITO may require for performance of its various functions. LG&E/KU shall submit and coordinate generator unit schedules as necessary to permit the ITO to assess transmission transfer capability and to permit the Reliability Coordinator to assess transmission reliability. LG&E/KU shall submit, on an annual basis, data concerning projected loads, designated network resources, generation and transmission maintenance schedules, and other such operating data as the ITO may require for performance its various functions.

### **1.3.4 Long-term capacity purchases and sales.** LG&E/KU will maintain a list of all long-term capacity purchases and sales and include this information in its model development and the Annual Plan.

## **2 ITO Review and Assessment**

The ITO will be responsible for the following tasks:

- 2.1** Independently reviewing and approving LG&E/KU's Planning Guidelines. If the ITO concludes that additional explanatory detail is required, LG&E/KU will modify the appropriate business practice documents to include the additional detail. The ITO will ensure that the final versions of the Planning Criteria are posted on OASIS;
- 2.2** Reviewing and approving LG&E/KU's Base Case Model; reviewing, evaluating, and commenting on the Annual Plan as developed by LG&E/KU. This review and evaluation will be based on all applicable planning criteria and statewide or multi-state transmission planning requirements;
- 2.3** Monitoring LG&E/KU's transmission facility ratings based on access to data necessary to evaluate such ratings;
- 2.4** Performing an Independent assessment of the Transmission System using the Planning Guidelines and the Base Case Model. As part of this assessment, the ITO will independently evaluate whether: (i) LG&E/KU's Annual Plan complies with the Planning Guidelines and the Base Case Model; and (ii) whether there are upgrade projects in the Annual Plan that are not necessary to meet the Planning Guidelines and the Base Case Model;

- 2.5 Holding a Transmission Planning Conference to gather input and consider the planning process and LG&E/KU's Annual Plan; and
- 2.6 Providing LG&E/KU with its conclusions regarding the reliability assessment and evaluation of the Annual Plan, including any outstanding issues that the ITO believes LG&E/KU should address. LG&E/KU will have the opportunity to review the ITO's conclusions and may submit a revised Annual Plan and supporting documentation to the ITO to address any outstanding issues. Once the Annual Plan has been finalized by LG&E/KU, the ITO will submit the Annual Plan to the Reliability Coordinator for regional coordination.

### **3 Regional Coordination**

The Reliability Coordinator will be responsible for the following tasks:

- 3.1 Integrating and verifying that the respective plans for the regional area meet reliability standards.
- 3.2 Identifying and reporting on potential Transmission System and resource adequacy deficiencies in the regional area, and provide alternate plans that mitigate these deficiencies.
- 3.3 Reviewing and reporting, as appropriate, on LG&E/KU's Annual Plan for assessment and compliance with reliability standards within their regional area.
- 3.4 Notifying impacted transmission entities within their regional area of any planned transmission changes that may impact their facilities.
- 3.5 Submitting Annual Plan, including any changes based on the regional coordination, to the ITO for final approval.

### **4 Final Review and Assessment**

- 4.1 The ITO shall have final review and assessment of all plans. If the ITO cannot approve a plan after regional coordination, then the ITO will return the plan to LG&E/KU for further development as appropriate. The process for final approval of any previously rejected plan will follow the same iterative process as outlined above.
- 4.2 The ITO will post LG&E/KU's finalized Annual Plan on OASIS.

### **5 Implementation of Plan and Construction of Upgrades**

- 5.1 LG&E/KU is responsible for the implementation of the Annual Plan. LG&E/KU will make a good faith effort to design, certify, and build facilities approved by the ITO in the Annual Plan.
- 5.2 In the case where the Reliability Coordinator or the ITO does not agree with the Annual Plan, nothing in this Attachment B shall prevent LG&E/KU from constructing those facilities it deems necessary to reliably meet its

obligation to serve its Transmission Customers, point-to-point, Network Integration Service, and Native Load Customers.

ATTACHMENT C  
TO THE RELIABILITY COORDINATOR AGREEMENT

LIST OF KEY PERSONNEL  
TVA Reliability Coordination Services

August 2014

**Reliability Authority & Regional Operations**

Armando Rodriguez - Senior Manager, Reliability Authority & Regional Operations

Roy Mathai - Project Manager, Operations Readiness

**Reliability Operations**

Nathan Schweighart - Manager, Reliability Operations

Terry Williams - Specialist Reliability Analysis Operator

Julio Bolano - Specialist Reliability Analysis Operator

Richard Brent Fuller - Specialist Reliability Analysis Operator

Timothy Gleason - Specialist Reliability Analysis Operator

Donald Herring - Specialist Reliability Analysis Operator

Daniel Kehoe - Specialist Reliability Analysis Operator

Thomas Wilk - Specialist Reliability Analysis Operator

William C. Dunn - Reliability Coordinator System Operator

Kevin Grooms - Reliability Coordinator System Operator

Darrell Jones - Reliability Coordinator System Operator

Thomas C. Nance - Reliability Coordinator System Operator

Travis Rackley - Reliability Coordinator System Operator

Brent Taylor - Reliability Coordinator System Operator

**Reliability Analysis**

Scott Walker - Manager, Reliability Analysis

Timothy Fritch - Electrical Engineer Planning

Marshalia Green - Electrical Engineer Planning

Gary Kobet - Electrical Engineer Planning

Shaun McFarland - Electrical Engineer Planning

Charles Michael McAmis - Electrical Engineer Planning

Jonathan Prater - Electrical Engineer Planning

Matthew Scott Schebler - Electrical Engineer Planning

Joshua Shultz - Electrical Engineer Planning

Justin Baier - Engineering Intern

Ulyana Pugina - Engineering Intern

**Advanced Power Applications**

Gregory Dooley - Electrical Engineer Power Systems

Alden Bost Jr. - Electrical Engineer Power Systems

Joey Burke - Electrical Engineer Power Systems

Brian Scott - Electrical Engineer Power Systems

David Nordy Jr. - Electrical Engineer Power Systems

Thomas Scott - Engineering Intern

Cyril Shircel - Engineering Intern



Karlee Winkelman - Engineering Intern

**EXHIBIT 1  
TO THE RELIABILITY COORDINATOR AGREEMENT**

LG&E and KU hereby incorporate the Baseline Congestion Management Process (Version 1.2), which is attached hereto.

Document Content(s)

Attachment Q.DOCX.....	1-86
Transmittal Letter.PDF.....	87-92
Marked Tariff.PDF.....	93-139
Executed Agreement.PDF.....	140-181
FERC GENERATED TARIFF FILING.RTF.....	182-274