UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation	**)** **)**	**Docket No. RR15-12-___**

COMPLIANCE FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND PETITION FOR APPROVAL OF REVISED DELEGATION AGREEMENTS WITH REGIONAL ENTITIES

The North American Electric Reliability Corporation ("NERC")[1] hereby submits this compliance filing in accordance with the Federal Energy Regulatory Commission's ("Commission" or "FERC") November 2, 2015 Order ("November 2 Order")[2] conditionally approving (i) a revised *pro forma* Regional Delegation Agreement ("RDA") and (ii) revised, individual RDAs between NERC and each of the eight Regional Entities (the *pro forma* RDA and the individual RDAs are collectively referred to as the "Revised RDAs") in the referenced docket. In the November 2 Order, the Commission directed NERC to modify various provisions of the Revised RDAs and to submit a compliance filing to address these modifications within 120 days

[1] The Commission certified NERC as the Electric Reliability Organization ("ERO") authorized by Section 215 of the Federal Power Act, in its order issued July 20, 2006, in Docket No. RR06-1-000. *See Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062 (2006), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on clarification and reh'g*, 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 342 (D.C. Cir. 2009).

[2] *See North American Electric Reliability Corporation, Order Conditionally Approving Revised Pro Forma Delegation Agreement and Revised Delegation Agreements with Regional Entities*, 153 FERC ¶ 61,135 (2015) ("November 2 Order").

of the date of the November 2 Order.[3] Specifically, the Commission directed NERC to do the following:

(1) retain references to "audit" in Section 8(f) of the Revised RDAs;[4]

(2) revise Section 8(g) to explicitly include audits and reviews, pursuant to Section 8(f), in the non-public information to which the Commission must have full access;[5]

(3) remove the automatic renewal provisions in Section 12 so that the RDAs are subject to re-evaluation and re-approval following the term ending on December 31, 2020;[6]

(4) include a provision requiring NERC to maintain on its public website the currently effective versions of all Regional Entity bylaws and regional standard development procedures;[7]

(5) explain whether "compliance and enforcement program procedures and guidance that NERC may from time to time develop" require Commission approval;[8]

(6) clarify in Section 15 that the Commission or a court, per Section 1500 of the NERC Rules of Procedure, may direct NERC or a Regional Entity not to notify a disclosing entity of a required disclosure.[9]

NERC respectfully requests that the Commission issue an order approving this compliance filing which includes the Revised RDAs in **Attachments 2 - 9**.

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[3] *See* November 2 Order at P 2 and Ordering Paragraph (C).

[4] *See id*. at P 48.

[5] *See id*. at P 49.

[6] *See id*. at PP 58-60, 62-63.

[7] *See id*. at PP 67, 69-70.

[8] *See* November 2 Order at P 73.

[9] *See id*. at PP 76-79.

I. Commission-Directed Modifications to the Revised RDAs

In this section, NERC outlines the Commission-directed modifications to the Revised RDAs that will take effect on January 1, 2016, as reflected in **Attachments 1-A** and **1-B**.

A. Regional Entity Bylaws and Regional Reliability Standard Development Procedures – Section 3.

In the November 2 Order, the Commission directed NERC to modify Section 3 of the Revised RDAs to include a provision requiring NERC to maintain on its public website the currently effective versions of all of the Regional Entity bylaws and regional standard development procedures.[10] In conformance with the November 2 Order, NERC modifies Section 3(b) of the Revised RDAs as follows:

> **3. General Covenants**.
>
> (b) [REGIONAL ENTITY] shall provide NERC with a copy of its Regional Entity Rules upon request by NERC. NERC shall maintain on its public website the currently effective versions of all Regional Entity bylaws and Regional Entity standard development procedures.

B. Enforcement of Compliance with Reliability Standards – Section 6.

In the November 2 Order, the Commission directed NERC to clarify the meaning of the phrase "compliance and enforcement procedures and guidance that NERC may from time to time develop" in Section 6(c) of the Revised RDAs.[11] While NERC is not proposing any edits to this section, NERC is providing a clarification. Section 6(c) of the Revised RDAs provides in pertinent part that:

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[10] *Id.* at PP 69-70.

[11] *See id.* at P 73.

> **6. <u>Enforcement of Compliance with Reliability Standards</u>.**
>
> (c) [REGIONAL ENTITY] shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by [REGIONAL ENTITY], as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations.
>
> ***

The Commission specifically noted that procedures and guidance affecting the scope of noncompliance information as well as the submittal of noncompliance information to the Commission requires Commission approval.

NERC's reporting obligations regarding noncompliance information are memorialized in the NERC Rules of Procedure and Commission orders. NERC clarifies that any Compliance Monitoring and Enforcement Program ("CMEP") procedures and guidance are separate, but consistent with the NERC Rules of Procedure. CMEP procedures and guidance provide direction and guidance to ERO Enterprise CMEP staff on approaches to carrying out compliance and enforcement activities within the ERO Enterprise. As an example, NERC guidance may set forth requirements for submitting a CMEP spreadsheet in a particular format. NERC confirms that any change in what noncompliance information it reports to the Commission and when it submits such noncompliance information to the Commission requires a change to the NERC Rules of Procedure. In order for such a change to take effect, NERC must obtain prior Commission approval.

C. NERC Reviews and Audits of Regional Entities – Sections 8 and 12.

In the November 2 Order, the Commission directed NERC to retain references to "audit" in Section 8 of the Revised RDAs, and to make conforming changes to Section 12, to avoid any confusion regarding NERC's responsibility to conduct audits of the Regional Entities every five

years as required by the NERC Rules of Procedure.[12] In accordance with the November 2 Order, NERC revises Sections 8 and 12 as follows:

8. Oversight of Performance of Delegated Functions and Related Activities.

(f) NERC ~~may~~ shall perform reviews and audits of [REGIONAL ENTITY] on a reasonable periodicity to determine [REGIONAL ENTITY]'s compliance with this Agreement, any policies or procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, ~~and~~ directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv~~) and (~~), (d) and (f), respectively, that are maintained as non-public.

12. Term and Termination.

(b) ~~The term of this Agreement shall commence on the Effective Date, and shall have an initial term of five years (the "Term"), ending on December 31, 2020. Thereafter, the Term shall automatically extend for one additional five-year term unless either Party shall provide written notice of termination of this Agreement to the other~~The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If [REGIONAL ENTITY] meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

[12] November 2 Order at P 47.

D. Automatic Renewal of Regional Delegation Agreements – Section 12.

In the November 2 Order, the Commission directed NERC to "modify the *Pro Forma* Delegation Agreement and specific Delegation Agreements with each Regional Entity by removing the automatic renewal provisions, such that the Delegation Agreements are subject to [the Commission's] re-evaluation and re-approval following the initial term, scheduled to end on December 31, 2020."[13] In compliance with this directive, NERC modifies Section 12(b) of the Revised RDAs as follows:

> **12. <u>Term and Termination</u>.**
>
> (b) ~~The term of this Agreement shall commence on the Effective Date, and shall have an initial term of five years (the "Term"), ending on December 31, 2020. Thereafter, the Term shall automatically extend for one additional five-year term unless either Party shall provide written notice of termination of this Agreement to the other~~<u>The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If [REGIONAL ENTITY] meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate</u> no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

[13] November 2 Order at P 59.

E. Confidentiality – Section 15.

In the November 2 Order, the Commission directed NERC to revise Section 15 of the Revised RDAs to state that the provisions of Section 1500 of the NERC Rules of Procedure control if a conflict arises between Section 1500 and the Revised RDAs.[14] In accordance with the November 2 Order, NERC modifies Section 15 of as follows:

> **15. Confidentiality**.
>
> (d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel.~~, in which event the recipient hereby agrees to~~ Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt notice of ~~such~~ a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

II. Conclusion

NERC respectfully requests that the Commission accept this compliance filing and the Revised RDAs.

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[14] *Id*. at P 79.

Respectfully submitted,

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Counsel for North American Electric Reliability Corporation

Date: December 18, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding. Dated at Washington, D.C. this 18th day of December 2015.

/s/ Nina H. Jenkins-Johnston
Nina H. Jenkins-Johnston

Counsel for North American Electric Reliability Corporation

Attachment 1-A

Commission-directed Modifications to the

Pro Forma Regional Delegation Agreement

(Redline Version)

Redline Version

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND [REGIONAL ENTITY]

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and [REGIONAL ENTITY], an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and [REGIONAL ENTITY] may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities ("Regional Entities") such as [REGIONAL ENTITY], provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, [REGIONAL ENTITY] [is/is not] organized on an Interconnection-wide basis and therefore [is/is not] entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through [REGIONAL ENTITY] to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that [REGIONAL ENTITY] meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and [REGIONAL ENTITY], having operated under a predecessor agreement to this Agreement, have negotiated this amended and restated Agreement so as to incorporate the benefits of their mutual experience and lessons learned while operating under the predecessor agreement and thereby provide for the more efficient and effective execution of

their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and [REGIONAL ENTITY] agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to [REGIONAL ENTITY] to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, [REGIONAL ENTITY] hereby represents and warrants to NERC that:

(i) [REGIONAL ENTITY] is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. [REGIONAL ENTITY] is governed in accordance with its bylaws by [select appropriate: an independent board/a balanced stakeholder board/ a combination independent and balanced stakeholder board]. Pursuant to these bylaws, no two industry sectors can control any [REGIONAL ENTITY] decision and no single industry sector can veto any [REGIONAL ENTITY] decision. The relevant criteria for the

establishment of such bylaws are attached hereto in **Exhibit B**. No other [REGIONAL ENTITY] corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) [REGIONAL ENTITY] has developed a standards development procedure, which provides the process that [REGIONAL ENTITY] may use to develop Regional Reliability Standards [and Regional Variances, if the regional entity is organized on an Interconnection-wide basis] that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, [REGIONAL ENTITY] has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within [REGIONAL ENTITY]'s geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to [REGIONAL ENTITY] that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. General Covenants.

(a) During the term of this Agreement, [REGIONAL ENTITY] shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) [REGIONAL ENTITY] shall provide NERC with a copy of its Regional Entity Rules upon request by NERC. NERC shall maintain on its public website the currently effective versions of all Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and [REGIONAL ENTITY] shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon [REGIONAL ENTITY].

4. <u>Delegation of Authority</u>.

(a) Based upon the representations, warranties and covenants of [REGIONAL ENTITY] in this Agreement, [REGIONAL ENTITY's] corporate governance documents, the [REGIONAL ENTITY's] standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to [REGIONAL ENTITY] for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**, provided, that [REGIONAL ENTITY] shall not monitor and enforce compliance with Reliability Standards for [REGIONAL ENTITY] or an affiliated entity with respect to reliability functions for which [REGIONAL ENTITY] or an affiliate is a Registered Entity. Any exclusions from this delegation of authority to [REGIONAL ENTITY] within, or additions to this delegation of authority to [REGIONAL ENTITY] beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) In circumstances where [REGIONAL ENTITY] or an affiliated entity is a Registered Entity, [REGIONAL ENTITY] shall enter into an agreement with another Regional

Entity or NERC for the other Regional Entity or NERC to monitor and enforce [REGIONAL ENTITY]'s or affiliate's compliance with Reliability Standards. Such agreements are subject to NERC and Commission approval.

(c) Nothing in this Agreement shall prohibit [REGIONAL ENTITY] from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both [REGIONAL ENTITY] and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, [REGIONAL ENTITY] shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. <u>Development and Proposal of Reliability Standards</u>.

(a) In connection with its Delegated Authority, [REGIONAL ENTITY] shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords [REGIONAL ENTITY] reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards [and Regional Variances, if Regional Entity is organized on an Interconnection-wide basis] through [REGIONAL ENTITY]'s process. [REGIONAL ENTITY]'s process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to [REGIONAL ENTITY]'s process shall be submitted to the NERC Board of Trustees for approval and upon approval, be submitted to the

Commission for approval. Proposals approved through [REGIONAL ENTITY]'s process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time. The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. [REGIONAL ENTITY] may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, [REGIONAL ENTITY] shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and [REGIONAL ENTITY] agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. [REGIONAL ENTITY] may not change its compliance

monitoring and enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed, and the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, [REGIONAL ENTITY] agrees to comply with the NERC Rules of Procedure, with any directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) [REGIONAL ENTITY] shall maintain a program of proactive monitoring and enforcement of compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) [REGIONAL ENTITY] shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by [REGIONAL ENTITY], as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and [REGIONAL ENTITY] shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by [REGIONAL ENTITY] of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, [REGIONAL ENTITY] shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. A Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures.

(f) [For Regional Entities with such agreements: [REGIONAL ENTITY] may also perform compliance monitoring and enforcement activities outside of the boundaries shown in **Exhibit A**, on behalf of a Regional Entity that is unable to perform such activities with respect to one or more registered entities within its footprint due to a conflict of interest. Such activities shall be performed pursuant to a contract between [REGIONAL ENTITY] and other such Regional Entity that is approved by both NERC and the Commission.]

7. <u>Delegation-Related Activities</u>.

NERC will engage [REGIONAL ENTITY] on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by [REGIONAL ENTITY] in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by [REGIONAL ENTITY] and other Regional Entities. [REGIONAL ENTITY] shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in

accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to the Commission.

(c) **Reliability Assessment and Performance Analysis.** [REGIONAL ENTITY] shall develop assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. [REGIONAL ENTITY] shall also develop and maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** [REGIONAL ENTITY] shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and [REGIONAL ENTITY] shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, [REGIONAL ENTITY] shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** [REGIONAL ENTITY] may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** [REGIONAL ENTITY] shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** [REGIONAL ENTITY] shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of [REGIONAL ENTITY]'s performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and [REGIONAL ENTITY] that matters relating to NERC's oversight of [REGIONAL ENTITY]'s performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and [REGIONAL ENTITY] and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with [REGIONAL ENTITY] and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and [REGIONAL ENTITY]'s performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. [REGIONAL ENTITY] shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate [REGIONAL ENTITY]'s performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate [REGIONAL ENTITY]'s performance of its delegated functions and related activities and to provide advice and direction to [REGIONAL ENTITY] on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, [REGIONAL ENTITY] and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, [REGIONAL ENTITY] shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of [REGIONAL ENTITY]'s performance against the performance goals, measures and parameters, or performance of specific activities, to be unsatisfactory, *provided*, that prior to requiring [REGIONAL ENTITY] to adopt and implement an action plan or other remedial action, NERC shall issue a notice to [REGIONAL ENTITY] of the need and basis for an action plan or other remedial action and provide an opportunity for [REGIONAL ENTITY] to submit a written response contesting NERC's evaluation of [REGIONAL ENTITY]'s performance and the need for an action plan. [REGIONAL ENTITY] may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request. NERC and [REGIONAL ENTITY] shall work collaboratively as needed in the development and implementation of [REGIONAL ENTITY]'s action plan. A final action plan submitted by [REGIONAL ENTITY] to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to [REGIONAL ENTITY] standardized training and education programs, which shall be designed taking into account input from [REGIONAL ENTITY] and other Regional Entities, for [REGIONAL ENTITY] personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to [REGIONAL ENTITY] concerning the manner in which [REGIONAL ENTITY] shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with [REGIONAL ENTITY] and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and [REGIONAL ENTITY] and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of

and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, [REGIONAL ENTITY], subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by [REGIONAL ENTITY], the NERC Board of Trustees (or a committee of the Board to which the Board delegates appropriate authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without [REGIONAL ENTITY]'s agreement, *provided*, that [REGIONAL ENTITY] shall request such review within thirty (30) days following issuance of the directive by the NERC President unless good cause can be shown for a later request.

(iv) NERC and [REGIONAL ENTITY] and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which [REGIONAL ENTITY], and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. [REGIONAL ENTITY], either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with [REGIONAL ENTITY], either

individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC ~~may~~ shall perform reviews and audits of [REGIONAL ENTITY] on a reasonable periodicity to determine [REGIONAL ENTITY]'s compliance with this Agreement, any policies or procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, ~~and~~ directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv~~) and (~~), (d) and (f), respectively, that are maintained as non-public.

9. **Funding**. [REGIONAL ENTITY] and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) [REGIONAL ENTITY] shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. [REGIONAL ENTITY]'s proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, [REGIONAL ENTITY] to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. [REGIONAL ENTITY]'s business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) [REGIONAL ENTITY] and NERC agree that the portion of [REGIONAL ENTITY]'s approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end

users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by [REGIONAL ENTITY] and approved by NERC and the Commission. If [REGIONAL ENTITY] proposes to use a formula other than Net Energy for Load beginning in the following year, [REGIONAL ENTITY] shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and [REGIONAL ENTITY] to the Commission pursuant to the ERO Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide [REGIONAL ENTITY] with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) [REGIONAL ENTITY] shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of [REGIONAL ENTITY], to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund [REGIONAL ENTITY]'s performance of its Delegated Authority and related activities in accordance with [REGIONAL ENTITY]'s Commission-approved business plan and budget, in the amount of [REGIONAL ENTITY]'s assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting [REGIONAL ENTITY]'s approved assessments from end users and other entities and payment of the approved assessment amount to [REGIONAL ENTITY], unless otherwise

modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon [REGIONAL ENTITY] that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without [REGIONAL ENTITY]'s consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC and [REGIONAL ENTITY] fiscal year budget with the actual results at the NERC and Regional Entity levels. [REGIONAL ENTITY] shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) [REGIONAL ENTITY] shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) [REGIONAL ENTITY] shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which [REGIONAL ENTITY] shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY]) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which [REGIONAL ENTITY] shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY]. *Provided*, that, subject to approval by NERC and the Commission, [REGIONAL ENTITY] may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's

sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. [REGIONAL ENTITY] may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit [REGIONAL ENTITY] from contracting with other entities to assist it in carrying out its Delegated Authority, provided [REGIONAL ENTITY] retains control and responsibility for such Delegated Authority.

11. Default and Cure. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. Term and Termination.

(a) This Agreement shall become effective on [January 1, 2016] (the "Effective Date").

(b) ~~The term of this Agreement shall commence on the Effective Date, and shall have an initial term of five years (the "Term"), ending on December 31, 2020. Thereafter, the Term shall automatically extend for one additional five-year term unless either Party shall provide written notice of termination of this Agreement to the other~~The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit

pursuant to the audit requirements of the NERC Rules of Procedure to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If [REGIONAL ENTITY] meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to provide for a transition of [REGIONAL ENTITY]'s Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. Limitation of Liability. [REGIONAL ENTITY] and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and [REGIONAL ENTITY] shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of [REGIONAL ENTITY]'s or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that [REGIONAL ENTITY] or NERC is found liable for gross negligence or intentional misconduct, in which case [REGIONAL ENTITY] or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

14. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. Confidentiality.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient: (i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to

maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel.~~, in which event the recipient hereby agrees to~~ Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt notice of ~~such~~a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. Amendment. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the

Commission.

17. **Amendments to the NERC Rules of Procedure**. NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations, or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed. To the extent [REGIONAL ENTITY] does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of [REGIONAL ENTITY] under this Agreement, [REGIONAL ENTITY] shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by [REGIONAL ENTITY] to NERC and the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

18. **Dispute Resolution**. In the event a dispute arises under this Agreement between NERC and [REGIONAL ENTITY] (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to [REGIONAL ENTITY]'s performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures ("Dispute Resolution") to attempt to resolve the dispute. [REGIONAL ENTITY] shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to

resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20) business days after the date of the receiving Party's notice, the designated representatives shall engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be

presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:	If to [REGIONAL ENTITY]:
North American Electric Reliability Corporation 1325 G Street NW, Suite 600 Washington, DC 20005 Attn: General Counsel Email: legal@nerc.net	Attn: Email:

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that [REGIONAL ENTITY] may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	[REGIONAL ENTITY]
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Attachment 1-B

Commission-directed Modifications to the

Pro Forma Regional Delegation Agreement

(Clean Version)

Clean Version

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND [REGIONAL ENTITY]

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and [REGIONAL ENTITY], an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and [REGIONAL ENTITY] may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities ("Regional Entities") such as [REGIONAL ENTITY], provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, [REGIONAL ENTITY] [is/is not] organized on an Interconnection-wide basis and therefore [is/is not] entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through [REGIONAL ENTITY] to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that [REGIONAL ENTITY] meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and [REGIONAL ENTITY], having operated under a predecessor agreement to this Agreement, have negotiated this amended and restated Agreement so as to incorporate the benefits of their mutual experience and lessons learned while operating under the predecessor agreement and thereby provide for the more efficient and effective execution of

their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and [REGIONAL ENTITY] agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to [REGIONAL ENTITY] to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, [REGIONAL ENTITY] hereby represents and warrants to NERC that:

(i) [REGIONAL ENTITY] is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. [REGIONAL ENTITY] is governed in accordance with its bylaws by [select appropriate: an independent board/a balanced stakeholder board/ a combination independent and balanced stakeholder board]. Pursuant to these bylaws, no two industry sectors can control any [REGIONAL ENTITY] decision and no single industry sector can veto any [REGIONAL ENTITY] decision. The relevant criteria for the

establishment of such bylaws are attached hereto in **Exhibit B**. No other [REGIONAL ENTITY] corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) [REGIONAL ENTITY] has developed a standards development procedure, which provides the process that [REGIONAL ENTITY] may use to develop Regional Reliability Standards [and Regional Variances, if the regional entity is organized on an Interconnection-wide basis] that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, [REGIONAL ENTITY] has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within [REGIONAL ENTITY]'s geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to [REGIONAL ENTITY] that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. <u>General Covenants</u>.

(a) During the term of this Agreement, [REGIONAL ENTITY] shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) [REGIONAL ENTITY] shall provide NERC with a copy of its Regional Entity Rules upon request by NERC. NERC shall maintain on its public website the currently effective versions of all Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and [REGIONAL ENTITY] shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon [REGIONAL ENTITY].

4. <u>Delegation of Authority</u>.

(a) Based upon the representations, warranties and covenants of [REGIONAL ENTITY] in this Agreement, [REGIONAL ENTITY's] corporate governance documents, the [REGIONAL ENTITY's] standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to [REGIONAL ENTITY] for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**, provided, that [REGIONAL ENTITY] shall not monitor and enforce compliance with Reliability Standards for [REGIONAL ENTITY] or an affiliated entity with respect to reliability functions for which [REGIONAL ENTITY] or an affiliate is a Registered Entity. Any exclusions from this delegation of authority to [REGIONAL ENTITY] within, or additions to this delegation of authority to [REGIONAL ENTITY] beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) In circumstances where [REGIONAL ENTITY] or an affiliated entity is a Registered Entity, [REGIONAL ENTITY] shall enter into an agreement with another Regional

Entity or NERC for the other Regional Entity or NERC to monitor and enforce [REGIONAL ENTITY]'s or affiliate's compliance with Reliability Standards. Such agreements are subject to NERC and Commission approval.

(c) Nothing in this Agreement shall prohibit [REGIONAL ENTITY] from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both [REGIONAL ENTITY] and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, [REGIONAL ENTITY] shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. <u>Development and Proposal of Reliability Standards</u>.

(a) In connection with its Delegated Authority, [REGIONAL ENTITY] shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords [REGIONAL ENTITY] reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards [and Regional Variances, if Regional Entity is organized on an Interconnection-wide basis] through [REGIONAL ENTITY]'s process. [REGIONAL ENTITY]'s process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to [REGIONAL ENTITY]'s process shall be submitted to the NERC Board of Trustees for approval and upon approval, be submitted to the

Commission for approval. Proposals approved through [REGIONAL ENTITY]'s process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time. The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. [REGIONAL ENTITY] may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, [REGIONAL ENTITY] shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and [REGIONAL ENTITY] agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. [REGIONAL ENTITY] may not change its compliance

monitoring and enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed, and the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, [REGIONAL ENTITY] agrees to comply with the NERC Rules of Procedure, with any directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) [REGIONAL ENTITY] shall maintain a program of proactive monitoring and enforcement of compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) [REGIONAL ENTITY] shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by [REGIONAL ENTITY], as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and [REGIONAL ENTITY] shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by [REGIONAL ENTITY] of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, [REGIONAL ENTITY] shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. A Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures.

(f) [For Regional Entities with such agreements: [REGIONAL ENTITY] may also perform compliance monitoring and enforcement activities outside of the boundaries shown in **Exhibit A**, on behalf of a Regional Entity that is unable to perform such activities with respect to one or more registered entities within its footprint due to a conflict of interest. Such activities shall be performed pursuant to a contract between [REGIONAL ENTITY] and other such Regional Entity that is approved by both NERC and the Commission.]

7. <u>Delegation-Related Activities</u>.

NERC will engage [REGIONAL ENTITY] on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by [REGIONAL ENTITY] in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by [REGIONAL ENTITY] and other Regional Entities. [REGIONAL ENTITY] shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in

accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to the Commission.

(c) **Reliability Assessment and Performance Analysis.** [REGIONAL ENTITY] shall develop assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. [REGIONAL ENTITY] shall also develop and maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** [REGIONAL ENTITY] shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and [REGIONAL ENTITY] shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, [REGIONAL ENTITY] shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** [REGIONAL ENTITY] may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** [REGIONAL ENTITY] shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** [REGIONAL ENTITY] shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of [REGIONAL ENTITY]'s performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and [REGIONAL ENTITY] that matters relating to NERC's oversight of [REGIONAL ENTITY]'s performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and [REGIONAL ENTITY] and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with [REGIONAL ENTITY] and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and [REGIONAL ENTITY]'s performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. [REGIONAL ENTITY] shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate [REGIONAL ENTITY]'s performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate [REGIONAL ENTITY]'s performance of its delegated functions and related activities and to provide advice and direction to [REGIONAL ENTITY] on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, [REGIONAL ENTITY] and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, [REGIONAL ENTITY] shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of [REGIONAL ENTITY]'s performance against the performance goals, measures and parameters, or performance of specific activities, to be unsatisfactory, *provided*, that prior to requiring [REGIONAL ENTITY] to adopt and implement an action plan or other remedial action, NERC shall issue a notice to [REGIONAL ENTITY] of the need and basis for an action plan or other remedial action and provide an opportunity for [REGIONAL ENTITY] to submit a written response contesting NERC's evaluation of [REGIONAL ENTITY]'s performance and the need for an action plan. [REGIONAL ENTITY] may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request. NERC and [REGIONAL ENTITY] shall work collaboratively as needed in the development and implementation of [REGIONAL ENTITY]'s action plan. A final action plan submitted by [REGIONAL ENTITY] to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to [REGIONAL ENTITY] standardized training and education programs, which shall be designed taking into account input from [REGIONAL ENTITY] and other Regional Entities, for [REGIONAL ENTITY] personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to [REGIONAL ENTITY] concerning the manner in which [REGIONAL ENTITY] shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with [REGIONAL ENTITY] and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and [REGIONAL ENTITY] and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of

and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, [REGIONAL ENTITY], subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by [REGIONAL ENTITY], the NERC Board of Trustees (or a committee of the Board to which the Board delegates appropriate authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without [REGIONAL ENTITY]'s agreement, *provided*, that [REGIONAL ENTITY] shall request such review within thirty (30) days following issuance of the directive by the NERC President unless good cause can be shown for a later request.

(iv) NERC and [REGIONAL ENTITY] and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which [REGIONAL ENTITY], and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. [REGIONAL ENTITY], either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with [REGIONAL ENTITY], either

individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC shall perform reviews and audits of [REGIONAL ENTITY] on a reasonable periodicity to determine [REGIONAL ENTITY]'s compliance with this Agreement, any policies or procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv), (d) and (f), respectively, that are maintained as non-public.

9. **Funding**. [REGIONAL ENTITY] and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) [REGIONAL ENTITY] shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. [REGIONAL ENTITY]'s proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, [REGIONAL ENTITY] to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. [REGIONAL ENTITY]'s business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) [REGIONAL ENTITY] and NERC agree that the portion of [REGIONAL ENTITY]'s approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end

users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by [REGIONAL ENTITY] and approved by NERC and the Commission. If [REGIONAL ENTITY] proposes to use a formula other than Net Energy for Load beginning in the following year, [REGIONAL ENTITY] shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and [REGIONAL ENTITY] to the Commission pursuant to the ERO Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide [REGIONAL ENTITY] with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) [REGIONAL ENTITY] shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of [REGIONAL ENTITY], to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund [REGIONAL ENTITY]'s performance of its Delegated Authority and related activities in accordance with [REGIONAL ENTITY]'s Commission-approved business plan and budget, in the amount of [REGIONAL ENTITY]'s assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting [REGIONAL ENTITY]'s approved assessments from end users and other entities and payment of the approved assessment amount to [REGIONAL ENTITY], unless otherwise

modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon [REGIONAL ENTITY] that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without [REGIONAL ENTITY]'s consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC and [REGIONAL ENTITY] fiscal year budget with the actual results at the NERC and Regional Entity levels. [REGIONAL ENTITY] shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) [REGIONAL ENTITY] shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) [REGIONAL ENTITY] shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which [REGIONAL ENTITY] shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY]) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which [REGIONAL ENTITY] shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY]. *Provided*, that, subject to approval by NERC and the Commission, [REGIONAL ENTITY] may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's

sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. [REGIONAL ENTITY] may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit [REGIONAL ENTITY] from contracting with other entities to assist it in carrying out its Delegated Authority, provided [REGIONAL ENTITY] retains control and responsibility for such Delegated Authority.

11. <u>Default and Cure</u>. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. <u>Term and Termination</u>.

(a) This Agreement shall become effective on [January 1, 2016] (the "Effective Date").

(b) The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If [REGIONAL ENTITY] meets such requirements, this Agreement may be renewed

for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to provide for a transition of [REGIONAL ENTITY]'s Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. <u>Limitation of Liability</u>. [REGIONAL ENTITY] and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups

based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and [REGIONAL ENTITY] shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of [REGIONAL ENTITY]'s or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that [REGIONAL ENTITY] or NERC is found liable for gross negligence or intentional misconduct, in which case [REGIONAL ENTITY] or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

14. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. **Confidentiality**.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient: (i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel. Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt notice of a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. **Amendment**. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

17. **Amendments to the NERC Rules of Procedure**. NERC shall not adopt amendments to

the NERC Rules of Procedure that conflict with the rights, obligations, or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed. To the extent [REGIONAL ENTITY] does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of [REGIONAL ENTITY] under this Agreement, [REGIONAL ENTITY] shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by [REGIONAL ENTITY] to NERC and the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

18. <u>Dispute Resolution</u>. In the event a dispute arises under this Agreement between NERC and [REGIONAL ENTITY] (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to [REGIONAL ENTITY]'s performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures ("Dispute Resolution") to attempt to resolve the dispute. [REGIONAL ENTITY] shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of

the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20) business days after the date of the receiving Party's notice, the designated representatives shall engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through

Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:	If to [REGIONAL ENTITY]:
North American Electric Reliability Corporation 1325 G Street NW, Suite 600 Washington, DC 20005 Attn: General Counsel Email: legal@nerc.net	Attn: Email:

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that [REGIONAL ENTITY] may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability

requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	[REGIONAL ENTITY]
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Attachment 2

Florida Reliability Coordinating Council

Executed Delegation Agreement Effective January 1, 2016

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND FLORIDA RELIABILITY COORDINATING COUNCIL

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and Florida Reliability Coordinating Council ("FRCC"), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and FRCC may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional

entities ("Regional Entities") such as FRCC, provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, FRCC is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through FRCC to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that FRCC meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and FRCC, having operated under a predecessor agreement to this Agreement, have negotiated this amended and restated Agreement so as to incorporate

the benefits of their mutual experience and lessons learned while operating under the predecessor agreement and thereby provide for the more efficient and effective execution of their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and FRCC agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to FRCC to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, FRCC hereby represents and warrants to NERC that:

(i) FRCC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. FRCC is governed in accordance with its bylaws by a balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any

FRCC decision and no single industry sector can veto any FRCC decision. The relevant criteria for the establishment of such bylaws are attached hereto in **Exhibit B**. No other FRCC corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) FRCC has developed a standards development procedure, which provides the process that FRCC may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, FRCC has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within FRCC's geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to FRCC that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. <u>General Covenants</u>.

(a) During the term of this Agreement, FRCC shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) FRCC shall provide NERC with a copy of its Regional Entity Rules upon request by NERC. NERC shall maintain on its public website the currently effective versions of all Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of FRCC under this Agreement without first obtaining the consent of FRCC, which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and FRCC shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon FRCC.

4. <u>Delegation of Authority</u>.

(a) Based upon the representations, warranties and covenants of FRCC in this Agreement, FRCC's corporate governance documents, FRCC standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to FRCC for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**, provided, that FRCC shall not monitor and enforce compliance with Reliability Standards for FRCC or an affiliated entity with respect to reliability functions for which FRCC or an affiliate is a Registered Entity. Any exclusions from this delegation of authority to FRCC within, or additions to this delegation of authority to FRCC beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) In circumstances where FRCC or an affiliated entity is a Registered Entity, FRCC shall enter into an agreement with another Regional Entity or NERC for the other Regional Entity or NERC to monitor and enforce FRCC's or affiliate's compliance with Reliability Standards. Such agreements are subject to NERC and Commission approval.

(c) Nothing in this Agreement shall prohibit FRCC from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both FRCC and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, FRCC shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. <u>Development and Proposal of Reliability Standards</u>.

(a) In connection with its Delegated Authority, FRCC shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords FRCC reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through FRCC's process. FRCC's process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to FRCC's process shall be submitted to the NERC Board of Trustees for approval and upon approval, be submitted to the Commission for approval. Proposals approved through FRCC's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time.

The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. FRCC may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, FRCC shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and FRCC agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. FRCC may not change its compliance monitoring and enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed, and the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, FRCC agrees to comply with the NERC Rules of Procedure, with any

directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) FRCC shall maintain a program of proactive monitoring and enforcement of compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) FRCC shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by FRCC, as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and FRCC shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by FRCC of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, FRCC shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. A Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures.

7. <u>Delegation-Related Activities</u>.

NERC will engage FRCC on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the

Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by FRCC in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by FRCC and other Regional Entities. FRCC shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to the Commission.

(c) **Reliability Assessment and Performance Analysis.** FRCC shall develop assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. FRCC shall also develop and

maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** FRCC shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and FRCC shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, FRCC shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** FRCC may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** FRCC shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** FRCC shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of FRCC's performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and FRCC that matters relating to

NERC's oversight of FRCC's performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and FRCC and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with FRCC and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and FRCC's performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. FRCC shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate FRCC's performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate FRCC's performance of its delegated functions and related activities and to provide advice and direction to FRCC on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, FRCC and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, FRCC shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of FRCC's performance against the performance goals, measures and parameters, or performance of specific activities, to be unsatisfactory, *provided*, that prior to requiring FRCC to adopt and implement an action plan or other remedial action, NERC shall issue a notice to FRCC of the need and basis for an action plan or other remedial action and provide an opportunity for FRCC to submit a written response contesting NERC's evaluation of FRCC's performance and the need for an action plan. FRCC may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request.

NERC and FRCC shall work collaboratively as needed in the development and implementation of FRCC's action plan. A final action plan submitted by FRCC to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to FRCC standardized training and education programs, which shall be designed taking into account input from FRCC and other Regional Entities, for FRCC personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to FRCC concerning the manner in which FRCC shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with FRCC and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and FRCC and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, FRCC, subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by FRCC, the NERC Board of Trustees (or a committee of the Board to which the Board delegates appropriate authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without FRCC's agreement, *provided*, that FRCC shall request such review within thirty (30) days following issuance of the directive by the NERC President unless good cause can be shown for a later request.

(iv) NERC and FRCC and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the

directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which FRCC, and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. FRCC, either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with FRCC, either individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC shall perform reviews and audits of FRCC on a reasonable periodicity to determine FRCC's compliance with this Agreement, any policies or procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv), (d) and (f), respectively, that are maintained

as non-public.

9. **Funding**. FRCC and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) FRCC shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. FRCC's proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, FRCC to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. FRCC's business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) FRCC and NERC agree that the portion of FRCC's approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by FRCC and approved by NERC and the Commission. If FRCC proposes to use a formula other than Net Energy for Load beginning in the following year, FRCC shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and FRCC to the Commission pursuant to the ERO Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable

interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide FRCC with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) FRCC shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of FRCC, to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund FRCC's performance of its Delegated Authority and related activities in accordance with FRCC's Commission-approved business plan and budget, in the amount of FRCC's assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting FRCC's approved assessments from end users and other entities and payment of the approved assessment amount to FRCC, unless otherwise modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon FRCC that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without FRCC's consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC and FRCC fiscal year budget with the actual results at the NERC and Regional Entity levels. FRCC shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) FRCC shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30,

September 30, and December 31).

(i) FRCC shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which FRCC shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of FRCC) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which FRCC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of FRCC. *Provided*, that, subject to approval by NERC and the Commission, FRCC may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. FRCC may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit FRCC from contracting with other entities to assist it in carrying out its Delegated Authority, provided FRCC retains control and responsibility for such Delegated Authority.

11. **Default and Cure**. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. <u>Term and Termination</u>.

(a) This Agreement shall become effective on January 1, 2016 (the "Effective Date").

(b) The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that FRCC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If FRCC meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that FRCC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to provide for a transition of FRCC's Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by FRCC and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. **Limitation of Liability**. FRCC and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and FRCC shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of FRCC's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that FRCC or NERC is found liable for gross negligence or intentional misconduct, in which case FRCC or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

14. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. <u>Confidentiality</u>.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient: (i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel. Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt notice of a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to

such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. **Amendment**. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

17. **Amendments to the NERC Rules of Procedure**. NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations, or programs of FRCC under this Agreement without first obtaining the consent of FRCC, which consent shall not be unreasonably withheld or delayed. To the extent FRCC does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of FRCC under this Agreement, FRCC shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by FRCC to NERC and the Commission, or at such other time as may be mutually agreed by FRCC and NERC.

18. **Dispute Resolution**. In the event a dispute arises under this Agreement between NERC and FRCC (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to FRCC's performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures

("Dispute Resolution") to attempt to resolve the dispute. FRCC shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20) business days after the date of the receiving Party's notice, the designated representatives shall engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period

may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:

North American Electric Reliability Corporation
1325 G Street NW, Suite 600
Washington, DC 20005
Attn: General Counsel
Email: legal@nerc.net

If to FRCC:

Florida Reliability Coordinating Council
3600 Bayport Drive
Suite 600
Tampa, Florida 33607
Attn: Morvarid M. Jones, General Counsel
Email: mjones@frcc.com

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect

to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that FRCC may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	FLORIDA RELIABILITY COORDINATING COUNCIL
By: _____	By: Stacy Dochoda
Name: _____	Name: Stacy Dochoda
Title: _____	Title: President & CEO
Date: _____	Date: 12/14/15

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	FLORIDA RELIABILITY COORDINATING COUNCIL
By: Gerald W Cauley	By: _____
Name: Gerald W. Cauley	Name: _____
Title: President and CEO	Title: _____
Date: 12/15/2015	Date: _____

Exhibit A — FRCC Boundaries
(see attached map)

The physical boundaries of the Florida Reliability Coordinating Council, Inc. (FRCC) are entirely within the geographic boundaries of the State of Florida. The FRCC region is comprised of peninsular Florida east of the Apalachicola River with the exception of a small section of northeast Florida (Baker and Nassau counties). The FRCC region is within the Eastern Interconnection and is under the direction of the FRCC Reliability Coordinator.

The FRCC region interconnects with the SERC region via 12 transmission lines. The 12 lines consist of two 500 kV, four 230 kV and six 115 kV lines. These lines are referred to as the "Florida / Southern Interface".

The areas, noted above, in northeast Florida (part of Baker and Nassau counties) are served by Okefenoke Rural Electric Membership Corporation (OREMC), a member of the Georgia System Operations Corporation, and also include the Georgia Transmission Corporation (GTC) facilities physically located in Baker County, Florida. These areas are considered to be part of the SERC Reliability Corporation (SERC). SERC is responsible for registration and compliance monitoring of OREMC and the GTC facilities in Baker and Nassau Counties, Florida.

Within the FRCC region, compliance monitoring and enforcement functions with respect to reliability functions for which FRCC is a registered entity are performed by SERC pursuant to a contract between FRCC and SERC.

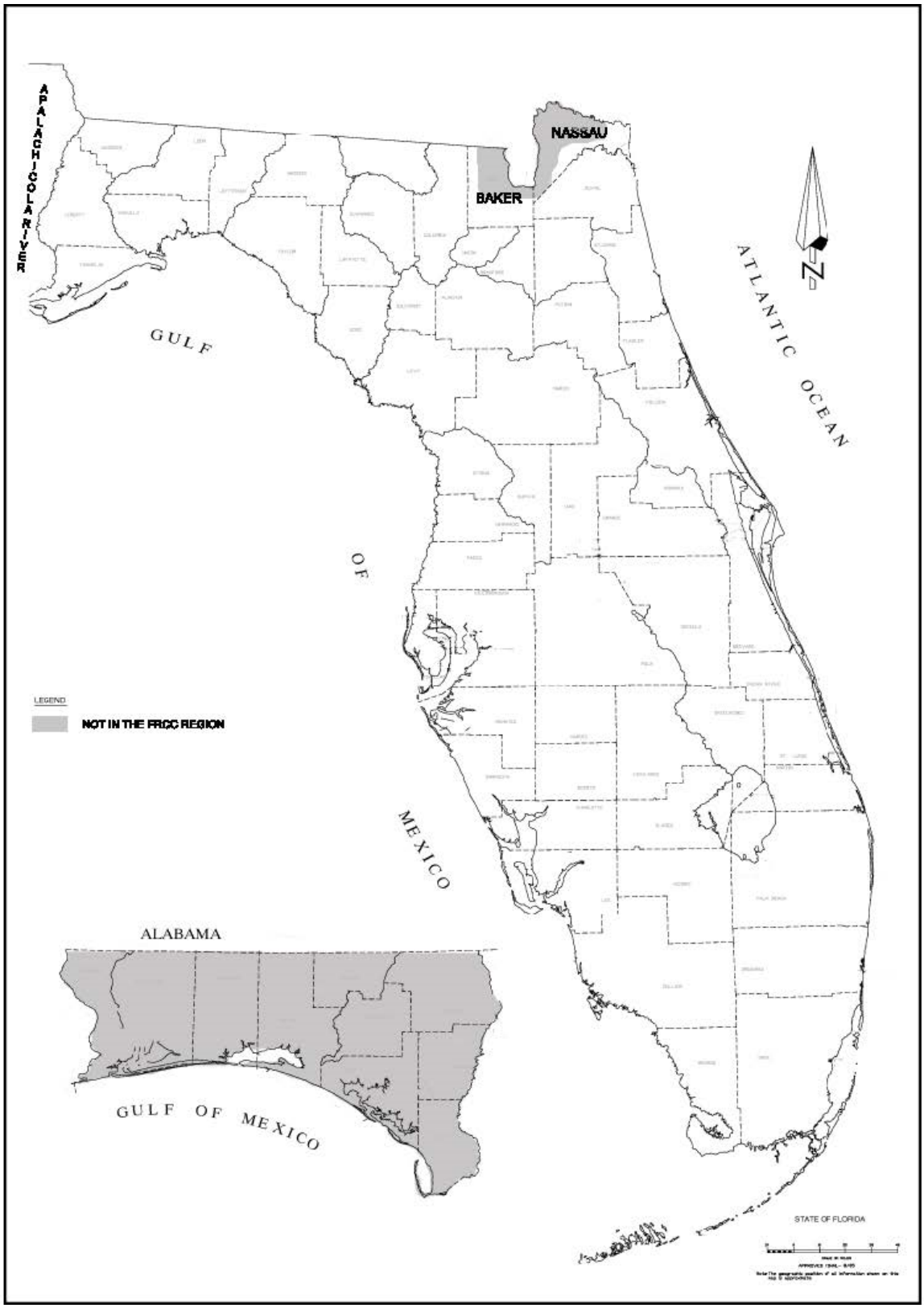

APALACHICOLA RIVER
NASSAU
BAKER
GULF
OF
MEXICO
ATLANTIC OCEAN
N
LEGEND
NOT IN THE FRCC REGION
ALABAMA
GULF OF MEXICO
STATE OF FLORIDA

Exhibit B — Governance

The Regional Entity bylaws shall meet the following criteria:

<u>CRITERION 1</u>: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

<u>CRITERION 2</u>: The Regional Entity has established rules that assure its independence from the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

<u>CRITERION 3</u>: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

<u>CRITERION 4</u>: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

<u>CRITERION 5</u>: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Exhibit C [Intentionally left blank]

Exhibit D — Compliance Monitoring and Enforcement Program

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

FRCC will implement the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure (which for purposes of this section 1.0 shall not include Attachment 2, Hearing Procedures), to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within **FRCC's** geographic or electrical boundaries, and such other scope, set forth in **Exhibit A** of this Agreement.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

FRCC, to the extent required in the Rules of Procedure, shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be the FRCC Board Compliance Committee (BCC), a balanced compliance panel reporting directly to the FRCC Board of Directors.

The BCC will consist of one (1) representative of a Voting Member from each of the six (6) sectors in FRCC, who shall be a member of the Board of Directors. Each year, two (2) Directors (including Alternate Directors) from each Sector, will volunteer to serve in a BCC pool. At the time a hearing request is received, the Chair of the FRCC Board of Directors will appoint one member from each Sector to form the BCC for that hearing. Once appointed to a hearing, a Director or Alternate Director shall serve throughout the hearing's duration. The Board Member from the Registered Entity that has requested the hearing will not be selected for that BCC. In the event one (1) Sector of FRCC declines to participate on the BCC, the Chair of the Board of Directors shall randomly select one (1) additional BCC member from the remaining five (5) Sectors to constitute the BCC. The Chair of the FRCC Board of Directors will appoint a Chair and Vice-Chair of the BCC. Terms of BCC members will be equivalent to the time it takes to complete the hearing for which they were selected. Members may be re-appointed to subsequent terms without any limits to the number of terms they serve.

FRCC Industry Sectors are as follows:

- One (1) Member from the Investor Owned Utility Sector
- One (1) Member from the Suppliers Sector
- One (1) Member from the Non-Investor Owned Utility Wholesale Sector
- One(1) Member from the Load Serving Entity Sector
- One (1) Member from the Generating Load Serving Entity Sector
- One (1) Member from the General Sector

Each member of the BCC shall be a full voting member. There will be no alternates or proxies for the BCC members. Decisions of the BCC shall require (i) a quorum to be present requiring at least fifty (50) percent of the number of members assigned to the BCC provided, however, that in each case at least four (4) eligible Sectors are represented and (ii) a majority vote of the members of the BCC voting on the decision.

To the extent required in the Rules of Procedure, FRCC shall conduct all compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, proposed Mitigation Plan, or a proposed Remedial Action Directive, in accordance with Attachment 2, Hearing Procedures, to the NERC Compliance Monitoring and Enforcement Program, subject to the following deviations, if any: None.

3.0 OTHER DECISION-MAKING BODIES

FRCC has engaged the SERC Reliability Corporation (SERC) to oversee the compliance monitoring and enforcement responsibility as related to FRCC's compliance with Reliability Standard requirements that are applicable to the functions for which FRCC is a Registered Entity.

Exhibit E — Funding

1. Scope of Activities Funded through the ERO Funding Mechanism

FRCC shall include in its annual budget submission to NERC amounts for costs it will incur in performing its delegated functions and related activities as described in Sections 5, 6 and 7 of the Agreement. These activities shall include:

- Reliability Standard Development
- Compliance Monitoring and Enforcement
- Organization Registration and Certification
- Reliability Assessment and Performance Analysis (including necessary data gathering activities)
- Event Analysis and Reliability Improvement
- Training and Education
- Situation Awareness
- Infrastructure Security

2. Preparation of Annual Business Plan and Budget

(a) NERC and FRCC, in conjunction with the other Regional Entities, shall collaboratively develop an annual schedule for the development, submission, review and approval of FRCC's business plan and budget. The annual schedule for the preparation of business plans and budgets shall require FRCC (i) to submit to NERC draft(s) of FRCC's proposed business plan and budget and other preliminary documents and information, and (ii) to submit a final proposed business plan and budget that has been approved by FRCC Board of Trustees to NERC by July 1 or such other agreed date as provides sufficient time for NERC's review, approval and submission of FRCC's business plan and budget to the Commission 130 days in advance of the beginning of each fiscal year. The FRCC business plan and budget submission shall include supporting materials, including FRCC's complete business plan and organization chart, explaining the proposed collection of all assessments, dues, fees and charges, and the proposed expenditure of the funds to be collected in sufficient detail to justify the requested budgeted expenditures and assessments. FRCC's business plan and budget and proposed assessments shall provide for reasonable reserve mechanisms for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(b) NERC shall review and approve FRCC's proposed business plan and budget and proposed assessments for performing the delegated functions and related activities described in Sections 5, 6 and 7 of this Agreement and listed above in Section 1 of this **Exhibit E**, or shall direct FRCC to make such revisions as NERC deems appropriate prior to approval.

NERC shall submit FRCC's approved business plan and budget and proposed assessments to the Commission for approval as part of NERC's overall business plan and budget submission, in accordance with the ERO Regulations.

3. Allocation of Costs

Assessments to fund the costs of FRCC's delegated functions and related activities pursuant to the Agreement shall be allocated among all load-serving entities on the basis of Net Energy for Load, unless a different method(s) of allocating and calculating such assessments has been submitted to and approved by NERC and the Commission in accordance with Section 9(b) of the Agreement. FRCC shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities or designees within its geographic boundaries that shall be responsible for paying FRCC's assessment and the load-serving entities' proportionate Net Energy for Load, and such other data and information as is necessary to allocate and calculate the allocation of FRCC's assessment to the load-serving entities or designees under the method(s) of allocation and calculation that will be used.

4. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities or designees identified by FRCC covering the NERC and FRCC assessments approved for collection.

(b) NERC shall pursue any non-payments of assessment amounts and shall request assistance from Applicable Governmental Authorities as necessary to secure collection. To the extent reasonably practicable, FRCC shall assist NERC in pursuing and collecting any non-payments. Notwithstanding the foregoing, FRCC is not responsible and does not assume any liability for recovering non-payments or underpayments of assessment amounts. NERC shall retain sole responsibility for recovering non-payments or underpayments of assessment amounts. NERC shall add the amount of any non-payments by end-users or designees within FRCC's region, that are reasonably determined to be uncollectible, to NERC's assessments for a subsequent year with the amount of such non-payments to be allocated to end-users within FRCC's region.

(c) Upon approval by Applicable Governmental Authorities of FRCC's annual assessment to fund the costs of its delegated functions and related activities, NERC shall pay FRCC's annual assessment to FRCC in four equal quarterly payments on January 15, April 15, July 15 and October 15 of the budget year.

5. Application of Penalties

Except as otherwise approved by the Commission, all penalty monies received by FRCC, other than penalty monies received from an operational function or division or affiliated entity of FRCC, shall be applied as a general offset to FRCC's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity.

Except as otherwise approved by the Commission, any penalty monies received from an operational function or division or affiliated entity of FRCC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

6. Budget and Funding for FRCC's Non-Statutory Activities

In addition to its delegated functions and related activities, as specified in Sections 5, 6 and 7 of the Agreement and in Section 1 of this **Exhibit E** (such delegated functions and activities referred to in this Section 6 as "statutory activities"), FRCC performs the following other functions and activities (such other functions and activities being referred to in this Section 6 as "non-statutory activities"):

Non-Statutory Activities

The FRCC Member Services (MS) Division provides services that enhance the reliable coordination of planning and operations relating to the bulk power system within the FRCC region. These services are carried out on behalf of FRCC MS members with oversight by two of the standing committees. The Planning Committee (PC) and Operating Committee (OC) and their various subcommittees, task forces and working groups, as well as the FRCC Planning and Operations (P&O) staff, support the MS activities of the region.

Planning Committee (PC)

The PC functional scope is to promote the reliability of the BES within the FRCC region by assessing and encouraging generation and transmission adequacy. The PC assesses generation adequacy by performing a reliability assessment taking into account projected load and resources. The PC, through the FRCC Regional Transmission Planning Process, provides a vehicle for ensuring that transmission planning within FRCC will provide for the development of a robust transmission network within the FRCC region.

Operating Committee (OC)

The OC functional scope is to provide for the reliable operations of the Bulk Power System in the FRCC region through coordination activities of operations and maintenance. The OC is responsible for the coordination, operations planning, operation and maintenance of the interconnected systems operating in the region. The OC's primary reliability goals include effective implementation of the *Reliability Process for the FRCC Bulk Electric System* document by all operators within the region.

FRCC shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions:

(i). Separation of funding sources for statutory activities and non-statutory activities.

FRCC maintains separate accounts for statutory and non-statutory funding revenues.

(ii). Separation of costs of statutory activities and non-statutory activities. FRCC has adopted the NERC Chart of Accounts for Expenses and the NERC Rules of Procedure Categories as well as Member Services Functional Categories and utilizes these in order to correctly code each invoice received for all goods and services as well as for staff to specify where their time is spent each day for their time accounting reports. These methods are used to ensure that no statutory funds are used to pay for non-statutory expenses and that no non-statutory funds are used to pay for statutory expenses.

Each employee prepares a time sheet with their time accounted for between statutory and non-statutory functions that they personally spent their time on. Within statutory and non-statutory they further break down their time by the function areas. The monthly time accounting summarization of FTE by function is calculated using the time sheets that each employee is required to turn in to HR bi-weekly. The time sheet is reviewed by the departmental head and initialled bi-weekly.

Employees are categorized into 2 groups: Technical Employees – those employees who work directly on functions and have little or no administrative duties (examples would be the Compliance staff and the Engineers) and Non-Technical Staff – those employees who perform support functions that are 80% or greater nonspecific definable by function (examples would be the Accounting staff, the President, the receptionist, etc.). The time from the time sheets are entered into a macro (by employee and function worked on) for the corresponding month being accounted for. The FTE's by program are then calculated and used to allocate the total of the General & Administrative Department back to the program areas on the line "Miscellaneous."

FRCC uses standard cost accounting procedures to allocate general expenses (that cannot be directly assigned) to a specific function. The system used consists of directly expensing as much as possible directly to the function (whether that function is Statutory or Member Services) that incurred the expense. This is accomplished by routing to the responsible departmental heads all invoices pertaining to their job responsibility. The departmental head assigns the functional category and returns the invoice to accounting who assigns the General Ledger Account Number (as specified in the FRCC Accounting Policy Manual – Coding of Invoices for Goods and Services). If the expense cannot be directly charged to a particular function (example rent, payroll taxes, benefits, general office supplies, etc.), the expense is charged to holding accounts by chart of accounts line item to be allocated back to the program areas (to include General & Administrative) at the end of the month. This is done by using the monthly time accounting summarization of FTE by function. So there are two ways expenses are charged to a particular function, either by direct expense or by allocation from the results of the monthly time accounting summarization of FTE by function (including General & Administrative).

FRCC shall provide its budget for such non-statutory activities to NERC at the same time that FRCC submits its proposed annual business plan and budget for statutory activities to NERC pursuant to Section 9 of the Agreement. FRCC's budget for non-statutory

activities that is provided to NERC shall contain a detailed list of FRCC's non-statutory activities and a description of the funding sources for the non-statutory activities. FRCC agrees that no costs (which shall include a reasonable allocation of FRCC's general and administrative costs) of non-statutory activities are to be included in the calculation of FRCC's assessments, dues, fees, and other charges for its statutory activities.

The allocation of costs between FRCC's statutory and non-statutory functions is reviewed annually by an independent audit firm in connection with the preparation of the company's audited financial statements.

7. Amended or Supplemental Business Plans and Budgets

During the course of the fiscal year, if FRCC determines it does not or will not have sufficient funds to carry out its delegated functions and related activities, FRCC shall submit to NERC one or more proposed amended or supplemental business plans and budgets and requests for approval of supplemental assessments, reflecting costs, cost increases or funding shortfalls not provided for in FRCC's approved business plan and budget for the fiscal year. NERC shall review and approve the proposed amended or supplemental business plan and budget and proposed supplemental assessment, or shall direct FRCC to make such revisions as NERC deems appropriate prior to approval. NERC shall submit FRCC's approved amended or supplemental business plan and budget and proposed supplemental assessment to the Commission for approval.

8. NERC Review of Regional Entity Financial Records

Upon a request made to FRCC with reasonable notice, NERC shall have access to and may review all financial records of FRCC, including records used to prepare FRCC's financial statements. NERC shall conduct reviews of the quarterly and annual financial statements submitted by FRCC pursuant to Section 9(h) and (i) of the Agreement. FRCC shall provide supporting documentation for the quarterly and annual financial statements as reasonably requested by NERC.

Attachment 3

Midwest Reliability Organization, Inc.

Executed Delegation Agreement Effective January 1, 2016

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND MIDWEST RELIABILITY ORGANIZATION

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and Midwest Reliability Organization, Inc. ("MRO"), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and MRO may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional

entities ("Regional Entities") such as MRO, provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, MRO is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through MRO to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that MRO meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and MRO, having operated under a predecessor agreement to this Agreement, have negotiated this amended and restated Agreement so as to incorporate

the benefits of their mutual experience and lessons learned while operating under the predecessor agreement and thereby provide for the more efficient and effective execution of their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and MRO agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to MRO to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, MRO hereby represents and warrants to NERC that:

(i) MRO is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. MRO is governed in accordance with its bylaws by a combination independent and balanced stakeholder board. Pursuant to these bylaws, no two

industry sectors can control any MRO decision and no single industry sector can veto any MRO decision. The relevant criteria for the establishment of such bylaws are attached hereto in **Exhibit B**. No other MRO corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) MRO has developed a standards development procedure, which provides the process that MRO may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, MRO has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within MRO's geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to MRO that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. <u>General Covenants</u>.

(a) During the term of this Agreement, MRO shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) MRO shall provide NERC with a copy of its Regional Entity Rules upon request by NERC. NERC shall maintain on its public website the currently effective versions of all

Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of MRO under this Agreement without first obtaining the consent of MRO, which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and MRO shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon MRO.

4. <u>Delegation of Authority</u>.

(a) Based upon the representations, warranties and covenants of MRO in this Agreement, MRO's corporate governance documents, MRO's standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to MRO for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**. Any exclusions from this delegation of authority to MRO within, or additions to this delegation of authority to MRO beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) [This subsection intentionally left blank].

(c) Nothing in this Agreement shall prohibit MRO from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to

approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both MRO and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, MRO shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. Development and Proposal of Reliability Standards.

(a) In connection with its Delegated Authority, MRO shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords MRO reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through MRO's process. MRO's process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to MRO's process shall be submitted to the NERC Board of Trustees for approval and upon approval, be submitted to the Commission for approval. Proposals approved through MRO's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time. The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either

approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. MRO may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, MRO shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and MRO agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. MRO may not change its compliance monitoring and enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed, and the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, MRO agrees to comply with the NERC Rules of Procedure, with any directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) MRO shall maintain a program of proactive monitoring and enforcement of

compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) MRO shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by MRO, as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and MRO shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by MRO of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, MRO shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. A Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures.

7. Delegation-Related Activities.

NERC will engage MRO on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by MRO in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by MRO and other Regional Entities. MRO shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to the Commission.

(c) **Reliability Assessment and Performance Analysis.** MRO shall develop assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. MRO shall also develop and maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** MRO shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and MRO shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, MRO shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** MRO may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** MRO shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** MRO shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of MRO's performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and MRO that matters relating to NERC's oversight of MRO's performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and MRO and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with MRO and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and MRO's performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. MRO shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate MRO's performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate MRO's performance of its delegated functions and related activities and to provide advice and direction to MRO on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, MRO and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, MRO shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of MRO's performance against the performance goals, measures and parameters, or performance of specific activities, to be unsatisfactory, *provided*, that prior to requiring MRO to adopt and implement an action plan or other remedial action, NERC shall issue a notice to MRO of the need and basis for an action plan or other remedial action and provide an opportunity for MRO to submit a written response contesting NERC's evaluation of MRO's performance and the need for an action plan. MRO may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request. NERC and MRO shall work collaboratively as needed in the development and implementation of MRO's action plan. A final action plan submitted by MRO to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to MRO standardized training and education

programs, which shall be designed taking into account input from MRO and other Regional Entities, for MRO personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to MRO concerning the manner in which MRO shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with MRO and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and MRO and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, MRO, subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by MRO, the NERC Board of Trustees (or a committee of the Board to which the Board delegates appropriate authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without MRO's agreement, *provided*, that MRO shall request such review within thirty (30) days following issuance of the directive by the NERC President unless good cause can be shown for a later request.

(iv) NERC and MRO and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC

Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which MRO, and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. MRO, either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with MRO, either individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC shall perform reviews and audits of MRO on a reasonable periodicity to determine MRO's compliance with this Agreement, any policies or procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and Commission staff shall have full access to action plans and remedial actions, directives, directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv), (d) and (f), respectively, that are maintained as non-public.

9. **Funding**. MRO and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) MRO shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. MRO's proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, MRO to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. MRO's business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) MRO and NERC agree that the portion of MRO's approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by MRO and approved by NERC and the Commission. If MRO proposes to use a formula other than Net Energy for Load beginning in the following year, MRO shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and MRO to the Commission pursuant to the ERO Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide MRO with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) MRO shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of MRO, to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund MRO's performance of its Delegated Authority and related activities in accordance with MRO's Commission- approved business plan and budget, in the amount of MRO's assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting MRO's approved assessments from end users and other entities and payment of the approved assessment amount to MRO, unless otherwise modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon MRO that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without MRO's consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC and MRO fiscal year budget with the actual results at the NERC and Regional Entity levels. MRO shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) MRO shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) MRO shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which MRO shall offset penalty monies it receives against its next year's annual budget for carrying out functions under this Agreement. *Provided*, that, subject to approval by NERC and the Commission, MRO may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. MRO may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit MRO from contracting with other entities to assist it in carrying out its Delegated Authority, provided MRO retains control and responsibility for such Delegated Authority.

11. **Default and Cure**. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. <u>Term and Termination</u>.

(a) This Agreement shall become effective on January 1, 2016 (the "Effective Date").

(b) The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that MRO continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If MRO meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that MRO continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to provide for a transition of MRO's Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the

Commission, or at such other time as may be mutually agreed by MRO and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. <u>Limitation of Liability</u>. MRO and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and MRO shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of MRO's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that MRO or NERC is found liable for gross negligence or intentional misconduct, in which case MRO or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

14. <u>No Third Party Beneficiaries</u>. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. <u>Confidentiality</u>.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient:

(i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel. Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt notice of a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as

directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. **Amendment**. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

17. **Amendments to the NERC Rules of Procedure**. NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations, or programs of MRO under this Agreement without first obtaining the consent of MRO, which consent shall not be unreasonably withheld or delayed. To the extent MRO does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of MRO under this Agreement, MRO shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by MRO to NERC and the Commission, or at such other time as may be mutually agreed by MRO and NERC.

18. **Dispute Resolution**. In the event a dispute arises under this Agreement between NERC and MRO (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to MRO's performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures ("Dispute Resolution") to attempt to resolve the dispute. MRO shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating

that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20) business days after the date of the receiving Party's notice, the designated representatives shall engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a

court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:

North American Electric Reliability Corporation
1325 G Street NW, Suite 600
Washington, DC 20005
Attn: General Counsel
Email: legal@nerc.net

If to MRO:

Midwest Reliability Organization
380 St. Peter Street
Suite 800
St. Paul, Minnesota 55102
Attn: General Counsel
Email: generalcounsel@midwestreliability.org

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the

Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that MRO may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	MIDWEST RELIABILITY ORGANIZATION, INC.
By: _____	By: _____
Name: _____	Name: Daniel P. Skaar
Title: _____	Title: President and CEO
Date: _____	Date: 12/9/15

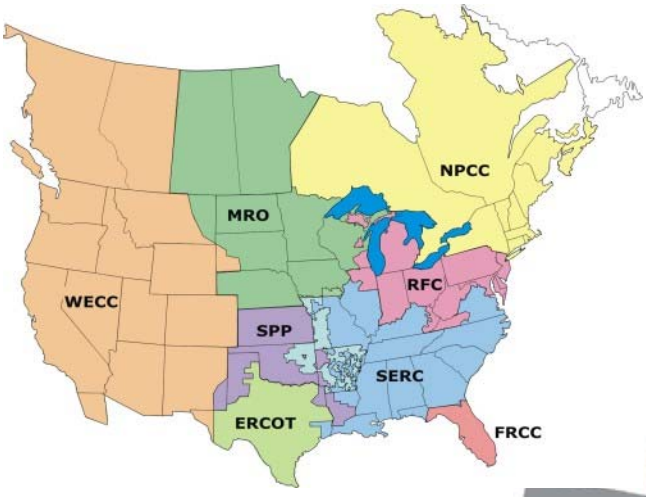
NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	MIDWEST RELIABILITY ORGANIZATION, INC.
By: Gerald W Cauley	By: _____
Name: Gerald W. Cauley	Name: _____
Title: President and CEO	Title: _____
Date: 12/15/2015	Date: _____

Exhibit A — Regional Boundaries

MRO is one of eight regional entities that comprise the North American Electric Reliability Corporation (NERC). MRO is a not for profit entity committed to safeguarding and improving reliability of the Bulk Power System in the upper Midwest part of North America and the Canadian provinces of Manitoba and Saskatchewan. The Midwest Reliability Organization region supplies approximately 270,000,000 megawatt-hours to more than twenty million people and covers roughly one million square miles.

There are several Regional Transmission Organizations that overlap MRO and other Regional Entity footprints. MRO coordinates its delegated responsibilities with these neighboring Regional Entities to avoid duplicity and ensure consistency and accuracy. MRO does not have affiliates and does not perform any reliability functions that would result in a conflict or inability to perform the delegated responsibilities of this Agreement.



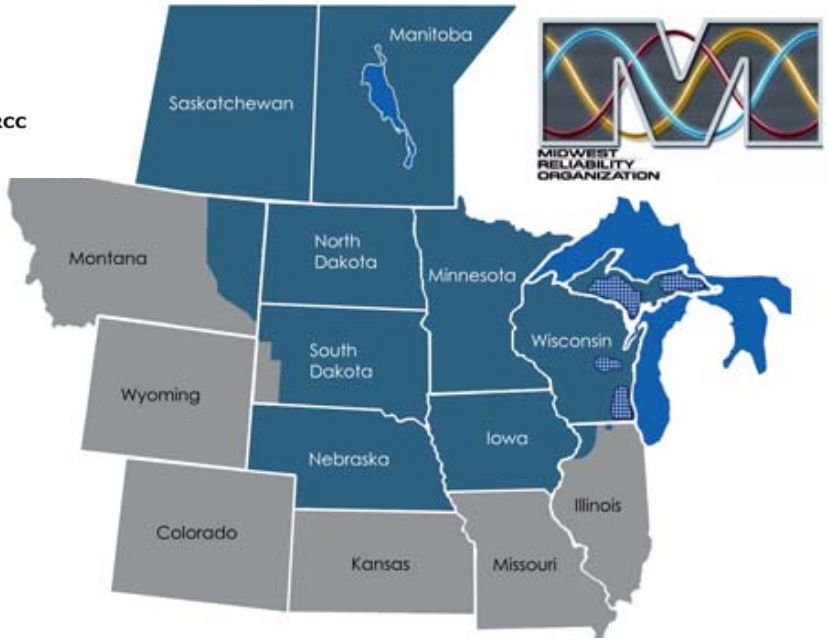


Exhibit B — Governance

The Regional Entity bylaws shall meet the following criteria:

<u>CRITERION 1</u>: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

<u>CRITERION 2</u>: The Regional Entity has established rules that assure its independence from the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

<u>CRITERION 3</u>: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

<u>CRITERION 4</u>: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

<u>CRITERION 5</u>: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Exhibit C [Intentionally left blank]

Exhibit D — Compliance Monitoring and Enforcement Program

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

Midwest Reliability Organization ("MRO") will implement the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure (which for purposes of this section 1.0 shall not include Attachment 2, Hearing Procedures), to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within **MRO's** geographic or electrical boundaries, and such other scope, set forth in **Exhibit A** of this Agreement.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

MRO, to the extent required in the Rules of Procedure, shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be either **MRO's** board, a committee of the board, a balanced compliance panel reporting directly to **MRO's** board or an independent hearing panel. **MRO's** hearing body is a balanced subset of its board that is appointed by the board with no more than one member from each sector.

To the extent required in the Rules of Procedure, **MRO** shall conduct all compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, proposed Mitigation Plan, or a proposed Remedial Action Directive, in accordance with Attachment 2, Hearing Procedures, to the NERC Compliance Monitoring and Enforcement Program, subject to the following deviations, if any: **NONE.**

3.0 OTHER DECISION-MAKING BODIES

A presiding officer who presides over the reception of evidence may prepare recommendations to be used by the board of directors in preparing its decision in a compliance hearing. In addition to compliance hearings, **MRO's** Hearing Body also reviews and approves settlements in a yes or no fashion, but is not permitted to make modifications to negotiated settlements/agreements.

Exhibit E — Funding

1. Scope of Activities Funded through the ERO Funding Mechanism

Midwest Reliability Organization ("MRO") shall include in its annual budget submission to NERC amounts for costs it will incur in performing its delegated functions and related activities as described in Sections 5, 6 and 7 of the Agreement. These activities shall include:

- Reliability Standard Development
- Compliance Monitoring and Enforcement
- Organization Registration and Certification
- Reliability Assessment and Performance Analysis (including necessary data gathering activities)
- Event Analysis and Reliability Improvement
- Training and Education
- Situation Awareness
- Infrastructure Security

2. Preparation of Annual Business Plan and Budget

(a) NERC and MRO, in conjunction with the other Regional Entities, shall collaboratively develop an annual schedule for the development, submission, review and approval of MRO's business plan and budget. The annual schedule for the preparation of business plans and budgets shall require MRO (i) to submit to NERC draft(s) of MRO's proposed business plan and budget and other preliminary documents and information, and (ii) to submit a final proposed business plan and budget that has been approved by MRO Board of Trustees to NERC by July 1 or such other agreed date as provides sufficient time for NERC's review, approval and submission of MRO's business plan and budget to the Commission 130 days in advance of the beginning of each fiscal year. The MRO business plan and budget submission shall include supporting materials, including MRO's complete business plan and organization chart, explaining the proposed collection of all assessments, dues, fees and charges, and the proposed expenditure of the funds to be collected in sufficient detail to justify the requested budgeted expenditures and assessments. MRO's business plan and budget and proposed assessments shall provide for reasonable reserve mechanisms for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(b) NERC shall review and approve MRO's proposed business plan and budget and proposed assessments for performing the delegated functions and related activities described in Sections 5, 6 and 7 of this Agreement and listed above in Section 1 of this **Exhibit E**, or

shall direct MRO to make such revisions as NERC deems appropriate prior to approval. NERC shall submit MRO's approved business plan and budget and proposed assessments to the Commission for approval as part of NERC's overall business plan and budget submission, in accordance with the ERO Regulations.

3. Allocation of Costs

Assessments to fund the costs of MRO's delegated functions and related activities pursuant to the Agreement shall be allocated among all load-serving entities on the basis of Net Energy for Load, unless a different method(s) of allocating and calculating such assessments has been submitted to and approved by NERC and the Commission in accordance with Section 9(b) of the Agreement. MRO shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities or designees within its geographic boundaries that shall be responsible for paying MRO's assessment and the load-serving entities' proportionate Net Energy for Load, and such other data and information as is necessary to allocate and calculate the allocation of MRO's assessment to the load-serving entities or designees under the method(s) of allocation and calculation that will be used.

4. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities or designees identified by MRO covering the NERC and MRO assessments approved for collection.

(b) NERC shall pursue any non-payments of assessment amounts and shall request assistance from Applicable Governmental Authorities as necessary to secure collection. To the extent reasonably practicable, MRO shall assist NERC in pursuing and collecting any non-payments. Notwithstanding the foregoing, MRO is not responsible and does not assume any liability for recovering non-payments or underpayments of assessment amounts. NERC shall retain sole responsibility for recovering non-payments or underpayments of assessment amounts. NERC shall add the amount of any non-payments by end-users or designees within MRO's region, that are reasonably determined to be uncollectible, to NERC's assessments for a subsequent year with the amount of such non-payments to be allocated to end-users within MRO's region.

(c) Upon approval by Applicable Governmental Authorities of MRO's annual assessment to fund the costs of its delegated functions and related activities, NERC shall pay MRO's annual assessment to Regional Entity in four equal quarterly payments on January 15, April 15, July 15 and October 15 of the budget year.

5. Application of Penalties

Except as otherwise approved by the Commission, all penalty monies received by MRO shall be applied as a general offset to MRO's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity.

6. Budget and Funding for MRO's Non-Statutory Activities

In addition to its delegated functions and related activities, as specified in Sections 5, 6 and 7 of the Agreement and in Section 1 of this **Exhibit E** (such delegated functions and activities referred to in this Section 6 as "statutory activities"), MRO performs the following other functions and activities (such other functions and activities being referred to in this Section 6 as "non-statutory activities"): **NONE**.

MRO shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions: **NOT APPLICABLE.**

MRO shall provide its budget for such non-statutory activities to NERC at the same time that MRO submits its proposed annual business plan and budget for statutory activities to NERC pursuant to Section 9 of the Agreement. MRO's budget for non-statutory activities that is provided to NERC shall contain a detailed list of MRO's non-statutory activities and a description of the funding sources for the non-statutory activities. MRO agrees that no costs (which shall include a reasonable allocation of MRO's general and administrative costs) of non-statutory activities are to be included in the calculation of MRO's assessments, dues, fees, and other charges for its statutory activities.

7. Amended or Supplemental Business Plans and Budgets

During the course of the fiscal year, if MRO determines it does not or will not have sufficient funds to carry out its delegated functions and related activities, MRO shall submit to NERC one or more proposed amended or supplemental business plans and budgets and requests for approval of supplemental assessments, reflecting costs, cost increases or funding shortfalls not provided for in MRO's approved business plan and budget for the fiscal year. NERC shall review and approve the proposed amended or supplemental business plan and budget and proposed supplemental assessment, or shall direct MRO to make such revisions as NERC deems appropriate prior to approval. NERC shall submit MRO's approved amended or supplemental business plan and budget and proposed supplemental assessment to the Commission for approval.

8. NERC Review of Regional Entity Financial Records

Upon a request made to MRO with reasonable notice, NERC shall have access to and may review all financial records of MRO, including records used to prepare MRO's financial statements. NERC shall conduct reviews of the quarterly and annual financial statements submitted by MRO pursuant to Section 9(h) and (i) of the Agreement. MRO shall provide supporting documentation for the quarterly and annual financial statements as reasonably requested by NERC.

Attachment 4

Northeast Power Coordinating Council, Inc.

Executed Delegation Agreement Effective January 1, 2016

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND NORTHEAST POWER COORDINATING COUNCIL, INC.

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and Northeast Power Coordinating Council, Inc. ("NPCC"), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and NPCC may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional

entities ("Regional Entities") such as NPCC, provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, NPCC is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through NPCC to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that NPCC meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and NPCC, having operated under a predecessor agreement to this Agreement, have negotiated this amended and restated Agreement so as to incorporate

the benefits of their mutual experience and lessons learned while operating under the predecessor agreement and thereby provide for the more efficient and effective execution of their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and NPCC agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to NPCC to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, NPCC hereby represents and warrants to NERC that:

(i) NPCC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. NPCC is governed in accordance with its bylaws by a combination independent and balanced stakeholder board. Pursuant to these bylaws, no two

industry sectors can control any NPCC decision and no single industry sector can veto any NPCC decision. The relevant criteria for the establishment of such bylaws are attached hereto in **Exhibit B**. No other NPCC corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) NPCC has developed a standards development procedure, which provides the process that NPCC may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, NPCC has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within NPCC's geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to NPCC that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. <u>General Covenants</u>.

(a) During the term of this Agreement, NPCC shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) NPCC shall provide NERC with a copy of its Regional Entity Rules upon request by NERC. NERC shall maintain on its public website the currently effective versions of all

Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of NPCC under this Agreement without first obtaining the consent of NPCC, which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and NPCC shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon NPCC.

4. <u>Delegation of Authority</u>.

(a) Based upon the representations, warranties and covenants of NPCC in this Agreement, NPCC's corporate governance documents, the NPCC's standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to NPCC for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**, provided, that NPCC shall not monitor and enforce compliance with Reliability Standards for NPCC or an affiliated entity with respect to reliability functions for which NPCC or an affiliate is a Registered Entity. Any exclusions from this delegation of authority to NPCC within, or additions to this delegation of authority to NPCC beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) In circumstances where NPCC or an affiliated entity is a Registered Entity, NPCC shall enter into an agreement with another Regional Entity or NERC for the other Regional

Entity or NERC to monitor and enforce NPCC's or affiliate's compliance with Reliability Standards. Such agreements are subject to NERC and Commission approval.

(c) Nothing in this Agreement shall prohibit NPCC from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both NPCC and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, NPCC shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. <u>Development and Proposal of Reliability Standards</u>.

(a) In connection with its Delegated Authority, NPCC shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords NPCC reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through NPCC's process. NPCC's process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to NPCC's process shall be submitted to the NERC Board of Trustees for approval and upon approval, be submitted to the Commission for approval. Proposals approved through NPCC's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a

Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time. The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. NPCC may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, NPCC shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and NPCC agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. NPCC may not change its compliance monitoring and enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed, and

the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, NPCC agrees to comply with the NERC Rules of Procedure, with any directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) NPCC shall maintain a program of proactive monitoring and enforcement of compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) NPCC shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by NPCC, as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and NPCC shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by NPCC of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, NPCC shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. A Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures.

(f) NPCC may also perform compliance monitoring and enforcement activities outside of the boundaries shown in **Exhibit A**, on behalf of a Regional Entity that is unable to

perform such activities with respect to one or more registered entities within its footprint due to a conflict of interest. Such activities shall be performed pursuant to a contract between NPCC and other such Regional Entity that is approved by both NERC and the Commission.

7. <u>Delegation-Related Activities</u>.

NERC will engage NPCC on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by NPCC in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by NPCC and other Regional Entities. NPCC shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC

shall defend the decision in any subsequent appeal of the decision by the Registered Entity to the Commission.

(c) **Reliability Assessment and Performance Analysis.** NPCC shall develop assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. NPCC shall also develop and maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** NPCC shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and NPCC shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, NPCC shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** NPCC may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** NPCC shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** NPCC shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of

the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of NPCC's performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and NPCC that matters relating to NERC's oversight of NPCC's performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and NPCC and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with NPCC and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and NPCC's performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. NPCC shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate NPCC's performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate NPCC's performance of its delegated functions and related activities and to provide advice and direction to NPCC on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, NPCC and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, NPCC shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of NPCC's performance against the performance goals, measures and parameters, or performance of

specific activities, to be unsatisfactory, *provided*, that prior to requiring NPCC to adopt and implement an action plan or other remedial action, NERC shall issue a notice to NPCC of the need and basis for an action plan or other remedial action and provide an opportunity for NPCC to submit a written response contesting NERC's evaluation of NPCC's performance and the need for an action plan. NPCC may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request. NERC and NPCC shall work collaboratively as needed in the development and implementation of NPCC's action plan. A final action plan submitted by NPCC to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to NPCC standardized training and education programs, which shall be designed taking into account input from NPCC and other Regional Entities, for NPCC personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to NPCC concerning the manner in which NPCC shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with NPCC and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and NPCC and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, NPCC, subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by NPCC, the NERC Board of Trustees (or a committee of the Board to which the Board delegates appropriate authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without NPCC's agreement, *provided*, that NPCC shall request such review

within thirty (30) days following issuance of the directive by the NERC President unless good cause can be shown for a later request.

(iv) NERC and NPCC and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which NPCC, and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. NPCC, either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with NPCC, either individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC shall perform reviews and audits of NPCC on a reasonable periodicity to determine NPCC's compliance with this Agreement, any policies or procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to

monitor the implementation of guidance and directions issued by the NERC Board of Trustees pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv), (d) and (f), respectively, that are maintained as non-public.

9. **Funding**. NPCC and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NPCC shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. NPCC's proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, NPCC to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. NPCC's business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) NPCC and NERC agree that the portion of NPCC's approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by NPCC and approved by NERC and the Commission. If NPCC proposes to use a formula other than Net Energy for Load beginning in the following year, NPCC shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan

and budget submitted by NERC and NPCC to the Commission pursuant to the ERO Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide NPCC with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) NPCC shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of NPCC, to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund NPCC's performance of its Delegated Authority and related activities in accordance with NPCC's Commission-approved business plan and budget, in the amount of NPCC's assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting NPCC's approved assessments from end users and other entities and payment of the approved assessment amount to NPCC, unless otherwise modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon NPCC that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without NPCC's consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC and NPCC fiscal year budget with the actual results at the

NERC and Regional Entity levels. NPCC shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) NPCC shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) NPCC shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which NPCC shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of NPCC) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which NPCC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of NPCC. *Provided*, that, subject to approval by NERC and the Commission, NPCC may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. NPCC may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit NPCC from contracting with other entities to assist it in carrying out its Delegated Authority, provided NPCC retains control and responsibility for such Delegated Authority.

11. **Default and Cure**. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the

following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. <u>Term and Termination</u>.

(a) This Agreement shall become effective on January 1, 2016 (the "Effective Date").

(b) The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that NPCC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If NPCC meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that NPCC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to provide for a transition of NPCC's Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by NPCC and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. <u>Limitation of Liability</u>. NPCC and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and NPCC shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of NPCC's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that NPCC or NERC is found liable for gross negligence or intentional misconduct, in which case

NPCC or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

14. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. **Confidentiality**.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient: (i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel. Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt notice of a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an

appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. **Amendment**. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

17. **Amendments to the NERC Rules of Procedure**. NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations, or programs of NPCC under this Agreement without first obtaining the consent of NPCC, which consent shall not be unreasonably withheld or delayed. To the extent NPCC does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of NPCC under this Agreement, NPCC shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement.

Such termination shall be effective one year following written notice by NPCC to NERC and the Commission, or at such other time as may be mutually agreed by NPCC and NERC.

18. **Dispute Resolution**. In the event a dispute arises under this Agreement between NERC and NPCC (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to NPCC's performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures ("Dispute Resolution") to attempt to resolve the dispute. NPCC shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20) business days after the date of the receiving Party's notice, the designated representatives shall engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:

North American Electric Reliability Corporation
1325 G Street NW, Suite 600
Washington, DC 20005
Attn: General Counsel
Email: legal@nerc.net

If to NPCC:

Northeast Power Coordinating Council, Inc.
1040 Avenue of the Americas
10th Floor
New York, New York 10018
Attn: Edward Schwerdt
Email: eschwerdt@npcc.org

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that NPCC may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in

Exhibit A.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

By: Gerald W. Cauley

Name: Gerald W. Cauley

Title: President and CEO

Date: 12/15/2015

NORTHEAST POWER COORDINATING COUNCIL, INC.

By: [signature]

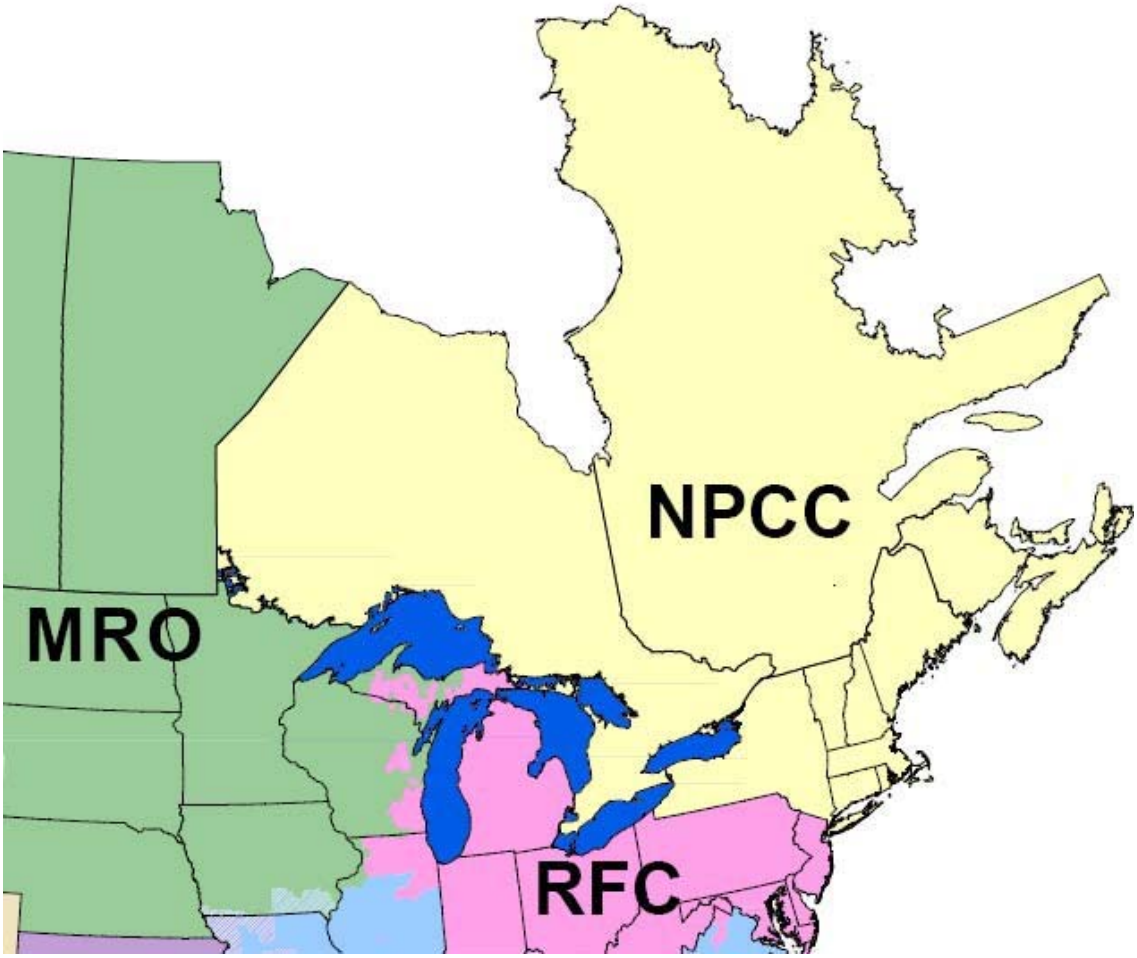
Name: EDWARD A. SCHWERDT

Title: PRESIDENT + CEO

Date: 12/2/15

Northeast Power Coordinating Council, Inc. (NPCC)
Exhibit A – Geographic Area

The geographic area covered by NPCC includes New York state, the six New England states, and Ontario, Quebec, and the Maritime Provinces in Canada. The total population served is approximately 56 million. The area covered is approximately 1 million square miles.



NPCC may also perform compliance monitoring and enforcement activities outside of the region shown above, on behalf of NERC and/or other Regional Entities, such activities undertaken pursuant to a contract between NPCC and such other Regional Entity that is approved by NERC and the Commission.

Exhibit B — Governance

The Regional Entity bylaws shall meet the following criteria:

<u>CRITERION 1</u>: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

<u>CRITERION 2</u>: The Regional Entity has established rules that assure its independence from the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

<u>CRITERION 3</u>: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

<u>CRITERION 4</u>: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

<u>CRITERION 5</u>: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Exhibit C [Intentionally left blank]

Northeast Power Coordinating Council, Inc.

Exhibit D — Compliance Monitoring and Enforcement Program

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.1 Obligations of NPCC

NPCC will implement the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure (which for purposes of this section 1.0 shall not include Attachment 2, Hearing Procedures), to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within the U.S. portion of **NPCC's** geographic or electrical boundaries, and such other scope, set forth in **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

Compliance monitoring and enforcement programs will be implemented within the Canadian portion of **NPCC's** geographic area, consistent with individual Canadian Provincial Memoranda of Understanding (MOU) or Agreements and Canadian laws. All executed MOUs and Agreements will be provided to NERC as allowable under Canadian law.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

NPCC, to the extent required in the Rules of Procedure, shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a registered entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan. The **NPCC** Compliance Committee, reporting to the **NPCC** Board, will be responsible for impaneling a Hearing Body, when required. The Hearing Body will consist of an independent Hearing Officer and two (2) Independent Directors. The Hearing Officer, who is not a member of the Compliance Committee, the **NPCC** Board, or **NPCC** Staff, will conduct the hearing. The Hearing Body will utilize a simple majority vote to resolve issues. This voting rule, along with the structure of the Hearing Body, fully supports the requirement that no two stakeholder sectors may control, and no single stakeholder sector may veto, a matter before the Hearing Body.

To the extent required in the Rules of Procedure, **NPCC** shall conduct all compliance hearings in which a registered entity may contest a finding of alleged violation, proposed penalty or sanction, proposed Mitigation Plan, or a proposed Remedial Action Directive, in accordance with Attachment 2, Hearing Procedures, to the NERC Compliance Monitoring and Enforcement Program, subject to the following deviations, if any: None

3.0 OTHER DECISION-MAKING BODIES

NPCC Management, based on the review and recommendations of Compliance Staff, will be the sole decision-making body to review and make final determinations on each potential noncompliance identified by any means.

Exhibit E — Funding

1. Scope of Activities Funded through the ERO Funding Mechanism

NPCC shall include in its annual budget submission to NERC amounts for costs it will incur in performing its delegated functions and related activities as described in Sections 5, 6 and 7 of the Agreement. These activities shall include:

- Reliability Standard Development
- Compliance Monitoring and Enforcement
- Organization Registration and Certification
- Reliability Assessment and Performance Analysis (including necessary data gathering activities)
- Event Analysis and Reliability Improvement
- Training and Education
- Situation Awareness
- Infrastructure Security

2. Preparation of Annual Business Plan and Budget

(a) NERC and NPCC, in conjunction with the other Regional Entities, shall collaboratively develop an annual schedule for the development, submission, review and approval of NPCC's business plan and budget. The annual schedule for the preparation of business plans and budgets shall require NPCC (i) to submit to NERC draft(s) of NPCC's proposed business plan and budget and other preliminary documents and information, and (ii) to submit a final proposed business plan and budget that has been approved by NPCC Board of Directors to NERC by July 1 or such other agreed date as provides sufficient time for NERC's review, approval and submission of NPCC's business plan and budget to the Commission 130 days in advance of the beginning of each fiscal year. The NPCC business plan and budget submission shall include supporting materials, including NPCC's complete business plan and organization chart, explaining the proposed collection of all assessments, dues, fees and charges, and the proposed expenditure of the funds to be collected in sufficient detail to justify the requested budgeted expenditures and assessments. NPCC's business plan and budget and proposed assessments shall provide for reasonable reserve mechanisms for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(b) NERC shall review and approve NPCC's proposed business plan and budget and proposed assessments for performing the delegated functions and related activities described in Sections 5, 6 and 7 of this Agreement and listed above in Section 1 of this **Exhibit E**, or shall direct NPCC to make such revisions as NERC deems appropriate prior to approval.

NERC shall submit NPCC's approved business plan and budget and proposed assessments to the Commission for approval as part of NERC's overall business plan and budget submission, in accordance with the ERO Regulations.

3. Allocation of Costs

Assessments to fund the costs of NPCC's delegated functions and related activities pursuant to the Agreement shall be allocated among all load-serving entities on the basis of Net Energy for Load, unless a different method(s) of allocating and calculating such assessments has been submitted to and approved by NERC and the Commission in accordance with Section 9(b) of the Agreement. NPCC shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities or designees within its geographic boundaries that shall be responsible for paying NPCC's assessment and the load-serving entities' proportionate Net Energy for Load, and such other data and information as is necessary to allocate and calculate the allocation of NPCC's assessment to the load-serving entities or designees under the method(s) of allocation and calculation that will be used.

4. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities or designees identified by NPCC covering the NERC and NPCC assessments approved for collection.

(b) NERC shall pursue any non-payments of assessment amounts and shall request assistance from Applicable Governmental Authorities as necessary to secure collection. To the extent reasonably practicable, NPCC shall assist NERC in pursuing and collecting any non-payments. Notwithstanding the foregoing, NPCC is not responsible and does not assume any liability for recovering non-payments or underpayments of assessment amounts. NERC shall retain sole responsibility for recovering non-payments or underpayments of assessment amounts. NERC shall add the amount of any non-payments by end-users or designees within NPCC's region, that are reasonably determined to be uncollectible, to NERC's assessments for a subsequent year with the amount of such non-payments to be allocated to end-users within NPCC's region.

(c) Upon approval by Applicable Governmental Authorities of NPCC's annual assessment to fund the costs of its delegated functions and related activities, NERC shall pay NPCC's annual assessment to NPCC in four equal quarterly payments on January 15, April 15, July 15 and October 15 of the budget year.

5. Application of Penalties

Except as otherwise approved by the Commission, all penalty monies received by NPCC, other than penalty monies received from an operational function or division or affiliated entity of NPCC, shall be applied as a general offset to NPCC's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the

investigating entity. Except as otherwise approved by the Commission, any penalty monies received from an operational function or division or affiliated entity of NPCC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

6. Budget and Funding for NPCC's Non-Statutory Activities

In addition to its delegated functions and related activities, as specified in Sections 5, 6 and 7 of the Agreement and in Section 1 of this **Exhibit E** (such delegated functions and activities referred to in this Section 6 as "statutory activities"), NPCC's Criteria Services division performs the following other functions and activities (such other functions and activities being referred to in this Section as "non-statutory activities"):

NPCC List of Criteria Services Division Functions (Non-Statutory Activities)

1. Regionally-specific Criteria

- NPCC develops and maintains Regionally-specific more stringent criteria
- NPCC develops and maintains criteria establishing resource adequacy requirements within the region

2. Criteria Compliance Program

- NPCC monitors and assesses compliance with its more stringent regional criteria
- NPCC conducts a Reliability Compliance and Enforcement Program (RCEP) utilizing non-monetary sanctions

NPCC shall employ the following methods and procedures to (i) keep its funding mechanisms for its Regional Entity division (statutory activities) separate from its funding mechanisms for its Criteria Services division (non- statutory activities), and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions:

1. Funding of NPCC Criteria Services Division (non-statutory activities). A separate membership based funding mechanism is utilized for non-statutory activities.

2. NPCC procedures for separating funding and expenditures for Regional Entity division (statutory activities) and criteria services division (non-statutory activities)

NPCC utilizes the NERC System of Accounts (NSOA) to provide consistency for account codes, divisional separation codes and activity codes. In August of 2007, NPCC CBRE (which prior to the merger performed statutory activities) merged into and with Northeast Power Coordinating Council, Inc. (referred to as NPCC) (which prior to the merger performed non-statutory activities) with the merged corporation having divisional separation for Regional Entity and Criteria Services. As recommended by NERC, NPCC uses the not-for-profit MIP Fund Accounting program by Sage Software to accurately account for income, time and labor. Effective January 1, 2008, with corporate restructuring of NPCC completed in later 2007, 2008 actual program costs are being charged to appropriate program

areas.

NPCC does not conduct resource or transmission planning, is not an Independent System Operator (ISO), nor does it perform the functions of a Reliability Coordinator (RC). As such, while at this time, there is a breakout for Criteria related activities, all functions performed by NPCC are in the furtherance of NERC's statutory mission and reliability of the international bulk power system in Northeastern North America.

Methodology

NPCC's revenue and expenditure classification methodology identifies appropriate methods of accounting for income, time and costs to ensure that U.S. Federal/statutory and Canadian provincial and/or governmental authorities' agreed upon revenue and expenses are accounted for separately from NPCC's Regionally-specific Criteria development and Criteria compliance (non-statutory) income, time and expense.

Division Codes

There are two division codes that are used by NPCC in accounting for revenues and expenses. The codes are as follows:

	Division ID	Division Name
	RE	Regional Entity – U.S. Statutory and Canadian Regulatory and/or Governmental Authority authorized
	CSD	Criteria Services - Non-Statutory

The two division codes allow NPCC to separate Regional Entity statutory activity revenues and expenses from Criteria Services non-statutory activity revenues and expenses. These categories were developed to ensure that non-statutory related revenues and expenses are segregated and accounted for separately from statutory-related revenues and expenses.

Program Codes

As required by NERC, NPCC adopted a financial accounting system consistent with NERC's functional categories. At NPCC, functional categories are referred to as Program Codes.

There are twelve program codes that are used by NPCC in accounting for expenses. The codes are as follows:

	Program ID	Program Name
	300	Reliability Standards
	400	Compliance Enforcement and Organization Registration and Certification
	800	Reliability Assessment and Performance Analysis
	700	Reliability Readiness Evaluation and Improvement
	900	Training and Education
	1000	Situational Awareness and Infrastructure Security
	ADMIN	General Administration
	FINANCE	Accounting and Finance
	HR	Human Resources
	IT	Information Technology
	LEGAL	Legal and Regulatory
	MEMBERS	Members Forum

Program codes are used to further delineate expenses into functional groupings that are assigned to program heads. NPCC staff utilize their assigned program codes (the program where they reside for payroll purposes) when coding expenses, unless otherwise authorized by management.

When time is spent in support of both statutory activities and non-statutory activities (applicable to a limited number of employees in the Administrative Services functions of General Administration, Accounting and Finance, Human resources, Information Technology, Legal and Regulatory and Members Forms), staff members develop accurate timesheet allocations between division codes.

Divisional separation with regard to statutory activities (Regional Entity division) and non-statutory activities (Criteria Services division) is reflected in the NPCC balance sheet and general ledger though the MIP Fund Accounting software programs.

NPCC shall provide its budget for such non-statutory activities to NERC at the same time that NPCC submits its annual budget request to NERC pursuant to Section 1. NPCC's budget for non-statutory activities that is provided to NERC shall contain a detailed list of NPCC's non-statutory activities and a description of the funding sources for the non-statutory activities. NPCC agrees that no costs of non-statutory activities are to be included in the calculation of NPCC's charges for its activities pursuant to this Agreement.

7. Amended or Supplemental Business Plans and Budgets

During the course of the fiscal year, if NPCC determines it does not or will not have sufficient funds to carry out its delegated functions and related activities, NPCC shall submit to NERC one or more proposed amended or supplemental business plans and budgets and requests for approval of supplemental assessments, reflecting costs, cost increases or funding shortfalls not provided for in NPCC's approved business plan and budget for the fiscal year. NERC shall review and approve the proposed amended or supplemental business plan and budget and proposed supplemental assessment, or shall direct NPCC to make such revisions as NERC deems appropriate prior to approval. NERC shall submit NPCC's approved amended or supplemental business plan and budget and proposed supplemental assessment to the Commission for approval.

8. NERC Review of Regional Entity Financial Records

Upon a request made to NPCC with reasonable notice, NERC shall have access to and may review all financial records of NPCC, including records used to prepare NPCC's financial statements. NERC shall conduct reviews of the quarterly and annual financial statements submitted by NPCC pursuant to Section 9(h) and (i) of the Agreement. NPCC shall provide supporting documentation for the quarterly and annual financial statements as reasonably requested by NERC.

9. Costs Associated with Cross-Regional Compliance Monitoring and Enforcement

The costs associated with any Cross-Regional Compliance Monitoring and Enforcement performed by NPCC pursuant to Section 6(f) of this Agreement with respect to registered functions of another Regional Entity are to be funded by payments from the Regional Entity contracting with NPCC for such services, in accordance with the contract between NPCC and the other Regional Entity. Where such a contract has been entered into, NPCC will include a description of the resources it has budgeted to perform such services, and its estimated costs (including appropriate allocation of NPCC's General and Administrative costs) to perform such services, in each budget year, in NPCC's annual business plan and budget that is submitted to NERC and the Commission for approval.

Attachment 5

ReliabilityFirst Corporation

Executed Delegation Agreement Effective January 1, 2016

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND RELIABILITYFIRST CORPORATION

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and ReliabilityFirst Corporation ("ReliabilityFirst"), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and ReliabilityFirst may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the

delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities ("Regional Entities") such as ReliabilityFirst, provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, ReliabilityFirst is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through ReliabilityFirst to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that ReliabilityFirst meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and ReliabilityFirst, having operated under a predecessor

agreement to this Agreement, have negotiated this amended and restated Agreement so as to incorporate the benefits of their mutual experience and lessons learned while operating under the predecessor agreement and thereby provide for the more efficient and effective execution of their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and ReliabilityFirst agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to ReliabilityFirst to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, ReliabilityFirst hereby represents and warrants to NERC that:

(i) ReliabilityFirst is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. ReliabilityFirst is governed in accordance

with its bylaws by a combination independent and balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any ReliabilityFirst decision and no single industry sector can veto any ReliabilityFirst decision. The relevant criteria for the establishment of such bylaws are attached hereto in **Exhibit B**. No other ReliabilityFirst corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) ReliabilityFirst has developed a standards development procedure, which provides the process that ReliabilityFirst may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, ReliabilityFirst has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within ReliabilityFirst's geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to ReliabilityFirst that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. <u>General Covenants</u>.

(a) During the term of this Agreement, ReliabilityFirst shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) ReliabilityFirst shall provide NERC with a copy of its Regional Entity Rules upon

request by NERC. NERC shall maintain on its public website the currently effective versions of all Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of ReliabilityFirst under this Agreement without first obtaining the consent of ReliabilityFirst, which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and ReliabilityFirst shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon ReliabilityFirst.

4. Delegation of Authority.

(a) Based upon the representations, warranties and covenants of ReliabilityFirst in this Agreement, ReliabilityFirst's corporate governance documents, ReliabilityFirst's standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to ReliabilityFirst for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**, *provided*, that ReliabilityFirst shall not monitor and enforce compliance with Reliability Standards for ReliabilityFirst or an affiliated entity with respect to reliability functions for which ReliabilityFirst or an affiliate is a Registered Entity. Any exclusions from this delegation of authority to ReliabilityFirst within, or additions to this delegation of authority to ReliabilityFirst beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) In circumstances where ReliabilityFirst or an affiliated entity is a Registered Entity, ReliabilityFirst shall enter into an agreement with another Regional Entity or NERC for the other Regional Entity or NERC to monitor and enforce ReliabilityFirst's or affiliate's compliance with Reliability Standards. Such agreements are subject to NERC and Commission approval.

(c) Nothing in this Agreement shall prohibit ReliabilityFirst from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both ReliabilityFirst and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, ReliabilityFirst shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. <u>Development and Proposal of Reliability Standards</u>.

(a) In connection with its Delegated Authority, ReliabilityFirst shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords ReliabilityFirst reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through ReliabilityFirst's process. ReliabilityFirst's process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to ReliabilityFirst's process shall be submitted to the

NERC Board of Trustees for approval and upon approval, be submitted to the Commission for approval. Proposals approved through ReliabilityFirst's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time. The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. ReliabilityFirst may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, ReliabilityFirst shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and ReliabilityFirst agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the

assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. ReliabilityFirst may not change its compliance monitoring and enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed, and the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, ReliabilityFirst agrees to comply with the NERC Rules of Procedure, with any directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) ReliabilityFirst shall maintain a program of proactive monitoring and enforcement of compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) ReliabilityFirst shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by ReliabilityFirst, as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and ReliabilityFirst shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by ReliabilityFirst of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, ReliabilityFirst shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. A Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are

assured through reasonable and appropriate recusal procedures.

7. <u>Delegation-Related Activities</u>.

NERC will engage ReliabilityFirst on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by ReliabilityFirst in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by ReliabilityFirst and other Regional Entities. ReliabilityFirst shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to the Commission.

(c) **Reliability Assessment and Performance Analysis.** ReliabilityFirst shall develop assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. ReliabilityFirst shall also develop and maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** ReliabilityFirst shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and ReliabilityFirst shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, ReliabilityFirst shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** ReliabilityFirst may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** ReliabilityFirst shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** ReliabilityFirst shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of ReliabilityFirst's performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and ReliabilityFirst that matters relating to NERC's oversight of ReliabilityFirst's performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and ReliabilityFirst and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with ReliabilityFirst and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and ReliabilityFirst's performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. ReliabilityFirst shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate ReliabilityFirst's performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate ReliabilityFirst's performance of its delegated functions and related activities and to provide advice and direction to ReliabilityFirst on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, ReliabilityFirst and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, ReliabilityFirst shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of ReliabilityFirst's performance against the performance goals, measures and parameters, or performance of

specific activities, to be unsatisfactory, *provided*, that prior to requiring ReliabilityFirst to adopt and implement an action plan or other remedial action, NERC shall issue a notice to ReliabilityFirst of the need and basis for an action plan or other remedial action and provide an opportunity for ReliabilityFirst to submit a written response contesting NERC's evaluation of ReliabilityFirst's performance and the need for an action plan. ReliabilityFirst may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request. NERC and ReliabilityFirst shall work collaboratively as needed in the development and implementation of ReliabilityFirst's action plan. A final action plan submitted by ReliabilityFirst to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to ReliabilityFirst standardized training and education programs, which shall be designed taking into account input from ReliabilityFirst and other Regional Entities, for ReliabilityFirst personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to ReliabilityFirst concerning the manner in which ReliabilityFirst shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with ReliabilityFirst and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and ReliabilityFirst and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, ReliabilityFirst, subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by ReliabilityFirst, the NERC Board of Trustees (or a committee of the Board to which the Board

delegates appropriate authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without ReliabilityFirst's agreement, *provided*, that ReliabilityFirst shall request such review within thirty (30) days following issuance of the directive by the NERC President unless good cause can be shown for a later request.

(iv) NERC and ReliabilityFirst and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which ReliabilityFirst, and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. ReliabilityFirst, either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with ReliabilityFirst, either individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC shall perform reviews and audits of ReliabilityFirst on a reasonable periodicity to determine ReliabilityFirst's compliance with this Agreement, any policies or

procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv), (d) and (f) respectively, that are maintained as non-public.

9. **Funding**. ReliabilityFirst and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) ReliabilityFirst shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. ReliabilityFirst's proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, ReliabilityFirst to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. ReliabilityFirst's business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) ReliabilityFirst and NERC agree that the portion of ReliabilityFirst's approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by ReliabilityFirst and approved by NERC and the Commission. If ReliabilityFirst proposes to use a formula other than Net Energy for Load beginning in the following year, ReliabilityFirst shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula

and file it with the Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and ReliabilityFirst to the Commission pursuant to the ERO Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide ReliabilityFirst with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) ReliabilityFirst shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of ReliabilityFirst, to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund ReliabilityFirst's performance of its Delegated Authority and related activities in accordance with ReliabilityFirst's Commission-approved business plan and budget, in the amount of ReliabilityFirst's assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting ReliabilityFirst's approved assessments from end users and other entities and payment of the approved assessment amount to ReliabilityFirst, unless otherwise modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon ReliabilityFirst that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without ReliabilityFirst's consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and

consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC and ReliabilityFirst fiscal year budget with the actual results at the NERC and Regional Entity levels. ReliabilityFirst shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) ReliabilityFirst shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) ReliabilityFirst shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which ReliabilityFirst shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of ReliabilityFirst) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which ReliabilityFirst shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of ReliabilityFirst. *Provided*, that, subject to approval by NERC and the Commission, ReliabilityFirst may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. ReliabilityFirst may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit ReliabilityFirst from contracting with other entities to assist it in carrying out its Delegated Authority, provided ReliabilityFirst retains control and

responsibility for such Delegated Authority.

11. **Default and Cure**. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. **Term and Termination**.

(a) This Agreement shall become effective on January 1, 2016 (the "Effective Date").

(b) The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that ReliabilityFirst continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If ReliabilityFirst meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that ReliabilityFirst continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing

written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to provide for a transition of ReliabilityFirst's Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by ReliabilityFirst and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. <u>Limitation of Liability</u>. ReliabilityFirst and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and ReliabilityFirst shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or

omission associated with the performance of ReliabilityFirst's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that ReliabilityFirst or NERC is found liable for gross negligence or intentional misconduct, in which case ReliabilityFirst or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

14. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. **Confidentiality**.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient: (i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel. Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-

party beneficiary of this Agreement that provided the Confidential Information with prompt notice of a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. **Amendment**. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

17. **Amendments to the NERC Rules of Procedure**. NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations, or programs of ReliabilityFirst under this Agreement without first obtaining the consent of ReliabilityFirst, which consent shall not be unreasonably withheld or delayed. To the extent ReliabilityFirst does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt

the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of ReliabilityFirst under this Agreement, ReliabilityFirst shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by ReliabilityFirst to NERC and the Commission, or at such other time as may be mutually agreed by ReliabilityFirst and NERC.

18. **Dispute Resolution**. In the event a dispute arises under this Agreement between NERC and ReliabilityFirst (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to ReliabilityFirst's performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures ("Dispute Resolution") to attempt to resolve the dispute. ReliabilityFirst shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20)

business days after the date of the receiving Party's notice, the designated representatives shall engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:	If to ReliabilityFirst:
North American Electric Reliability Corporation 1325 G Street NW, Suite 600 Washington, DC 20005 Attn: General Counsel Email: legal@nerc.net	ReliabilityFirst Corporation 3 Summit Park Drive Suite 600 Cleveland, Ohio 44131 Attn: Timothy Gallagher, President Email: tim.gallagher@rfirst.org

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that ReliabilityFirst may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in

Exhibit A.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

By: _____

Name: Gerald W. Cauley

Title: President and CEO

Date: 12/15/2015

RELIABILITYFIRST CORPORATION

By: _____

Name: Timothy R Gallagher

Title: President & CEO

Date: 12/8/15

Exhibit A — Regional Boundaries

The Boundaries of ReliabilityFirst Corporation (ReliabilityFirst) are defined by the service territories of Load Serving Entities (LSEs) and include all of New Jersey, Delaware, Pennsylvania, Maryland, District of Columbia, West Virginia, Ohio, Indiana, Lower Michigan and portions of Upper Michigan, Wisconsin, Illinois, Kentucky, Tennessee and Virginia as shown on the map below. In addition, transmission systems and generation within the metered boundaries of the LSEs are within ReliabilityFirst even if outside the respective service territories shown. The area is electrically contiguous.

Exhibit B — Governance

The Regional Entity bylaws shall meet the following criteria:

<u>CRITERION 1</u>: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

<u>CRITERION 2</u>: The Regional Entity has established rules that assure its independence from the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

<u>CRITERION 3</u>: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

<u>CRITERION 4</u>: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

<u>CRITERION 5</u>: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Exhibit C [Intentionally left blank]

Exhibit D — Compliance Monitoring and Enforcement Program

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

ReliabilityFirst will implement the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure (which for purposes of this section 1.0 shall not include Attachment 2, Hearing Procedures), to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within **ReliabilityFirst's** geographic or electrical boundaries, and such other scope, set forth in **Exhibit A** of this Agreement.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

ReliabilityFirst, to the extent required in the Rules of Procedure, shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be either **ReliabilityFirst's** board, a committee of the board, a balanced compliance panel reporting directly to **ReliabilityFirst's** board or an independent hearing panel. **ReliabilityFirst's** hearing body is a composition of members of the **ReliabilityFirst** Compliance Committee as established by the Board of Directors of ReliabilityFirst as set out in the ReliabilityFirst Compliance Committee Charter. No two industry sectors may control any decision and no single segment may veto any matter brought before the Hearing Body either before or after any recusals or disqualifications.

To the extent required in the Rules of Procedure, **ReliabilityFirst** shall conduct all compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, proposed Mitigation Plan, or a proposed Remedial Action Directive, in accordance with Attachment 2, Hearing Procedures, to the NERC Compliance Monitoring and Enforcement Program, subject to the following deviations, if any: None.

3.0 OTHER DECISION-MAKING BODIES

None.

Exhibit E — Funding

1. Scope of Activities Funded through the ERO Funding Mechanism

ReliabilityFirst shall include in its annual budget submission to NERC amounts for costs it will incur in performing its delegated functions and related activities as described in Sections 5, 6 and 7 of the Agreement. These activities shall include:

- Reliability Standard Development
- Compliance Monitoring and Enforcement
- Organization Registration and Certification
- Reliability Assessment and Performance Analysis (including necessary data gathering activities)
- Event Analysis and Reliability Improvement
- Training and Education
- Situation Awareness
- Infrastructure Security

2. Preparation of Annual Business Plan and Budget

(a) NERC and ReliabilityFirst, in conjunction with the other Regional Entities, shall collaboratively develop an annual schedule for the development, submission, review and approval of ReliabilityFirst's business plan and budget. The annual schedule for the preparation of business plans and budgets shall require ReliabilityFirst (i) to submit to NERC draft(s) of ReliabilityFirst's proposed business plan and budget and other preliminary documents and information, and (ii) to submit a final proposed business plan and budget that has been approved by ReliabilityFirst Board of Trustees to NERC by July 1 or such other agreed date as provides sufficient time for NERC's review, approval and submission of ReliabilityFirst's business plan and budget to the Commission 130 days in advance of the beginning of each fiscal year. The ReliabilityFirst business plan and budget submission shall include supporting materials, including ReliabilityFirst's complete business plan and organization chart, explaining the proposed collection of all assessments, dues, fees and charges, and the proposed expenditure of the funds to be collected in sufficient detail to justify the requested budgeted expenditures and assessments. ReliabilityFirst's business plan and budget and proposed assessments shall provide for reasonable reserve mechanisms for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(b) NERC shall review and approve ReliabilityFirst's proposed business plan and budget and proposed assessments for performing the delegated functions and related activities described in Sections 5, 6 and 7 of this Agreement and listed above in Section 1 of

this **Exhibit E**, or shall direct ReliabilityFirst to make such revisions as NERC deems appropriate prior to approval. NERC shall submit ReliabilityFirst's approved business plan and budget and proposed assessments to the Commission for approval as part of NERC's overall business plan and budget submission, in accordance with the ERO Regulations.

3. Allocation of Costs

Assessments to fund the costs of ReliabilityFirst's delegated functions and related activities pursuant to the Agreement shall be allocated among all load-serving entities on the basis of Net Energy for Load, unless a different method(s) of allocating and calculating such assessments has been submitted to and approved by NERC and the Commission in accordance with Section 9(b) of the Agreement. ReliabilityFirst shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities or designees within its geographic boundaries that shall be responsible for paying ReliabilityFirst's assessment and the load-serving entities' proportionate Net Energy for Load, and such other data and information as is necessary to allocate and calculate the allocation of ReliabilityFirst's assessment to the load-serving entities or designees under the method(s) of allocation and calculation that will be used.

4. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities or designees identified by ReliabilityFirst covering the NERC and ReliabilityFirst assessments approved for collection.

(b) NERC shall pursue any non-payments of assessment amounts and shall request assistance from Applicable Governmental Authorities as necessary to secure collection. To the extent reasonably practicable, ReliabilityFirst shall assist NERC in pursuing and collecting any non-payments. Notwithstanding the foregoing, ReliabilityFirst is not responsible and does not assume any liability for recovering non-payments or underpayments of assessment amounts. NERC shall retain sole responsibility for recovering non-payments or underpayments of assessment amounts. NERC shall add the amount of any non-payments by end-users or designees within ReliabilityFirst's region, that are reasonably determined to be uncollectible, to NERC's assessments for a subsequent year with the amount of such non-payments to be allocated to end-users within ReliabilityFirst's region.

(c) Upon approval by Applicable Governmental Authorities of ReliabilityFirst's annual assessment to fund the costs of its delegated functions and related activities, NERC shall pay ReliabilityFirst's annual assessment to ReliabilityFirst in four equal quarterly payments on January 15, April 15, July 15 and October 15 of the budget year.

5. Application of Penalties

Except as otherwise approved by the Commission, all penalty monies received by ReliabilityFirst, other than penalty monies received from an operational function or division or affiliated entity of ReliabilityFirst, shall be applied as a general offset to ReliabilityFirst's

budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Except as otherwise approved by the Commission, any penalty monies received from an operational function or division or affiliated entity of ReliabilityFirst shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

6. Budget and Funding for ReliabilityFirst's Non-Statutory Activities

In addition to its delegated functions and related activities, as specified in Sections 5, 6 and 7 of the Agreement and in Section 1 of this **Exhibit E** (such delegated functions and activities referred to in this Section 6 as "statutory activities"), ReliabilityFirst performs the following other functions and activities (such other functions and activities being referred to in this Section 6 as "non-statutory activities"): **None**

ReliabilityFirst shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions: **Not applicable**

ReliabilityFirst shall provide its budget for such non-statutory activities to NERC at the same time that ReliabilityFirst submits its proposed annual business plan and budget for statutory activities to NERC pursuant to Section 9 of the Agreement. ReliabilityFirst's budget for non-statutory activities that is provided to NERC shall contain a detailed list of ReliabilityFirst's non-statutory activities and a description of the funding sources for the non-statutory activities. ReliabilityFirst agrees that no costs (which shall include a reasonable allocation of ReliabilityFirst's general and administrative costs) of non-statutory activities are to be included in the calculation of ReliabilityFirst's assessments, dues, fees, and other charges for its statutory activities. **Not applicable**

7. Amended or Supplemental Business Plans and Budgets

During the course of the fiscal year, if ReliabilityFirst determines it does not or will not have sufficient funds to carry out its delegated functions and related activities, ReliabilityFirst shall submit to NERC one or more proposed amended or supplemental business plans and budgets and requests for approval of supplemental assessments, reflecting costs, cost increases or funding shortfalls not provided for in ReliabilityFirst's approved business plan and budget for the fiscal year. NERC shall review and approve the proposed amended or supplemental business plan and budget and proposed supplemental assessment, or shall direct ReliabilityFirst to make such revisions as NERC deems appropriate prior to approval. NERC shall submit ReliabilityFirst's approved amended or supplemental business plan and budget and proposed supplemental assessment to the Commission for approval.

8. NERC Review of Regional Entity Financial Records

Upon a request made to ReliabilityFirst with reasonable notice, NERC shall have access to and may review all financial records of ReliabilityFirst, including records used to prepare ReliabilityFirst's financial statements. NERC shall conduct reviews of the quarterly and annual financial statements submitted by ReliabilityFirst pursuant to Section 9(h) and (i) of the Agreement. ReliabilityFirst shall provide supporting documentation for the quarterly and annual financial statements as reasonably requested by NERC.

Attachment 6

SERC Reliability Corporation

Executed Delegation Agreement Effective January 1, 2016

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND SERC RELIABILITY CORPORATION

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and SERC Reliability Corporation ("SERC"), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and SERC may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities ("Regional Entities") such as SERC, provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, SERC is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through SERC to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that SERC meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and SERC, having operated under a predecessor agreement to this Agreement, have negotiated this amended and restated Agreement so as to incorporate the benefits of their mutual experience and lessons learned while operating under the

predecessor agreement and thereby provide for the more efficient and effective execution of their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and SERC agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to SERC to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, SERC hereby represents and warrants to NERC that:

(i) SERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. SERC is governed in accordance with its bylaws by a balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any SERC decision and no single industry sector can veto any SERC decision. The relevant criteria

for the establishment of such bylaws are attached hereto in **Exhibit B**. No other SERC corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) SERC has developed a standards development procedure, which provides the process that SERC may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, SERC has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within SERC's geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to SERC that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. <u>General Covenants</u>.

(a) During the term of this Agreement, SERC shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) SERC shall provide NERC with a copy of its Regional Entity Rules upon request by NERC. NERC shall maintain on its public website the currently effective versions of all Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of SERC under this Agreement without first obtaining the consent of SERC, which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and SERC shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon SERC.

4. <u>Delegation of Authority</u>.

(a) Based upon the representations, warranties and covenants of SERC in this Agreement, SERC's corporate governance documents, the SERC's standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to SERC for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**, provided, that SERC shall not monitor and enforce compliance with Reliability Standards for SERC or an affiliated entity with respect to reliability functions for which SERC or an affiliate is a Registered Entity. Any exclusions from this delegation of authority to SERC within, or additions to this delegation of authority to SERC beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) In circumstances where SERC or an affiliated entity is a Registered Entity, SERC shall enter into an agreement with another Regional Entity or NERC for the other Regional Entity or NERC to monitor and enforce SERC's or affiliate's compliance with Reliability Standards. Such agreements are subject to NERC and Commission approval.

(c) Nothing in this Agreement shall prohibit SERC from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both SERC and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, SERC shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. <u>Development and Proposal of Reliability Standards</u>.

(a) In connection with its Delegated Authority, SERC shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords SERC reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through SERC's process. SERC's process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to SERC's process shall be submitted to the NERC Board of Trustees for approval and upon approval, be submitted to the Commission for approval. Proposals approved through SERC's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time.

The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. SERC may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, SERC shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and SERC agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. SERC may not change its compliance monitoring and enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed, and the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, SERC agrees to comply with the NERC Rules of Procedure, with any

directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) SERC shall maintain a program of proactive monitoring and enforcement of compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) SERC shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by SERC, as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and SERC shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by SERC of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, SERC shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. A Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures.

(f) SERC may also perform compliance monitoring and enforcement activities outside of the boundaries shown in **Exhibit A**, on behalf of a Regional Entity that is unable to perform such activities with respect to one or more registered entities within its footprint due to a conflict

of interest. Such activities shall be performed pursuant to a contract between SERC and other such Regional Entity that is approved by both NERC and the Commission.

7. <u>Delegation-Related Activities</u>.

NERC will engage SERC on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by SERC in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by SERC and other Regional Entities. SERC shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to

the Commission.

(c) **Reliability Assessment and Performance Analysis.** SERC shall develop assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. SERC shall also develop and maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** SERC shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and SERC shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, SERC shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** SERC may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** SERC shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** SERC shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of

the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of SERC's performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and SERC that matters relating to NERC's oversight of SERC's performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and SERC and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with SERC and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and SERC's performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. SERC shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate SERC's performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate SERC's performance of its delegated functions and related activities and to provide advice and direction to SERC on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, SERC and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, SERC shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of SERC's performance against the performance goals, measures and parameters, or performance of specific activities, to be unsatisfactory, *provided*, that prior to requiring SERC to adopt and

implement an action plan or other remedial action, NERC shall issue a notice to SERC of the need and basis for an action plan or other remedial action and provide an opportunity for SERC to submit a written response contesting NERC's evaluation of SERC's performance and the need for an action plan. SERC may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request. NERC and SERC shall work collaboratively as needed in the development and implementation of SERC's action plan. A final action plan submitted by SERC to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to SERC standardized training and education programs, which shall be designed taking into account input from SERC and other Regional Entities, for SERC personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to SERC concerning the manner in which SERC shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with SERC and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and SERC and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, SERC, subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by SERC, the NERC Board of Trustees (or a committee of the Board to which the Board delegates appropriate authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without SERC's agreement, *provided*, that SERC shall request such review within thirty (30) days following issuance of the directive by the NERC President unless good

cause can be shown for a later request.

(iv) NERC and SERC and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which SERC, and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. SERC, either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with SERC, either individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC shall perform reviews and audits of SERC on a reasonable periodicity to determine SERC's compliance with this Agreement, any policies or procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees

pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv), (d) and (f), respectively, that are maintained as non-public.

9. **Funding**. SERC and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) SERC shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. SERC's proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, SERC to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. SERC's business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) SERC and NERC agree that the portion of SERC's approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by SERC and approved by NERC and the Commission. If SERC proposes to use a formula other than Net Energy for Load beginning in the following year, SERC shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan

and budget submitted by NERC and SERC to the Commission pursuant to the ERO Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide SERC with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) SERC shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of SERC, to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund SERC's performance of its Delegated Authority and related activities in accordance with SERC's Commission- approved business plan and budget, in the amount of SERC's assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting SERC's approved assessments from end users and other entities and payment of the approved assessment amount to SERC, unless otherwise modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon SERC that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without SERC's consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare

each Commission-approved NERC and SERC fiscal year budget with the actual results at the NERC and Regional Entity levels. SERC shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) SERC shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) SERC shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which SERC shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of SERC) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which SERC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of SERC. *Provided*, that, subject to approval by NERC and the Commission, SERC may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. SERC may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit SERC from contracting with other entities to assist it in carrying out its Delegated Authority, provided SERC retains control and responsibility for such Delegated Authority.

11. **Default and Cure**. Upon a Breach, the non-breaching Party shall give written notice

of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. <u>Term and Termination</u>.

(a) This Agreement shall become effective on January 1, 2016 (the "Effective Date").

(b) The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that SERC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If SERC meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that SERC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise

mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to provide for a transition of SERC's Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by SERC and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. **Limitation of Liability**. SERC and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and SERC shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of SERC's or NERC's responsibilities under this Agreement or in conducting

activities under the authority of Section 215 of the Act, except to the extent that SERC or NERC is found liable for gross negligence or intentional misconduct, in which case SERC or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

14. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. **Confidentiality**.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient: (i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel. Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt notice of a request or requirement for disclosure of the Confidential Information in order to

enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. **Amendment**. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

17. **Amendments to the NERC Rules of Procedure**. NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations, or programs of SERC under this Agreement without first obtaining the consent of SERC, which consent shall not be unreasonably withheld or delayed. To the extent SERC does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of SERC under this Agreement, SERC shall have the option,

exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by SERC to NERC and the Commission, or at such other time as may be mutually agreed by SERC and NERC.

18. **Dispute Resolution**. In the event a dispute arises under this Agreement between NERC and SERC (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to SERC's performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures ("Dispute Resolution") to attempt to resolve the dispute. SERC shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20) business days after the date of the receiving Party's notice, the designated representatives shall engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the

process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:	If to SERC:
North American Electric Reliability Corporation 1325 G Street NW, Suite 600 Washington, DC 20005 Attn: General Counsel Email: legal@nerc.net	SERC Reliability Corporation 3701 Arco Corporate Drive Suite 300 Charlotte, NC 28273 Attn: President and CEO Email: shenry@serc1.org

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that SERC may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit**

A.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

By: Gerald W Cauley

Name: Gerald W Cauley

Title: President and CEO

Date: 12/15/2015

SERC RELIABILITY CORPORATION

By: R. Scott Henry

Name: R. Scott Henry

Title: President and CEO

Date: 12/17/2015

SERC Regional Boundaries

<u>Exhibit A</u>
to the
Amended and Restated
Regional Entity Delegation Agreement
between

North American Electric Reliability Corporation
and
SERC Reliability Corporation

1.0 Regional Boundaries

The geographic boundaries of SERC Reliability Corporation (SERC) are determined by the service areas of its membership, comprised of investor-owned utilities, municipal, cooperative, state and federal systems, merchant electricity generators and power marketers.

SERC covers an area of approximately 560,000 square miles in sixteen states: all of Alabama, Georgia, Mississippi, North Carolina and South Carolina, and portions of Arkansas, Florida, Illinois, Iowa, Kentucky, Louisiana, Missouri, Oklahoma, Tennessee, Texas and Virginia.

Service provided by SERC members in areas which overlap with neighboring regions:

- The area in southern Iowa is served by N.E. Missouri Electric Power Cooperative, a member of Associated Electric Cooperative, Inc., and N.W. Electric Power Cooperative, a member of Associated Electric Cooperative, Inc.
- The area in eastern Oklahoma is served by KAMO Electric Cooperative, Inc., a member of Associated Electric Cooperative, Inc.
- The area in Arkansas is served by Entergy Arkansas.
- The area in western Missouri is served by N.W. Electric Power Cooperative, a member of Associated Electric Cooperative, Inc., and KAMO Electric Cooperative, Inc., a member of Associated Electric Cooperative, Inc.
- The area in N.E. Florida (part of Baker and Nassau counties) served by Okefenoke Rural Electric Membership Corporation (OREMC), a member of Georgia System Operations Corporation, and facilities physically located in Baker County, Florida owned by Georgia Transmission Corporation (GTC) are part of the SERC Region and not the FRCC Region.

A regional map is shown in Section 1.1.

SERC may also perform compliance and enforcement activities outside of the Region, on behalf of NERC and/or other Regional Entities, such activities to be undertaken pursuant to a contract between the Regional Entities that is approved by the Board Executive Committee, NERC and the Federal Energy Regulatory Commission.

Regional Boundaries

1.1 SERC Regional Map

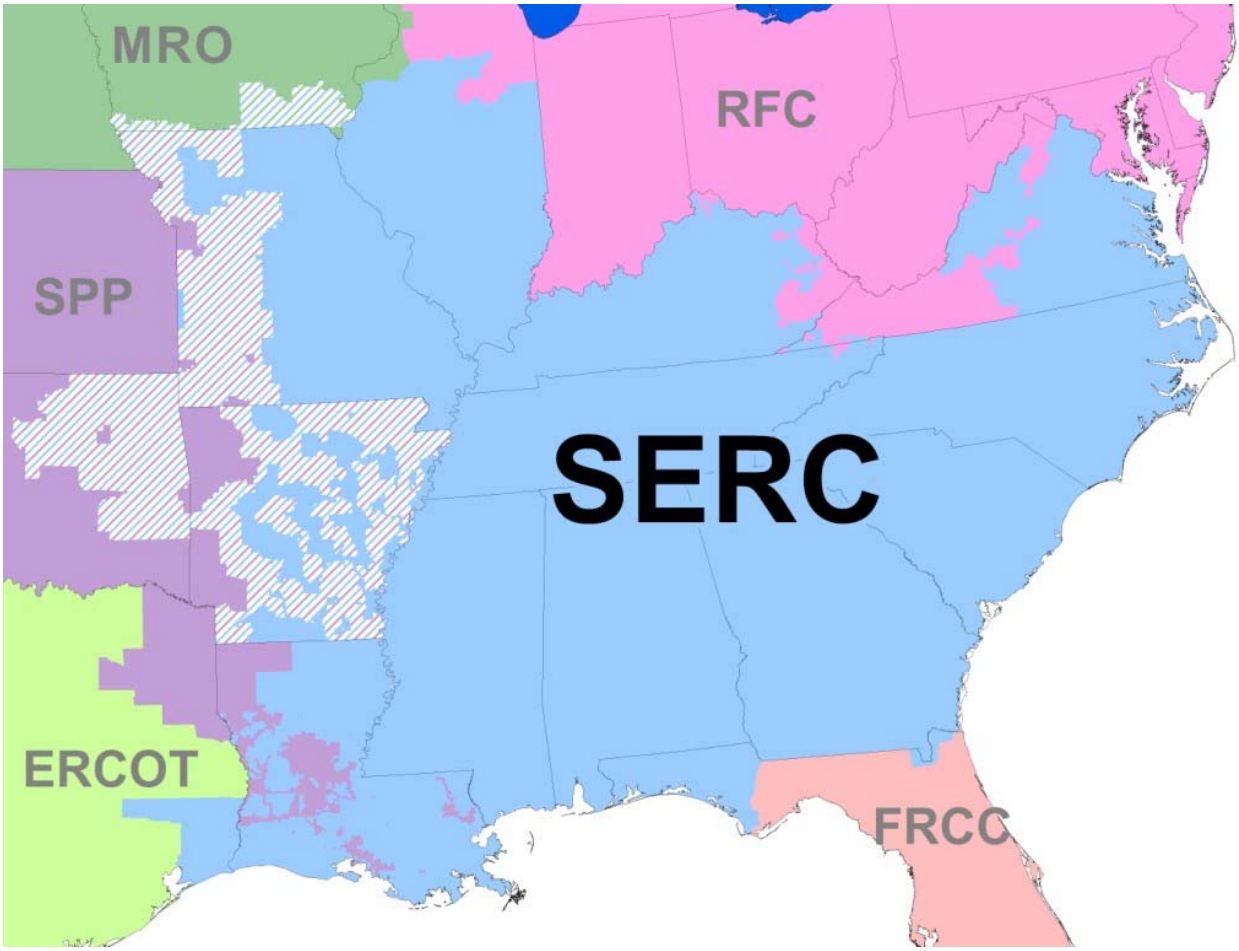


Exhibit B — Governance

The Regional Entity bylaws shall meet the following criteria:

<u>CRITERION 1</u>: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

<u>CRITERION 2</u>: The Regional Entity has established rules that assure its independence from the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

<u>CRITERION 3</u>: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

<u>CRITERION 4</u>: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

<u>CRITERION 5</u>: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Exhibit C [Intentionally left blank]

SERC Compliance Monitoring and Enforcement Program

<u>Exhibit D</u>
to the
Amended and Restated
Regional Entity Delegation Agreement
between

North American Electric Reliability Corporation
and
SERC Reliability Corporation

Exhibit D — Compliance Monitoring and Enforcement Program

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

SERC Reliability Corporation ("SERC") will implement the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure (which for purposes of this section 1.0 shall not include Attachment 2, Hearing Procedures), to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within SERC's geographic or electrical boundaries, and such other scope, set forth in **Exhibit A** of this Agreement.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

SERC, to the extent required in the Rules of Procedure, shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be a balanced compliance panel reporting directly to SERC's board.

SERC's Hearing Body is the Board Compliance Committee, or a subset of the Board Compliance Committee. The Board Compliance Committee is comprised of SERC board members appointed by the Board of Directors. The Board Compliance Committee representation is as follows:

- The Investor-Owned Utility Sector shall have three (3) representatives;
- The Federal/State Sector shall have two (2) representatives;
- The Cooperative Sector shall have two (2) representatives;
- The Municipal Sector shall have two (2) representatives;
- The Marketer Sector shall have on (1) representative;
- The Merchant Electricity Sector shall have one (1) representative;
- The ISO-RTO Sector shall have one (1) representative

Consistent with the Hearing Procedures, a quorum for the purpose of constituting a Hearing Body shall be half of SERC's Board Compliance Committee, or six members including alternates. In addition to the quorum requirement, the chair of the Board Compliance Committee shall declare the Hearing Body duly constituted only if no two sectors can control and no one sector can veto the actions of the Hearing Body (the "Sector Control Requirements"). To ensure that the Sector Control Requirements are met in the formation of a Hearing Body, the Chair shall adhere to the following in declaring the Hearing Body duly constituted:

- If the Hearing Body is made up of six (6) members of the BCC, then each sector shall have no more than one (1) representative on the Hearing Body.
- If the Hearing Body is made up of seven (7) or eight (8) members of the BCC, then only one sector can have two (2) representatives on the Hearing Body, and each other sector can have only one (1) representative on the Hearing Body.

- If the Hearing Body is made up of nine (9) or ten (10) members of the BCC, then no sector can have more than two (2) representatives on the Hearing Body.
- If the Hearing Body is made up of eleven (11) or twelve (12) members of the BCC, then the Sector Control Requirements are met, as no two sectors would have enough votes to control, and no one sector would have the ability to veto.

Approval of all actions before a duly constituted Hearing Body shall require a simple majority of the votes cast, with each member of the Hearing Body having one vote. The decision of any duly constituted Hearing Body pursuant to these requirements shall be final and binding on the Corporation, without requiring either the full Compliance Committee or the Corporation to ratify the Hearing Body's actions.

To the extent required in the Rules of Procedure, SERC shall conduct all compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, proposed Mitigation Plan, or a proposed Remedial Action Directive, in accordance with Attachment 2, Hearing Procedures, to the NERC Compliance Monitoring and Enforcement Program, subject to the following deviations, if any: None.

3.0 OTHER DECISION-MAKING BODIES

SERC does not use decision making bodies within its compliance program other than the Board Compliance Committee described in Section 2.0.

SERC Funding

<u>Exhibit E</u>
to the
Amended and Restated
Regional Entity Delegation Agreement
between

North American Electric Reliability Corporation
and
SERC Reliability Corporation

Exhibit E — Funding

1. Scope of Activities Funded through the ERO Funding Mechanism

SERC shall include in its annual budget submission to NERC amounts for costs it will incur in performing its delegated functions and related activities as described in Sections 5, 6 and 7 of the Agreement. These activities shall include:

- Reliability Standard Development
- Compliance Monitoring and Enforcement
- Organization Registration and Certification
- Reliability Assessment and Performance Analysis (including necessary data gathering activities)
- Event Analysis and Reliability Improvement
- Training and Education
- Situation Awareness
- Infrastructure Security

2. Preparation of Annual Business Plan and Budget

(a) NERC and SERC, in conjunction with the other Regional Entities, shall collaboratively develop an annual schedule for the development, submission, review and approval of SERC's business plan and budget. The annual schedule for the preparation of business plans and budgets shall require SERC (i) to submit to NERC draft(s) of SERC's proposed business plan and budget and other preliminary documents and information, and (ii) to submit a final proposed business plan and budget that has been approved by SERC Board of Directors to NERC by July 1 or such other agreed date as provides sufficient time for NERC's review, approval and submission of SERC's business plan and budget to the Commission 130 days in advance of the beginning of each fiscal year. The SERC business plan and budget submission shall include supporting materials, including SERC's complete business plan and organization chart, explaining the proposed collection of all assessments, dues, fees and charges, and the proposed expenditure of the funds to be collected in sufficient detail to justify the requested budgeted expenditures and assessments. SERC's business plan and budget and proposed assessments shall provide for reasonable reserve mechanisms for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(b) NERC shall review and approve SERC's proposed business plan and budget and proposed assessments for performing the delegated functions and related activities described in Sections 5, 6 and 7 of this Agreement and listed above in Section 1 of this **Exhibit E**, or shall direct SERC to make such revisions as NERC deems appropriate prior to approval. NERC shall submit SERC's approved business plan and budget and proposed assessments to the Commission for approval as part of NERC's overall business plan and budget

submission, in accordance with the ERO Regulations.

3. Allocation of Costs

Assessments to fund the costs of SERC's delegated functions and related activities pursuant to the Agreement shall be allocated among all load-serving entities on the basis of Net Energy for Load, unless a different method(s) of allocating and calculating such assessments has been submitted to and approved by NERC and the Commission in accordance with Section 9(b) of the Agreement. SERC shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities or designees within its geographic boundaries that shall be responsible for paying SERC's assessment and the load-serving entities' proportionate Net Energy for Load, and such other data and information as is necessary to allocate and calculate the allocation of SERC's assessment to the load-serving entities or designees under the method(s) of allocation and calculation that will be used.

4. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities or designees identified by SERC covering the NERC and SERC assessments approved for collection.

(b) NERC shall pursue any non-payments of assessment amounts and shall request assistance from Applicable Governmental Authorities as necessary to secure collection. To the extent reasonably practicable, SERC shall assist NERC in pursuing and collecting any non-payments. Notwithstanding the foregoing, SERC is not responsible and does not assume any liability for recovering non-payments or underpayments of assessment amounts. NERC shall retain sole responsibility for recovering non-payments or underpayments of assessment amounts. NERC shall add the amount of any non-payments by end-users or designees within SERC's region, that are reasonably determined to be uncollectible, to NERC's assessments for a subsequent year with the amount of such non-payments to be allocated to end-users within SERC's region.

(c) Upon approval by Applicable Governmental Authorities of SERC's annual assessment to fund the costs of its delegated functions and related activities, NERC shall pay SERC's annual assessment to SERC in four equal quarterly payments on January 15, April 15, July 15 and October 15 of the budget year.

5. Application of Penalties

Except as otherwise approved by the Commission, all penalty monies received by SERC, other than penalty monies received from an operational function or division or affiliated entity of SERC, shall be applied as a general offset to SERC's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Except as otherwise approved by the Commission, any penalty monies received from an operational function or division or affiliated entity of SERC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

6. Budget and Funding for SERC's Non-Statutory Activities

In addition to its delegated functions and related activities, as specified in Sections 5, 6 and 7 of the Agreement and in Section 1 of this **Exhibit E** (such delegated functions and activities referred to in this Section 6 as "statutory activities"), SERC performs the following other functions and activities (such other functions and activities being referred to in this Section 6 as "non-statutory activities"): None.

SERC shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions: Not applicable.

SERC shall provide its budget for such non-statutory activities to NERC at the same time that SERC submits its proposed annual business plan and budget for statutory activities to NERC pursuant to Section 9 of the Agreement. SERC's budget for non-statutory activities that is provided to NERC shall contain a detailed list of SERC's non-statutory activities and a description of the funding sources for the non-statutory activities. SERC agrees that no costs (which shall include a reasonable allocation of SERC's general and administrative costs) of non-statutory activities are to be included in the calculation of SERC's assessments, dues, fees, and other charges for its statutory activities.

Costs associated with Cross-Regional Compliance Monitoring. The costs associated with any Cross-Regional Compliance Monitoring performed by SERC pursuant to Section 6(f) of this Agreement with respect to registered functions of another Regional Entity are to be funded by payments from the NERC or the Regional Entity contracting with SERC for such services, in accordance with the contract between SERC and NERC or the other Regional Entity. Where such a contract has been entered into SERC will include a description of the resources it has budgeted to perform such services, and its estimated costs (including an appropriate allocation of SERC's General and Administrative costs) to perform such services, in each budget year, in SERC's annual business plan and budget that is submitted to NERC and to the Commission for approval.

7. Amended or Supplemental Business Plans and Budgets

During the course of the fiscal year, if SERC determines it does not or will not have sufficient funds to carry out its delegated functions and related activities, SERC shall submit to NERC one or more proposed amended or supplemental business plans and budgets and requests for approval of supplemental assessments, reflecting costs, cost increases or funding shortfalls not provided for in SERC's approved business plan and budget for the fiscal year. NERC shall review and approve the proposed amended or supplemental business plan and budget and proposed supplemental assessment, or shall direct SERC to make such revisions as NERC deems appropriate prior to approval. NERC shall submit SERC's approved amended or supplemental business plan and budget and proposed supplemental assessment to the Commission for approval.

8. NERC Review of Regional Entity Financial Records

Upon a request made to SERC with reasonable notice, NERC shall have access to and may review all financial records of SERC, including records used to prepare SERC's financial statements. NERC shall conduct reviews of the quarterly and annual financial statements submitted by SERC pursuant to Section 9(h) and (i) of the Agreement. SERC shall provide supporting documentation for the quarterly and annual financial statements as reasonably requested by NERC.

Attachment 7

Southwest Power Pool, Inc., on behalf of Southwest Power Pool Regional Entity,

Executed Delegation Agreement Effective January 1, 2016

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND SOUTHWEST POWER POOL, INC.

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and Southwest Power Pool, Inc., on behalf of Southwest Power Pool Regional Entity ("SPP"), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and SPP may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the

delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities ("Regional Entities") such as SPP, provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, SPP /is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through SPP to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that SPP meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and SPP, having operated under a predecessor agreement to this Agreement, have negotiated this amended and restated Agreement so as to incorporate the benefits of their mutual experience and lessons learned while operating under the predecessor agreement and thereby provide for the more efficient and effective execution of their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and SPP agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to SPP to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, SPP hereby represents and warrants to NERC that:

(i) SPP is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and

fulfilling its obligations hereunder. SPP is governed in accordance with its bylaws by an independent board. Pursuant to these bylaws, no two industry sectors can control any SPP decision and no single industry sector can veto any SPP decision. The relevant criteria for the establishment of such bylaws are attached hereto in **Exhibit B**. No other SPP corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) SPP has developed a standards development procedure, which provides the process that SPP may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, SPP has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within SPP's geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to SPP that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. <u>General Covenants</u>.

(a) During the term of this Agreement, SPP shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) SPP shall provide NERC with a copy of its Regional Entity Rules upon request by

NERC. NERC shall maintain on its public website the currently effective versions of all Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of SPP under this Agreement without first obtaining the consent of SPP, which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and SPP shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon SPP.

4. <u>Delegation of Authority</u>.

(a) Based upon the representations, warranties and covenants of SPP in this Agreement, SPP's corporate governance documents, SPP's standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to SPP for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**, provided, that SPP shall not monitor and enforce compliance with Reliability Standards for SPP or an affiliated entity with respect to reliability functions for which SPP or an affiliate is a Registered Entity. Any exclusions from this delegation of authority to SPP within, or additions to this delegation of authority to SPP beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) In circumstances where SPP or an affiliated entity is a Registered Entity, SPP

shall enter into an agreement with another Regional Entity or NERC for the other Regional Entity or NERC to monitor and enforce SPP's or affiliate's compliance with Reliability Standards. Such agreements are subject to NERC and Commission approval.

(c) Nothing in this Agreement shall prohibit SPP from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both SPP and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, SPP shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. <u>Development and Proposal of Reliability Standards</u>.

(a) In connection with its Delegated Authority, SPP shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords SPP reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through SPP's process. SPP's process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to SPP's process shall be submitted to the NERC Board of Trustees for approval and upon approval, be submitted to the Commission for approval. Proposals approved through SPP's process shall be reviewed by the NERC Board of Trustees after NERC provides notice

and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time. The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. SPP may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, SPP shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and SPP agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. SPP may not change its compliance monitoring and enforcement program set forth

in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed, and the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, SPP agrees to comply with the NERC Rules of Procedure, with any directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) SPP shall maintain a program of proactive monitoring and enforcement of compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) SPP shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by SPP, as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and SPP shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by SPP of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, SPP shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. A Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures.

7. <u>Delegation-Related Activities</u>.

NERC will engage SPP on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by SPP in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by SPP and other Regional Entities. SPP shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to the Commission.

(c) **Reliability Assessment and Performance Analysis.** SPP shall develop assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. SPP shall also develop and maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** SPP shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and SPP shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, SPP shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** SPP may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** SPP shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** SPP shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of SPP's performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and SPP that matters relating to NERC's oversight of SPP's performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and SPP and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with SPP and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and SPP's performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. SPP shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate SPP's performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate SPP's performance of its delegated functions and related activities and to provide advice and direction to SPP on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, SPP and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, SPP shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of SPP's performance against the performance goals, measures and parameters, or performance of specific activities, to be unsatisfactory, *provided*, that prior to requiring SPP to adopt and implement an action plan or other remedial action, NERC shall issue a notice to SPP of the need and basis for an action plan

or other remedial action and provide an opportunity for SPP to submit a written response contesting NERC's evaluation of SPP's performance and the need for an action plan. SPP may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request. NERC and SPP shall work collaboratively as needed in the development and implementation of SPP's action plan. A final action plan submitted by SPP to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to SPP standardized training and education programs, which shall be designed taking into account input from SPP and other Regional Entities, for SPP personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to SPP concerning the manner in which SPP shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with SPP and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and SPP and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, SPP, subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by SPP, the NERC Board of Trustees (or a committee of the Board to which the Board delegates appropriate authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without SPP's agreement, *provided*, that SPP shall request such review within thirty (30) days following issuance of the directive by the NERC President unless good cause can be shown for a later request.

(iv) NERC and SPP and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which SPP, and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. SPP, either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with SPP, either individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC shall perform reviews and audits of SPP on a reasonable periodicity to determine SPP's compliance with this Agreement, any policies or procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC

Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv), (d) and (f), respectively, that are maintained as non-public.

9. **Funding**. SPP and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) SPP shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. SPP's proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, SPP to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. SPP's business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) SPP and NERC agree that the portion of SPP's approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by SPP and approved by NERC and the Commission. If SPP proposes to use a formula other than Net Energy for Load beginning in the following year, SPP shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and SPP to the Commission pursuant to the ERO Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide SPP with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) SPP shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of SPP, to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund SPP's performance of its Delegated Authority and related activities in accordance with SPP's Commission- approved business plan and budget, in the amount of SPP's assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting SPP's approved assessments from end users and other entities and payment of the approved assessment amount to SPP, unless otherwise modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon SPP that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without SPP's consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC and SPP fiscal year budget with the actual results at the NERC and Regional Entity levels. SPP shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts.

NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) SPP shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) SPP shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which SPP shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of SPP) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which SPP shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of SPP. *Provided*, that, subject to approval by NERC and the Commission, SPP may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. SPP may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit SPP from contracting with other entities to assist it in carrying out its Delegated Authority, provided SPP retains control and responsibility for such Delegated Authority.

11. **Default and Cure**. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if

such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. <u>Term and Termination</u>.

(a) This Agreement shall become effective on January 1, 2016 (the "Effective Date").

(b) The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that SPP continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If SPP meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that SPP continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to

provide for a transition of SPP's Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by SPP and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. Limitation of Liability. SPP and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and SPP shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of SPP's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that SPP or NERC is found liable for gross negligence or intentional misconduct, in which case SPP or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys'

fees and litigation costs), exemplary, or punitive damages.

14. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. **Confidentiality**.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient: (i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel. Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt notice of a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive

compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. **Amendment**. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

17. **Amendments to the NERC Rules of Procedure**. NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations, or programs of SPP under this Agreement without first obtaining the consent of SPP, which consent shall not be unreasonably withheld or delayed. To the extent SPP does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of SPP under this Agreement, SPP shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by SPP to NERC and the Commission, or at such other time as may be mutually agreed by SPP and NERC.

18. **Dispute Resolution**. In the event a dispute arises under this Agreement between NERC and SPP (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to SPP's performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures ("Dispute Resolution") to attempt to resolve the dispute. SPP shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20) business days after the date of the receiving Party's notice, the designated representatives shall engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter

engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:

North American Electric Reliability Corporation
1325 G Street NW, Suite 600
Washington, DC 20005
Attn: General Counsel
Email: legal@nerc.net

If to SPP:

Southwest Power Pool, Inc.

201 Worthen Drive
Little Rock, Arkansas 72223-4936
Attn: Ron Ciesiel, SPP RE General Manager
Email: rciesiel.re@spp.org

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that SPP may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

By: Gerald W Cauley

Name: Gerald W. Cauley

Title: President and CEO

Date: 12/15/2015

SOUTHWEST POWER POOL, INC.

By: Ron Ciesiel

Name: RON CIESIEL

Title: SPP RE GENERAL MANAGER

Date: 12/2/15

By: Nicholas A. Brown

Name: NICHOLAS A. BROWN

Title: PRESIDENT & CEO

Date: 12/2/15

Exhibit A — Regional Boundaries

The geographic boundaries of Southwest Power Pool (SPP) are determined by the service areas of its membership, comprised of investor-owned utilities, municipal, cooperative, state and federal systems, merchant electricity generators and power marketers.

The SPP Regional Entity covers an area of approximately 250,000 square miles of service territory (purple region depicted below) in all or part of eight states: Arkansas, Kansas, Louisiana, New Mexico, Mississippi, Missouri, Oklahoma, and Texas.

Service provided by SPP members in areas which overlap with neighboring regions:

- The area in northeastern Oklahoma is served by Western Farmers Electric Cooperative, Oklahoma Gas & Electric Company, Oklahoma Municipal Power Authority, Grand River Dam Authority, and AEP.
- The area in Arkansas is served by Arkansas Electric Cooperative Corporation, Oklahoma Gas & Electric Company, and AEP.
- The area in western Missouri is served by Empire District Electric Company, City Power & Light (Independence, MO), City Utilities (Springfield, MO), Grand River Dam Authority, Kansas City Power & Light Company, City Power & Light (Independence, MO), and Southwestern Power Administration.

Within the SPP region, compliance monitoring and enforcement functions with respect to reliability functions for which SPP is the registered entity are performed by SERC Reliability Corporation (SERC) pursuant to a contract between SPP and SERC.

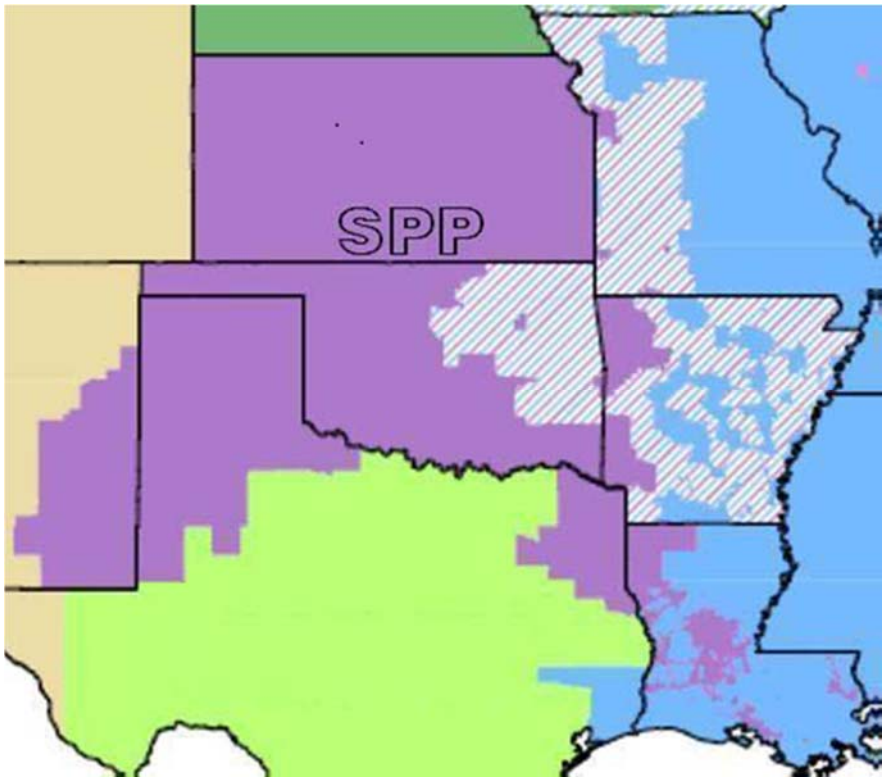


Exhibit B — Governance

The Regional Entity bylaws shall meet the following criteria:

<u>CRITERION 1</u>: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

<u>CRITERION 2</u>: The Regional Entity has established rules that assure its independence from the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

<u>CRITERION 3</u>: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

<u>CRITERION 4</u>: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

<u>CRITERION 5</u>: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Exhibit C [Intentionally left blank]

Exhibit D — Compliance Monitoring and Enforcement Program

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

SPP will implement the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure (which for purposes of this section 1.0 shall not include Attachment 2, Hearing Procedures), to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within **SPP's** geographic or electrical boundaries, and such other scope, set forth in **Exhibit A** of this Agreement.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

SPP, to the extent required in the Rules of Procedure, shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be either **SPP's** board, a committee of the board, a balanced compliance panel reporting directly to **SPP's** board or an independent hearing panel. **SPP's** hearing body is the SPP Regional Entity Trustees.

To the extent required in the Rules of Procedure, **SPP** shall conduct all compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, proposed Mitigation Plan, or a proposed Remedial Action Directive, in accordance with Attachment 2, Hearing Procedures, to the NERC Compliance Monitoring and Enforcement Program, subject to the following deviations, if any: None.

3.0 OTHER DECISION-MAKING BODIES

SPP has engaged the SERC Reliability Corporation (SERC) to oversee the compliance monitoring and enforcement responsibility within the SPP region as related to SPP's compliance with Reliability Standards requirements that are applicable to the functions for which SPP is a Registered Entity.

Exhibit E — Funding

1. Scope of Activities Funded through the ERO Funding Mechanism

SPP shall include in its annual budget submission to NERC amounts for costs it will incur in performing its delegated functions and related activities as described in Sections 5, 6 and 7 of the Agreement. These activities shall include:

- Reliability Standard Development
- Compliance Monitoring and Enforcement
- Organization Registration and Certification
- Reliability Assessment and Performance Analysis (including necessary data gathering activities)
- Event Analysis and Reliability Improvement
- Training and Education
- Situation Awareness
- Infrastructure Security

2. Preparation of Annual Business Plan and Budget

(a) NERC and SPP, in conjunction with the other Regional Entities, shall collaboratively develop an annual schedule for the development, submission, review and approval of SPP's business plan and budget. The annual schedule for the preparation of business plans and budgets shall require SPP (i) to submit to NERC draft(s) of SPP's proposed business plan and budget and other preliminary documents and information, and (ii) to submit a final proposed business plan and budget that has been approved by SPP Board of Trustees to NERC by July 1 or such other agreed date as provides sufficient time for NERC's review, approval and submission of SPP's business plan and budget to the Commission 130 days in advance of the beginning of each fiscal year. The SPP business plan and budget submission shall include supporting materials, including SPP's complete business plan and organization chart, explaining the proposed collection of all assessments, dues, fees and charges, and the proposed expenditure of the funds to be collected in sufficient detail to justify the requested budgeted expenditures and assessments. SPP's business plan and budget and proposed assessments shall provide for reasonable reserve mechanisms for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(b) NERC shall review and approve SPP's proposed business plan and budget and proposed assessments for performing the delegated functions and related activities described in Sections 5, 6 and 7 of this Agreement and listed above in Section 1 of this **Exhibit E**, or shall direct SPP to make such revisions as NERC deems appropriate prior to approval.

NERC shall submit SPP's approved business plan and budget and proposed assessments to the Commission for approval as part of NERC's overall business plan and budget submission, in accordance with the ERO Regulations.

3. Allocation of Costs

Assessments to fund the costs of SPP's delegated functions and related activities pursuant to the Agreement shall be allocated among all load-serving entities on the basis of Net Energy for Load, unless a different method(s) of allocating and calculating such assessments has been submitted to and approved by NERC and the Commission in accordance with Section 9(b) of the Agreement. SPP shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities or designees within its geographic boundaries that shall be responsible for paying SPP's assessment and the load-serving entities' proportionate Net Energy for Load, and such other data and information as is necessary to allocate and calculate the allocation of SPP's assessment to the load-serving entities or designees under the method(s) of allocation and calculation that will be used.

4. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities or designees identified by SPP covering the NERC and SPP assessments approved for collection.

(b) NERC shall pursue any non-payments of assessment amounts and shall request assistance from Applicable Governmental Authorities as necessary to secure collection. To the extent reasonably practicable, SPP shall assist NERC in pursuing and collecting any non-payments. Notwithstanding the foregoing, SPP is not responsible and does not assume any liability for recovering non-payments or underpayments of assessment amounts. NERC shall retain sole responsibility for recovering non-payments or underpayments of assessment amounts. NERC shall add the amount of any non-payments by end-users or designees within SPP's region, that are reasonably determined to be uncollectible, to NERC's assessments for a subsequent year with the amount of such non-payments to be allocated to end-users within SPP's region.

(c) Upon approval by Applicable Governmental Authorities of SPP's annual assessment to fund the costs of its delegated functions and related activities, NERC shall pay SPP's annual assessment to SPP in four equal quarterly payments on January 15, April 15, July 15 and October 15 of the budget year.

5. Application of Penalties

Except as otherwise approved by the Commission, all penalty monies received by SPP, other than penalty monies received from an operational function or division or affiliated entity of SPP, shall be applied as a general offset to SPP's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Except as otherwise approved by the Commission, any penalty monies received from an operational

function or division or affiliated entity of SPP shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

6. Budget and Funding for SPP's Non-Statutory Activities

In addition to its delegated functions and related activities, as specified in Sections 5, 6 and 7 of the Agreement and in Section 1 of this **Exhibit E** (such delegated functions and activities referred to in this Section 6 as "statutory activities"), SPP performs the following other functions and activities (such other functions and activities being referred to in this Section 6 as "non-statutory activities"):

SPP performs non-statutory activities as a Regional Transmission Organization ("RTO"). As a RTO, SPP is mandated by the Commission to ensure reliable supplies of power, adequate transmission infrastructure, and competitive wholesale prices of electricity. In furtherance of this mandate, SPP's specific non-statutory activities are the following primary services:

1. Tariff Administration: Independent administration of the Open Access Transmission Tariff that provides one-stop shopping for regional transmission service with consistent rates and terms.

2. Reliability Coordination: SPP monitors power flow throughout our footprint. We anticipate problems and take preemptive action to mitigate operating limit violations. SPP coordinates regional response in emergency situations or blackouts.

3. Regional Scheduling: SPP ensures that the amount of power sent is coordinated and matched with power received. SPP's regional scheduling service reduces the number of entities with which SPP members and customers have to coordinate.

4. Market Operations: SPP administers an Integrated Marketplace, monitors resource/load balance and ensures that less expensive power is used to serve load before expensive power, all while ensuring system reliability is met.

5. Expansion Planning: SPP's planning process seeks to identify system limitations and develop transmission upgrades for increased capacity.

6. Contract Services: SPP provides reliability, tariff administration, and scheduling for non-members on a contract basis.

SPP shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions:

(i) <u>Separation of funding sources for statutory activities and non-statutory activities</u>. As a RTO, SPP is a public utility under the Federal Power Act, and is required to submit its budget to the Commission. The Commission already has approved SPP's RTO activities and has

ordered that SPP's budgets be filed with the Commission.

SPP's non-statutory activities are funded separately from its Regional Entity statutory activities through the imposition of a Commission-approved Tariff Administration Fee charged by SPP to all load under the SPP Open Access Tariff, except for Contract Services activities, which are funded by contract fees. Additionally, SPP's members are assessed an annual membership fee.

SPP shall provide its budget for such non-statutory activities to NERC at the same time that SPP submits its annual budget to FERC. SPP agrees that no costs of non-statutory activities are to be included in the calculation of SPP's dues, fees, and other charges for its statutory activities.

As provided in section 4(c) of this Exhibit E, on a quarterly basis, NERC will pay SPP an amount equal to one-fourth of the current year approved annual funding amount for SPP's statutory activities. Upon receipt of payment from NERC, SPP will deposit these funds into an account established solely to receive and hold funding received from NERC pursuant to SPP's performance of statutory activities under the Delegation Agreement. On a monthly basis, all expenses incurred by SPP for statutory activities and for non-statutory activities are recorded and paid from the SPP operating account. Throughout the year, as expenses incurred for SPP statutory activities are paid from the SPP operating account, transfers are made from the account established solely to receive and hold funding received from NERC to the SPP operating account in the amounts of payments made for expenses incurred for SPP statutory activities. The RE General Manager shall have primary authority to approve all withdrawal of funds from the SPP Regional Entity bank account. In the event the SPP RE General Manager is unavailable to authorize a funds withdrawal, the SPP RE Board of Trustee Chairman may authorize the withdrawal.

(ii) Separation of costs of statutory activities and non-statutory activities. All employees performing functions directly attributed to SPP's delegated responsibilities who also perform functions related to SPP's non-statutory activities will utilize a time tracking system to accurately reflect their time spent on statutory activities. On a monthly basis, SPP will input the time associated with its direct function staff performing statutory activities into a cost calculation model. Specifically, direct costs attributable to the direct function staff performing statutory activities are salary, SPP-paid medical insurance, Medicare and Social Security taxes, and other SPP-paid benefits. These costs are then combined with other directly assignable costs of statutory activities, such as travel, meetings, contractors, professional services, fees and expenses of Regional Entity independent trustees, and other direct administrative expenses, and reported on the NERC Statement of Activities.

In addition, an allocation of SPP overhead costs to statutory activities is calculated and the allocated overhead costs are recorded on the NERC Statement of Activities. These overhead costs are shared throughout the SPP organization and include costs for facilities, payroll and accounts payable processing, human resources and benefits management, accounting, information technology, executive leadership, corporate affairs and communications, office costs and other support services and expenditures. This allocation is developed on an annual

basis and apportioned monthly using SPP's current year expenses by allocating SPP's shared services support costs which support all of SPP's functions (*i.e.*, the costs for the activities identified in the second sentence of this paragraph) by an appropriate measure (headcount, square footage, number of devices, etc.). An allocation of SPP overhead costs will also be added to the directly assignable staff's hourly rate for those employees performing SPP's statutory activities identified in the first paragraph of this section.

The total expenses for statutory activities in a month as recorded on the NERC Statement of Activities are used to determine the amount of transfer to be made to the SPP operating account to reimburse the SPP operating account for the payment of expenses of SPP's statutory activities. The RE General Manager shall have primary authority to approve all withdrawal of funds from the SPP Regional Entity bank account. In the event the SPP RE General Manager is unavailable to authorize the funds transfer, the SPP RE Board of Trustee Chairman may authorize the funds transfer.

SPP shall provide its budget for such non-statutory activities to NERC at the same time that SPP submits its proposed annual business plan and budget for statutory activities to NERC pursuant to Section 9 of the Agreement SPP's budget for non-statutory activities that is provided to NERC shall contain a detailed list of SPP's non-statutory activities and a description of the funding sources for the non-statutory activities. SPP agrees that no costs (which shall include a reasonable allocation of SPP's general and administrative costs) of non-statutory activities are to be included in the calculation of SPP's assessments, dues, fees, and other charges for its statutory activities.

7. Amended or Supplemental Business Plans and Budgets

During the course of the fiscal year, if SPP determines it does not or will not have sufficient funds to carry out its delegated functions and related activities, SPP shall submit to NERC one or more proposed amended or supplemental business plans and budgets and requests for approval of supplemental assessments, reflecting costs, cost increases or funding shortfalls not provided for in SPP's approved business plan and budget for the fiscal year. NERC shall review and approve the proposed amended or supplemental business plan and budget and proposed supplemental assessment, or shall direct SPP to make such revisions as NERC deems appropriate prior to approval. NERC shall submit SPP's approved amended or supplemental business plan and budget and proposed supplemental assessment to the Commission for approval.

8. NERC Review of Regional Entity Financial Records

Upon a request made to SPP with reasonable notice, NERC shall have access to and may review all financial records of SPP Regional Entity, including records used to prepare SPP Regional Entity's financial statements. NERC shall conduct reviews of the quarterly and annual financial statements submitted by SPP pursuant to Section 9(h) and (i) of the Agreement. SPP shall provide supporting documentation for the quarterly and annual

financial statements as reasonably requested by NERC.

Attachment 8

Texas Reliability Entity, Inc.

Executed Delegation Agreement Effective January 1, 2016

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND TEXAS RELIABILITY ENTITY, INC.

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and Texas Reliability Entity, Inc. ("Texas RE"), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and Texas RE may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional

entities ("Regional Entities") such as Texas RE, provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, Texas RE is organized on an Interconnection-wide basis and therefore is entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through Texas RE to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that Texas RE meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and Texas RE, having operated under a predecessor agreement to this Agreement, have negotiated this amended and restated Agreement so as to incorporate the

benefits of their mutual experience and lessons learned while operating under the predecessor agreement and thereby provide for the more efficient and effective execution of their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and Texas RE agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to Texas RE to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, Texas RE hereby represents and warrants to NERC that:

(i) Texas RE is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. Texas RE is governed in accordance with its bylaws by a combination independent and balanced stakeholder board. Pursuant to these bylaws, no two

industry sectors can control any Texas RE decision and no single industry sector can veto any Texas RE decision. The relevant criteria for the establishment of such bylaws are attached hereto in **Exhibit B**. No other Texas RE corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) Texas RE has developed a standards development procedure, which provides the process that Texas RE may use to develop Regional Reliability Standards and Regional Variances that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, Texas RE has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within Texas RE's geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to Texas RE that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. <u>General Covenants</u>.

(a) During the term of this Agreement, Texas RE shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) Texas RE shall provide NERC with a copy of its Regional Entity Rules upon request by NERC. NERC shall maintain on its public website the currently effective versions of

all Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of Texas RE under this Agreement without first obtaining the consent of Texas RE, which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and Texas RE shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon Texas RE.

4. <u>Delegation of Authority</u>.

(a) Based upon the representations, warranties and covenants of Texas RE in this Agreement, Texas RE's corporate governance documents, Texas RE's standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to Texas RE for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**, provided, that Texas RE shall not monitor and enforce compliance with Reliability Standards for Texas RE or an affiliated entity with respect to reliability functions for which Texas RE or an affiliate is a Registered Entity. Any exclusions from this delegation of authority to Texas RE within, or additions to this delegation of authority to Texas RE beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) In circumstances where Texas RE or an affiliated entity is a Registered Entity, Texas RE shall enter into an agreement with another Regional Entity or NERC for the other

Regional Entity or NERC to monitor and enforce Texas RE's or affiliate's compliance with Reliability Standards. Such agreements are subject to NERC and Commission approval.

(c) Nothing in this Agreement shall prohibit Texas RE from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both Texas RE and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, Texas RE shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. <u>Development and Proposal of Reliability Standards</u>.

(a) In connection with its Delegated Authority, Texas RE shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords Texas RE reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards and Regional Variances through Texas RE's process. Texas RE's process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to Texas RE's process shall be submitted to the NERC Board of Trustees for approval and upon approval, be submitted to the Commission for approval. Proposals approved through Texas RE's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to

comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time. The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. Texas RE may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, Texas RE shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and Texas RE agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. Texas RE may not change its compliance monitoring and enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or

delayed, and the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, Texas RE agrees to comply with the NERC Rules of Procedure, with any directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) Texas RE shall maintain a program of proactive monitoring and enforcement of compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) Texas RE shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by Texas RE, as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and Texas RE shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by Texas RE of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, Texas RE shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. A Regional Entity may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures.

7. <u>Delegation-Related Activities</u>.

NERC will engage Texas RE on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by Texas RE in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by Texas RE and other Regional Entities. Texas RE shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to the Commission.

(c) **Reliability Assessment and Performance Analysis.** Texas RE shall develop

assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. Texas RE shall also develop and maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** Texas RE shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and Texas RE shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, Texas RE shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** Texas RE may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** Texas RE shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** Texas RE shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of Texas RE's performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and Texas RE that matters relating to NERC's oversight of Texas RE's performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and Texas RE and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with Texas RE and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and Texas RE's performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. Texas RE shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate Texas RE's performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate Texas RE's performance of its delegated functions and related activities and to provide advice and direction to Texas RE on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, Texas RE and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, Texas RE shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of Texas RE's performance against the performance goals, measures and parameters, or performance of

specific activities, to be unsatisfactory, *provided*, that prior to requiring Texas RE to adopt and implement an action plan or other remedial action, NERC shall issue a notice to Texas RE of the need and basis for an action plan or other remedial action and provide an opportunity for Texas RE to submit a written response contesting NERC's evaluation of Texas RE's performance and the need for an action plan. Texas RE may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request. NERC and Texas RE shall work collaboratively as needed in the development and implementation of Texas RE's action plan. A final action plan submitted by Texas RE to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to Texas RE standardized training and education programs, which shall be designed taking into account input from Texas RE and other Regional Entities, for Texas RE personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to Texas RE concerning the manner in which Texas RE shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with Texas RE and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and Texas RE and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, Texas RE, subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by Texas RE, the NERC Board of Trustees (or a committee of the Board to which the Board delegates appropriate

authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without Texas RE's agreement, *provided*, that Texas RE shall request such review within thirty (30) days following issuance of the directive by the NERC President unless good cause can be shown for a later request.

(iv) NERC and Texas RE and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which Texas RE, and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. Texas RE, either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with Texas RE, either individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC shall perform reviews and audits of Texas RE on a reasonable periodicity to determine Texas RE's compliance with this Agreement, any policies or procedures

established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv), (d) and (f), respectively, that are maintained as non-public.

9. **Funding**. Texas RE and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) Texas RE shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. Texas RE's proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, Texas RE to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. Texas RE's business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) Texas RE and NERC agree that the portion of Texas RE's approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by Texas RE and approved by NERC and the Commission. If Texas RE proposes to use a formula other than Net Energy for Load beginning in the following year, Texas RE shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the

Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and Texas RE to the Commission pursuant to the ERO Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide Texas RE with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) Texas RE shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of Texas RE, to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund Texas RE's performance of its Delegated Authority and related activities in accordance with Texas RE's Commission-approved business plan and budget, in the amount of Texas RE's assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting Texas RE's approved assessments from end users and other entities and payment of the approved assessment amount to Texas RE, unless otherwise modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon Texas RE that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without Texas RE's consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the

Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC and Texas RE fiscal year budget with the actual results at the NERC and Regional Entity levels. Texas RE shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) Texas RE shall submit unaudited quarterly interim financial statements in a form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) Texas RE shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which Texas RE shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of Texas RE) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which Texas RE shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of Texas RE. *Provided*, that, subject to approval by NERC and the Commission, Texas RE may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Texas RE may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit Texas RE from contracting with other entities to assist it in carrying out its Delegated Authority, provided Texas RE retains control and responsibility for such Delegated Authority.

11. **Default and Cure**. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. **Term and Termination**.

(a) This Agreement shall become effective on January 1, 2016 (the "Effective Date").

(b) The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that Texas RE continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If Texas RE meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that Texas RE continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such

event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to provide for a transition of Texas RE's Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by Texas RE and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. **Limitation of Liability**. Texas RE and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and Texas RE shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of Texas RE's or NERC's responsibilities under this

Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that Texas RE or NERC is found liable for gross negligence or intentional misconduct, in which case Texas RE or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

14. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. **Confidentiality**.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient: (i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel. Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt

notice of a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. **Amendment**. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

17. **Amendments to the NERC Rules of Procedure**. NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations, or programs of Texas RE under this Agreement without first obtaining the consent of Texas RE, which consent shall not be unreasonably withheld or delayed. To the extent Texas RE does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially

affecting the rights or obligations of Texas RE under this Agreement, Texas RE shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by Texas RE to NERC and the Commission, or at such other time as may be mutually agreed by Texas RE and NERC.

18. **Dispute Resolution**. In the event a dispute arises under this Agreement between NERC and Texas RE (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to Texas RE's performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures ("Dispute Resolution") to attempt to resolve the dispute. Texas RE shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20) business days after the date of the receiving Party's notice, the designated representatives shall

engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:

North American Electric Reliability Corporation
1325 G Street NW, Suite 600
Washington, DC 20005
Attn: General Counsel
Email: legal@nerc.net

If to Texas RE:

Texas Reliability Entity, Inc.
805 Las Cimas Parkway
Suite 200
Austin, Texas 78746
Attn: General Counsel
Email: legal@texasre.org

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that Texas RE may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in

Exhibit A.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

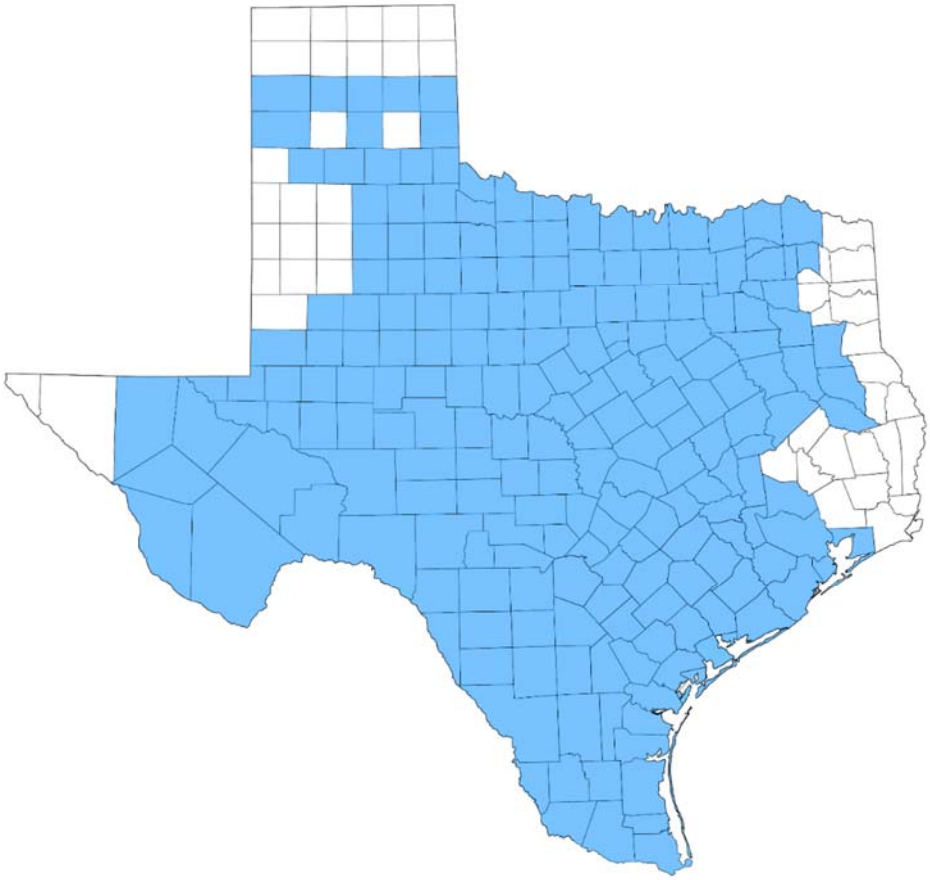
24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	TEXAS RELIABILITY ENTITY, INC.
By: Gerald W. Cauley	By: W. Lane Lanford
Name: Gerald W. Cauley	Name: W. Lane Lanford
Title: President and CEO	Title: President + CEO
Date: 12/15/2015	Date: 12/16/15

Exhibit A — Regional Boundaries

The Electric Reliability Council of Texas (ERCOT) region is the geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric utilities operating outside the jurisdiction of the Public Utility Commission of Texas (PUCT). The ERCOT region does not interconnect synchronously across state lines to import or export power with neighboring reliability regions. The ERCOT geographic region includes 200,000 square miles, 90% of Texas load, and 75% of Texas land area but does not include the Panhandle (with the exception of certain Competitive Energy Renewable Zone transmission lines), El Paso area, and two areas of East Texas. The ERCOT region includes the following Texas cities and towns: Dallas, Ft. Worth, Houston, San Antonio, Austin, Paris, Tyler, Nacogdoches, Lufkin, Bryan, College Station, Corpus Christi, Harlingen, Brownsville, Laredo, Brownwood, San Angelo, Abilene, Midland, Odessa, Fort Stockton, Monahans, Snyder, Vernon, Wichita Falls, Denton, Garland, Greenville, Waco, Temple, Killeen, Weatherford, and Graham, as indicated on the map below.



*Map shows approximate geographic areas for general information only and does not indicate areas where service providers overlap.

Exhibit B — Governance

The Regional Entity bylaws shall meet the following criteria:

<u>CRITERION 1</u>: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

<u>CRITERION 2</u>: The Regional Entity has established rules that assure its independence from the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

<u>CRITERION 3</u>: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

<u>CRITERION 4</u>: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

<u>CRITERION 5</u>: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Exhibit C [Intentionally left blank]

Exhibit D — Compliance Monitoring and Enforcement Program

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

Texas RE will implement the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure (which for purposes of this section 1.0 shall not include Attachment 2, Hearing Procedures), to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within **Texas RE's** geographic or electrical boundaries, and such other scope, set forth in **Exhibit A** of this Agreement.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

Texas RE, to the extent required in the Rules of Procedure, shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be either **Texas RE's** board, a committee of the board, a balanced compliance panel reporting directly to **Texas RE's** board or an independent hearing panel. **Texas RE's** hearing body is a committee of the board comprised of a portion of the Texas RE Directors, with a majority of independent directors.

To the extent required in the Rules of Procedure, **Texas RE** shall conduct all compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, proposed Mitigation Plan, or a proposed Remedial Action Directive, in accordance with Attachment 2, Hearing Procedures, to the NERC Compliance Monitoring and Enforcement Program, subject to the following deviations, as set forth in the Texas RE Hearing Body Charter:

(a) The Hearing Body will attend the evidentiary hearing so that the members can hear and weigh the evidence presented and assess the credibility of the witnesses.

(b) Following post-hearing briefing, the Hearing Body will convene to deliberate and make an initial determination of the disputed issues based on the evidence admitted during the proceedings. The Hearing Body will issue an Initial Opinion reflecting the decisions of the Hearing Body in accordance with the Hearing Procedures.

3.0 OTHER DECISION-MAKING BODIES

None

Exhibit E — Funding

1. Scope of Activities Funded through the ERO Funding Mechanism

Texas RE shall include in its annual budget submission to NERC amounts for costs it will incur in performing its delegated functions and related activities as described in Sections 5, 6 and 7 of the Agreement. These activities shall include:

- Reliability Standard Development
- Compliance Monitoring and Enforcement
- Organization Registration and Certification
- Reliability Assessment and Performance Analysis (including necessary data gathering activities)
- Event Analysis and Reliability Improvement
- Training and Education
- Situation Awareness
- Infrastructure Security

2. Preparation of Annual Business Plan and Budget

(a) NERC and Texas RE, in conjunction with the other Regional Entities, shall collaboratively develop an annual schedule for the development, submission, review and approval of Texas RE's business plan and budget. The annual schedule for the preparation of business plans and budgets shall require Texas RE (i) to submit to NERC draft(s) of Texas RE's proposed business plan and budget and other preliminary documents and information, and (ii) to submit a final proposed business plan and budget that has been approved by Texas RE Board of Directors to NERC by July 1 or such other agreed date as provides sufficient time for NERC's review, approval and submission of Texas RE's business plan and budget to the Commission 130 days in advance of the beginning of each fiscal year. The Texas RE business plan and budget submission shall include supporting materials, including Texas RE's complete business plan and organization chart, explaining the proposed collection of all assessments, dues, fees and charges, and the proposed expenditure of the funds to be collected in sufficient detail to justify the requested budgeted expenditures and assessments. Texas RE's business plan and budget and proposed assessments shall provide for reasonable reserve mechanisms for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(b) NERC shall review and approve Texas RE's proposed business plan and budget and proposed assessments for performing the delegated functions and related activities described in Sections 5, 6 and 7 of this Agreement and listed above in Section 1 of this **Exhibit E**, or shall direct Texas RE to make such revisions as NERC deems appropriate

prior to approval. NERC shall submit Texas RE's approved business plan and budget and proposed assessments to the Commission for approval as part of NERC's overall business plan and budget submission, in accordance with the ERO Regulations.

3. Allocation of Costs

Assessments to fund the costs of Texas RE's delegated functions and related activities pursuant to the Agreement shall be allocated among all load-serving entities on the basis of Net Energy for Load, unless a different method(s) of allocating and calculating such assessments has been submitted to and approved by NERC and the Commission in accordance with Section 9(b) of the Agreement. Texas RE shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities or designees within its geographic boundaries that shall be responsible for paying Texas RE's assessment and the load-serving entities' proportionate Net Energy for Load, and such other data and information as is necessary to allocate and calculate the allocation of Texas RE's assessment to the load-serving entities or designees under the method(s) of allocation and calculation that will be used. NERC and Texas RE agree that for purposes of Sections 3 and 4 of this **Exhibit E**, Electric Reliability Council of Texas (ERCOT ISO), as the sole independent system operator and Balancing Authority, is the only load-serving entity or designee in Texas RE's region and shall be invoiced for the entire NERC and Texas RE assessments approved for collection.

4. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities or designees identified by Texas RE covering the NERC and Texas RE assessments approved for collection.

(b) NERC shall pursue any non-payments of assessment amounts and shall request assistance from Applicable Governmental Authorities as necessary to secure collection. To the extent reasonably practicable, Texas RE shall assist NERC in pursuing and collecting any non-payments. Notwithstanding the foregoing, Texas RE is not responsible and does not assume any liability for recovering non-payments or underpayments of assessment amounts. NERC shall retain sole responsibility for recovering non-payments or underpayments of assessment amounts. NERC shall add the amount of any non-payments by end-users or designees within Texas RE's region, that are reasonably determined to be uncollectible, to NERC's assessments for a subsequent year with the amount of such non-payments to be allocated to end-users within Texas RE's region.

(c) Upon approval by Applicable Governmental Authorities of Texas RE's annual assessment to fund the costs of its delegated functions and related activities, NERC shall pay Texas RE's annual assessment to Regional Entity in four equal quarterly payments on January 15, April 15, July 15 and October 15 of the budget year.

5. Application of Penalties

Except as otherwise approved by the Commission, all penalty monies received by Texas RE,

other than penalty monies received from an operational function or division or affiliated entity of Texas RE, shall be applied as a general offset to Texas RE's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Except as otherwise approved by the Commission, any penalty monies received from an operational function or division or affiliated entity of Texas RE shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

6. Budget and Funding for Texas RE's Non-Statutory Activities

In addition to its delegated functions and related activities, as specified in Sections 5, 6 and 7 of the Agreement and in Section 1 of this **Exhibit E** (such delegated functions and activities referred to in this Section 6 as "statutory activities"), Texas RE performs the following other functions and activities (such other functions and activities being referred to in this Section 6 as "non-statutory activities"):

Texas RE performs non-statutory activities as the ERCOT region Reliability Monitor on behalf of the Public Utility Commission of Texas ("PUCT"). As the Reliability Monitor, Texas RE audits and investigates market participants' compliance with ERCOT Protocols and Operating Guides (ERCOT regional rules), reports possible non-compliance with reliability-related regional rules to the PUCT, and provides testimony and support to the PUCT in enforcement cases prosecuted by the PUCT. These non-statutory activities are funded through the ERCOT ISO system administration fee and payment to Texas RE is authorized by the PUCT. Texas RE shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions:

A. Texas RE segregates the funding for its statutory activities and non-statutory activities by recording the funding transactions in separate and distinct general ledger accounts, in accordance with Generally Accepted Accounting Principles.

B. Texas RE utilizes and must maintain a time recording and expense management system under which employee time and expenses incurred in the conduct of non-statutory activities will be tracked to ensure that they are not funded by NERC remittances intended for the funding of statutory activities.

C. Texas RE has adopted a detailed system of Account Codes, Department Codes and Activity Codes which are used in recording expenses. The Activity Codes are specific to statutory activities and non-statutory activities. The Texas RE Activity Codes are modeled on the NERC Functional Categories. Texas RE shall use Department Codes that are unique to Texas RE to record all costs and expenses incurred by Texas RE for statutory activities and non-statutory activities.

D. Texas RE shall use Activity Codes to appropriately track its costs for statutory activities separately from its costs for non-statutory activities.

E. Where employee time or an expense affects multiple activities, Texas RE will use an accurate basis of allocation of the time or expense between the activities being performed based on specific metrics, such as time tracking, data observations or total cost input. Total cost input relates the portion of the expense to the total expense to establish an appropriate method to allocate.

Texas RE shall provide its budget for such non-statutory activities to NERC at the same time that Texas RE submits its proposed annual business plan and budget for statutory activities to NERC pursuant to Section 9 of the Agreement. Texas RE's budget for non-statutory activities that is provided to NERC shall contain a detailed list of Texas RE's non-statutory activities and a description of the funding sources for the non-statutory activities. Texas RE agrees that no costs (which shall include a reasonable allocation of Texas RE's general and administrative costs) of non-statutory activities are to be included in the calculation of Texas RE's assessments, dues, fees, and other charges for its statutory activities.

7. Amended or Supplemental Business Plans and Budgets

During the course of the fiscal year, if Texas RE determines it does not or will not have sufficient funds to carry out its delegated functions and related activities, Texas RE shall submit to NERC one or more proposed amended or supplemental business plans and budgets and requests for approval of supplemental assessments, reflecting costs, cost increases or funding shortfalls not provided for in Texas RE's approved business plan and budget for the fiscal year. NERC shall review and approve the proposed amended or supplemental business plan and budget and proposed supplemental assessment, or shall direct Texas RE to make such revisions as NERC deems appropriate prior to approval. NERC shall submit Texas RE's approved amended or supplemental business plan and budget and proposed supplemental assessment to the Commission for approval.

8. NERC Review of Regional Entity Financial Records

Upon a request made to Texas RE with reasonable notice, NERC shall have access to and may review all financial records of Texas RE, including records used to prepare Texas RE's financial statements. NERC shall conduct reviews of the quarterly and annual financial statements submitted by Texas RE pursuant to Section 9(h) and (i) of the Agreement. Texas RE shall provide supporting documentation for the quarterly and annual financial statements as reasonably requested by NERC.

Attachment 9

Western Electricity Coordinating Council

Executed Delegation Agreement Effective January 1, 2016

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND WESTERN ELECTRICITY COORDINATING COUNCIL

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") Effective as of January 1, 2016, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the Bulk-Power System, and the Western Electricity Coordinating Council ("WECC"), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified in **Exhibit A** to this Agreement, and for other purposes. NERC and WECC may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (hereafter "the Act"), which, among other things, provides for the establishment of an Electric Reliability Organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the Bulk-Power System;

WHEREAS, the Commission has adopted regulations for the implementation of the Act, which are set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39 (the "ERO Regulations");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the Bulk-Power System, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the ERO Regulations provide for the

delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities ("Regional Entities") such as WECC, provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of Bulk-Power System reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, WECC is organized on an Interconnection-wide basis and therefore is entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through WECC to carry out certain of its activities in furtherance of its responsibilities as the ERO under the Act;

WHEREAS, NERC has concluded that WECC meets all requirements of the Act, the ERO Regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules of Procedure") necessary to qualify for delegation; and

WHEREAS, NERC and WECC, having operated under a predecessor agreement to

this Agreement, have negotiated this amended and restated Agreement so as to incorporate the benefits of their mutual experience and lessons learned while operating under the predecessor agreement and thereby provide for the more efficient and effective execution of their respective responsibilities in a transparent manner that is pursuant to Section 215 of the Act and the ERO Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and WECC agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the ERO Regulations, the NERC Rules of Procedure, or the NERC Glossary of Terms Used in Reliability Standards, or, if not so defined, shall be defined as set forth in this Section 1 or elsewhere in the text of this Agreement:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to WECC to propose and enforce Reliability Standards, consistent with Section 4(d) and the boundaries identified in **Exhibit A** pursuant to the Act and to undertake related activities set forth in this Agreement in furtherance of these delegated functions in accordance with the Act, the ERO Regulations and this Agreement.

2. Representations.

(a) For purposes of its Delegated Authority, WECC hereby represents and warrants to NERC that:

(i) WECC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. WECC is governed in accordance with its bylaws by an

independent Board. Pursuant to these bylaws, no two industry sectors can control any WECC decision and no single industry sector can veto any WECC decision. The relevant criteria for the establishment of such bylaws are attached hereto in **Exhibit B**. No other WECC corporate governance documents shall be inconsistent with the criteria in **Exhibit B**.

(ii) WECC has developed a standards development procedure, which provides the process that WECC may use to develop Regional Reliability Standards and Regional Variances that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, WECC has adopted the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, which provides for the enforcement of Reliability Standards within WECC's geographic boundaries as shown in **Exhibit A**.

(b) NERC hereby represents and warrants to WECC that:

(i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) NERC has been certified as the ERO by the Commission pursuant to the Act.

(iii) NERC shall comply with its Certificate of Incorporation, Bylaws and Rules of Procedure, as from time to time adopted, approved or amended.

3. <u>General Covenants</u>.

(a) During the term of this Agreement, WECC shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend its Regional Entity Rules without NERC approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) WECC shall provide NERC with a copy of its Regional Entity Rules upon request by NERC. NERC shall maintain on its public website the currently effective versions of all

Regional Entity bylaws and Regional Entity standard development procedures.

(c) During the term of this Agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 17 and 18 of this Agreement, NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations or programs of WECC under this Agreement without first obtaining the consent of WECC, which consent shall not be unreasonably withheld or delayed.

(d) During the term of this Agreement, NERC and WECC shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

(e) For purposes of this Agreement, NERC shall collaborate with the Regional Entities in the development of guidance, policies and procedures, and oversight parameters as contemplated by this Agreement. In the event that collaboration is not successful on any such matter, the NERC President may issue a directive with respect to such matter pursuant to Section 8 herein, and such directive shall be binding upon WECC.

4. <u>Delegation of Authority</u>.

(a) Based upon the representations, warranties and covenants of WECC in this Agreement, WECC's corporate governance documents, WECC's standards development process, and the compliance monitoring and enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to WECC for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries and such other scope set forth in **Exhibit A**, provided, that WECC shall not monitor and enforce compliance with Reliability Standards for WECC or an affiliated entity with respect to reliability functions for which WECC or an affiliate is a Registered Entity. For avoidance of doubt, Peak Reliability (or its successor) is not an affiliated entity of WECC for purposes of this Section 4(a). Any exclusions from this delegation of authority to WECC within, or additions to this delegation of authority to WECC beyond, the geographic boundaries set forth in **Exhibit A** are stated in **Exhibit A**.

(b) In circumstances where WECC or an affiliated entity is a Registered Entity,

WECC shall enter into an agreement with another Regional Entity or NERC for the other Regional Entity or NERC to monitor and enforce WECC's or affiliate's compliance with Reliability Standards. Such agreements are subject to NERC and Commission approval.

(c) Nothing in this Agreement shall prohibit WECC from entering into an arrangement between one or more other Regional Entities to perform compliance monitoring and enforcement activities outside of its region, on behalf of NERC and/or other Regional Entities, for Registered Entities that have registered functions monitored by more than one Regional Entity, subject to approval by NERC.

(d) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified in **Exhibit A** that is within the United States. Any delegation of authority by Applicable Governmental Authorities in Canada or Mexico shall be governed by the law of such authority or a separate agreement and is outside the scope of this Agreement; provided, however, that both WECC and NERC shall endeavor to ensure that this Agreement and any such separate agreement are compatible.

(e) As a condition to this delegation of authority and subject to the provisions of Section 17 of this Agreement, WECC shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. <u>Development and Proposal of Reliability Standards</u>.

(a) In connection with its Delegated Authority, WECC shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords WECC reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards and Regional Variances through WECC's process. WECC's process shall be consistent with the NERC Rules of Procedure and Commission directives. Any changes to WECC's process shall be submitted to the NERC Board of Trustees for approval and upon approval, be submitted to the Commission for approval. Proposals approved through WECC's process shall be reviewed by the NERC Board

of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule of Procedure 312.3 as it may be amended from time to time. The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) of this Agreement if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed Regional Reliability Standard or Regional Variance and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. WECC may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Regional Entity organized on an Interconnection-wide basis shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Interconnection-wide Regional Entity during NERC's review of the proposal.

6. <u>Enforcement of Compliance with Reliability Standards</u>.

(a) In connection with its delegated authority pursuant to this Agreement, WECC shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the boundaries set forth in **Exhibit A** through the compliance monitoring and enforcement program set forth in **Exhibit D**. NERC and WECC agree that this compliance monitoring and enforcement program meets all applicable requirements of the Act, Order No. 672 of the Commission, and the ERO Regulations, including, inter alia, the requirement for an audit program pursuant to Section 39.7(a) of the ERO Regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the ERO Regulations and the requirements for due process. WECC may not change its compliance monitoring and enforcement program set forth

in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed, and the approval of the Commission. Subject to the rights and limitations specified in Sections 17 and 18 of this Agreement, WECC agrees to comply with the NERC Rules of Procedure, with any directives issued pursuant to Section 8(c) of this Agreement, and with any guidance and directions issued by the NERC Board of Trustees or a Board committee pursuant to Section 8(d) of this Agreement, in implementing this program.

(b) WECC shall maintain a program of proactive monitoring and enforcement of compliance with Reliability Standards, in accordance with the NERC Compliance Monitoring and Enforcement Program and the annual ERO Compliance Monitoring and Enforcement Program Implementation Plan.

(c) WECC shall report promptly to NERC information regarding noncompliance with a Reliability Standard, and its eventual disposition by WECC, as set forth in, and subject to the confidentiality and disclosure provisions of, the NERC Rules of Procedure, the NERC Compliance Monitoring and Enforcement Program, this Agreement, compliance and enforcement program procedures and guidance that NERC may from time to time develop and the ERO Regulations. NERC shall promptly forward such report to the Commission, as required by the ERO Regulations, or as the Commission shall from time to time direct. NERC and WECC shall cooperate in filing such periodic summary reports and analyses as the Commission shall from time to time direct.

(d) All dispositions by WECC of noncompliance with Reliability Standards shall be reported to NERC for review. NERC shall develop and implement policies and procedures for the review and, where appropriate, approval of dispositions of noncompliance.

(e) As part of its compliance monitoring and enforcement program, WECC shall maintain a conflict of interest policy that assures the integrity and independence of such program, including the integrity and independence of the persons or decision-making bodies making final determinations in compliance enforcement actions under Section 5.0 of the NERC Compliance Monitoring and Enforcement Program. WECC may have stakeholders lead or participate in its board compliance committee so long as integrity and independence are assured through reasonable and appropriate recusal procedures.

7. <u>Delegation-Related Activities</u>.

NERC will engage WECC on its behalf to carry out certain of its activities that are in furtherance of Bulk-Power System reliability and NERC's responsibilities as the ERO under the Act or in support of the Delegated Authority, as specified in the NERC Rules of Procedure and listed in **Exhibit E**. NERC may from time to time develop policies or procedures, which shall be used by WECC in the performance of the delegation-related activities. These delegation-related activities shall include, but are not limited to, those described in subsections (a) through (g), each of which shall be considered a statutory activity:

(a) **Certification of Bulk-Power System Entities.** The NERC Board of Trustees shall set criteria for certification in accordance with the NERC Rules of Procedure. Certifications shall be issued in accordance with the NERC Rules of Procedure.

(b) **Registration of owners, operators, and users of the Bulk-Power System as responsible for compliance with requirements of Reliability Standards.**

(i) The NERC Board of Trustees shall develop criteria for registration of owners, operators, and users of the Bulk-Power System as Registered Entities and shall apply the registration criteria to register owners, operators and users of the Bulk-Power System as Registered Entities.

(ii) NERC shall maintain a registration database of Registered Entities, based on data and information provided by WECC and other Regional Entities. WECC shall provide timely and accurate information relating to registrations to NERC, as needed, to enable NERC to maintain a registration database that is accurate and up-to-date and to enable NERC to satisfy its monthly reporting obligation.

(iii) The NERC Board of Trustees Compliance Committee shall hear and decide appeals from owners, operators and users of the Bulk-Power System contesting registration, in accordance with the NERC Rules of Procedure. If the NERC Board of Trustees Compliance Committee upholds the decision to register an owner, operator, or user, NERC shall defend the decision in any subsequent appeal of the decision by the Registered Entity to the Commission.

(c) **Reliability Assessment and Performance Analysis.** WECC shall develop

assessments of the reliability of the Bulk-Power System, or ensure that data and information are collected, analyzed and provided to NERC in support of the development of reliability assessments, in accordance with the NERC Rules of Procedure. WECC shall also develop and maintain, and collect data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the Reliable Operation of the Bulk-Power System, in accordance with the NERC Rules of Procedure and NERC directives, and policies and procedures related to data-gathering, quality control, forms, and reporting mechanisms that NERC may from time to time develop.

(d) **Event Analysis and Reliability Improvement.** WECC shall conduct event analysis pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop. NERC and WECC shall coordinate event analysis to support the effective and efficient use of their collective resources, consistency in event analysis, and timely delivery of event analysis reports. In collaboration with NERC, WECC shall disseminate to the electric industry lessons learned and other information obtained or resulting from event analysis.

(e) **Training and Education.** WECC may provide training and education to Registered Entities, as it deems necessary, in support of its performance of delegated functions and related activities under this Agreement. NERC may also provide training and education programs to Registered Entities on topics relating to NERC's responsibilities as the ERO.

(f) **Situation Awareness.** WECC shall gather and assess situation awareness information provided by Registered Entities pursuant to the NERC Rules of Procedure, applicable governmental regulations, and policies and procedures that NERC may from time to time develop, and shall provide other data, information and assistance to NERC in support of NERC's activities in monitoring present conditions, and responding to events, on the Bulk-Power System.

(g) **Critical Infrastructure Security.** WECC shall collaborate with NERC in its efforts to coordinate electric industry activities to promote critical infrastructure protection of the Bulk-Power System in North America.

8. <u>Oversight of Performance of Delegated Functions and Related Activities</u>.

This Section 8 sets forth processes and procedures which the Parties intend shall be used in NERC's oversight of WECC's performance of its Delegated Authority and related activities pursuant to this Agreement. It is the intent of NERC and WECC that matters relating to NERC's oversight of WECC's performance of its Delegated Authority and related activities shall be established or resolved by collaboration between NERC and WECC and, where applicable, other Regional Entities, to the maximum extent possible, consistent with the construct that NERC and the Regional Entities are operating together in a collaborative manner to carry out the responsibilities of the ERO under Section 215 of the Act and the ERO Regulations.

(a) (i) NERC shall develop, in collaboration with WECC and other Regional Entities, performance goals, performance reports, measures and other parameters (including, without limiting the scope of such goals, financial performance goals), which shall be used to measure NERC's and WECC's performance of their respective functions and related activities. The performance goals, measures and parameters and the form of performance reports shall be approved by the NERC President and shall be made public. WECC shall provide data, information and reports to NERC, in accordance with established schedules, to enable NERC to calculate WECC's performance to the agreed-upon goals, measures and parameters.

(ii) NERC shall use the performance goals, measures and parameters, and performance reports to evaluate WECC's performance of its delegated functions and related activities and to provide advice and direction to WECC on performance improvements. The performance goals, measures and other parameters, and the values of such goals, measures and parameters, shall be reviewed by NERC, WECC and the other Regional Entities, revised if appropriate, and made public, on the same timeline as the annual business planning and budgeting process described in Section 9 of this Agreement.

(iii) At the request of the President of NERC, WECC shall be required to develop, submit for NERC approval, and implement action plans to address, areas of its performance that are reasonably determined by NERC, based on analysis of WECC's performance against the performance goals, measures and parameters, or performance of specific activities, to be unsatisfactory, *provided*, that prior to requiring WECC to adopt and

implement an action plan or other remedial action, NERC shall issue a notice to WECC of the need and basis for an action plan or other remedial action and provide an opportunity for WECC to submit a written response contesting NERC's evaluation of WECC's performance and the need for an action plan. WECC may request that the President of NERC reconsider the request, and thereafter may request that the NERC Board of Trustees review and reconsider the request. NERC and WECC shall work collaboratively as needed in the development and implementation of WECC's action plan. A final action plan submitted by WECC to NERC shall be made public unless the President of NERC makes a written determination that the action plan or specific portions of the plan should be maintained as non-public.

(b) NERC shall make available to WECC standardized training and education programs, which shall be designed taking into account input from WECC and other Regional Entities, for WECC personnel on topics relating to the delegated functions and related activities.

(c) (i) NERC may issue directives to WECC concerning the manner in which WECC shall perform its delegated functions and related activities under this Agreement. The NERC Rules of Procedure, or any other ERO Rule requiring approval of the Commission, shall not be considered "directives." NERC shall initiate the development of a directive through a collaborative process with WECC and, if applicable, other Regional Entities to which the directive will apply. Any directive developed through the collaborative process shall be approved by, and issued under the signature of, the NERC President.

(ii) If after a period of time that is reasonable under the circumstances, NERC and WECC and, if applicable, other Regional Entities, are unable to reach agreement on the contents of the directive, NERC may issue the directive with the approval of and under the signature of the NERC President.

(iii) Upon issuance of a directive by the NERC President, it shall be binding upon, and shall be complied with by, WECC, subject to reasonable time periods for adoption, implementation, and funding of any necessary resources. Upon request by WECC, the NERC Board of Trustees (or a committee of the Board to which the Board delegates appropriate authority) shall review and shall confirm, revise or revoke any directive that was issued by the NERC President without WECC's agreement, *provided*, that WECC shall request such review within thirty (30) days following issuance of the directive by the NERC President unless good

cause can be shown for a later request.

(iv) NERC and WECC and, if applicable, other Regional Entities, shall collaborate in deciding whether a directive (whether issued pursuant to paragraph (ii) or paragraph (iii)) shall be made public. If no agreement is reached by the date of issuance as to whether the directive shall be made public, the NERC President shall decide whether the directive will be made public, *provided*, that it is the intent of the Parties that the NERC President shall apply a presumption that directives should be made public, unless the NERC President makes a written determination stating a specific reason for maintaining a particular directive as non-public.

(d) In addition to the issuance of directives pursuant to subsection (c), the NERC Board of Trustees (or a Board committee to which the Board has delegated authority) may issue guidance or directions as to the manner in which WECC, and, if applicable, other Regional Entities, shall perform delegated functions and related activities. The NERC Board of Trustees or Board committee shall also establish reasonable time periods for the implementation of any such guidance or directions, taking into account the impact on the reliability of the Bulk-Power System and the need for funding of additional resources. Any such guidance or directions shall be stated in writing and shall be public, unless the NERC Board of Trustees or Board committee makes a written determination stating a specific reason for maintaining particular guidance or directions as non-public. WECC, either individually or in conjunction with other Regional Entities, may request that the NERC Board of Trustees or Board committee reconsider or revise the guidance or direction.

(e) NERC shall conduct collaborative reviews with WECC, either individually or in conjunction with one or more other Regional Entities, that provide for the exchange of information on practices, experiences, and lessons learned in the implementation of the delegated functions.

(f) NERC shall perform reviews and audits of WECC on a reasonable periodicity to determine WECC's compliance with this Agreement, any policies or procedures established by NERC, NERC's Rules of Procedure, the Compliance Monitoring and Enforcement Program, Commission requirements, and directives that are in effect pursuant to Section 8(c) and to monitor the implementation of guidance and directions issued by the NERC Board of Trustees

pursuant to Section 8(d). All such periodic reviews and audits shall comply with the NERC Rules of Procedure and Commission directives.

(g) The Commission and the Commission staff shall have full access to action plans and remedial actions, directives, directions and guidance, and audits and reviews issued or conducted pursuant to subsections (a)(iii), (c)(iv), (d), and (f), respectively, that are maintained as non-public.

9. **Funding**. WECC and NERC shall ensure, subject to Commission approval in accordance with the ERO Regulations, that the delegated functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) WECC shall develop, through a collaborative process with NERC, and propose, an annual business plan and budget, in accordance with ERO Regulations, Commission orders and NERC business planning and budgeting policies and instructions. WECC's proposed business plan and budget shall describe the activities necessary for, and provide a budget with adequate resources for, WECC to carry out its Delegated Authority under this Agreement, including the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E**. WECC's business plan and budget shall show the funding sources and amounts to fund the proposed budget, including as applicable assessments to end users, penalty monies, and other sources of funds.

(b) WECC and NERC agree that the portion of WECC's approved budget for the functions and activities described in Sections 5, 6 and 7 and listed in **Exhibit E** that is to be funded by assessments, will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on Net Energy for Load, or through such other formula as is proposed by WECC and approved by NERC and the Commission. If WECC proposes to use a formula other than Net Energy for Load beginning in the following year, WECC shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission by May 15 for approval, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and WECC to the Commission pursuant to the ERO

Regulations for such year.

(c) NERC shall determine that the assessments to fund the costs for its statutory functions in its Commission-approved budget are first allocated fairly among the Interconnections and regions according to the applicability of this work to those Interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a Net Energy for Load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide WECC with the form or forms for business plan and budget submittal, and any accompanying instructions, in accordance with the schedule for preparation of the business plan and budget developed by NERC and the Regional Entities.

(e) WECC shall submit its proposed annual business plan and budget for carrying out its Delegated Authority functions and related activities described in Sections 5, 6 and 7 and listed in **Exhibit E**, as well as for all other activities of WECC, to NERC for review and approval in accordance with the annual schedule for the preparation of business plans and budgets which shall be developed collaboratively by NERC and the Regional Entities, as more fully described in **Exhibit E**.

(f) NERC shall fund WECC's performance of its Delegated Authority and related activities in accordance with WECC's Commission- approved business plan and budget, in the amount of WECC's assessments to end users approved by the Commission. **Exhibit E** sets forth the procedures and timing for billing and collecting WECC's approved assessments from end users and other entities and payment of the approved assessment amount to WECC, unless otherwise modified and approved by NERC and the Commission. NERC shall not impose any material obligation or requirement regarding the Delegated Authority upon WECC that has not been provided for in an approved business plan and budget or an approved amended or supplemental business plan and budget, without WECC's consent.

(g) NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC and WECC fiscal year budget with the actual results at the NERC and Regional Entity levels. WECC shall follow NERC's prescribed system of accounts

except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(h) WECC shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) WECC shall submit audited financial statements annually, including supporting materials, in a form provided by NERC, by no later than the date reasonably required and designated in writing by NERC to enable NERC to assemble and file the required annual budget to actual true up filing with the Commission.

(j) **Exhibit E** to this Agreement sets forth the mechanism through which WECC shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of WECC) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which WECC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of WECC. *Provided*, that, subject to approval by NERC and the Commission, WECC may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

10. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. WECC may not delegate in whole or in part its Delegated Authority to any other entity without NERC's express consent; provided, however, that nothing in this provision shall prohibit WECC from contracting with other entities to assist it in carrying out its Delegated Authority, provided WECC retains control and responsibility for such Delegated Authority.

11. **Default and Cure**. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the

following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; *provided however*, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this Section 11, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 18 of this Agreement to resolve a dispute as to whether a Breach has occurred or been cured. The provisions of this Section 11 will survive termination of this Agreement.

12. <u>Term and Termination</u>.

(a) This Agreement shall become effective on January 1, 2016 (the "Effective Date").

(b) The term of this Agreement shall be five (5) years from the Effective Date ("Term"), prior to which time NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that WECC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If WECC meets such requirements, this Agreement may be renewed for another five (5) year term with Commission approval. This Agreement may be renewed for successive additional five (5) year renewal terms, with Commission approval, provided that prior to the end of each renewal term, NERC shall conduct an audit pursuant to the audit requirements of the NERC Rules of Procedure to ensure that WECC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. Provided, that either Party may terminate this Agreement as of the end of a term by providing written notice to terminate no later than one year prior to the then effective expiration of the Term. In such event, this Agreement shall terminate upon the expiration of then effective Term, unless otherwise mutually agreed to by the Parties.

(c) In the event of the termination of this Agreement, the Parties shall work to provide for a transition of WECC's Delegated Authority to NERC or to another eligible entity and to provide for the resolution of any wind-up costs associated with termination of this Agreement.

(d) 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 a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by WECC and NERC.

(e) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 13), No Third Party Beneficiaries (Section 14) and Confidentiality (Section 15) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

13. <u>Limitation of Liability</u>. WECC and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and WECC shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of WECC's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that WECC or NERC is found liable for gross negligence or intentional misconduct, in which case

WECC or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

14. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any third party, except as otherwise specifically provided herein and in Section 15(c).

15. **Confidentiality**.

(a) During the course of the Parties' performance under this Agreement, a Party may receive proprietary, business sensitive, or critical infrastructure information ("Confidential Information") necessary to fulfill its respective obligations in connection with this Agreement. The Parties agree that their mutual objective under this provision is to provide appropriate protection for Confidential Information, while maintaining the ability to conduct their respective business activities.

(b) No obligation of confidentiality shall apply to any information that the recipient: (i) already possesses without obligation of confidentiality; (ii) develops independently; or (iii) rightfully receives without any obligation of confidentiality from a third party.

(c) The Parties may transfer or exchange such Confidential Information with and between the other Regional Entities as third-party beneficiaries of the terms of this Agreement, provided the Parties and the other Regional Entities as third-party beneficiaries continue to maintain the confidentiality of such information.

(d) Except as set forth herein and within the NERC Rules of Procedure, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party or specified third-party beneficiary of this Agreement, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel. Unless prohibited from doing so under the NERC Rules of Procedure, the recipient shall provide the Party or specified third-party beneficiary of this Agreement that provided the Confidential Information with prompt notice of a request or requirement for disclosure of the Confidential Information in order to enable such issuing Party or specified third-party beneficiary of this Agreement to (a) seek an

appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party or specified third-party beneficiary of this Agreement waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In the event of any inconsistency or conflict between the provisions of this Section 15 and the provisions of Section 1500 of the NERC Rules of Procedure, the provisions of Section 1500 of the NERC Rules of Procedure shall control.

(e) Each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

(f) This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement, nor does it prohibit permitted disclosures as set forth in the NERC Rules of Procedure.

16. Amendment. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

17. Amendments to the NERC Rules of Procedure. NERC shall not adopt amendments to the NERC Rules of Procedure that conflict with the rights, obligations, or programs of WECC under this Agreement without first obtaining the consent of WECC, which consent shall not be unreasonably withheld or delayed. To the extent WECC does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 18 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules of Procedure. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of WECC under this Agreement, WECC shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement.

Such termination shall be effective one year following written notice by WECC to NERC and the Commission, or at such other time as may be mutually agreed by WECC and NERC.

18. <u>Dispute Resolution</u>. In the event a dispute arises under this Agreement between NERC and WECC (including disputes relating to NERC's performance of its obligations under this Agreement and/or disputes relating to WECC's performance of its obligations under this Agreement) which cannot be resolved through discussions between representatives of the Parties in the normal course of operations, the Parties shall use the following procedures ("Dispute Resolution") to attempt to resolve the dispute. WECC shall not suspend performance of any delegated function, and the Parties shall continue to make reasonable, good faith efforts to comply with their obligations under this Agreement, during the pendency of Dispute Resolution. All notices required to be sent pursuant to this Dispute Resolution procedure shall be sent in accordance with Section 19 of this Agreement. This Dispute Resolution procedure is separate from and in addition to all other processes provided for in this Agreement.

(a) The Party invoking Dispute Resolution shall send a notice to the other Party describing the dispute, stating the invoking Party's position with respect to the dispute, stating that the Party is invoking Dispute Resolution, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the invoking Party.

(b) Within three (3) business days after receipt of the notice invoking Dispute Resolution, the receiving Party shall send a notice to the invoking Party acknowledging receipt of the notice invoking Dispute Resolution, stating the receiving Party's position with respect to the dispute, and naming the Party's designated representative for negotiating a resolution of the dispute. The designated representative shall have authority to resolve the dispute on behalf of the receiving Party.

(c) During the period commencing three (3) business days and ending twenty (20) business days after the date of the receiving Party's notice, the designated representatives shall engage in good faith negotiations to attempt to resolve the dispute, provided, that the designated representatives may agree prior to the end of such twenty (20) business day period that the process should move to the next step of Dispute Resolution.

(d) If the designated representatives are unable to arrive at a resolution of the dispute by the end of the time period described in subsection (c), they shall notify the chief executive officers of their respective Parties. The chief executive officers of the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute during the period of twenty (20) business days immediately following the time period described in subsection (c), provided, that the chief executive officers may agree prior to the end of such twenty (20) business day period that negotiations are at impasse and the process may move to the next step as described in subsection (f). Upon mutual agreement of the Parties, the twenty (20) business day period may be extended to pursue ongoing good faith negotiations.

(e) If a resolution of the dispute is achieved by the Parties, it shall be memorialized in a writing that is acceptable in form and substance to each party and is signed by the designated representative or chief executive officer on behalf of each Party.

(f) If the Parties are unable to resolve the dispute pursuant to the process described in subsections (a) through (e), then either Party may invoke any other available dispute resolution mechanism, including, without limitation, filing a complaint or petition with the Commission requesting resolution of the dispute by the Commission, or filing a complaint for relief in a court having jurisdiction over Parties and the subject matter of the dispute in accordance with Section 20. Provided, however, that: (i) it is the intent of the Parties that unresolved disputes shall be presented to and resolved by the Commission if the Commission has and accepts jurisdiction over the subject matter of the dispute, (ii) the Parties may, by mutual agreement, attempt to resolve the dispute through arbitration, mediation, or other process involving resort to an impartial neutral, and (iii) it is the intent of the Parties that resolution of disputes through Commission proceedings, arbitration, mediation, or other use of an impartial neutral, is preferred over resort to judicial proceedings.

(g) This Section 18 shall not apply to compliance enforcement actions against individual Registered Entities.

19. **Notice**. All notices, demands, requests, and other communications required, permitted by, or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand, email or overnight courier:

If to NERC:

North American Electric Reliability Corporation
1325 G Street NW, Suite 600
Washington, DC 20005
Attn: General Counsel
Email: legal@nerc.net

If to WECC:

Western Electricity Coordinating Council
155 North 400 West,
Suite 200
Salt Lake City, Utah 84103
Attn: General Counsel
Email: sgoodwill@wecc.biz

20. **Governing Law**. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of Georgia without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in Georgia. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in Georgia for the purpose of hearing and determining any action not heard and determined by the Commission.

21. **Headings**. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

22. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that WECC may have to adopt reliability requirements or take other actions to maintain reliability of the Bulk-Power System within the geographic boundaries described in **Exhibit A** that are outside the Delegated Authority, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

23. **Entire Agreement**. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	WESTERN ELECTRICITY COORDINATING COUNCIL
By: _____	By: _____
Name: _____	Name: James B. Robb
Title: _____	Title: Chief Executive Officer
Date: _____	Date: December 11, 2015

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the Effective Date.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	WESTERN ELECTRICITY COORDINATING COUNCIL
By: Gerald W. Cauley	By: _____
Name: Gerald W. Cauley	Name: _____
Title: President and CEO	Title: _____
Date: 12/15/2015	Date: _____

Exhibit A — Regional Boundaries

WECC's physical boundaries coincide with the boundaries of the Western Interconnection. The Western Interconnection consists of the synchronously operated electric transmission grid in the western part of North America, which includes parts of Montana, Nebraska, New Mexico, South Dakota, Texas, Wyoming, and Mexico and all of Arizona, California, Colorado, Idaho, Nevada, Oregon, Utah, Washington and the Canadian Provinces of British Columbia and Alberta. The WECC region encompasses approximately 1.8 million square miles.

WECC's northern border runs along the northern border of British Columbia and Alberta. The western border extends along the western coast of North America from British Columbia into northern Baja California, Mexico. The southern border traverses northern Baja and extends along the southern United States border to Texas. The eastern border bisects North America from Alberta, Canada through the states of Montana, South Dakota, Wyoming, Nebraska, Texas and New Mexico to the southern United States border.

Exhibit B — Governance

The Regional Entity bylaws shall meet the following criteria:

<u>CRITERION 1</u>: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

<u>CRITERION 2</u>: The Regional Entity has established rules that assure its independence from the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

<u>CRITERION 3</u>: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

<u>CRITERION 4</u>: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

<u>CRITERION 5</u>: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Exhibit C [Intentionally left blank]

Exhibit D — Compliance Monitoring and Enforcement Program

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

WECC will implement the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure (which for purposes of this section 1.0 shall not include Attachment 2, Hearing Procedures), to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within **WECC's** geographic or electrical boundaries, and such other scope, set forth in **Exhibit A** of this Agreement.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

WECC, to the extent required in the Rules of Procedure, shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be either **WECC's** board, a committee of the board, a balanced compliance panel reporting directly to **WECC's** board or an independent hearing panel. **WECC's** hearing body is the Compliance Hearing Body, a committee of the WECC Board comprised solely of directors, as set forth in the WECC Compliance Hearing Body Charter.

Consistent with the WECC Compliance Hearing Body Charter, hearing panels for individual matters will include directors and may include industry subject matter experts. No industry representative or member class shall control the outcome.

To the extent required in the Rules of Procedure, **WECC** shall conduct all compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, proposed Mitigation Plan, or a proposed Remedial Action Directive, in accordance with Attachment 2, Hearing Procedures, to the NERC Compliance Monitoring and Enforcement Program, subject to the following deviations, if any: None.

3.0 OTHER DECISION-MAKING BODIES

None.

Exhibit E — Funding

1. Scope of Activities Funded through the ERO Funding Mechanism

WECC shall include in its annual budget submission to NERC amounts for costs it will incur in performing its delegated functions and related activities as described in Sections 5, 6 and 7 of the Agreement. These activities shall include:

- Reliability Standard Development
- Compliance Monitoring and Enforcement

  This category includes activities under the WECC Reliability Management System
- Organization Registration and Certification
- Reliability Assessment and Performance Analysis (including necessary data gathering activities)

  This category includes the WECC Transmission Expansion Planning Program, Loads and Resources Activities, and all necessary supporting activities
- Event Analysis and Reliability Improvement
- Training and Education

  This category includes WECC's Training Programs
- Situation Awareness

  As agreed to by NERC and WECC on an annual basis, this category includes WECC's Reliability Coordinator Functions, Western Interconnection Synchrophasor Program, WECC Interchange Tool, and all necessary supporting activities. If sub-delegated by WECC, the costs for the Reliability Coordinator Functions, Western Interconnection Synchrophasor Program, WECC Interchange Tool and necessary supporting activities shall not be included in WECC's annual budget submission to NERC but rather shall be included in the budget of Peak Reliability.
- Infrastructure Security

2. Preparation of Annual Business Plan and Budget

(a) NERC and WECC, in conjunction with the other Regional Entities, shall collaboratively develop an annual schedule for the development, submission, review and approval of WECC's business plan and budget. The annual schedule for the preparation of business plans and budgets shall require WECC (i) to submit to NERC draft(s) of WECC's proposed business plan and budget and other preliminary documents and information, and (ii) to submit a final proposed business plan and budget that has been approved by the

WECC Board of Directors to NERC by July 1 or such other agreed date as provides sufficient time for NERC's review, approval and submission of WECC's business plan and budget to the Commission 130 days in advance of the beginning of each fiscal year. The WECC business plan and budget submission shall include supporting materials, including WECC's complete business plan and organization chart, explaining the proposed collection of all assessments, dues, fees and charges, and the proposed expenditure of the funds to be collected in sufficient detail to justify the requested budgeted expenditures and assessments. WECC's business plan and budget and proposed assessments shall provide for reasonable reserve mechanisms for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(b) NERC shall review and approve WECC's proposed business plan and budget and proposed assessments for performing the delegated functions and related activities described in Sections 5, 6 and 7 of this Agreement and listed above in Section 1 of this **Exhibit E**, or shall direct WECC to make such revisions as NERC deems appropriate prior to approval. NERC shall submit WECC's approved business plan and budget and proposed assessments to the Commission for approval as part of NERC's overall business plan and budget submission, in accordance with the ERO Regulations.

3. Allocation of Costs

Assessments to fund the costs of WECC's delegated functions and related activities pursuant to the Agreement shall be allocated among all load-serving entities on the basis of Net Energy for Load, unless a different method(s) of allocating and calculating such assessments has been submitted to and approved by NERC and the Commission in accordance with Section 9(b) of the Agreement. WECC shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities or designees within its geographic boundaries that shall be responsible for paying WECC's assessment and the load-serving entities' proportionate Net Energy for Load, and such other data and information as is necessary to allocate and calculate the allocation of WECC's assessment to the load-serving entities or designees under the method(s) of allocation and calculation that will be used.

Entities on the list of LSEs or Balancing Authorities will be responsible for collection and/or payment of charges through the mechanism described in either Option 1 or 2 below. Each Balancing Authority will inform WECC by June 1st of each year of its choice of Option 1 or 2, and will give WECC at least 90 days' notice of its intention to change from one option to the other.

a. OPTION 1 -- The Balancing Authority will provide WECC a list of all LSEs located within its area, including each LSE's name, contact information, and Net Energy for Load. This information will be updated annually and provided to WECC no later than June 1st of each year. WECC will use this list to bill each LSE for all costs on an annual basis.

b. OPTION 2 -- WECC will bill the Balancing Authority for all costs on an annual

basis. The Balancing Authority will be responsible for equitably allocating WECC costs among the LSEs in its area (if applicable) on the basis of Net Energy for Load, collecting the funds, and ensuring that WECC receives full payment on an annual basis.

4. Collection of Funding

(a) NERC and WECC agree that WECC shall act as the billing and collection agent on behalf of NERC to bill and collect the NERC, WECC, and WIRAB assessments from load-serving entities and designees (or such other entities as agreed by NERC and WECC). WECC agrees that it shall (i) issue all invoices to each load-serving entity or Balancing Authority (depending on the Balancing Authority's choice of Option 1 or 2 above) in a prompt and timely manner after receipt from NERC of the information needed to issue the invoices, but no later than November 15th of each year; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC in a timely manner, as follows: Once per week until all billings are collected, WECC will electronically transfer to NERC, in immediately available funds, all payments received by WECC from load-serving entities or other entities for payment of the NERC, WECC, and WIRAB assessments billed on the annual invoices. In the event that (1) WECC includes Peak Reliability assessments (or assessments of a differently named company performing the same functions) on the annual invoices; (2) a payment received is less than the total amount billed for the NERC, WECC, WIRAB, and Peak Reliability assessments; and (3) WECC does not know and, after due inquiry with the entity submitting the underpayment and consultation with NERC, is unable to determine which invoiced item accounts for the shortfall, WECC shall be permitted to prorate the shortfall among all assessments received from that entity. On the same day that WECC makes each electronic transfer of funds to NERC, WECC shall send an e-mail to the Chief Financial Officer or Controller of NERC detailing the collections being transmitted, including a listing of the load-serving entities or other entities from which payments were collected and the amount collected from each entity and the breakdown of the total payments collected among NERC statutory funding, WECC statutory funding, and WIRAB statutory funding.

WECC agrees that it shall not in any way use its position as billing and collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of Reliability Standards (including Regional Reliability Standards and Regional Variances), administration of the compliance monitoring and enforcement program and other compliance and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of WECC's budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this Agreement. To the extent WECC uses another entity as collection agent, it will incorporate these safeguards in the arrangements with the collection agent.

Within three (3) business days following receipt of an electronic transfer of collected assessments from WECC in accordance with Section 4(a) of this **Exhibit E**, NERC will electronically transfer (i) to WECC, in immediately available funds, the portion of the

payment received from WECC constituting WECC statutory funding, and (ii) to WIRAB, in immediately available funds, the portion of the payment received from WECC constituting WIRAB statutory funding.

(b) NERC shall pursue any non-payments of assessment amounts constituting NERC, WECC, and WIRAB statutory funding and shall request assistance from Applicable Governmental Authorities as necessary to secure collection. To the extent reasonably practicable, WECC shall assist NERC in pursuing and collecting any non-payments. Notwithstanding the foregoing, WECC is not responsible and does not assume any liability for recovering non-payments or underpayments of assessment amounts. NERC shall retain sole responsibility for recovering non-payments or underpayments of assessment amounts constituting NERC, WECC, and WIRAB statutory funding. NERC shall add the amount of any non-payments by end-users or designees within WECC's region, that are reasonably determined to be uncollectible, to NERC's assessments for a subsequent year with the amount of such non-payments to be allocated to end-users within WECC's region.

5. Application of Penalties

Except as otherwise approved by the Commission, all penalty monies received by WECC, other than penalty monies received from an operational function or division or affiliated entity of WECC, shall be applied as a general offset to WECC's budget requirements for U.S.-related activities under this Agreement for a subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Except as otherwise approved by the Commission, any penalty monies received from an operational function or division or affiliated entity of WECC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

6. Budget and Funding for WECC's Non-Statutory Activities

In addition to its delegated functions and related activities, as specified in Sections 5, 6 and 7 of the Agreement and in Section 1 of this **Exhibit E** (such delegated functions and activities referred to in this Section 6 as "statutory activities"), WECC performs the following other functions and activities (such other functions and activities being referred to in this Section 6 as "non-statutory activities"): Western Renewable Generation Information System ("WREGIS").

WECC shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions: WECC utilizes a fund accounting system with capabilities to segregate receipts and expenses based on function or activity. WECC has segregated non-statutory activities by assigning a separate fund code to those receipts and expenses. All expenditures or receipts that are entered into WECC's accounting system must include a fund code identifying whether the transaction is related to statutory or non-statutory activities.

General and administrative costs are allocated to non-statutory activities based on an FTE ratio that is consistent with NERC's accounting methodology for allocation of overhead to statutory activities. For these reasons, time records are not necessary for WECC to properly allocate costs between statutory and non-statutory activities.

WECC shall provide its budget for such non-statutory activities to NERC at the same time that WECC submits its proposed annual business plan and budget for statutory activities to NERC pursuant to Section 9 of the Agreement. WECC's budget for non-statutory activities that is provided to NERC shall contain a detailed list of WECC's non-statutory activities and a description of the funding sources for the non-statutory activities. WECC agrees that no costs (which shall include a reasonable allocation of WECC's general and administrative costs) of non-statutory activities are to be included in the calculation of WECC's assessments, dues, fees, and other charges for its statutory activities.

7. Amended or Supplemental Business Plans and Budgets

During the course of the fiscal year, if WECC determines it does not or will not have sufficient funds to carry out its delegated functions and related activities, WECC shall submit to NERC one or more proposed amended or supplemental business plans and budgets and requests for approval of supplemental assessments, reflecting costs, cost increases or funding shortfalls not provided for in WECC's approved business plan and budget for the fiscal year. NERC shall review and approve the proposed amended or supplemental business plan and budget and proposed supplemental assessment, or shall direct WECC to make such revisions as NERC deems appropriate prior to approval. NERC shall submit WECC's approved amended or supplemental business plan and budget and proposed supplemental assessment to the Commission for approval.

8. NERC Review of Regional Entity Financial Records

Upon a request made to WECC with reasonable notice, NERC shall have access to and may review all financial records of WECC, including records used to prepare WECC's financial statements. NERC shall conduct reviews of the quarterly and annual financial statements submitted by WECC pursuant to Section 9(h) and (i) of the Agreement. WECC shall provide supporting documentation for the quarterly and annual financial statements as reasonably requested by NERC.