

Attachment 1

NERC *Pro Forma* Regional Delegation Agreement
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**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, 2021, 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 described 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; or
- (ii) a hybrid board consisting of a combination of independent and balanced stakeholder members.

(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 described 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 or a hybrid board consisting of a combination of independent and balanced stakeholder members]. 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 and shall retain during the term of this Agreement a governing board with a sufficient number of independent members to perform certain oversight obligations, including those relating to: (A) nomination of independent governing board members, (B) compensation for the Regional Entity chief executive officer, and, (C) compliance monitoring and enforcement program implementation. [REGIONAL ENTITY] has and shall retain, during the term of this agreement, fair and reasonable compensation for independent governing board members. [REGIONAL ENTITY] has and shall retain, during the term of this agreement, appropriate conflict of interest and recusal policies with respect to their employees, non-independent and independent governing board members and will avoid any conflicts of interest, including but not limited to, significant commercial relationships with registered entities. Each Regional Entity's implementation of these requirements has been documented and accepted by NERC based on principles developed in consultation with the Regional Entities and such implementation will be reviewed in connection with renewal of this Agreement.

(iii) [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.

(iv) 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 for the registered entities assigned to the [REGIONAL ENTITY] as reflected on NERC's Compliance Registry.

(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. Delegation of Authority.

(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**. 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) 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.

(c) 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.

(d) 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. Development and Proposal of Reliability Standards.

(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. Enforcement of Compliance with Reliability Standards.

(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. Subject to Section 2. (a) (i), [Regional Entity] may have stakeholders participate in a 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. Delegation-Related Activities.

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 in the NERC Rules of Procedure 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. Oversight of Performance of Delegated Functions and Related Activities.

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 against its next year's annual budget for carrying out functions under this Agreement. *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, 2021] (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 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. 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. 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 2

NERC *Pro Forma* Regional Delegation Agreement Redline

**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~~2021, 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~~ described 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)(i) a balanced stakeholder board;~~ or
- ~~(iii)(ii)~~ (ii) a hybrid board consisting of a combination of independent and balanced stakeholder ~~board members~~.

(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 ~~described~~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 or a hybrid board consisting of /a balanced stakeholder board/ a combination of independent and balanced stakeholder ~~board members~~]. 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**.

~~(i)~~ [REGIONAL ENTITY] has and shall retain during the term of this Agreement a governing board with a sufficient number of independent members to perform certain oversight obligations, including those relating to: (A) nomination of independent governing board members, (B) compensation for the Regional Entity chief executive officer, and, (C) compliance monitoring and enforcement program implementation. [REGIONAL ENTITY] has and shall retain, during the term of this agreement, fair and reasonable compensation for independent governing board members. [REGIONAL ENTITY] has and shall retain, during the term of this agreement, appropriate conflict of interest and recusal policies with respect to their employees, non-independent and independent governing board members and will avoid any conflicts of interest, including but not limited to, significant commercial relationships with registered entities. Each Regional Entity's implementation of these requirements has been documented and accepted by NERC based on principles developed in consultation with the Regional Entities and such implementation will be reviewed in connection with renewal of this Agreement.

(ii)

~~(ii)(iii)~~ [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)(iv)~~ 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 for the registered entities assigned to the within [REGIONAL ENTITY] as reflected on NERC's geographic boundaries as shown in **Exhibit A** Compliance Registry.

(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. **Delegation of Authority.**

(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.~~

~~(e)(b)~~ 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)(c)~~ 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)(d)~~ 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. Development and Proposal of Reliability Standards.

(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. Enforcement of Compliance with Reliability Standards.

(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. Subject to Section 2. (a) (i), 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. Delegation-Related Activities.

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 in the NERC Rules of Procedure 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. Oversight of Performance of Delegated Functions and Related Activities.

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

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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. 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~~2021] (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. 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. 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. 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

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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 3

MRO Regional Delegation Agreement
Clean

**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, 2021, 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 described 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; or
 - (ii) A hybrid board consisting of a combination of independent and balanced stakeholder members.

(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 hybrid board consisting of a combination of independent and balanced stakeholder board members. 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 and shall retain during the term of this Agreement a governing board with a sufficient number of independent members to perform certain oversight obligations, including those relating to: (A) nomination of independent governing board members, (B) compensation for the Regional Entity chief executive officer, and, (C) compliance monitoring and enforcement program implementation. MRO has and shall retain, during the term of this agreement, fair and reasonable compensation for independent governing board members. MRO has and shall retain, during the term of this agreement, appropriate conflict of interest and recusal policies with respect to their employees, nonindependent and independent governing board members and will avoid any conflicts of interest, including but not limited to, significant commercial relationships with registered entities. Each Regional Entity's implementation of these requirements has been documented and accepted by NERC based on principles developed in consultation with the Regional Entities and such implementation will be reviewed in connection with renewal of this Agreement.

(iii) 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.

(iv) 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 for the registered entities assigned to MRO as reflected on NERC's Compliance Registry.

(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. General Covenants.

(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. Delegation of Authority.

(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) 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.

(c) 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.

(d) 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. Enforcement of Compliance with Reliability Standards.

(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. Subject to Section 2. (a) (i), MRO may have

stakeholders 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 in the NERC Rules of Procedure 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. Oversight of Performance of Delegated Functions and Related Activities.

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. Term and Termination.

(a) This Agreement shall become effective on January 1, 2021 (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 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. Limitation of Liability. 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. 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 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@mro.net

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: **_Sara E. Patrick**

Title: _____

Title: **_President and CEO**

Date: _____

Date: _____

Exhibit A — Regional Boundaries

MRO is one of six regional entities that operates under a Delegation Agreement with 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 for registered entities in all or part of the states of Arkansas, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin as provided in the NERC Compliance Registry and under similar arrangements with NERC and provincial authorities in the Canadian provinces of Manitoba and Saskatchewan.

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.

MRO may also perform compliance and enforcement activities outside of its geographic boundaries, on behalf of NERC and/or other Regional Entities, such activities to be undertaken pursuant to the ERO Enterprise Multi-Region Registered Entity Coordinated Oversight Program.

Exhibit B — Governance

The Regional Entity bylaws shall meet the following criteria:

CRITERION 1: The Regional Entity shall be governed by an independent board or a hybrid board consisting of a combination of independent and balanced stakeholder board members.

CRITERION 2: 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.)

CRITERION 3: 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.)

CRITERION 4: 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.)

CRITERION 5: 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 has adopted the Consolidated Hearing Process consistent with Rules of Procedure 403.15.B. to conduct hearings and issue decisions concerning disputed compliance matters in accordance with Attachment 2, Hearing Procedures, of Appendix 4C.

However, consistent with the Rules of Procedure and **MRO’s** bylaws, **MRO** may modify its selection of hearing process by notifying NERC six months prior to the decision becoming effective.

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

MRO Regional Delegation Agreement Redline

EXECUTION VERSION

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~~2021, 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~~described 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)(i) a balanced stakeholder board;~~ or

~~(iii)(ii)~~ A hybrid board consisting of a combination of independent and balanced stakeholder board members.

(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

hybrid board consisting of a combination of independent and balanced stakeholder board members. 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 and shall retain during the term of this Agreement a governing board with a sufficient number of independent members to perform certain oversight obligations, including those relating to: (A) nomination of independent governing board members, (B) compensation for the Regional Entity chief executive officer, and, (C) compliance monitoring and enforcement program implementation. MRO has and shall retain, during the term of this agreement, fair and reasonable compensation for independent governing board members. MRO has and shall retain, during the term of this agreement, appropriate conflict of interest and recusal policies with respect to their employees, nonindependent and independent governing board members and will avoid any conflicts of interest, including but not limited to, significant commercial relationships with registered entities. Each Regional Entity's implementation of these requirements has been documented and accepted by NERC based on principles developed in consultation with the Regional Entities and such implementation will be reviewed in connection with renewal of this Agreement.

~~(ii)(iii)~~ _____ 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)(iv)~~ _____ 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 for the registered entities assigned to within MRO as reflected on NERC's geographic boundaries as shown in Exhibit A Compliance Registry.

(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. General Covenants.

(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. Delegation of Authority.

(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].

~~(e)(b)~~ 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)(c)~~ 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)(d)~~ 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. Enforcement of Compliance with Reliability Standards.

(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~~Subject to Section 2. (a) (i), MRO-~~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 in the NERC Rules of Procedure 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. Oversight of Performance of Delegated Functions and Related Activities.

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. Term and Termination.

(a) This Agreement shall become effective on January 1, ~~2016~~2021 (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. Limitation of Liability. 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. 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 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@mro.netmidwestreliability.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: Sara E.
Patrick

Title: _____

Title: President and
CEO

Date: _____

Date: _____

Exhibit A — Regional Boundaries

MRO is one of ~~eight~~six regional entities that operates under a Delegation Agreement ~~comprise with~~ 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~~ for registered entities in all or part of the states of Arkansas, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin as provided in the NERC Compliance Registry and under similar arrangements with NERC and provincial authorities in 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:

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

CRITERION 2: 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.)

CRITERION 3: 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.)

CRITERION 4: 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.)

CRITERION 5: 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 has adopted the Consolidated Hearing Process consistent with Rules of Procedure 403.15.B. to conduct hearings and issue decisions concerning disputed compliance matters in accordance with Attachment 2, Hearing Procedures, of Appendix 4C.

However, consistent with the Rules of Procedure and MRO’s bylaws, MRO may modify its selection of hearing process by notifying NERC six months prior to the decision becoming effective. 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.