

# LARGE C&I STANDARD OFFER QUICKSTART PROGRAM CONTRACT

This Large Commercial and Industrial Standard Offer QuickStart Program Contract (the "Agreement") is made and entered into by and between Entergy Arkansas, Inc. ("Entergy Arkansas") and \_\_\_\_\_, a \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (hereinafter "Customer").

**WHEREAS**, Entergy Arkansas has developed a program called "Large C&I Standard Offer QuickStart Program" for its large commercial and industrial customer classes (the "C&I SOP") with the approval of the Arkansas Public Service Commission ("APSC"); and

**WHEREAS**, the C&I SOP seeks to procure peak demand savings through the installation and operation of energy efficiency measures at the facilities of such customers; and

**WHEREAS**, the Customer has developed a plan for participation in the C&I SOP through a set of installed energy efficiency measures and other improvements necessary to produce consistent and predictable peak demand savings over at least a ten-year period (the "Project").

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I - DEFINITIONS

1.1 "Contract Documents" shall mean (1) the Customer's approved Final Project Application, including the Measurement & Verification Plan if required, attached hereto and incorporated herein as Exhibit A, (2) the C&I SOP Program Manual, attached hereto and incorporated herein as Exhibit B, and (3) this Agreement, together with any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.

1.2 "Deemed Demand Savings" shall mean a pre-determined estimate of Demand Savings attributable to a Measure in a particular type of application that Entergy Arkansas may use instead of Measured Demand Savings.

1.3 "Demand Savings" shall mean the maximum 15 minute average electric demand reduction, expressed in kilowatts (kW) that results only from those Measures included in the Customer's approved Final Project Application. Demand Savings occur when the Measures are operating at peak conditions during the summer period. The summer period

is defined as weekdays between the hours of 11 AM and 9 PM from May 1 until September 30, excluding banking holidays. Any Demand Savings that may result from Measures installed or activities completed by the Customer that are not included in the approved Final Project Application will be excluded from this definition and are not eligible for payment under the C&I SOP. Demand Savings will be calculated based upon savings over and above standard efficiency equipment and *not* in relationship to existing equipment, except in cases where no standards exist, as defined in the Program Manual. Equipment standard efficiency is defined in the "Measurement & Verification" section of the Program Manual and/or as approved by the Arkansas Public Service Commission.

1.4 "Estimated Demand Savings" shall mean the Demand Savings expected to be derived from the Measures to be installed or actually installed at the Project Site.

1.5 "Measure" shall mean new equipment, material, or systems installed pursuant to the Project that when installed and used at a Project Site result in a quantifiable reduction in purchased electric peak demand, measured in kW, that meet the requirements as stated in the Program Manual.

1.6 "Measured Demand Savings" shall mean the Demand Savings derived during the Performance Period from the Measures installed at the Project Site as determined in accordance with the Measurement and Verification Plan found in the Final Project Application and as documented in a Savings Report approved by Entergy Arkansas.

1.7 "Program Manual" means the C&I SOP Program Manual, a copy of which is attached hereto as Exhibit B, as amended from time to time.

1.8 "Project" is defined by a set of proposed or installed Measures in a single application. All Projects must include Estimated Demand Savings of at least 20 kW during the summer peak period.

1.9 "Performance Period" shall mean the period following approval of the Installation Report during which measurement and verification activities take place. A Performance Period is not to exceed twelve (12) months.

1.10 "Project Site" shall mean the location of Customer's facilities where approved Measures will be installed and from which Demand Savings will be obtained.

1.11 "Prudent Electrical Practices" shall mean those practices, methods, standards and equipment commonly used in prudent electrical engineering and operations to operate electrical equipment lawfully and with safety, dependability and efficiency and in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal, state and local codes provided, however, that in the event of a conflict, the applicable federal, state or local code shall govern.

1.12 "APSC" shall mean the Arkansas Public Service Commission, or its duly authorized successor.

## **ARTICLE II - TERM AND TERMINATION**

2.1 The term of this Agreement shall commence on the date of execution by Entergy Arkansas (the "Effective Date") and unless otherwise terminated as set forth herein, shall continue in force and effect until payment by Entergy Arkansas of the Performance Payment due pursuant to Article 7.4 herein below, or until twelve (12) months following the Effective Date, whichever is later. However, the rights and obligations set forth in Article IX herein shall survive the expiration or termination of this Agreement for any reason whatsoever.

## **ARTICLE III - ACKNOWLEDGEMENT OF PROGRAM REQUIREMENTS**

3.1 By executing this Agreement, the Customer represents it has received and reviewed all Entergy Arkansas C&I SOP rules and information and all applicable laws and regulations prior to submission of its Final Project Application. The Customer warrants and represents that it meets or exceeds all of the following qualifications required by Entergy Arkansas for participation in the C&I SOP, including:

3.1.1 It has all applicable licenses required under state law and local building codes;

3.1.2 It has all building permits necessary for installing the Measurers as required by governing jurisdictions;

3.1.3 Has produced a work plan for Project design and implementation;

3.1.4 Is not an Entergy Arkansas affiliate;

3.1.5 Has revealed all affiliate relationships that meet Program rules in the Entergy Arkansas Large C&I Standard Offer QuickStart Program Manual; and

3.1.6 It satisfies all criteria to participate in the Project, including but not limited to, qualifying as a large commercial or industrial retail customer, as defined in the Program Manual.

3.2 Customer acknowledges that its Project meets all regulatory requirements, including:

3.2.1 The Project results in a reduction in purchased energy consumption and peak demand, and a reduction in energy costs for the end-use customer;

3.2.2 The Project will result in consistent and predictable peak demand savings over a ten-year period;

3.2.3 The Project includes appropriate and adequate measurement, verification, and reporting procedures;

3.2.4 The Project does not achieve demand reduction by eliminating an existing function or shutting down a facility or operation, or result in building vacancies or the re-location of existing operations to locations outside of the facility or area served by Entergy Arkansas;

3.2.5 Measures installed pursuant to the Project would not be installed in the absence of the C&I SOP;

3.2.6 The Project does not result in negative environmental or health effects, including effects that result from improper disposal of equipment and materials; and

3.2.7 The Project does not involve the installation of self-generation or co-generation equipment, but may involve renewable technologies.

#### **ARTICLE IV - CUSTOMER AGREEMENT**

4.1 Customer agrees to disclose any potential adverse environmental or health effects associated with the Measures to be installed at the Project Site.

4.2 The Customer Agreement must include the following provisions:

4.2.1 The Customer agrees to provide Entergy Arkansas and the independent measurement and verification expert selected by the APSC, upon three (3) days' prior oral notice, full and complete access to the Project Site for any purpose related to the C&I SOP. The right of access will be subject to Customer's reasonable access requirements and, unless otherwise agreed, must occur within the Customer's normal business hours.

4.2.2 A Customer acknowledgement that any review, inspection, or acceptance by Entergy Arkansas of the Project Site or of the design, construction, installation, operation or maintenance of the Measures is solely for the information of Entergy Arkansas and that, in performing any such inspection or review or in accepting the Measures, Entergy Arkansas makes no representations or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by the Customer, or compatibility with the Customer's facilities.

4.2.3 A Customer is not authorized to make representations or incur obligations on behalf of Entergy Arkansas.

4.2.4 A Customer acknowledgement that they are solely responsible for performance thereunder.

4.2.5 THE CUSTOMER HEREBY RELEASES ENTERGY ARKANSAS FROM ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, AND LEGAL LIABILITY INCLUDING, BUT NOT LIMITED TO (1) INJURY OR DEATH OF PERSONS, (2) DAMAGE TO NATURAL RESOURCES, (3) VIOLATION OF ANY LOCAL, STATE, OR FEDERAL LAW OR REGULATION INCLUDING, BUT NOT

LIMITED TO, ENVIRONMENTAL AND HEALTH AND SAFETY LAWS OR REGULATIONS, (4) STRICT LIABILITY IMPOSED BY ANY LAW OR REGULATION, (5) EQUIPMENT MALFUNCTIONS, OR (6) DEMAND SAVINGS SHORTFALLS ARISING OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THE PROJECT, REGARDLESS OF ANY STRICT LIABILITY OR NEGLIGENCE OF ENTERGY ARKANSAS, WHETHER ACTIVE OR PASSIVE (COLLECTIVELY, "CLAIMS"). CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD ENTERGY ARKANSAS HARMLESS FROM AND AGAINST ALL CLAIMS.

## **ARTICLE V - PROJECT IMPLEMENTATION**

5.1 The Customer agrees that if any portion of the equipment or conditions at the Project Site in place before the installation of the Measures, and such equipment or conditions are an integral part of the Measures, has been altered prior to the execution of the Agreement, or if any of the proposed Measures have been installed prior to the execution of the Agreement, the Project, or the affected portions thereof, may be disallowed.

5.2 The Customer agrees, on and after the Effective Date, to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Contract Documents. To the extent of any conflict between this Agreement and other Contract Documents, the terms of this Agreement shall prevail.

5.3 Measures shall be designed, constructed and installed in a good and workmanlike manner only with materials and equipment of appropriate quality, and, in any event, in accordance with Prudent Electrical Practices.

5.4 Irrespective of the Effective Date, installation of the Measures must be completed no later than December 1<sup>st</sup> of the current funding year. If the Customer does not complete the installation of the Measures by such time, absent a Force Majeure (as defined in Section 15 below) event, the Customer's actions or inactions shall constitute a breach of contract unless the Customer requests, and Entergy Arkansas, in its sole discretion, grants to the Customer an extension of time to complete installation of the Measures.

5.5 Customer must provide a certificate indicating that the Measures contracted for were installed at the Project Site. The Customer certification should be submitted with the Installation Report described in Section 5.6 below. If a Customer refuses to sign the Customer certificate, Entergy Arkansas may request, at Customer's expense, that Entergy Arkansas perform an inspection of the Project Site. Final payment of incentives will not be made unless and until a Customer certification or inspection has been completed in accordance with the terms of the Contract Documents.

5.6 Within thirty (30) days of completing installation of the Measures at the Project Site, the Customer shall so notify Entergy Arkansas by submitting an Installation Report documenting the Measures actually installed, including a document signed by the Customer certifying that the Measures were installed.

5.7 Within thirty (30) days of receipt of the Installation Report, Entergy Arkansas shall inspect all or part of the Measures at the Project Site to verify installation of the Measures. Approval of the Installation Report shall be granted if Entergy Arkansas reasonably determines that the Measures at the Project Site were installed and are capable of performing their intended function of producing Demand Savings in material compliance with the Contract Documents. If any Measures are rejected, Entergy Arkansas will set forth the written reasons for such rejection and the Customer may attempt to remedy the deficiencies and resubmit its Installation Report. Any necessary revisions shall be performed in the time period specified by Entergy Arkansas in the notice of deficiency. If Customer does not remedy the deficiencies or if any Measure is rejected a second time, Entergy Arkansas will consider it a breach of contract and may not pay any incentive for such Measure.

5.8 Any review, inspection, or acceptance by Entergy Arkansas of the Project Site or of the design, construction, installation, operation or maintenance of the Measures is solely for the information of Entergy Arkansas and that, in performing any such inspection or review or in accepting the Measures, Entergy Arkansas makes no representations or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by the Customer, or their compatibility with the Customer's facilities.

5.9 The Estimated Demand Savings attributable to the Measures documented in the approved Installation Report will be used for purposes of calculating the Installation Payment in Section 7.3, below.

## **ARTICLE VI - MEASUREMENT AND VERIFICATION**

6.1 The Customer shall measure and verify the Demand Savings that result from the Measures installed as a part of the Project as set forth in the Measurement and Verification Plan found in the Final Project Application.

6.2 Within thirty (30) days of the conclusion of the Performance Period, the Customer shall submit for review and approval a Savings Report to Entergy Arkansas documenting the Measured Demand Savings for the Performance Period. If the Savings Report is deficient, Entergy Arkansas will provide, in writing, notice of the deficiency, and the Customer shall revise and resubmit the Savings Report until it is approved by Entergy Arkansas. Any necessary revisions shall be performed in the time-period specified by Entergy Arkansas in the notice of deficiency.

6.3 The Measured Demand Savings attributable to the Measures documented in the approved Savings Report will be used for purposes of calculating the Performance Payment in Section 7.4, below.

## **ARTICLE VII - INCENTIVE PAYMENTS**

7.1 Entergy Arkansas agrees to make incentive payments to the Customer based upon the Estimated Demand Savings and the Measured Demand Savings, as the case may be, derived from the Project. The total incentive payment due to the Customer will be calculated by multiplying the Estimated Demand Savings and Measured Demand Savings, as the case may be, by the applicable incentive rate associated with the Measures installed at the Project Site.

7.2 If the Project consists of Measures for which there exist, and the Customer has elected to use, deemed or stipulated demand, then Entergy Arkansas will make one incentive payment based upon such Deemed Demand Savings. Otherwise, the total incentive payment shall be payable in two installments as set forth herein below.

7.3 Upon completion of installation of the Measures and review and approval of the Installation Report, Entergy Arkansas will make the first incentive payment (the "Installation Payment") within thirty (30) days. The Installation Payment will be forty percent (40%) of the total incentive payment due based upon the following equation:

Installation Payment = 0.4 x (Estimated Demand Savings x Demand Savings Incentive Rate)

7.4 At the conclusion of the Performance Period and upon Entergy Arkansas review and approval of the Savings Report, Entergy Arkansas will make the second incentive payment (the "Performance Payment") within thirty (30) days. The Performance Payment will be the remaining amount of the total incentive payment due based upon the Measured Demand Savings. The amount of the Incentive Payment shall be calculated using the following formula:

Performance Payment = (Measured Demand Savings x Demand Savings Incentive Rate) – Installation Payment

In the event that the above formula results in a negative Performance Payment, then the Customer will refund that amount to Entergy Arkansas within thirty (30) days of receipt of an invoice from Entergy Arkansas. If Customer fails to remit payment within said time period, Entergy Arkansas reserves all rights to take all legal action necessary against Customer and shall be allowed to collect all reasonable attorney's fees, costs, and interest at the maximum rate allowed by law.

7.5 Under no circumstances will Entergy Arkansas make a total incentive payment (i.e., the sum of the Installation Payment and the Performance Payment) that is more than 100% of the total estimated incentive payment specified in the Final Project Application.

## **ARTICLE VIII - AUDIT AND RECORDS**

8.1 The Customer shall keep and maintain accurate and detailed records and documentation relating to the Project and its associated Demand Savings under this Agreement for a period of not less than three (3) years beyond the termination of this

Agreement. During the retention period, such records shall be made available, upon reasonable notice, for inspection during normal business hours by Entergy Arkansas or any governmental agency having jurisdiction over the C&I SOP or any portion of the Project.

## **ARTICLE IX - INDEMNITY**

9.1 THE CUSTOMER AGREES TO AND WILL DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS ENTERGY ARKANSAS, ITS AFFILIATED AND ASSOCIATED COMPANIES AND EACH OF THEIR OFFICERS, DIRECTORS, AGENTS, SHAREHOLDERS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY REFERRED TO AS "ENTERGY ARKANSAS GROUP") FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, ATTORNEYS' FEES, DAMAGES, DEMANDS, JUDGMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY IN TORT, CONTRACT, OR ANY OTHER BASIS AND OF EVERY KIND AND CHARACTER WHATSOEVER (COLLECTIVELY REFERRED TO AS "CLAIMS"), FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (INCLUDING PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE CLAIMED TO HAVE SUFFERED BY THE CUSTOMER OR ITS AGENTS, EMPLOYEES OR CONTRACTORS) (COLLECTIVELY REFERRED TO AS "CUSTOMER GROUP"), ARISING OUT OF OR INCIDENT TO OR RELATED IN ANY WAY TO, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, OR THE WORK, SERVICES, OR MATERIALS TO BE PERFORMED OR SUPPLIED THEREUNDER, OR TO ANY ACTIVITIES OF ANY MEMBER OF THE CUSTOMER GROUP WHILE ON ANY PREMISES ACTUALLY OR ALLEGEDLY OWNED, CONTROLLED, OR OPERATED BY ENTERGY ARKANSAS, INCLUDING, BUT NOT LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM (1) ANY CONDITION OF THE CUSTOMER PREMISES, (2) SEPARATE OPERATIONS BEING CONDUCTED ON THE CUSTOMER PREMISES, OR (3) THE IMPERFECTION OR DEFECTIVE CONDITION, WHETHER LATENT OR PATENT, OF ANY MATERIAL OR EQUIPMENT SOLD, SUPPLIED, OR FURNISHED BY ENTERGY ARKANSAS GROUP; AND FURTHER, IT IS THE EXPRESS INTENT OF THE PARTIES THAT, FOR THE PURPOSES OF THIS PARAGRAPH, CLAIMS, AND THE CUSTOMER'S OBLIGATIONS TO DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS, WILL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM ENTERGY ARKANSAS GROUP'S SOLE OR CONCURRENT (1) NEGLIGENCE, (2) STRICT LIABILITY, OR (3) OTHER FAULT OF ANY NATURE. PROVIDED, HOWEVER, THE CUSTOMER'S OBLIGATIONS UNDER THIS SECTION SHALL NOT INCLUDE CLAIMS ARISING OUT OF OR RESULTING FROM ENTERGY ARKANSAS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

To the extent necessary to permit Entergy Arkansas to enforce any term, clause, or condition of this Agreement, the Customer agrees that with respect to any Claims brought against Entergy Arkansas, the Customer will and does hereby waive as to Entergy Arkansas any defense it may have by virtue of the workers' compensation laws of any

state.

## **ARTICLE X - PERMITS, LICENSES, AND COMPLIANCE WITH LAWS**

10.1 The Customer represents and warrants that prior to beginning installation of Measures, the Customer will, at its own cost and expense, obtain all permits and other authorizations from governmental authorities as then may be required to install, construct, operate and maintain the Measures in question and to perform its obligations hereunder. During the term hereof, the Customer will obtain all such additional governmental permits, licenses, and other authorizations when required with respect to any of the Measures under this Agreement. If requested by Entergy Arkansas, the Customer shall furnish to Entergy Arkansas copies of each such permit, license or other approval promptly following receipt thereof. The Customer shall maintain in full force and affect all such governmental permits, licenses and other authorizations as may be necessary for the construction, operation, or maintenance of the Measures in accordance herewith.

10.2 The Customer shall be responsible for all royalties, fees, or claims for any licensed, copyrighted, or similarly protected intellectual property, device, process, or procedure used installed, or provided by it. The Customer shall defend any suit that may be brought against Entergy Arkansas and shall hold Entergy Arkansas harmless from any liability or infringement of any such intellectual property used by the Customer in the implementation of the Project.

10.3 All work performed by the Customer in connection with the implementation of the Project and all Measures installed or maintained by the Customer shall conform to all applicable laws, statutes, ordinances, rules, regulations, and decrees of any governmental or administrative body having jurisdiction over the C&I SOP or any portion of the Project, including without limitation, Occupational Safety and Health Administration (OSHA) regulations, the National Electric Safety Code (NESC), the National Electric Code (NEC), and applicable Arkansas Health and Safety Codes.

## **ARTICLE XI - DEFAULT AND REMEDIES**

11.1 Each of the following events will be deemed to be an Event of Default hereunder:

11.1.1 Failure of the Customer to perform its responsibilities in a timely manner or implement the Project in compliance with the C&I SOP Manual and other Contract Documents;

11.1.2 Failure of the Customer to provide Entergy Arkansas and/or its contractors with sufficient access to the Project Sites for the purposes of conducting inspections or measurement and verification activities;

11.1.3 Failure of the Customer to maintain any necessary permits, licenses or insurance required pursuant to the Contract Documents;

11.1.4 The Customer's assignment or subcontracting of all or part of the duties required under the Contract Documents without the prior written consent of Entergy Arkansas;

11.1.5 The Customer's submission to Entergy Arkansas of any false, misleading or inaccurate information or documentation with respect to implementation of the Project or the Customer's performance hereunder, when the Customer knew or reasonably should have known that such information was false, misleading or inaccurate; or

11.1.6 Failure of either party in a material fashion to perform or observe any of the material terms, conditions or provisions of this Agreement which materially adversely affects the other party and continues after notice and a thirty (30) day period to cure, or, if such failure cannot reasonably be cured within thirty (30) days, after notice and such period to cure in excess of thirty (30) days as may be reasonably required (provided that the non-performing party commences action to cure within an initial period thirty (30) days after notice and thereafter pursues such cure with reasonable diligence).

11.2 In the event of an Event of Default, the non-defaulting party shall be entitled to exercise any and all remedies provided for by law or in equity, including the right to terminate this agreement upon written notice to the other party. Termination shall be effective upon the receipt of properly served notice. Termination of this Agreement will not relieve the defaulting party of any obligations accruing prior to the event of termination, including, but not limited to the obligations of Article IX.

## **ARTICLE XII – LIMITATION OF LIABILITY**

**12.1 NEITHER ENTERGY ARKANSAS, ITS AFFILIATED AND ASSOCIATED COMPANIES NOR ANY OF THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY REFERRED TO AS “ENTERGY ARKANSAS GROUP”) SHALL BE LIABLE TO CUSTOMER OR ANY CUSTOMER FOR CLAIMS FOR INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, CLAIMS IN THE NATURE OF LOST REVENUES, INCOME OR PROFITS, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON WARRANTY, NEGLIGENCE, STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE AND CUSTOMER SHALL PROTECT, INDEMNIFY AND HOLD HARMLESS THE ENTERGY ARKANSAS GROUP FROM THE SAME.**

## **ARTICLE XIII - NOTICES**

13.1 All notices or reports from one party to the other will be deemed to have been delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, to the following addresses:

Entergy Arkansas:

Entergy Arkansas, Inc.,  
Program Administrator – EAI Quick Start Programs  
Large C&I SOP  
6929 JFK Blvd., #20-167  
North Little Rock, AR 72116-5339

Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

13.2 Either party may change its address by written notice to the other in accordance with this Article XIII.

#### **ARTICLE XIV – AMENDMENT**

14.1 No amendment or modification of this Agreement shall be binding on either party unless it is in writing and signed by both parties. Amendments to this Agreement will be attached hereto and made a part hereof for all purposes.

#### **ARTICLE XV - FORCE MAJEURE**

15.1 Should either Party be rendered unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligation of the Party so rendered, that is affected by the event of Force Majeure, will be suspended only during the continuance of that inability. The Party so affected will give written notice of the existence, extent and nature of the Force Majeure to the other Party within forty-eight (48) hours after the occurrence of the event. The Party so affected will use its best efforts to remedy its inability as soon as possible and will provide the other Party with prompt notice when it is able to resume the performance of its obligations. Failure to give notice will result in the continuance of the affected Party's obligation regardless of the extent of any existing Force Majeure.

15.2 The term "Force Majeure" as used in this Agreement will mean acts of God (except as excluded herein), strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, priority allocations of pipe or other materials or orders, restraints or prohibitions by any court, board, department, commission or agency of the United States or of any State, any arrests and restraints, civil disturbances, explosions, and inability despite reasonable diligence to obtain materials essential to this Agreement. Rain, snow, ice or other adverse weather conditions will not be considered events of Force Majeure.

15.3 The term "Force Majeure" shall not include any of the following:

15.3.1 Any removal, reduction, curtailment or interruption of operation of any or all Measures whether in whole, or in part, which removal, reduction, curtailment or interruption is caused by or arises from the action or inaction of the Customer or any third party, including without limitation, any vendor or supplier to the Customer or Entergy Arkansas, unless, and then only to the extent that, any such action or inaction was beyond the reasonable control of, and occurred without the fault or negligence of such third party, and such third party, by exercise of due foresight, could not reasonably have been expected to avoid;

15.3.2 Any outage, whether or not due to the fault or negligence of Entergy Arkansas or Customer, of the Measures or Entergy Arkansas' system attributable to a defect or inadequacy in the manufacture, design or installation of the Measures that prevents, curtails, interrupts or reduces the ability of the measures to provide Demand.

15.3.3 Any reduction in Measured Demand Savings caused by or resulting from a Customer's termination or reduction of electrical distribution service received from Entergy Arkansas and the substitution therefore of electric service from any other source.

15.4 If any Force Majeure causes a reduction in the Measures, the Parties may at any time agree to reduce the number of Measures for the duration of the Force Majeure event.

## **ARTICLE XVI - MISCELLANEOUS**

16.1 The Customer will not assign, transfer or otherwise dispose of any of its obligations or duties without the prior written approval of Entergy Arkansas. Any assignment or transfer made without the express written approval of Entergy Arkansas will be null and void. Entergy Arkansas retains the right to assign, transfer or otherwise dispose of any of its obligations or duties without the prior written approval of the Customer.

16.2 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Agreement shall be deemed to be a waiver or any other breach of the same or any other term, condition or covenant contained herein.

16.3 The Contract Documents constitute the entire Agreement between the parties with respect to the subject matter hereof and there are no express or implied warranties or representations upon which any party may rely beyond those set forth therein. The execution of this Agreement superseded all previous agreements, discussions, communications and correspondence with respect to such subject matter.

16.4 In the event any provision of this Agreement is held to be void, unlawful, or

otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.

16.5 This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Arkansas. The parties agree that the proper venue and jurisdiction for any cause of action relating to the Agreement will be in Pulaski County, Arkansas.

16.6 The Customer shall not use Entergy Arkansas' corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including soliciting customers for participation in its project, without Entergy Arkansas' prior written consent.

16.7 The Customer may file a complaint against Entergy Arkansas concerning this C&I SOP with the APSC.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**Entergy Arkansas, Inc.**

**Customer**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**FINAL PROJECT APPLICATION**

**EXHIBIT B**

**ENTERGY ARKANSAS 2007-2008  
C&I STANDARD OFFER QUICKSTART PROGRAM MANUAL**