

## **SOUTHERN COMPANY ENERGY AUCTION**

### **Participant Agreement**

This Participant Agreement (“Agreement”) sets forth the terms upon which Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company (collectively “Southern”) has agreed to provide the party identified below (“Participant”) with access to the Southern Company Energy Auction (the “Auction”) for the submission and matching of bids and/or offers thereunder. In consideration of the mutual representations and agreements contained herein and other good and valuable consideration, Southern and Participant hereby covenant and agree as follows:

**1. ACCESS TO THE AUCTION.** To implement and operate the Auction, Southern may engage certain entities to serve as the Auction Administrator, the Auction Monitor, or the software provider. Such entities together with Southern shall be referred to collectively herein as the “Auction Provider.” Southern hereby grants Participant a non-exclusive, non-transferable, revocable license to: (i) access the Auction as it may exist from time to time; and (ii) utilize any systems and/or communication links furnished by the Auction Provider to Participant from time to time (collectively, the “Auction System”) in accordance with the Terms (as defined below) and solely for the purposes as provided herein. Contact information for the Auction Provider will be set forth on the Auction System.

**2. TERMS OF ACCESS.**

- a. This Agreement, taken together with: (i) the Auction Rules and Auction Procedures set forth on the Auction System; (ii) the Participant Contact Information (attached hereto as Annex A); (iii) the OATI webMarket User Company Nondisclosure Agreement executed between Participant and OATI (“OATI NDA”) (attached hereto as Annex B); and (iv) the Pricing Schedule (attached hereto as Annex C), are collectively referred to herein as the “Terms” and will govern Participant’s access to and use of the Auction System.
- b. Southern may amend the terms of this Agreement at any time and each such amendment will be prospectively binding on Southern and Participant, provided that the Auction Provider posts each such amendment on the Auction System at least thirty (30) calendar days in advance of its effective date. Participant’s use of the Auction after the effective date of each such amendment shall constitute ratification and acceptance of such amendment. Southern, at its own discretion, may require Participant to specifically acknowledge in writing certain amendments.
- c. The Auction System can be modified by the Auction Provider at any time without prior notice to Participant.

**3. PARTICIPANT’S REPRESENTATIONS, WARRANTIES AND COVENANTS.** On the Execution Date and throughout the term of this Agreement, Participant hereby continually represents, warrants and covenants as follows:

- a. Participant will submit bids and/or offers solely as principal, and will not use its access to the Auction as agent for a party not set forth herein. Participant acknowledges and agrees that programmatic access or retrieval of information or data is strictly prohibited, except as pre-approved by the Auction Provider.
- b. Participant's submission of bids and/or offers in the Auction is with the intent to enter into a definitive bilateral agreement with its matched counterparty pursuant to a contract for physical delivery of energy separate from the Auction in the event its submission is matched through the operation of the Auction process.
- c. Participant acknowledges and agrees that any and all data submitted to the Auction by Participant (including but not limited to bids and offers) shall be the non-exclusive property of the Auction Provider, and that the Auction Provider shall have the right to use such information for the purposes of administering the Auction, or as otherwise provided in the Auction Rules or described in the Auction Procedures, subject to the provisions of Section 8 hereof.
- d. Subject to the foregoing Section 3(c), Participant acknowledges and agrees that the Auction System and all information and content (including price and other data) displayed and distributed thereon (such information or content and information derived therefrom being referred to collectively herein as "Auction Data") are the exclusive proprietary property of the Auction Provider constituting trade secrets. Participant understands and acknowledges that it has been granted a limited license to use the Auction System and the Auction Data solely for the purposes set forth herein and Participant will have no other rights with respect to the Auction System or the Auction Data. In accordance with the foregoing, Participant will not provide access to the Auction System to any third party unless such third party is Participant's Authorized Agent set forth in Annex A. Participant further agrees that: (i) it will not copy, modify, reverse engineer, reverse assemble or reverse compile the Auction System or any of the Auction Data displayed on or issued by the Auction; and (ii) it will not distribute, rent, sell, retransmit, redistribute, release or license the Auction System, any Auction Data, or any part thereof to any third party.
- e. Participant will comply with the Terms and any and all laws, rules, regulations and orders applicable to Participant's access to and use of the Auction System and the Auction Data.
- f. Participant acknowledges and accepts that it shall be solely responsible for any and all costs or expenses associated with its accessing and utilizing the Auction System, including but not limited to, costs related to purchasing User IDs and Digital Certificates for accessing the Auction System and Administrative Fees (as set forth in Annex C, which may be amended from time to time). Notwithstanding the foregoing sentence, the Auction Provider will provide one (1) administrator User ID and up to three (3) additional User IDs to Participant free of charge; provided, however, that the Auction Provider may cease or alter such practice at Southern's sole discretion by amending this Section 3(f) in accordance with Section 2(b) herein. Payment and related terms for Digital Certificates shall be in accordance with the terms agreed to between Participant and OATI.

- g. Participant acknowledges that the Auction Provider may, in its sole discretion, with or without cause or prior notice to Participant, temporarily or permanently cease to operate the Auction System; temporarily or permanently cease to make certain products available; or suspend, terminate or restrict Participant's access to and utilization of the Auction. Participant acknowledges that its access to and utilization of the Auction and Auction System may be monitored by the Auction Provider for purposes of, but not limited to: (i) monitoring levels of activity of bids and/or offers on the Auction; (ii) maintaining the functional and operational integrity of the Auction and Auction System; and (iii) complying with applicable laws and regulations.
- h. Participant has all necessary power and authority to execute and perform this Agreement, and this Agreement is Participant's legal, valid and binding agreement, enforceable against Participant in accordance with its Terms. Neither the execution of, nor performance under, this Agreement by Participant violates any law, rule, regulation or order, or any agreement, document or instrument, binding on or applicable to Participant.
- i. Participant agrees to provide the Auction Provider with information related to Participant's use of the Auction System that is reasonably requested by the Auction Provider.

**4. USER IDs AND PASSWORDS.** The Auction Provider, (i) after receiving an executed copy of this Agreement; (ii) after receiving a fully executed copy of the OATI NDA; and (iii) after completing its review of the information provided in response to Annex A of this Agreement, may, in its sole discretion, issue to Participant, through its employees or Participant's Authorized Agent(s), one or more User IDs and passwords (collectively, the "Passwords") in accordance with Section 3(f) for use exclusively by Participant's employees or Participant's Authorized Agent(s). Participant will be solely responsible for controlling and monitoring the use of the Passwords, and will not provide the Passwords to any third party unless otherwise set forth herein. Participant will immediately notify the Auction Provider of any unauthorized disclosure or use of the Passwords or access to the Auction System or of the need to deactivate any Passwords. Participant acknowledges and agrees that it will be bound by any actions taken through the use of its Passwords (except through the fault or negligence of the Auction Provider) whether or not such actions were authorized; provided, however, that this Section 4 shall not impose an obligation upon the Auction Provider to monitor Participant's usage of the Auction System for unauthorized activity. Any notices or other communications sent to Participant or Participant's Authorized Agent(s) by the Auction Provider shall be binding on Participant.

**5. TERM.** This Agreement will commence (the "Commencement Date") as of the later of (i) the date the Auction, as expanded to allow participation by third party sellers, commences in accordance with authorization from the Federal Energy Regulatory Commission ("FERC") or (ii) the Execution Date set forth on the signature page below, and will continue thereafter unless and until terminated by either party to this Agreement upon 30 days' prior written notice to the other, provided that Southern can terminate this Agreement immediately if the Auction Provider determines that Participant is in violation of any provision herein. Southern's and Participant's continuing obligations under this Agreement and the Terms, including, without limitation, those

relating to “Indemnification” and “Confidentiality,” will survive the termination of this Agreement.

**6. EXECUTION OF TRANSACTIONS**

- a. All bids and offers submitted through the Auction and the matching of such bids and offers shall be in accordance with the Terms. The energy products available on the Auction (“Auction Products”) shall be those identified in the Auction Rules.
- b. In accordance with the Terms, Participant (as Bidder or Offeror) shall coordinate with its matched counterpart Bidder or Offeror, as the case may be, to finalize the terms of the bilateral agreement between them, including physical delivery of energy, transmission reservation and scheduling (i.e., NERC e-tagging) requirements, and other conditions or alternative arrangements as mutually agreed. In the event Participant and its counterpart are unable to finalize a bilateral agreement reflecting the matching of their respective bid(s) and offer(s) through the Energy Auction, Participant shall notify the Auction Provider.
- c. All charges, fees or adjustments related to the administration of the Auction incurred by Participant under this Agreement in any calendar month shall be invoiced in accordance with the Auction Procedures. The Auction Provider will provide Participant with an invoice that states the amount owed by Participant, which will be due and payable in accordance with invoice instructions on or before the tenth (10th) day after receipt of the invoice or if such day is not a business day then on the next business day. Late payments will bear interest after the due date at a rate per annum of interest equal to the Prime Rate (as published in the Wall Street Journal) plus 1.5%, provided that such rate shall not exceed the maximum rate allowed by applicable law.
- d. Participant shall not make any false, misleading or fraudulent posting of information on the Auction.

**7. LIMITATION OF LIABILITY; INDEMNITY.**

- a. PARTICIPANT ACKNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT SOUTHERN, AND ITS AGENTS, MAKE NO WARRANTY WHATSOEVER TO PARTICIPANT AS TO THE AUCTION SYSTEM OR ANY OTHER SERVICES, EXPRESS OR IMPLIED, AND THAT THE AUCTION SYSTEM AND ANY OTHER SERVICES ARE PROVIDED ON AN “AS IS” BASIS AT PARTICIPANT’S SOLE RISK. SOUTHERN, AND ITS AGENTS, EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER SOUTHERN, NOR ITS AGENTS, NOR THEIR MANAGERS, OFFICERS, PARENT, AFFILIATES, SUBSIDIARIES, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PERSON OR ENTITY SHALL HAVE ANY LIABILITY TO PARTICIPANT (i) FOR THE ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE AUCTION SYSTEM OR ANY OTHER SERVICES, (ii)

FOR DELAYS, OMISSIONS OR INTERRUPTIONS THEREIN, (iii) FOR THE ACCURACY OR COMPLETENESS OF THE DATA UTILIZED OR PROVIDED BY SOUTHERN OR ITS AGENTS OR (iv) FOR THE ACTS OR OMISSIONS OF PARTICIPANT'S AUTHORIZED AGENTS WITHIN THE AUCTION SYSTEM TO UTILIZE THE SERVICES ON BEHALF OF PARTICIPANT. PARTICIPANT ACKNOWLEDGES AND AGREES THAT SOUTHERN OR ITS AGENTS ARE NOT ADVISORS OR FIDUCIARIES OF PARTICIPANT. PARTICIPANT WAIVES AND RELEASES ANY AND ALL CLAIMS THAT IT MAY HAVE WITH REGARD TO ANY ACTS OR OMISSIONS OF SOUTHERN OR ITS AGENTS WITH REGARD TO THE AUCTION SYSTEM.

- b. Subject to Section 7(c) of this Agreement, Participant shall indemnify, protect, and hold harmless the Auction Provider, its directors, officers, affiliates, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs (including attorney's fees) resulting from or arising out of (i) any act or omission by any person obtaining access to the Auction System through Participant's Passwords (other than through the fault or negligence of the Auction Provider), whether or not Participant has authorized such access, and (ii) any act or omission of Participant's Authorized Agents in connection with the use of the Auction System.
- c. IN NO EVENT WILL EITHER PARTY TO THIS AGREEMENT OR ITS AGENTS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8. CONFIDENTIALITY.**

- a. Except as provided in Section 3(c), any and all non-public information in any form obtained by the Auction Provider or Participant, or their respective employees or agents, arising out of or related to the provision or use of the Auction System, including but not limited to trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto and Auction Data, shall be deemed to be confidential and proprietary information. Except as provided in Section 3(c), the Auction Provider and Participant agree to hold such information in strict confidence and not to disclose such information to third parties (other than to its employees or other entities granted access herein) or to use such information for any purpose whatsoever other than as contemplated by the Terms and to advise each of its employees, or other entities granted access herein, who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential in accordance with this Section 8. Notwithstanding the foregoing, it shall not be deemed a breach hereunder if the Auction Provider discloses the terms and conditions of a matched bid and/or offer, excluding the name or any other identifying information relating to the parties of the matched bid and/or offer, as specified in the Auction Rules and required by FERC.

- b. The restrictions in Section 8(a) shall not apply to information that is: (i) in or becomes part of the public domain other than as a result of a disclosure in violation of this Agreement, other applicable agreement or as a result of wrongful conduct of any third party; or (ii) known to or obtained by such party previously without an obligation of confidentiality.
- c. In the event that the Auction Provider or Participant (including the respective agents of either) receive a subpoena, data request, order or other directive of a court or regulatory body of competent jurisdiction, requesting confidential information governed by the terms of this Agreement (“Receiving Party”), the Receiving Party shall promptly notify the other party (Auction Provider or Participant, as applicable) of such requirement or request to the extent it is legally permitted to do so. The Receiving Party shall make reasonable commercial efforts to cooperate with the Auction Provider or Participant, as applicable, to narrow the scope of the required or requested disclosures or to seek a protective order or other similar relief. If requested by the Auction Provider or Participant, as applicable, the Receiving Party shall formally request that the governmental entity treat the information provided as confidential, to the extent it is not already treated as such, pursuant to the U.S. Freedom of Information Act and/or pursuant to an equivalent or comparable law or regulation, if applicable.

**9. NOTICES.** All notices delivered with respect to this Agreement shall be in writing and either (i) hand delivered or forwarded by a nationally recognized courier service, registered mail, or certified mail; or (ii) sent via electronic mail, in either case to the Primary Contact as set forth in Annex A for Participant and to the Auction Administrator as set forth on the Auction System for Southern.

**10. NO THIRD PARTY BENEFICIARY.** Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a party to this Agreement.

**11. FORCE MAJEURE.** Neither Southern nor Participant shall be deemed to be in default of any provision hereof or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, civil or military authority, civil disturbance, war, strikes, fires, failure of the Auction System, other catastrophes, power failure or any other cause beyond its reasonable control.

**12. WAIVER.** No waiver by either party of any default by the other in the performance of any provisions of this Agreement shall operate as a waiver of any continuing or future default, whether of a like or different character.

**13. ASSIGNMENT.** This Agreement may not be assigned by either party without the other party’s express prior written consent; provided, however, that either party may assign this Agreement to any entity (i) controlling, controlled by, or under common control with such party, or (ii) which succeeds to all or substantially all of the assets and business of such party, provided that, in the case of any such assignment by Participant, (a) Participant provides Southern with written notice in advance of the assignment and (b) the assignee agrees in writing to assume the assignor’s obligations under, and to be bound by the provisions of, this Agreement (as it may be amended from time to time), with a copy of such written agreement sent to Southern. This

Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns in accordance with its terms.

**14. GOVERNING LAW.** This Agreement and the rights and duties of the parties hereunder shall be governed and construed in all respects by the laws of the State of New York, without giving effect to principles of conflicts of law, except for Sections 5-1401 and 5-1402 of the New York General Obligations Law. The rights and remedies of the parties herein are cumulative and in addition to any and all rights and remedies that may be provided by law or equity.

**15. DISPUTE RESOLUTION.** Unless otherwise specified, any dispute, claim or controversy between the parties relating to this Agreement shall be resolved through binding arbitration conducted in accordance with the Arbitration Rules of the American Arbitration Association. Any such arbitration shall be conducted in Birmingham, Alabama or at such other location as may be agreed to by the parties and the arbitrators. For the avoidance of doubt, this arbitration clause only applies to Southern and Participant for issues relating to the administration of the Auction. Notwithstanding the foregoing, each party acknowledges that a breach of this Agreement may cause the other party irreparable injury and damage and therefore may be enjoined through injunctive proceedings in addition to any other rights and remedies which may be available to such other party at law or in equity, and each party hereby consents to the non-exclusive jurisdiction of any federal or state courts located in Birmingham, Alabama with respect to any such action. The parties expressly waive their right to trial by jury in any such action.

**16. HEADINGS.** The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.

**17. SEVERABILITY.** If any provision of this Agreement (or any portion thereof) shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.

**18. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the parties hereto.

**19. COMPLETE AGREEMENT.** This Agreement and the Terms, as defined above, constitute the entire agreement between the parties relating to the subject matter hereof. Upon the Commencement Date as set forth in Section 5, this Agreement shall supersede and replace the Participant's existing Auction Participant Agreement, if any.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

<b>Southern Company Services, Inc.</b> , as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company	<b>Participant:</b>
By: _____	By: _____

Name: _____	Name: _____
Title: _____	Title: _____
Execution Date: _____	<u>Note:</u> To gain access to and participate in the Auction, Participant must also provide the information requested in Annex A and must execute the nondisclosure agreement with Open Access Technology International, Inc.

ANNEX A

**PARTICIPANT CONTACT INFORMATION**

Participant Contact Information

1. **Primary Contact:** The Primary Contact will receive all notices under this agreement to Participant.

Primary Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. **Participant Administrator:** The Participant Administrator will have rights to set up additional users for Participant.

Participant Administrator Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

3. **Billing Contact:** The Billing Contact will receive all invoices under this Agreement pursuant to Section 6(c).

Billing Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. **OATI Webcare Code (PSC Code):** The Participant's access code provided by OATI that will permit the Auction Provider to view and verify applicable digital certificates.

OATI PSC CODE: \_\_\_\_\_

5. **Participant's Authorized Agent(s):** The following entity(ies) shall have rights to access the Auction System in accordance with the terms and conditions set forth in this Agreement.

Company Name(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Open  
Access  
Technology  
International, Inc.

INNOVATIVE SOLUTIONS FOR THE DEREGULATED ENERGY INDUSTRY

**OATI webMARKET USER COMPANY NONDISCLOSURE AGREEMENT**

IN CONSIDERATION FOR access to and use of OATI webMarket Service provided by Open Access Technology International, Inc. ("OATI"), \_\_\_\_\_ ("User Company") agrees as follows:

The User Company agrees not to publish or otherwise disclose any unpublished or proprietary confidential information or secret(s) relating to OATI webMarket Services, or its operations or other associated products or services. Further, User Company agrees not to copy or disclose the materials, apparatus, processes, formulae, plans, screen shots or methods used in development, manufacture, presentation or marketing of webMarket Services. Likewise, the User Company agrees not to make any drawings, writings or any other record in any form or nature which relates to any part(s) of the webMarket Service, except for copies kept in the ordinary course of business for internal archival purposes only. Additionally, the User Company will not publish or otherwise disclose secret, proprietary or confidential information of others to which it has access or about which it obtains knowledge in the course of its use of the webMarket Service. The term confidential information does not include information which (1) becomes generally available to the public other than as a result of a disclosure by User Company, or as a result of wrongful conduct of any third party, (2) was rightfully available to User Company on a non-confidential basis prior to its disclosure by OATI, (3) rightfully becomes available to User Company on a non-confidential basis and through proper means from a source other than OATI, provided that such source is not bound by a confidentiality agreement with OATI or otherwise prohibited from transmitting the information to User Company by a contractual, fiduciary or other legal obligation, or (4) is independently developed by User Company without use of or reference to the confidential information.

**PUBLIC INFORMATION NOTICE:**

OATI WEBMARKET SERVICE CONTAINS PROTECTED NONPUBLIC DATA AND IS NOT CONSIDERED PUBLIC INFORMATION OR DATA. IT IS NOT SUBJECT TO PUBLIC INSPECTION AND COPYING PURSUANT TO THE LAWS OF ANY JURISDICTION REGARDING PUBLIC ACCESS TO INFORMATION. FURTHER, OATI WEBMARKET SERVICE AND ALL DATA, DISPLAYS, MATERIALS AND INFORMATION COMPRISING WEBMARKET SERVICE ARE PROTECTED UNDER U.S. AND INTERNATIONAL COPYRIGHT LAWS.

THEREFORE, the User Company agrees to notify in writing OPEN ACCESS TECHNOLOGY INTERNATIONAL, INC. (OATI), 2300 Berkshire Lane North, Maildrop F, Minneapolis, Minnesota 55441, immediately upon receipt of any requests for disclosure, prior to any disclosures. Notification shall include the name, address, telephone and fax numbers of the requester as well as a description of the specific information requested. **IN NO EVENT shall the User Company provide any materials, documents, viewings, or other disclosures to any person, legal or natural, without the prior, written consent of OATI. In the event a court or regulatory agency of competent jurisdiction orders the release of such data, Customer will notify OATI upon receipt of the order and prior to providing such data in compliance with said order.**

This Agreement is binding on all employees and/or contractors of the above-named OATI User Company. This Agreement may be assigned by OATI.

**APPROVED BY:**

**USER COMPANY:**

**OPEN ACCESS TECHNOLOGY  
INTERNATIONAL, INC.:**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Name: Sasan Mokhtari, Ph.D.

Title: \_\_\_\_\_

Title: President & CEO

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

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

ANNEX C

Service and Pricing Schedule

Fees for User IDs pursuant to Section 3(f) herein are based on this Pricing Schedule.

<b>Item</b>	<b>Initiation Fee</b>	<b>Monthly Recurring Fee</b>	<b>Payable To</b>
<b>User IDs</b>	<b>\$1000.00 each</b>	<b>\$100.00 each</b>	<b>TransServ International, Inc.</b>

<b>Item</b>	<b>Initiation Fee</b>	<b>Bid/Offer Fee</b>	<b>Payable To</b>
<b>Administrative Fee</b>	<b>None</b>	<b>\$0.02/MWh per matched bid and offer</b>	<b>TransServ International, Inc.</b>