

**GUARANTEE AGREEMENT**  
**BETWEEN**  
**OFFICE OF THE GOVERNOR AND**  
**NRG Energy, Inc.**

**PARTIES TO THE AGREEMENT.** This Guarantee Agreement (“Guarantee Agreement”) is between the Office of the Governor (the “Office”), and NRG Energy, Inc. (the “Guarantor”). The Office and Guarantor are hereinafter referred to either individually as a “Party,” or collectively as the “Parties.”

**SECTION 1. PURPOSE.** The Parties are entering into this Guarantee Agreement to establish a Performance Bond on behalf of NRG Cedar Bayou 5 LLC (the “Company”) securing the interests of the Office as required by the terms of Agreement ID: J0012, a contract for Limitation on Taxable Value for School District Maintenance and Operations Ad Valorem Taxes under Section 403.612, Texas Government Code (the “Taxable Value Limitation Contract”). The Guarantor understands that the execution of a Performance Bond is a condition necessary for the Company to enter into the Taxable Value Limitation Contract and acknowledges that Guarantor receives a material benefit from the Company’s execution of the Taxable Value Limitation Contract.

**SECTION 2. TERM OF THE AGREEMENT.** This Guarantee Agreement begins on the date of last signature below (the “Effective Date”) and ends at the conclusion of the term of the Taxable Value Limitation Contract.

**SECTION 3. DEFINITIONS.** All definitions set forth in the Taxable Value Limitation Contract are incorporated herein by reference with the same force and effect as though fully set forth herein, unless this Guarantee Agreement expressly provides otherwise. To the extent of any conflict between a definition of this Guarantee Agreement and the Taxable Value Limitation Contract, the definition of this Guarantee Agreement shall supersede and control.

**SECTION 4. MAXIMUM LIABILITY OF THE OFFICE.**

**4.1.** The Guarantor shall not request, and acknowledges it is unable to receive, any taxable value limitation benefits under the Taxable Value Limitation or this Guarantee Agreement, and the total maximum liability of the Office to the Guarantor under the Taxable Value Limitation Contract and this Guarantee Agreement is Zero Dollars (\$0.00). The Parties acknowledge that the total maximum liability of the Office to the Company under the Taxable Value Limitation Contract and this Guarantee Agreement is Zero Dollars (\$0.00) and agree that this Guarantee Agreement does not create any additional liabilities by the Office to the Company.

**4.2.** Any change to the maximum liability by the Office must be supported by a written amendment to the Taxable Value Limitation Contract or this Guarantee Agreement, as applicable. The Parties agree that any act, action, or representation by either Party or their respective agents or employees that purports to increase the maximum liability of the Office is void, unless such increase is by a written amendment to this Guarantee Agreement, as signed by both Parties.

## **SECTION 5. MAXIMUM LIABILITY OF THE GUARANTOR TO THE OFFICE.**

**5.1.** The maximum financial liability of the Guarantor to the Office shall not exceed the lesser of (1) Two Million One Hundred Ninety-Five Thousand Eight Hundred Eighteen and NO/100 Dollars (\$2,195,818.00) and (2) the total amount of ad valorem tax benefit received by the Company under the Taxable Value Limitation Contract as of the date the Office makes a claim pursuant to the Taxable Value Limitation Contract.

**5.2.** The cost to the Guarantor to comply with the terms and conditions of the Taxable Value Limitation Contract or this Guarantee Agreement, including but not limited to costs of audits, auditors, and third-party independent auditors, costs of mediation, cost of records management and records retention, cost of reporting, permitting, and licensing, and other fees or taxes, are not included within this maximum liability limitation. These expenditures are inherent in the costs of the Guarantor's business methods and operations to ensure compliance with this Guarantee Agreement.

## **SECTION 6. GUARANTOR COMMITMENTS**

**6.1.** The Guarantor acknowledges it is providing a Performance Bond in accordance with Section 6.5.2.2 of the Taxable Value Limitation Contract in the amount specified in Exhibit A to that instrument, specifically Two Million One Hundred Ninety-Five Thousand Eight Hundred Eighteen and NO/100 Dollars (\$2,195,818.00). The Guarantor unconditionally guarantees the full payment and performance, when due, of each and every obligation of the Company under the terms of the Taxable Value Limitation Contract and any amendments thereto.

**6.2.** Following the occurrence of any event, act, or omission relating to the Company's performance that authorizes the Office to make a claim against the Performance Bond, including any circumstances specified in Section 6.5.3 of the Taxable Value Limitation Agreement, the Office may make one or several demands for payment of claims to the Guarantor ("Claim Demand") for the purpose of satisfying the Company's obligations under the Taxable Value Limitation Contract. The Office will deliver any Claim Demand in writing and provide a statement informing the Guarantor that it is demanding payment under the terms of this Guarantee Agreement. Each Claim Demand will specify the amount of the claim, and identify the bank, bank routing number, and bank account number to which the funds should be wire transferred, along with any other information that may be necessary to effectuate the wire transfer. The Guarantor shall initiate payment of the full amount stated in the Payment Demand via wire transfer no later than five business days following its receipt of any Claim Demand made by the Office in accordance with the Taxable Value Limitation Contract.

**6.3.** The Guarantor agrees that the Office may make a claim under this Guarantee Agreement at any time and from time to time, without the necessity of first seeking payment from or instituting legal action against the Company in connection with penalties or any other obligations of the Company arising from the Taxable Value Limitation Contract. The Guarantor waives the right to require the Office to proceed against the Company, to exercise any right or remedy under any of the Taxable Value Limitation Contract, or to pursue any other remedy or to enforce any other right in connection with the Company's performance under the Taxable Value Limitation Contract.

**6.4.** The Guarantor agrees that its commitments and obligations under this Guarantee Agreement remain unconditionally enforceable notwithstanding: (i) any modification, agreement, or stipulation between the Office and the Company with respect to the Company's obligations under Taxable Value Limitation Contract; (ii) any waiver of or failure to enforce any of the provisions contained in the Taxable Value Limitation Contract or any modification thereof; or (iii) any release of the Company from any liability with respect to the Taxable Value Limitation Contract.

## **SECTION 7. DISPUTE RESOLUTION.**

**7.1. Informal Meetings.** The Parties' representatives will meet as needed to implement the terms of this Guarantee Agreement and will make a good faith attempt to informally resolve any disputes.

**7.2. Guarantor's Continued Obligations.** The Guarantor shall not be excused from its obligations under this Guarantee Agreement during any pending dispute, unless approved in writing by the Office.

**SECTION 8. NOTICES.** Any notice required or permitted under this Guarantee Agreement by one Party to the other Parties must be in writing and correspond with the contact information noted below in this Section. Any notice required or permitted to be given under this Guarantee Agreement may be given by regular first-class mail and/or email and shall be deemed to have been delivered on the date of attempted or actual delivery to the recipient if addressed to the receiving Party at the Party's address specified below. The Parties will maintain and monitor at least one active email address for the receipt of Guarantee Agreement-related communications from the other Parties to the Guarantee Agreement.

### **Office of the Governor**

Adriana Cruz  
Executive Director  
Economic Development &  
Tourism  
Office of the Governor  
P.O. Box 12878  
Austin, Texas 78711-2878  
adriana.cruz@gov.texas.gov

### **Goose Creek Consolidated Independent School District**

Dr. Randal O'Brien  
Superintendent  
Goose Creek Consolidated  
Independent School District  
4544 Interstate 10 East  
Baytown, Texas 77521  
randal.obrien@gccisd.net

### **The Guarantor**

NRG Energy, Inc.  
804 Carnegie Center  
Princeton, NJ 08540  
Attention: Contract  
Administration  
NRGCollateral@nrg.com and  
ContractAdmin@nrg.com

## **SECTION 9. CERTIFICATIONS OF GUARANTOR.**

**9.1. General Certifications.** By agreeing to and signing this Guarantee Agreement, the Guarantor makes the certifications, guarantees, and warranties throughout this Guarantee Agreement and acknowledges the material nature of such provisions. The Guarantor acknowledges that this Guarantee Agreement may be terminated if the Guarantor makes false or inaccurate certifications, guarantees, or warranties or does not remain in compliance with the matters for which it has provided certifications, guarantees, or warranties for the duration of this Guarantee Agreement. The Guarantor acknowledges that termination of this Guarantee Agreement may result in an act of default by the Company if the Company does not obtain an alternative Performance Bond in accordance with, and as required by, Section 6 of the Taxable Value Limitation Contract.

**9.2. Contractual Authority.** The Guarantor represents that it has obtained all necessary authority to enter into this Guarantee Agreement.

**9.3. Not Ineligible to Contract.** The Guarantor is not listed as ineligible to receive a State contract or investment under Chapter 808, 809, 2270, 2271, 2274, 2275, or 2276, Texas Government Code.

**9.4. Legal and Regulatory Actions.** The Guarantor represents and warrants that it is not aware and has received no notice of any court or governmental agency actions, proceedings, investigations, or similar actions (collectively "actions"), pending or threatened against the Guarantor within the five years immediately preceding the Effective Date that would or could impair the Guarantor's performance under this Guarantee Agreement. In addition, the Guarantor represents and warrants that it shall notify the Office

in writing on or before the tenth day after any changes to the representations or warranties in this clause or of any actions that the Guarantor may become aware of and receives notice of on or after the Effective Date of this Guarantee Agreement. The Guarantor agrees that failure to so timely update the Office of actions shall constitute breach of this Guarantee Agreement and may result in immediate termination of this Guarantee Agreement.

**9.5. Compliance with Licensing, Permitting and Regulatory Bodies.** The Guarantor certifies that it has or will obtain all licenses, certifications, permits, and authorizations necessary to perform its obligations under this Guarantee Agreement, without costs to the Office. The Guarantor shall comply with any applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with its obligations under this Guarantee Agreement.

The Guarantor certifies that it currently is in good standing with all licensing, permitting or regulatory bodies that regulate any or all aspects of the Guarantor's business or operations. The Guarantor agrees to comply and remain compliant during the term of this Guarantee Agreement with all applicable licenses, legal certifications, inspections, and any other applicable local ordinance or state or federal laws.

**9.6. Certification of Good Standing; Delinquent Taxes.** The Guarantor certifies that it is in good standing under the laws of the state in which it was formed or organized and will provide the Office with documentation to support this certification upon request. The Guarantor agrees to remain in good standing with the Texas Secretary of State, the Comptroller, and related state or federal governmental bodies related to the Guarantor's right to conduct its business in this State. The Guarantor certifies that it owes no delinquent taxes to any taxing unit of this State as of the Effective Date and agrees to remain compliant with taxing units of this State during the term of this Guarantee Agreement.

**9.7. Media Releases or Pronouncements.** The Guarantor shall not use the Office's name or logo, or refer to the Office directly or indirectly in any media release, public service announcement, or public service disclosure relating to the Taxable Value Limitation Contract, this Guarantee Agreement, or any acquisition pursuant hereto, including in any promotional or marketing materials, without first obtaining the written consent from the Office. The Parties agree that the Office is free to publicize this Guarantee Agreement.

This subsection is not intended to and does not limit the Office's or the Guarantor's ability to comply with its obligations and duties under the Texas Public Information Act found in Texas Government Code Chapter 552 (the "PIA").

This subsection is not intended to and does not limit the Office's duties and obligations to report the Taxable Value Limitation Contract or this Guarantee Agreement, any payments made under the Taxable Value Limitation Contract, any contract compliance or performance information, or other state or federal reporting requirements applicable to the Office.

**9.8. Texas Public Information Act; Confidential Information.** Notwithstanding any provisions of this Guarantee Agreement to the contrary, the Guarantor acknowledges that the Office, and this Guarantee Agreement, are subject to Chapter 552, Texas Government Code (the "PIA"). The Guarantor acknowledges that the Office will comply with the PIA.

The Parties acknowledge that information created or exchanged in connection with this Guarantee Agreement is subject to the PIA, and the Parties agree that information not otherwise excepted from disclosure under the PIA will be available in a format that is accessible by the public at no additional charge to the Office. The Guarantor will cooperate with the Office in the production of documents or information responsive to a request for information.

Information provided by or on behalf of the Guarantor under, pursuant to, or in connection with this Guarantee Agreement that the Guarantor considers proprietary, financial, or trade secret information (collectively "Confidential Information") shall be designated as such when it is provided to the Office or any other entity in accordance with this Guarantee Agreement. The Office agrees to notify the Guarantor in writing within a reasonable time from receipt of a request for information covering the Guarantor's Confidential Information. The Office will decide whether to submit a PIA request to the Attorney General.

The Guarantor agrees to maintain the confidentiality of information received from the Office in connection with the performance of this Guarantee Agreement, including information that discloses confidential personal information, particularly, but not limited to, personally identifying information, personal financial information, and social security numbers. If the Guarantor receives a third-party request for information the Guarantor received from the Office, the Guarantor shall notify the Office within twenty-four hours of receipt.

**9.9. Survival of Promises.** Notwithstanding any expiration or termination of the Taxable Value Limitation Contract or this Guarantee Agreement, the rights and obligations pertaining to payment of claims, confidentiality, indemnification, disclaimers and limitation of liability, and any other provisions under Sections 6, 9.7, 9.8, and 10 of this Guarantee Agreement will survive any expiration or termination of the Taxable Value Limitation Contract or this Guarantee Agreement.

**9.10. Fraud, Waste, or Abuse.** The Guarantor acknowledges the Office does not tolerate any type of fraud, waste, or abuse of State resources. The Office's policy is to promote consistent, legal, and ethical organizational behavior. Any violations of law, Office policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. In the event of a formal allegation or a finding of fraud, waste, or misuse of funds, the Guarantor is required to immediately notify the Office of said finding. The Guarantor is also obliged to inform the Office of the status of any ongoing investigation. All notices should be reported to the Office's Fraud Coordinator or Ethics Advisor at (512) 463-2000 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

**9.11. Severability.** If any term or provision of this Guarantee Agreement is found to be illegal, invalid, or unenforceable, such construction shall not affect the legality, validity, or enforceability of any of its other terms or provisions. The illegal, invalid, or unenforceable term or provision shall be deemed severable and stricken from this Guarantee Agreement, but all other terms or provisions shall continue in full force and effect.

**9.12. Non-waiver.** The failure of any Party to insist upon strict performance of any of the terms or conditions herein, irrespective of the length of time of such failure, shall not be a waiver of that Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Guarantee Agreement shall constitute a consent or waiver to or of any breach or default in the performance of the same or any other obligation of this Guarantee Agreement.

**9.13. Force Majeure.** A Party shall not be liable to any other Party for any delay in, nor failure of performance, of any requirement included in this Guarantee Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes

of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. "Force majeure" means acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each Party must inform the others in writing, with proof of receipt, on or before the fifteenth day after the force majeure arises, or otherwise waive this right as a defense.

**9.14. Binding Effect.** This Guarantee Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their permitted respective representatives, successors, assigns, transferees or delegates.

**9.15. Successors and Assigns; Notice to the Office.** The Guarantor, or any legal successor thereto or prior assignee thereof, may not assign, transfer, or delegate this Guarantee Agreement, in whole or in part, or any right or duty required under this Guarantee Agreement, without obtaining the express written consent and approval of the Office. Any attempted assignment in violation of this Section is void and without effect. The Guarantor shall provide the Office written notice of any assignment, transfer, sale, delegation, change of control or similar transaction as soon as possible and not later than thirty days after the event. The Office, in its sole discretion may refuse to approve any assignment, transfer, delegation or changes to the Guarantor's duties and responsibilities under this Guarantee Agreement.

## **SECTION 10. SPECIAL TERMS AND CONDITIONS.**

**10.1. No Waiver of Sovereign Immunity.** The Office is immune from suit and from liability. The Parties agree that no provision of this Guarantee Agreement, nor the conduct or statement any person, will be construed as a waiver of the doctrines of sovereign immunity and official immunity, or of any of the privileges, rights, defenses, remedies, or immunities available to the Office, and/or the State of Texas, and their officers, employees, or agents as provided by law.

**10.2. No Personal Liability.** No employee, officer, representative, or appointee of the Office, including any person executing this Guarantee Agreement, shall be liable personally under this Guarantee Agreement or subject to any personal liability for any reason relating to the execution of this Guarantee Agreement.

**10.3. Governing Law; Venue.** This Guarantee Agreement is made and entered into in the State of Texas. This Guarantee Agreement and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Venue for any Guarantor-initiated action, suit, or litigation arising out of or in any way relating to this Guarantee Agreement shall be commenced exclusively in the Travis County District Court or the United States District Court, Western District of Texas - Austin Division. Venue for any Office -initiated action, suit, or litigation arising out of or in any way relating to this Guarantee Agreement may be commenced in a Texas state district court or a United States District Court selected by the Office in its sole discretion.

The Guarantor hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts referenced above for the purpose of prosecuting and/or defending such litigation. The Guarantor hereby waives and agrees not to assert as a defense, or otherwise, in any suit, action or proceeding, any claim that the Guarantor is not subject to the jurisdiction of the above-named courts; the suit, action, or litigation is brought in an inconvenient forum; and/or the venue is otherwise improper.

#### **10.4. Duty to Defend, Indemnify and Hold Harmless.**

**THE GUARANTOR AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, THE OFFICE, AND THEIR EMPLOYEES, AGENTS, OFFICERS, REPRESENTATIVES, CONTRACTORS, AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS OR SUITS WHATSOEVER, INCLUDING ANY RELATED COSTS, ATTORNEYS' FEES, EXPENSES, AND ANY TAX LIABILITY, UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION THAT ARISES FROM ANY ACTS OR OMISSIONS OF THE GUARANTOR OR ANY OF ITS EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, ASSIGNEES, AND ANY AFFILIATE OF THE GUARANTOR, RELATING TO THIS GUARANTEE AGREEMENT REGARDLESS OF WHETHER THE ACT OR OMISSION IS RELATED TO JOB CREATION OR OTHER PERFORMANCE MEASURE OR STATED PURPOSE OF THIS GUARANTEE AGREEMENT.**

**IF THE OFFICE, THE STATE OF TEXAS, OR ITS EMPLOYEES, AGENTS, OFFICERS, REPRESENTATIVES, CONTRACTORS, OR DESIGNEES ARE NAMED DEFENDANTS IN ANY LAWSUIT ASSOCIATED WITH THIS GUARANTEE AGREEMENT, THE DEFENSE SHALL BE COORDINATED BY THE GUARANTOR WITH THE OFFICE AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. THE GUARANTOR MAY NOT AGREE TO ANY SETTLEMENT IN SUCH A MATTER WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. THE GUARANTOR AND THE OFFICE AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIMS.**

#### **SECTION 11. CONSTRUCTION OF AGREEMENT AND AMENDMENTS.**

**11.1. Construction of Agreement.** To the extent the terms and conditions of this Guarantee Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be construed consistent with the general objectives, expectations, and purposes of this Guarantee Agreement and the Taxable Value Limitation Contract.

**11.2. Entire Agreement.** This Guarantee Agreement reflects the entire agreement between the Parties with respect to the subject matter therein described, and unless otherwise authorized by this Guarantee Agreement there are no other representations (verbal or written), understandings or agreements between the Parties related to such subject matter. By executing this Guarantee Agreement, the Guarantor agrees to strictly comply with the requirements and obligations of this Guarantee Agreement, including any exhibits.

**11.3. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument, which may be sufficiently evidenced by one counterpart.

**11.4. Amendment.** This Guarantee Agreement shall not be modified or amended except in writing, signed by both Parties. Any properly executed amendment of this Guarantee Agreement shall be binding upon the Parties and presumed to be supported by adequate consideration.

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**11.5. Electronic Signatures.** The Parties agree this Guarantee Agreement may be signed in electronic format.

**11.6. Official Capacity.** The Parties agree that the signatories hereto are signing, executing and performing this Guarantee Agreement only in their official capacity.

**OFFICE OF THE GOVERNOR**

**NRG ENERGY, INC.**

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CHIEF OF STAFF OR DESIGNEE

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SHAWNIE MCBRIDE  
SENIOR VICE PRESIDENT AND CHIEF RISK  
OFFICER

Date:

Date:

**ACKNOWLEDGED BY:**

**GOOSE CREEK CONSOLIDATED  
INDEPENDENT SCHOOL DISTRICT**

**NRG CEDAR BAYOU 5 LLC**

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JAMES CAMPISI  
BOARD PRESIDENT  
GOOSE CREEK CISD BOARD OF  
TRUSTEES

Date:

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THOMAS E. ATKINS  
VICE PRESIDENT

Date: