

**ARTICLE 5
GENERATOR IMBALANCE SERVICE**

- 5.1 General.** Generator shall comply with the generation imbalance service provisions of the Midwest ISO OATT.

**ARTICLE 6
MAINTENANCE**

- 6.1 Transmission Owner Obligations.** Transmission Owner shall maintain the Transmission Owner Interconnection Facilities and Interconnection System Upgrades to the extent they might reasonably be expected to have an impact on the operation of the Facility and Generator Interconnection Facilities (i) in a safe and reliable manner; (ii) in accordance with Good Utility Practice; (iii) in accordance with the Interconnection Guidelines, applicable operational and/or reliability criteria, protocols, and directives, including those of the Applicable Reliability Council; (iv) in accordance with Applicable Laws and Regulations; and (v) in accordance with the provisions of this Agreement.

- 6.2 Generator Obligations.** Generator shall maintain the Facility and the Generator Interconnection Facilities, to the extent they might reasonably be expected to have a material adverse impact on the operation of the Transmission System and other systems and generating facilities directly or indirectly interconnected to the Transmission System (i) in a safe and reliable manner; (ii) in accordance with Good Utility Practice; (iii) in accordance with Interconnection Guidelines, applicable operational and/or reliability criteria, protocols, and directives, including those of the Applicable Reliability Council; (iv) in accordance with Applicable Laws and Regulations; and (v) in accordance with the provisions of this Agreement.
- 6.3 Access Rights.** Consistent with the provisions of Sections 4.5 and 9.1.7, the Parties shall provide each other such easements and/or access rights as permissible to the property of the providing party as may be necessary for a Party's performance of their respective maintenance obligations under this Agreement; provided that notwithstanding anything stated herein, a Party performing maintenance work within the boundaries of the other Party's facilities must abide by the rules applicable to that site.

- 6.4 Maintenance Expenses.** Generator shall be responsible for all expenses associated with maintaining the Facility and the Generator Interconnection Facilities. The expense incurred by the Transmission Owner in maintaining the Transmission Owner Interconnection Facilities shall be included in the actual cost of operation and maintenance reimbursed to Transmission Owner as set forth in to Section 4.10.
- 6.5 Coordination.** The Parties agree to confer regularly to coordinate the planning and scheduling of preventative and corrective maintenance. Each Party shall conduct preventive and corrective maintenance activities as planned and scheduled in accordance with this Section.
- 6.6 Inspections and Testing.** Each Party shall perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Facility with the Transmission System in a safe and reliable manner.

- 6.7 Right to Observe Testing.** Each Party shall, at its own expense, have the right to observe the testing of any of the other Party's Interconnection Facilities whose performance may reasonably be expected to affect the reliability of the observing Party's facilities and equipment. Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities, and the other Party may have a representative attend and be present during such testing.
- 6.8 Cooperation.** Each Party agrees to cooperate with the other in the inspection, maintenance, and testing of those Secondary Systems directly affecting the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work in these areas, especially in electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

- 6.9 Observation of Deficiencies.** If a Party observes any deficiencies or defects on, or becomes aware of a lack of scheduled maintenance and testing with respect to, the other Party's facilities and equipment that might reasonably be expected to adversely affect the observing Party's facilities and equipment, the observing Party shall provide notice to the other Party that is prompt under the circumstance, and the other Party shall make any corrections required in accordance with Good Utility Practice. Any Party's review, inspection, and approval related to the other Party's facilities and equipment shall be limited to the purpose of assessing the safety, reliability, protection and control of the Transmission System and shall not be construed as confirming or endorsing the design of such facilities and equipment, or as a warranty of any type, including safety, durability or reliability thereof. Notwithstanding the foregoing, the inspecting Party shall have no liability whatsoever for failure to give a deficiency notice to the other Party and the Party owning the Interconnection Facilities shall remain fully liable for its failure to determine and correct deficiencies and defects in its facilities and equipment.

ARTICLE 7 EMERGENCIES

- 7.1 Obligations.** Each Party agrees to comply with the Emergency Condition procedures of NERC, the Applicable Reliability Council, the Midwest ISO, Transmission Owner, and of Generator.

- 7.2 Notice.** The Midwest ISO or, as applicable, the ITC shall provide Generator with prompt notification of an Emergency Condition regarding the Transmission Owner Interconnection Facilities and/or the Transmission System that may reasonably be expected to affect Generator's operation of the Facility, to the extent the Midwest ISO or ITC is aware of the Emergency Condition. Generator shall provide the Midwest ISO or ITC, as applicable with prompt notification of an Emergency Condition regarding the Facility and/or the Generator Interconnection Facilities which may reasonably be expected to affect the Transmission System or the Transmission Owner Interconnection Facilities, to the extent Generator is aware of the Emergency Condition. To the extent the Party becoming aware of an Emergency Condition is aware of the facts of the Emergency Condition, such notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Generator's or the Transmission Owner's facilities and operations, its anticipated duration, and the corrective action taken and/or to be taken, and shall be followed as soon as practicable with written notice.
- 7.3 Immediate Action.** In the event of an Emergency Condition, the Party becoming aware of the Emergency Condition may, in accordance with Good Utility Practice and using its reasonable judgment, take such action as is reasonable and necessary to prevent, avoid, or mitigate injury and danger to, or loss of, life or property. In the event Generator has identified an Emergency Condition involving the Transmission System, Generator shall obtain the consent of the Transmission Owner personnel prior to performing any manual switching operations at the Facility unless, in Generator's reasonable judgment, immediate action is required.

7.4 Midwest ISO and Transmission Owner Authority. The Midwest ISO or Transmission Owner may, consistent with Good Utility Practice, take whatever actions or inactions with regard to the Transmission System it deems necessary during an Emergency Condition in order to (i) preserve public health and safety; (ii) preserve the reliability of the Transmission System and interconnected sub-transmission and distribution system; (iii) limit or prevent damage; and (iv) expedite restoration of service. The Midwest ISO and Transmission Owner shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Facility. An Emergency Condition may be declared on a day ahead basis by the Midwest ISO or ITC, as applicable, to ensure a secure and reliable Transmission System under expected normal operating and first contingency conditions. Notwithstanding any other provision of this Agreement, the Facility may be called upon by the Midwest ISO or Transmission Owner during a potential or an actual Emergency Condition to mitigate such Emergency Condition by, but not limited to, requesting Generator to start-up, shut-down, and increase or decrease the real or reactive power output of the Facility consistent with the provisions of Sections 7.6 and 7.6.1. As requested by the Midwest ISO or Transmission Owner, Generator shall assist the Midwest ISO or Transmission Owner with any black start or restoration efforts of the Transmission System resulting from an Emergency Condition with compensation to be paid in accordance with Section 7.6.1, provided that such assistance does not require the installation of any equipment.

7.5 Generator Authority. Generator may, consistent with Good Utility Practice, take whatever actions or inactions with regard to the Facility it deems necessary during an Emergency Condition in order to (i) preserve public health and safety; (ii) preserve the reliability of the Facility; (iii) limit or prevent damage; and (iv) expedite restoration of service. Generator shall use Reasonable Efforts to minimize the effect of such actions or inaction on the Transmission System. The Midwest ISO and Transmission Owner shall use Reasonable Efforts to assist Generator in such actions.

7.6 Changes in Real Power and Reactive Power Production. During an Emergency Condition as declared by the Midwest ISO or, as applicable, the ITC, on the Transmission System or on an adjacent transmission system, the Midwest ISO or, as applicable, the ITC, in order to maintain Transmission System security consistent with the provisions of this Article 7, shall have the authority to direct Generator to increase or decrease real power production (measured in MW) and/or reactive power production (measured in MVAR), within the manufacturer's design and operational limitations of the Facility's equipment in service in accordance with Good Utility Practice, provided that the Facility is physically available for operation at the time. In the event of such a declaration of an Emergency Condition, determinations (i) that Transmission System security is in jeopardy, and (ii) that there is a need to increase or decrease reactive power production, even if real power production is adversely affected, shall be made solely by the Midwest ISO or its designated representative in accordance with Good Utility Practice on a non-discriminatory basis. Generator shall honor all of the Midwest ISO's and, as applicable, the ITC's orders and directives concerning Facility real power and/or reactive power output within the manufacturer's design limitations of the Facility's equipment in service and physically available for operation at the time, such that the security of the Transmission System is maintained. If the Midwest ISO or, as applicable, the ITC determines that the operation of the Facility in accordance with its directive is not necessary to alleviate the Emergency Condition, Generator shall be permitted to resume prior operating levels if consistent with Good Utility Practice. The Midwest ISO shall restore Transmission System conditions to normal as quickly as possible to alleviate any such Emergency Condition. The Midwest ISO and ITC shall take all reasonable steps to equitably allocate among all generating units and other reactive compensation resources the responsibility to provide reactive power support to the Transmission System. The Midwest ISO's and ITC's efforts to allocate such responsibility among all generators and other reactive compensation resources capable of such support shall be subject to the audit provisions of Section 7.9. Additionally, to the extent practical, the Midwest ISO and ITC, as applicable, has the right to request unit commitment and decommitment, and alteration of unit outage schedules. For purposes of this Section 7.6, physical availability of equipment or the Facility shall not be based on economic considerations.

7.6.1 Generator Compensation for Emergency Condition. Generator shall be compensated for its provision of real and reactive power, and any unavoidable costs related to changes in maintenance and outage schedules directed by Midwest ISO or Transmission Owner for Emergency Condition purposes and other Emergency Condition services needed to support the Transmission System during an Emergency Condition in accordance with Generator's FERC rate schedule then in effect and specifically applicable to an Emergency Condition under this Agreement, provided, however, that the failure to have any such rates shall not be a basis for Generator to refuse or deny such control to the Midwest ISO or ITC, as applicable, or a designated representative thereof.

7.7 Interruption for Emergency Condition. If at any time, in the Midwest ISO's or, as applicable, ITC's reasonable judgment exercised in accordance with Good Utility Practice, the continued operation of the Facility would cause an Emergency Condition, the Midwest ISO or ITC may curtail, interrupt, or reduce energy delivered from the Facility to the Transmission System subject to Section 4.14 until the condition which would cause the Emergency Condition is corrected and, where practicable, allow suitable time for Generator to remove or remedy such condition before any such curtailment, interruption, or reduction commences.

- 7.8 Disconnection in Event of Emergency Condition.** Subject to the provisions of Section 7.7, the Midwest ISO, Transmission Owner, or Generator shall have the right to disconnect the Facility without notice if, in the Midwest ISO's, Transmission Owner's or Generator's judgment, an Emergency Condition exists and immediate disconnection is necessary to protect persons or property from damage or interference caused by Generator's interconnection or lack of proper or properly operating System Protection Facilities. All Parties to this Agreement shall be notified of such disconnection. For purposes of this Section 7.8, System Protection Facilities may be deemed by the Midwest ISO or ITC to be not properly operating if the Midwest ISO's or ITC's, as applicable review under Article 6 discloses irregular or otherwise insufficient maintenance on the System Protection Facilities or that maintenance records do not exist or are otherwise insufficient to demonstrate that adequate maintenance has been and is being performed. If such maintenance records do not exist or are otherwise insufficient to demonstrate that adequate maintenance has been and is being performed, Generator shall have a reasonable opportunity to demonstrate to the Midwest ISO or ITC that the System Protection Facilities are operating properly through alternative documentation or by physical demonstration, provided that such alternative documentation or physical demonstration shall be subject to acceptance by the Midwest ISO or ITC in the exercise of its reasonable judgment.
- 7.9 Audit Rights.** Each Party shall keep and maintain record of actions taken during an Emergency Condition that may reasonably be expected to impact the other Party's facilities and make such records available for audit in accordance with Section 21.2.
- 7.10 Limited Liability.** No Party shall be liable to any other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and consistent with Good Utility Practice.

ARTICLE 8 SAFETY

- 8.1 General.** All work performed by either Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Applicable Laws and Regulations pertaining to the safety of persons or property. A Party performing work within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site.
- 8.2 Environmental Releases.** Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities, related to the Facility, the Interconnection Facilities, each of which may reasonably be expected to affect the other Parties. The notifying Party shall (i) provide the notice as soon as possible; (ii) make a good faith effort to provide the notice within twenty-four (24) hours after the Party becomes aware of the occurrence; and (iii) promptly furnish to the other Parties copies of any publicly available reports filed with any governmental agencies addressing such events.

ARTICLE 9
CONSTRUCTION AND MODIFICATION OF
INTERCONNECTION FACILITIES AND INTERCONNECTION SYSTEM UPGRADES

9.1 Construction.

9.1.1 Generator Obligations. Generator shall, at its expense, design, procure, construct, and install the Facility and the Generator Interconnection Facilities in accordance with the Interconnection Evaluation Study, the Interconnection Facilities Study and Good Utility Practice. The Generator Interconnection Facilities shall satisfy all requirements of applicable safety and/or engineering codes, including the Transmission Owner's, and further, shall satisfy Applicable Laws and Regulations.

9.1.2 Generator Specifications. Generator shall submit all final specifications for Generator Interconnection Facilities, including System Protection Facilities, to the Midwest ISO and Transmission Owner for review at least ninety (90) days prior to interconnecting Generator Interconnection Facilities with the Transmission System in order to insure that such interconnection is consistent with operational control, reliability and/or safety standards or requirements of the Midwest ISO and Transmission Owner. The Midwest ISO and Transmission Owner shall review and comment on such specifications within thirty (30) days.

- 9.1.3 Midwest ISO and Transmission Owner Review.** The Midwest ISO's and Transmission Owner's review of Generator's specifications shall be construed neither as confirming nor as endorsing the design, nor as any warranty as to fitness, safety, durability or reliability of the Generator Interconnection Facilities. Neither Transmission Owner nor the Midwest ISO shall, by reason of such review or failure to review, be responsible for strength, details of design, adequacy or capacity of Generator Interconnection Facilities, nor shall the Midwest ISO's or Transmission Owner's acceptance be deemed to be an endorsement of all or any part of the Generator Interconnection Facilities. Generator shall make changes to the Generator Interconnection Facilities as may be required by the Midwest ISO or Transmission Owner in accordance with Good Utility Practice. The cost of such changes shall be borne in accordance with Section 9.5.3.
- 9.1.4 Transmission Owner Obligations.** The Transmission Owner shall design, procure, construct and install, and Generator shall pay, consistent with Section 9.2, the cost of, all Transmission Owner Interconnection Facilities and Interconnection System Upgrades identified in Appendix A. All Transmission Owner Interconnection Facilities and Interconnection System Upgrades designed, procured, constructed, installed and maintained by the Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those of the Transmission Owner, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

9.1.5 Suspension of Work.

9.1.5.1 Right to Suspend. Generator reserves the right, upon written notice to the Midwest ISO and the other Parties, to suspend, at any time, all work by the Transmission Owner associated with the construction and installation of the Transmission Owner Interconnection Facilities and/or the Interconnection System Upgrades. In such event, Generator shall be responsible for the costs which the Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, and (ii) in suspending such work, including any costs incurred in order to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which the Transmission Owner cannot reasonably avoid; provided, however, that, prior to canceling any such contracts or orders, the Transmission Owner shall obtain Generator's authorization. The Transmission Owner shall invoice Generator pursuant to Article 13 and use Reasonable Efforts to minimize its costs.

- 9.1.5.2 Recommencing of Work.** If Generator requests the Transmission Owner to recommence such work, the Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Generator to suspend the work. In such event, Generator shall be responsible for any costs incurred in recommencing the work. Once work has been recommenced, if Generator attempts to suspend the work a second time, this Agreement shall terminate.
- 9.1.5.3 Termination.** In the event Generator suspends the performance of work by the Transmission Owner pursuant to this Section 9.1.5 and has not requested resumption of such work required hereunder by written request to the Midwest ISO or ITC, as applicable, on or before the three hundred and sixty-fifth (365th) day after such requested suspension, this Agreement shall be deemed terminated.

9.1.5.4 Right to Suspend Due to Default. Transmission Owner reserves the right, upon written notice to Generator, to suspend, at any time, work by the Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Transmission Owner Interconnection Facilities and/or the Interconnection System Upgrades upon the occurrence of either a Breach that Generator is unable to cure pursuant to Article 17 or an Event of Default pursuant to Article 17. Any form of suspension by Transmission Owner shall not be barred by Section 2.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 18. In such events, Generator shall be responsible for costs which the Transmission Owner incurs as set forth in Section 9.1.5.1.

9.1.6 Construction Status. The Transmission Owner shall inform Generator on a regular basis, and at such other times as Generator reasonably requests, of the status of the construction and installation of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades, including, but not limited to, the following information: (i) progress to date; (ii) a description of scheduled activities for the next period; (iii) the delivery status of all equipment ordered; and (iv) the identification of any event which the Transmission Owner reasonably expects may delay construction of, or may increase the cost by ten percent (10%) or more of, the Transmission Owner Interconnection Facilities and/or Interconnection System Upgrades.

9.1.7 Land Rights. Upon reasonable notice and supervision by a Party, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any necessary access for ingress and egress across lands owned or controlled by the Granting Party and/or its affiliates for the construction, operation and maintenance of necessary lines, substations, and other equipment to accomplish and operate interconnection of the Facility with the Transmission System under this Agreement and shall, at all reasonable times, give the Access Party, or its agents, free access for ingress and egress to such lines, substations, and equipment, for the purpose of implementing the provisions of this Agreement, and subject to the following provisions of this Section 9.1.7 and Subsections 9.1.7.1 and 9.1.7.2; provided, however, that, in exercising such access rights, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business, shall act in a manner consistent with Good Utility Practice, and adhere to the safety rules and procedures established by the Granting Party.

An accessible, protected and satisfactory site selected upon mutual agreement by the Parties and located on Generator's premises shall be provided by and at Generator's expense for installation of metering devices, unless the Transmission Owner elects to install meters on poles or other locations controlled by it. Generator grants to the Transmission Owner at all reasonable times and with reasonable supervision, the right of free ingress and egress to Generator's premises for the purpose of installing, testing, reading, inspecting, repairing, operating, altering or removing any of the Transmission Owner's property located on Generator's premises.

9.1.7.1 Other Property Owners. If any part of the Transmission Owner Interconnection Facilities are to be installed on property owned by someone other than Generator, Generator shall procure from the owners thereof any necessary rights of use, licenses, rights of way and easements, in a form reasonably satisfactory to the Transmission Owner, for the construction, operation, maintenance and replacement of the Transmission Owner Interconnection Facilities upon such property. In the event Generator is unable to secure them (i) by condemnation proceedings or (ii) by other means, the Midwest ISO, indirectly through the Transmission Owner, or Transmission Owner directly, may make Reasonable Efforts to secure them to the extent permitted by Applicable Laws and Regulations, and provided that Generator shall reimburse the Midwest ISO or Transmission Owner, for all reasonable and documented costs incurred by the Midwest ISO or Transmission Owner in securing such rights.

9.1.7.2 Safety. In connection with the Access Party's exercise of rights under Section 9.1.7, while on the Granting Party's premises, the Access Party's personnel and agents shall comply with all applicable safety rules or regulations of the Granting Party that are communicated by the Granting Party to the Access Party. Further, the Access Party shall indemnify and hold harmless the Granting Party in accordance with the provisions of Article 16 from and against any claims or damages resulting from such access.

9.1.8 Timely Completion.

9.1.8.1 Generator Obligations. Generator shall use Reasonable Efforts to design, procure, construct, install, and test the Generator Interconnection Facilities in accordance with the schedule set forth in Appendix A which schedule may be revised from time to time by mutual agreement of the Parties. As specified in Appendix A, the Transmission Owner, at its discretion, may permit Generator to design, procure and/or install all or a portion of the Transmission Owner Interconnection Facilities.

9.1.8.2 Midwest ISO and Transmission Owner Obligations. The Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Transmission Owner Interconnection Facilities and Interconnection System Upgrades in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time for completion of the Transmission Owner Interconnection Facilities or the Interconnection System Upgrades, or the ability to complete any of them, the Midwest ISO shall promptly notify Generator. In such circumstances, the Midwest ISO shall, within fifteen (15) days after notifying Generator of such an event and corresponding delay, convene a technical meeting with Generator and Transmission Owner to evaluate the alternatives available to Generator. The Midwest ISO or ITC, as applicable, shall also make available to Generator all studies and work papers related to the event and corresponding delay, including all information that is in the possession of the Midwest ISO or Transmission Owner that is reasonably needed by Generator to evaluate alternatives. The Transmission Owner shall, at Generator's request and expense, use Reasonable Efforts to accelerate its work under this Agreement in order to meet the schedule set forth in Appendix A, provided that Generator authorizes such actions and the costs associated therewith in advance.

- 9.1.9 Limited Operation.** If any of the Interconnection System Upgrades are not reasonably expected to be completed prior to the commercial operation date of the Facility, Generator may, at its option, have operating studies performed at its expense to determine the maximum allowable output of the Facility and, subject to Applicable Laws and Regulations and applicable Midwest ISO, Transmission Owner, and NERC criteria and requirements, Generator shall be permitted to operate the Facility, provided such limited operation of the Facility does not adversely affect the safety and reliability of the Transmission System.
- 9.1.10 Outage Costs.** If an outage of any part of the Transmission System is necessary to complete the process of constructing and installing the Interconnection Facilities or Interconnection System Upgrades, Generator shall be responsible for any costs or penalties associated with any redispatch or market-related costs arising from such an outage. The estimated cost, including penalties of such redispatch or market-related costs arising from such outage is set forth in Appendix A.

- 9.1.11 Pre-Commercial Testing.** Prior to the interconnection and operation of the Facility in parallel with the Transmission System, the Interconnection Facilities and Interconnection System Upgrades shall be tested to ensure their safe and reliable operation in accordance with Good Utility Practice, any applicable Midwest ISO, Transmission Owner, NERC and Applicable Reliability Council criteria and requirements and any **Applicable Laws and Regulations (“Pre-Commercial Testing”)**. **Similar testing may be required after initial operation as required by the above-mentioned organizations. The cost of all such testing shall be borne by Generator. In generating test energy, Generator shall be responsible for complying with all Midwest ISO OATT provisions as well as any applicable generator imbalance provisions.**
- 9.1.12 Modifications after Pre-Commercial Testing.** Based upon the Pre-Commercial Testing, Generator shall be responsible for making any modifications necessary to ensure the safe and reliable operation of the Facility and Generator Interconnection Facilities in accordance with Good Utility Practice, all applicable Midwest ISO, Transmission Owner, NERC and Applicable Reliability Council criteria and requirements, and all Applicable Laws and Regulations, and the Transmission Owner is responsible for making any modifications necessary to ensure the safe and reliable operation of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades in accordance with Good Utility Practice and all applicable Midwest ISO, Transmission Owner, NERC and Applicable Reliability Council criteria and requirements, and all Applicable Laws and Regulations. The costs of all such modifications are to be borne by Generator.

9.2 Interconnection Costs and Credits.

9.2.1 Costs. In addition to Operating Expenses under Section 4.10 and other expenses covered by this Agreement, Generator shall pay to the Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades (“Construction Expenditures”), as identified in Appendix A, in accordance with any cost recovery method that the Transmission Owner files and the FERC accepts as applicable under the Midwest ISO OATT.

9.2.2 Credits. Credits to Generator (or a third-party designated by Generator), if any, for amounts previously paid by Generator under Section 9.2.1, will be provided in accordance with any cost recovery method that the Transmission Owner files and the FERC accepts as applicable under the Midwest ISO OATT.

9.3 Drawings. Subject to the requirements of Article 20, upon completion of any construction or modification to the Facility and/or the Generator Interconnection Facilities that may reasonably be expected to affect the Transmission System, but not later than ninety (90) days thereafter, Generator shall issue "as built" drawings to the Midwest ISO and Transmission Owner, unless the Parties reasonably agree that such drawings are not necessary.

9.4 Taxes.

9.4.1 Indemnification for Contributions in Aid of Construction. The Parties intend that all payments made by Generator to Transmission Owner for the installation of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. With regard only to such contributions, Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Generator for the installation of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades. Notwithstanding the foregoing provisions of this Section 9.3.1, to the extent that the receipt of such payments by the Transmission Owner is determined by any Governmental Authority to constitute income by a Transmission Owner subject to taxation, Generator shall protect, indemnify and hold harmless Transmission Owner and its affiliated and associated companies, from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination.

Upon receiving written notification of such determination from the Governmental Authority, Transmission Owner shall provide Generator with written notification within thirty (30) days of such determination and notification. Transmission Owner, upon the timely written request by Generator and at Generator's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Owner shall cooperate and consult in good faith with Generator regarding the conduct of such contest. Generator shall advance to Transmission Owner on a periodic basis as requested by Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. Generator shall not be required to pay Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) day before the date on which Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest.

In the event such appeal, protest, abatement or other contest results in a determination that Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which Generator has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Generator any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or which Transmission Owner may be entitled with respect to such payment. In accordance with Article 13, Generator shall provide Transmission Owner with credit assurances sufficient to meet Generator's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 9.4.1. Such estimated liability shall be stated in Appendix A.

9.4.2 Private Letter Ruling. The Transmission Owner shall, at Generator's request and expense, file with the Internal Revenue Service a request for a Private Letter Ruling as to whether any of the sums paid, or to be paid, by Generator to Transmission Owner under the terms of this Agreement are subject to federal income taxation. Transmission Owner and Generator shall cooperate in good faith with respect to such request for a Private Letter Ruling and all costs associated with obtaining a Private Letter Ruling under this Agreement shall be the responsibility of Generator. If the Private Letter Ruling issued to Transmission Owner concludes that such sums are not subject to federal income taxation, Generator's obligations under Article 13 shall be reduced accordingly.

9.4.3 Other Taxes. The Midwest ISO, and, as applicable, the ITC, and Generator shall cooperate in good faith to appeal, protest, seek abatement of, or otherwise contest any tax (other than federal income tax) asserted or assessed against the Midwest ISO or ITC for which Generator may be required to reimburse the Midwest ISO or ITC under the terms of this Agreement.

9.5 Modifications.

9.5.1 General. Either Party may undertake modifications to its facilities. In the event a Party plans to undertake a modification that reasonably may be expected to impact another Party's facilities, that Party, in accordance with Good Utility Practice, shall provide the other Parties with sufficient information regarding such modification, so that the other Parties may evaluate the potential impact of such modification prior to commencement of the work, including information regarding when such additions, modifications or replacements are expected to be made; how long such additions, modifications or replacements are expected to take; whether such additions, modifications or replacements are expected to interrupt the flow of electricity from the Facility; and any other information that will enable the other Parties to evaluate the impact of the proposed additions, modifications, or replacements on its facilities and/or operations prior to the commencement of work. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Parties at least ninety (90) days in advance of the beginning of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld or delayed.

9.5.2 Standards. Any additions, modifications, or replacements made to a Party's facilities shall be constructed and operated in accordance with this Agreement, Good Utility Practice, Applicable Laws and Regulations, NERC and Applicable Reliability Council guidelines, and Midwest ISO and Transmission Owner guidelines.

9.5.3 Modification Costs. Unless required by Applicable Laws and Regulations or this Agreement, Generator shall not be responsible for the costs of any additions, modifications, or replacements made to the Transmission Owner Interconnection Facilities or the Transmission System by the Transmission Owner in its discretion or in order to facilitate the interconnection of a third-party to the Transmission Owner Interconnection Facilities or the Transmission System, or the provision of the delivery component transmission service under the Midwest ISO OATT for such third-party. **Generator shall, however, be responsible for the costs of (i) any additions, modifications, or replacements made to the Transmission Owner Interconnection Facilities or the Transmission System as a result of any additions, modifications, or replacements made by Generator to the Facility or (ii) additions, modifications, or replacements reasonably necessary to maintain or update the Generator Interconnection Facilities for reliability and safety purposes to the extent required by Good Utility Practice or to comply with changes in Applicable Laws and Regulations.**

ARTICLE 10 METERING

10.1 General. Unless otherwise agreed by the Parties, the Transmission Owner shall provide, install, operate, maintain, own and/or control suitable Metering Equipment at the Point of Interconnection prior to any operation of the Facility. Power flows to and from the Facility shall be measured at or, at the Transmission Owner 's option, compensated to the Point of Interconnection. Metering quantities, in analog and/or digital form, shall be provided to Generator upon request. All costs associated with the administration of Metering Equipment and the provision of metering data to Generator shall be born by Generator. The costs of administration and of providing metering data shall be separately itemized on the Transmission Owner 's invoice to Generator. All reasonable costs associated with either the initial installation of metering or any changes to Metering Equipment, shall be borne by Generator. Generator shall be responsible for making all appropriate metering arrangements for Station Power service requirements, to enable the Transmission Provider to implement Schedule 20. The Generator shall also be responsible for timely submission of accurate, complete and verified metering information to the Transmission Provider, which shall have the right to audit such submissions.

- 10.2 Standards.** Revenue quality Metering Equipment shall be installed, calibrated, and tested in accordance with applicable ANSI standards. To the extent this Article 10 conflicts with the manuals, standards or guidelines of the Applicable Reliability Council regarding interchange metering and transactions, the manuals, standards and guidelines of such Applicable Reliability Council shall control.
- 10.3 Testing of Metering Equipment.** The Transmission Owner shall, at Generator's expense, inspect and test all Transmission Owner-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Generator, the Transmission Owner shall inspect or test Metering Equipment more frequently than every two (2) years, at the expense of Generator. The Transmission Owner shall give reasonable notice of the time when any inspection or test shall take place, and Generator may have representatives present at the test or inspection. If Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Generator's expense, in order to provide accurate metering. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than one percent (1%) from the measurement made by the standard meter used in the test, adjustment shall be made correcting all measurements made by the inaccurate meter for (i) the actual period during which inaccurate measurements were made, if the period can be determined, or if not, (ii) the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment; provided that the period covered by the correction shall not exceed six months.

10.4 Metering Data. If the Parties have not made other arrangements, if hourly and/or daily energy readings are available and if such data are requested by the Midwest ISO, Generator shall report same to the Midwest ISO's or ITC's as applicable, representatives as indicated in Appendix E, by telephone or electronically or as the Parties otherwise agree, on a schedule to be agreed upon. At Generator's expense, Generator's metered data shall be telemetered to a location designated by the Midwest ISO and one or more locations designated by Generator.

10.5 Communications.

10.5.1 Generator Obligations. At Generator's expense, Generator shall maintain satisfactory operating communications with the Midwest ISO's system dispatcher or representative, as designated by the Midwest ISO or the Transmission Owner, as applicable. Generator shall provide standard voice line, dedicated voice line and facsimile communications at its Facility control room through use of the public telephone system. Generator shall also provide the dedicated data circuit(s) necessary to provide necessary generator data to the Midwest ISO as set forth in Appendix E. The data circuit(s) shall extend from the Facility to a location(s) specified by the Midwest ISO or its designate. Any required maintenance of such communications equipment shall be performed at Generator's expense, and may be performed by Generator or by the Transmission Owner. Operational communications shall be activated and maintained under, but not be limited to, the following events:

- (i) system paralleling or separation; (ii) scheduled and unscheduled shutdowns; (iii) equipment clearances; and (iv) hourly and daily load data.

10.5.2 Remote Terminal Unit. Prior to any operation of the Facility, a Remote Terminal Unit (“RTU”) or equivalent data collection and transfer equipment acceptable to all Parties shall be installed by Generator, or by the Transmission Owner at Generator's expense, to gather accumulated and instantaneous data to be telemetered to a location(s) designated by the Transmission Owner through use of a dedicated point-to-point data circuit(s) as indicated in Section 10.5.1. The communication protocol for this data circuit(s) shall be specified by the Transmission Owner. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by the Midwest ISO.

ARTICLE 11 FORCE MAJEURE

- 11.1 Notice.** The Party unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing or by telephone within a reasonable time after the occurrence of the cause relied on.
- 11.2 Duration of Force Majeure.** Except as set forth in Section 11.3, no Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure whether occurring on the Transmission System, the Facility, the Interconnection Facilities or any connecting electric generating, transmission or distribution system affecting the Party's operations. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.
- 11.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

ARTICLE 12 INFORMATION REPORTING

- 12.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.

ARTICLE 13 CREDITWORTHINESS, BILLING AND PAYMENTS

- 13.1 Creditworthiness.** By the earlier of (i) thirty (30) days prior to the due date for Generator's first payment under the payment schedule specified in Appendix A or (ii) the first date specified in Appendix A for the ordering of equipment by Transmission Owner for installing the Transmission Owner Interconnection Facilities and/or Interconnection System Upgrades, Generator shall provide the Transmission Owner, at Transmission Owner's option, with a form of adequate assurance of creditworthiness satisfactory to Transmission Owner. If the adequate assurance is a parental guarantee or surety bond, it must be made by an entity that meets the creditworthiness requirements of the Transmission Owner, have terms and conditions reasonably acceptable to the Transmission Owner and guarantee payment of the entire estimated amount that will be due under this Agreement during its term. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to the Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter shall reduce on a monthly basis in accordance with the monthly payment schedule.

The surety bond must be issued by an insurer reasonably acceptable to the Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount assured under the bond shall reduce on a monthly basis in accordance with the monthly payment schedule. After the interconnection has been placed in service, Generator shall, subject to the standards of this Section 13.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Section 4.10 and its obligations under Section 9.4.1. At least sixty (60) days prior to the date on which the interconnection is anticipated to be placed in service and at least annually thereafter, the Transmission Owner shall notify Generator of the estimated monthly payment obligation under Section 4.10. Generator's estimated liability under Section 9.4.1 is stated in Appendix A.

13.2 Generator's Continuing Creditworthiness. In the event Generator's creditworthiness becomes unsatisfactory to Transmission Owner in its reasonably exercised discretion for amounts for which payment is not otherwise assured, Transmission Owner may demand that Generator provide, at Generator's option (but subject to Transmission Owner's acceptance based upon reasonably exercised discretion), either (i) the posting of a letter of credit; (ii) a cash prepayment; (iii) the posting of other acceptable collateral or security by the Generator; (iv) a guarantee agreement executed by a creditworthy entity; or (v) some other mutually agreeable method of providing assurance of payment satisfying Transmission Owner. Failure of Generator to provide such reasonably satisfactory assurances of its ability to make payment under this Agreement within seven (7) days of demand therefore shall be an event of Default under Article 17 of this Agreement and Transmission Owner shall have the right to exercise any of the remedies provided for in Article 17.

- 13.3 Invoice.** Each invoice shall (i) delineate the month in which the services will be provided; (ii) fully describe the services to be rendered; and (iii) itemize the services to be performed or provided.
- 13.4 Payment.** The invoice shall be paid within thirty (30) days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party.
- 13.5 Final Invoice.** Within six (6) months after completion of the construction of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades, the Transmission Owner shall provide an invoice of the final cost of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades and shall set forth such costs in sufficient detail to enable Generator to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. To the extent that the final, actual costs that Generator is obligated to pay hereunder for the construction of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades exceeds the estimated costs already paid by Generator hereunder for such purposes, Generator shall reimburse the Transmission Owner for the amount of such difference within thirty (30) days after receipt of an invoice for such amount in accordance with the billing provisions of this Agreement. To the extent that the estimated costs already paid by Generator hereunder for such purposes exceed the final, actual costs that Generator is obligated to pay hereunder for such purposes, the Transmission Owner shall refund to Generator an amount equal to the difference within thirty (30) days of the issuance of such final cost invoice. The Transmission Owner shall use Reasonable Efforts to minimize its costs.

- 13.6 Disputes.** All invoiced amounts shall be paid on or before the invoice payment due date. In the event of a billing dispute between the Midwest ISO, Transmission Owner, and/or Generator, the Midwest ISO or ITC, as applicable, shall continue to provide interconnection service under the Interconnect Agreement as long as Generator pays disputed amounts on or before the due date. In the event the dispute is resolved in favor of the Generator, the Midwest ISO or Transmission Owner shall, within thirty (30) days of the resolution, make payment to the Generator with interest calculated in accordance with Section 13.8. If Generator fails to meet this requirement for continuation of service, then the Midwest ISO or ITC, as applicable, may provide notice to Generator of a Breach pursuant to Articles 17 and 18.
- 13.7 Waiver.** Payment of an invoice shall not relieve the paying Party from any other responsibilities or obligations it has under this Agreement, nor shall such payment constitute a waiver of any claims arising hereunder.
- 13.8 Interest.** Interest on any unpaid amounts shall be calculated daily at the then current prime interest rate per annum as published in the Federal Reserve Statistical Release H.15, or its successor publication, plus two percent (2%) per annum, or the maximum rate permitted by law, whichever is less, from the date due until the date upon which payment is made.
- 13.9 Payment During Dispute.** In the event of a billing dispute between the Midwest ISO, Transmission Owner, and/or Generator, each Party shall continue to provide services and pay all invoices.
- 13.10 Collection Expenses.** No Party shall be responsible for the other Parties' costs of collecting amounts due under this Agreement, including attorney fees and expenses and the expenses of arbitration.

ARTICLE 14 ASSIGNMENT

14.1 General. No Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed, except in connection with the sale, merger, or transfer of a substantial portion or all of its properties including the Interconnection Facilities which it owns so long as the assignee in such a sale, merger, or transfer directly assumes in writing all rights, duties and obligations arising under this Agreement. Prior to the effective date of any assignment pursuant to this Section 14.1 by Generator, the assignee shall demonstrate to the Midwest ISO and the Transmission Owner that the assignee will comply with the requirements of Article 13 on the effective date of the assignment, and such assignor shall be, without further action, released from its obligation hereunder. Any such assignment or delegation made without such written consent shall be null and void. In addition, the Midwest ISO shall be entitled to assign this Agreement to any wholly-owned direct or indirect subsidiary of the Midwest ISO.

14.2 Assignment. Notwithstanding the provisions of Section 14.1, Generator may assign this Agreement, including the right to receive transmission service credits under Section 9.2, and shall be, without further action, released from the obligations of this Agreement, without the Midwest ISO's or Transmission Owner's prior consent to any future owner that purchases or otherwise acquires, directly or indirectly, all or substantially all of the Facility provided that prior to the effective date of any such assignment, the assignee demonstrates to Transmission Owner that he assignee will comply with the provisions of Article 13 on the effective date of the assignment and assumes all other rights, duties, and obligations arising under this Agreement in a writing provided to the Midwest ISO and Transmission Owner. In addition and also notwithstanding the provisions of Section 14.1, Generator or its assignee may assign this Agreement to the persons, entities or institutions providing financing or refinancing for the development, design, construction or operation of the Facility and Generator Interconnection Facilities, provided that such assignment does not affect compliance with Article 13 and with all other rights, duties and obligations arising under this Agreement. If Generator provides notice thereof to the Midwest ISO and Transmission Owner, the Midwest ISO and Transmission Owner shall provide notice and reasonable opportunity for such lenders to cure any Default under this Agreement.

The Midwest ISO and Transmission Owner shall, if requested by such lenders, execute its standard documents and certificates as may be requested with respect to the assignment and status of this Agreement, provided such documents do not change the rights of the Midwest ISO or Transmission Owner under this Agreement except with respect to providing notice and reasonable opportunity to cure. Such standard documents and certificates shall include, if true at the time the statement is to be made, statements that (i) this Agreement is in full force and effect and that neither Generator, the Midwest ISO, nor Transmission Owner are in Default; (ii) all representations made by the Midwest ISO and Transmission Owner in this Agreement are true and complete as of the specified date; and (iii) all conditions to be satisfied by the Midwest ISO and Transmission Owner on or prior to the specified date have been satisfied. In the event of any foreclosure by such lenders, the purchasers at such foreclosure or any subsequent purchaser, shall upon request, be entitled to the rights and benefits of (and be bound by) this Agreement so long as it is an entity entitled to interconnect with the Transmission System. The Midwest ISO and Transmission Owner may bill Generator for the cost of providing such standard documents and certificates.

ARTICLE 15 INSURANCE

15.1 Generator Insurance. Without limiting any obligations or liabilities under this Agreement, Generator shall, at its expense, provide and maintain in effect for the life of this Agreement, minimum insurance coverage (in any combination of primary and excess layers) as follows:

15.1.1 Workers' Compensation. Workers' compensation insurance in accordance with all applicable state, federal, and maritime laws, including employer's liability insurance in the amount of one million dollars (\$1,000,000) per accident. The policy shall be endorsed to include a waiver of subrogation in favor of the Midwest ISO and Transmission Owner, and their affiliated and associated companies.

15.1.2 Commercial General Liability. Commercial general liability insurance, including contractual liability coverage, for liabilities assumed under this Agreement and personal injury coverage in the amount of twenty-five million dollars (\$25,000,000) per occurrence for bodily injury and property damage. The policy shall be endorsed to include the Midwest ISO, Transmission Owner, and their affiliated and associated companies as additional insured's with a provision substantially in the form of the following:

In consideration of the premium charged, the Midwest ISO, Transmission Owner, and their affiliated and associated companies are named as additional insured's with respect to liabilities arising out of the Midwest ISO's and Transmission Owner's use and ownership of the Transmission System and/or the Transmission Owner Interconnection Facilities and the Midwest ISO's and Transmission Owner's use of the Generator Interconnection Facilities. The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverage's afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limits of the carrier's liability. The Midwest ISO and Transmission Owner will not, by reason of their inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

- 15.2 Generator Self-Insurance.** Generator, at its option, may, with adequate credit assurance provided to Transmission Owner, self-insure all or part of the insurance required in this Article 15; provided, however, that all other provisions of this Article 15, including, but not limited to, waiver of subrogation, waiver of rights of recourse, and additional insured status, which provide or are intended to provide protection for the Midwest ISO, Transmission Owner, and their affiliated and associated companies under this Agreement, shall remain enforceable. Generator's election to self-insure shall not impair, limit, or in any manner result in a reduction of rights and/or benefits otherwise available to the Midwest ISO, Transmission Owner, and their affiliated and associated companies through formal insurance policies and endorsements as specified in the above paragraphs of this Article 15. All amounts of self-insurance, retentions and/or deductibles are the responsibility of and shall be borne by Generator.

15.3 Transmission Owner Insurance. Without limiting any obligations or liabilities under this Agreement, the Transmission Owner shall, at its expense, provide and maintain in effect for the life of this Agreement, minimum insurance coverage (in any combination of primary and excess layers) as follows:

15.3.1 Workers' Compensation. Workers' compensation insurance in accordance with all applicable state, federal, and maritime laws, including employer's liability insurance in the amount of one million dollars (\$1,000,000) per accident. The policy shall be endorsed to include a waiver of subrogation in favor of Generator and its affiliated and associated companies.

15.3.2 Commercial General Liability. Commercial general liability insurance, including contractual liability coverage for liabilities assumed under this Agreement, and personal injury coverage in the amount of twenty-five million dollars (\$25,000,000) per occurrence for bodily injury and property damage. The policy shall be endorsed to include Generator and its affiliated and associated companies as additional insured's with a provision substantially in the form of the following:

In consideration of the premium charged, Generator and its affiliated and associated companies are named as additional insured's with respect to liabilities arising out of Generator's use and ownership of the Facility and/or the Generator Interconnection Facilities and Generator's use of the Transmission System and/or the Transmission Owner Interconnection Facilities. The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverage's afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limits of the carrier's liability. Generator will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

- 15.4 Transmission Owner Self-Insurance.** The Transmission Owner, at its option, may, with adequate credit assurance provided to Generator, self-insure all or part of the insurance required in this Article 15; provided, however, that all other provisions of this Article 15, including, but not limited to, waiver of subrogation, waiver of rights of recourse, and additional insured status, which provide or are intended to provide protection for Generator and its affiliated and associated companies under this Agreement, shall remain enforceable. The Transmission Owner's election to self-insure shall not impair, limit, or in any manner result in a reduction of rights and/or benefits otherwise available to Generator and its affiliated and associated companies through formal insurance policies and endorsements as specified in the above paragraphs of this Article 15. All amounts of self-insurance, retentions and/or deductibles are the responsibility of and shall be borne by the Transmission Owner.
- 15.5 Notices and Certificates of Insurance.** All policies of insurance shall provide for thirty (30) days prior written notice of cancellation or material adverse change. Prior to the date the Facility is first operated in parallel with the Transmission System and annually thereafter during the term of this Agreement, certificates of insurance shall be furnished by the Transmission Owner to Generator.

ARTICLE 16 INDEMNITY

16.1 General. Each Party shall indemnify and hold harmless the other Parties, and the other Parties' respective officers, shareholders, stakeholders, managers, representatives, directors, agents and employees, and affiliated and associated companies, from and against any and all loss, liability, damage, cost or expense, including damage and liability for bodily injury to or death of persons, or damage to property of persons (including reasonable attorney's fees and expenses, litigation costs, consultant fees, investigation fees and sums paid in settlements of claims and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) (collectively, "Loss") to the extent arising out of, in connection with or resulting from (i) the indemnifying Party's breach of any of the representations or warranties made in, or failure to perform any of its obligations under, this Agreement; or (ii) the negligence or willful misconduct of the indemnifying Party or its contractors and regardless whether arising under Applicable Laws and Regulations or otherwise; *provided*, however, that no Party shall have any indemnification obligations under this Section 16.1 with respect to any Loss to the extent the Loss results from the negligence or willful misconduct of the Party seeking indemnity.

16.2 Notice and Defense. Promptly after receipt by a person entitled to indemnity (“Indemnified Person”) of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 16.1 may apply, the Indemnified Person shall notify the indemnifying Party of such fact, but any failure of or delay in such notification shall not affect a Party’s indemnification obligation unless such failure or delay shall be materially prejudicial to the indemnifying Party. The indemnifying Party shall have the right to assume the defense thereof with counsel designated by such indemnifying Party and reasonable satisfaction to the Indemnified Person; *provided*, however, that if the defendants in any such action include one or more Indemnified Persons and the indemnifying Party and the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person; *provided*, further that the indemnifying Party shall only be required to pay the fees and expenses of one additional law firm to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses. The Indemnified Person shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of which has been assumed by the indemnifying Party. Notwithstanding the foregoing, the indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person or there exists a conflict or adversity of interest between the Indemnified Person and the indemnifying Party, and in such event the indemnifying Party shall pay the reasonable expenses of the Indemnified Person in such defense, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be unreasonably withheld or delayed.

- 16.3 Indemnified Person.** If an Indemnified Person is entitled to indemnification under this Article 16 as a result of a claim by a third party, and the indemnifying Party fails to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Party contest, settle, consent to the entry of any judgment with respect to, or pay in full, such claim.
- 16.4 Amount Owning.** If an indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 16, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, not of any insurance or other recovery.
- 16.5 Limitation on Damages.** Notwithstanding any other provision of this Agreement, liability of all Parties shall be limited to direct actual damages, and all other damages at law or in equity are waived. Under no circumstances shall any Party or its affiliates, directors, officers, employees and agents, or any of them, be liable to the other Parties, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits. The limitations on damages specified in this Section 16.5 are without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. The provisions of this Section 16.5 shall survive the termination or expiration of this Agreement. This Section 16.5 shall not be interpreted in any way to override the provisions of Sections 16.1 through 16.4.

ARTICLE 17
BREACH, CURE AND DEFAULT

17.1 Events of Breach. A Breach of this Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;
- (c) If a Party (i) is adjudicated bankrupt; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;
- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of a Party to provide such access rights, or a Party's attempt to revoke or terminate such access rights, as provided under this Agreement;
or
- (f) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

- 17.2 Continued Operation.** In the event of a Breach or Default by a Party, the Parties shall continue to operate and maintain, as applicable, such DC power systems, protection and Metering Equipment, telemetering equipment, SCADA equipment, transformers, Secondary Systems, communications equipment, building facilities, software, documentation, structural components, and other facilities and appurtenances that are reasonably necessary for the Midwest ISO and Transmission Owner to operate and maintain the Transmission System, or for Generator to operate and maintain the Facility, in a safe and reliable manner.
- 17.3 Cure and Default.** Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach. Upon the occurrence described in part (c) of Section 17.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have thirty (30) days to cure such Breach unless such Breach is due to an occurrence under Section 17.1(a) or (c) in which case the cure period will be five (5) days. If the Breach is such that it cannot be cured within thirty (30) days, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such thirty (30) day time period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within thirty (30) days of becoming aware of the Breach, the Breaching Party will be in Default of this Agreement.

- 17.4 Right to Compel Performance.** Notwithstanding the foregoing, upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to (i) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof, and (ii) exercise such other rights and remedies as it may have in equity or at law.

ARTICLE 18

TERMINATION OF INTERCONNECTION SERVICE

- 18.1 Expiration of Term.** Except as otherwise specified in this Article 18, Interconnection Service for the Facility shall terminate at the conclusion of the term of this Agreement.
- 18.2 Termination.** In addition to the termination provisions set forth in Section 2.2, Party may terminate this Agreement upon the Default of another Party in accordance with this Agreement. Subject to the limitations set forth in Section 18.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.

18.3 Disposition of Facilities Upon Termination of Agreement.

18.3.1 Midwest ISO and Transmission Owner Obligations. Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner shall:

- (a) prior to the construction and installation of any portion of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades and to the extent possible, cancel any pending orders of, or return, such facilities to the extent that such orders or facilities are not required to provide Interconnection Service to a Subsequent Generator;
- (b) keep in place any portion of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades already constructed and installed, provided that Transmission Owner may, in its discretion, remove the Transmission Owner Interconnection Facilities; and
- (c) perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (*e.g.*, construction demobilization, wind-up work).

18.3.2 Generator Obligations. Upon billing by Transmission Owner, Generator shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Section 18.3.1 and for the cost of any Transmission Owner Interconnection Facilities and Interconnection System Upgrades described in Appendix A, including any study or redesign costs associated therewith, that are necessary for the provision of Interconnection Service to a Subsequent Generator that has entered into an Interconnection and Operating Agreement with Midwest ISO and/or Transmission Owner on or before the date of the termination of this Agreement. The Transmission Owner and the Midwest ISO shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Generator shall pay these costs pursuant to §13.4 of this Agreement. If the cost of any Transmission Owner Interconnection Facilities and Interconnection System Upgrades described in Appendix A, including any study or redesign costs associated therewith are necessary for the provision of Interconnection Service to such Subsequent Generator, Generator may seek recovery of such costs from the Subsequent Generator in accordance with Section 3.6 to the extent that Generator has paid such costs to Transmission Owner.

18.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Transmission Owner Interconnection Facilities or Interconnection System Upgrades, Transmission Owner may, at its option, retain any portion of such facilities not cancelled or returned in accordance with Section 18.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such facilities. To the extent that Generator has already paid Transmission Owner for any or all of such costs, Transmission Owner shall refund such amounts to Generator. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Generator such facilities as soon as practicable after Generator's payment for such facilities.

18.4 Survival of Rights. Termination of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder.

ARTICLE 19 SUBCONTRACTORS

19.1 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

19.1.1 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

19.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

19.1.3 No Limitation by Insurance. The obligations under this Article 19 will not be limited in any way by any limitation of subcontractor's insurance.

ARTICLE 20 CONFIDENTIALITY

- 20.1 Term.** During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 20, each Party shall hold in confidence and shall not disclose to any person Confidential Information.
- 20.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate (i) is generally available to the public other than as a result of a disclosure by the receiving Party; (ii) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (iii) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, after due inquiry, was under no obligation to the other Party to keep such information confidential; (iv) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (v) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Agreement; or (vi) is required, in accordance with Section 20.7 of this Agreement, to be disclosed to any Governmental Authority as long as such information is made available to the public, is otherwise required to be disclosed by Applicable Laws and Regulations or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information shall no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

- 20.3 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except on a need-to-know basis, to its employees, consultants or to parties who may be or considering providing financing to or equity participation with Generator in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 20 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person receiving the initial Confidential Information shall remain primarily responsible for any release of Confidential Information in contravention of this Article 20.
- 20.4 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to another Party. The disclosure by each Party to another Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.
- 20.5 No Warranties.** By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

- 20.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as that it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to other Parties under this Agreement or to comply with Applicable Laws and Regulations.
- 20.7 Order of Disclosure.** If a Governmental Authority with the right, power, and apparent authority to do so requests or requires a Party, by subpoena, oral deposition, interrogatories, requests for production of documents, data request, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt prior written notice to the extent possible of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or agreement, or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or agreement, or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party shall use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

- 20.8 Termination of Agreement.** Upon termination of this Agreement for any reason, each Party shall, at the Party's option, within ten (10) days after receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure and deletion certified in writing to the other Parties) or return to the other Parties, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Parties.
- 20.9 Remedies.** The Parties expressly agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 20. Each Party accordingly expressly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this Article 20, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed to be an exclusive remedy for the breach of this Article 20, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 20.

ARTICLE 21 INFORMATION ACCESS AND AUDIT RIGHTS

- 21.1 Information Access.** Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than to operate and maintain their respective facilities and equipment for the purposes set forth in this Section 21.1 and to enforce their rights under this Agreement.
- 21.2 Audit Rights.** Subject to the requirements of confidentiality under Article 20, a Party at its expense shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit each other's accounts and records pertaining to a Party's performance and/or satisfaction of obligations arising under this Agreement during the twenty-four (24) month period prior to commencement of the audit, other than the performance and/or satisfaction of the Midwest ISO under Section 4.7, which shall be subject to the audit provisions of such Section. Any audit authorized by this Section 21.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

ARTICLE 22 DISPUTES

- 22.1 Submission.** Any claim or dispute, which a Party may have against others, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Midwest ISO OATT.
- 22.2 Rights under the Federal Power Act.** Nothing in this Article 22 shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.

- 22.3 Equitable Remedies.** Nothing in this Article shall prevent either Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

ARTICLE 23
NOTICES

- 23.1 General.** Any notice, demand or request required or permitted to be given by a Party to others and any instrument required or permitted to be tendered or delivered by a Party in writing to the other may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To the Midwest ISO:

[Insert name and/or title of person]
Midwest ISO
701 City Center Drive
Carmel, IN 46032

To Transmission Owner:

[Insert name and/or title of person]
[Insert name of Transmission Owner]
[Insert street or P. O. Box address]
[Insert city, state and zip code]

To Generator:

[Insert name and/or title of person]
[Insert name of Generator]
[Insert street or P. O. Box address]
[Insert city, state and zip code]

23.2 Billings and Payments. Billings and payments shall be sent to the addresses shown in Section 23.1.

23.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To the Midwest ISO:

Voice telephone – [Insert number]

Facsimile telephone – [Insert number]

Email address – [Insert address]

To Transmission Owner:

Voice telephone – [Insert number]

Facsimile telephone – [Insert number]

Email address – [Insert address]

To Generator:

Voice telephone – [Insert number]

Facsimile telephone – [Insert number]

Email address – [Insert address]

ARTICLE 24
MISCELLANEOUS

- 24.1 No Ownership Control.** Generator represents and warrants as of the effective date of this Agreement, that it does not own more than five percent (5%) of the voting shares of the Midwest ISO, nor has contractual rights permitting it to direct the voting of such percentage of shares, and further agrees that this representation shall remain true during the term of this Agreement.
- 24.2 Waiver.** Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 24.3 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Indiana without regard to the conflicts of law provisions.
- 24.4 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

- 24.5 Amendments and Rights Under the Federal Power Act.** This Agreement may be amended by and only by a written instrument duly executed by all Parties. Upon satisfaction of all Applicable Laws and Regulations, an amendment to this Agreement shall become effective and a part of this Agreement. Notwithstanding the foregoing, nothing contained herein shall be construed as affecting in any way the rights of the Midwest ISO, Transmission Owner, or Generator under Sections 205 and 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder. The Midwest ISO and ITC, as applicable, after consultation with the Midwest ISO, reserves the right to file rate schedules with FERC concerning any services the Midwest ISO, or ITC, as applicable, deems necessary for reliable and orderly bulk power system management, including but not limited to any standby or related services that may arise from a failure by Generator to meet its schedule of deliveries across the Transmission System.
- 24.6 Entire Agreement.** This Agreement constitutes the entire agreement among the Parties hereto with reference to the subject matter hereof and no change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Generator, Transmission Owner, and the Midwest ISO. The terms and conditions of this Agreement and every appendix referred to herein shall be amended, as mutually agreed to by the Parties, to comply with changes or alterations made necessary by a valid applicable order of any Governmental Authority having jurisdiction hereof.

- 24.7 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 24.8 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.
- 24.9 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 24.10 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.

ARTICLE 25
REPRESENTATIONS AND WARRANTIES

- 25.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 25.1.1 Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of their organization as stated in the preamble of this Agreement.
- 25.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

25.1.3 No Conflict. The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of either Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon either Party or any of its assets.

25.1.4 Consent and Approval. That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

25.1.5 Solvency. That each Party is financially solvent.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

**Midwest Independent Transmission
System Operator, Inc.**

[Insert name of Generator]

By: _____
Name (typed or printed):
Title:

By: _____
Name (typed or printed):
Title:

[Insert name of Transmission Owner]

By: _____
Name (typed or printed):
Title:

APPENDIX A
POINT OF INTERCONNECTION, TRANSMISSION OWNER INTERCONNECTION FACILITIES, INTERCONNECTION SYSTEM UPGRADES, COST ESTIMATES AND RESPONSIBILITY, TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE, AND MONTHLY PAYMENT SCHEDULE

This Appendix A is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Midwest ISO.

- 1.1 Point of Interconnection.** The Point of Interconnection shall be at the point where _____ . See Drawing No. _____ dated _____, which drawing is attached hereto and made a part hereof. If not located at the Point of Interconnection, the metering point(s) shall be located at _____ .
- 1.2 Transmission Owner Interconnection Facilities (including metering equipment) to be constructed by the Transmission Owner.** The Transmission Owner shall construct _____ .

1.3 Transmission Owner Interconnection Facilities (including metering equipment) to be constructed by Generator. Generator shall construct _____.

1.4 Interconnection System Upgrades to be installed by the Transmission Owner. The Transmission Owner shall install _____.

1.5 Cost Estimates and Responsibility. Generator and the Transmission Owner hereby acknowledge and agree that the cost indicated below is only an estimate and that Generator hereby agrees to and shall reimburse the Transmission Owner for all actual costs, as determined pursuant to Section 9.4 herein associated with the construction and installation by the Transmission Owner and/or Generator of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades.

1.5.1 The cost for the Transmission Owner Interconnection Facilities to be constructed by the Transmission Owner is estimated at \$ _____.

1.5.2 The cost for the Transmission Owner Interconnection Facilities to be constructed by Generator is estimated at \$ _____.

1.5.3 The cost for the Interconnection System Upgrades is estimated at \$ _____.

- 1.5.4** The cost, including penalties, of redispatch or market-related costs arising from outages described in Section 9.1.10 of the Agreement is estimated at \$ _____.
- 1.5.5** The total cost for the Transmission Owner Interconnection Facilities and Interconnection System Upgrades is estimated at \$ _____.
- 1.5.6** Generator's liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under Section 9.4.1 is estimated at \$ _____. This amount is not included in the total cost for Transmission Owner Interconnection Facilities and Interconnection System Upgrades stated in Section 1.5.5 of this Appendix A.

- 1.6 First Equipment Order.** The first date for the ordering of equipment by Transmission Owner for installing Transmission Owner Interconnection Facilities and/or Interconnection System Upgrade is expected to be _____.
- 1.7 Transmission Credits.** The portion of the Interconnection System Upgrades that are subject to the transmission service credits described in Section 9.2 of this Agreement is estimated at \$ _____.
- 1.8 Construction Schedule.** Construction of the Facility, Generator Interconnection Facilities, the Transmission Owner Interconnection Facilities and Interconnection System Upgrades is scheduled as follows: **[Insert construction schedule]**
- 1.9 Monthly Payment Schedule.** Generator shall pay the Transmission Owner for the installation of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades in accordance with the following schedule:

Date Due	Amount Due
----------	------------

- 1.10 Permits, Licenses and Authorizations.** The Midwest ISO and/or Transmission Owner shall obtain the following permits, licenses and authorizations:

**APPENDIX B
FACILITY AND GENERATOR INTERCONNECTION FACILITIES**

This Appendix B is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Midwest ISO.

1.1 Facility. Generator intends to own and operate an _____ MW electric generating facility located in _____, and more specifically described as follows: **[Insert description of Facility]**

1.2 Generator Interconnection Facilities to be constructed by Generator. Generator shall construct _____.

1.3 Permits, Licenses and Authorizations. Generator shall obtain the following permits, licenses and authorizations:

APPENDIX C - OPERATION DATE

This Appendix C is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Midwest ISO.

[Date]

[Generator]

[Address]

[Address]

[Address]

Re: [Facility]

Dear _____

On [Date], the Transmission Owner _____, and _____ (the "Generator") completed to their mutual satisfaction all work on the [Facility] and associated interconnection facilities and related equipment required to interconnect the Facility with the Transmission Owner's Transmission System and have energized the Facility in parallel operation with the Transmission Owner's Transmission System. This letter confirms that the Facility may commence commercial operation of the Facility and associated interconnection facilities effective as of [Date plus one day].

Thank you.

[Signature]

[Transmission Owner Representative]

APPENDIX D - INTERCONNECTION GUIDELINES

This Appendix D is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Midwest ISO.

The unique requirements of each generation interconnection will dictate the establishment of mutually agreeable Interconnection Guidelines that further define the requirements of this Interconnection and Operating Agreement. The Interconnection Guidelines will address, but not be limited to, the following:

- (a) System Protection Facilities;**
- (b) Communication requirements;**
- (c) Metering requirement;**
- (d) Grounding requirements;**
- (e) Transmission Line and Substation Connection configurations;**
- (f) Unit Stability requirements;**
- (g) Equipment ratings;**
- (h) Short Circuit requirements;**
- (i) Synchronizing requirements;**
- (j) Generation Control requirements;**
- (k) Data provisions;**
- (l) Energization inspection and testing requirements;**
- (m) If applicable, the unique requirements, if any, of the Transmission Owner to which the Facility will be physically interconnected; and**
- (n) Other.**

Such mutually agreeable Interconnection Guidelines will be attached to this Agreement as Appendix D.

APPENDIX E - OPERATING GUIDELINES

This Appendix E is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Midwest ISO.

The unique requirements of each generation interconnection will dictate the establishment of mutually agreeable Operational Guidelines that further define the requirements of this Interconnection and Operating Agreement. These guidelines will address, but not be limited to, the following:

- (a) System Protection Facilities (relaying);**
- (b) Switching and tagging;**
- (c) Communication requirements;**
- (d) Metering requirements;**
- (e) Data reporting requirements;**
- (f) Training;**
- (g) Capacity determination and verification (including ancillary services and certification);**
- (h) Emergency operations, including system restoration and black start arrangements**
- (i) Identified must-run conditions;**
- (j) Provision of ancillary services;**
- (k) Specific transmission requirements of nuclear units to abide by all NRC requirements and regulations;**
- (l) Stability requirements, including generation short circuit ratio considerations;**
- (m) Limitations of operations in support of emergency response; and**
- (n) Maintenance and Testing;**
- (o) Generation and operation control;**
- (p) Other.**

Such mutually agreeable Operational Guidelines will be attached to this Agreement as Appendix E.

ATTACHMENT S-1

INDEPENDENT MARKET MONITOR RETENTION AGREEMENT

June 27, 2002

Dr. David B. Patton, President
Potomac Economics, Ltd.
4029 Ridge Top Road
Fairfax, VA 22030

Retention Agreement

Dear David:

This is to confirm the terms of the agreement by which the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"),¹ will retain, as of July 1, 2002, Potomac Economics in connection with implementing the Independent Market Monitor function for the Midwest ISO. As the Independent Market Monitor, you will review market power and other competitive conditions in the markets administered by the Midwest ISO and make reports and recommendations as appropriate, perform the tasks and responsibilities of the Independent Market Monitor specified in Attachment S to the Midwest ISO Tariff, and undertake such related tasks that fall under the normal responsibilities of a market monitor, such as filing testimony or working on design improvements.

You will lead this engagement on behalf of Potomac Economics, assisted as may be appropriate in the interests of economy and complying with applicable deadlines, or as may otherwise be requested by the Midwest ISO, by members or employees of Potomac Economics working under your direction and supervision.

¹ All references in this Agreement to the Midwest ISO shall be construed as encompassing any successor in interest to the Midwest ISO.

The term of this Agreement shall begin on July 1, 2002 and shall end on July 1, 2004, unless terminated earlier as provided herein or renewed for an additional two-year term by the Midwest ISO and approved by the Federal Energy Regulatory Commission ("FERC"). If the Midwest ISO is dissatisfied with your work performance, it may make a filing with FERC requesting permission to either terminate this Agreement on 30 days written notice or to not renew this Agreement upon its expiration. Potomac Economics shall have the right to comment on, or protest, any such filing. The Midwest ISO may not terminate this Agreement with Potomac Economics, or otherwise replace Potomac Economics as its Independent Market Monitor, nor may the Midwest ISO or Potomac Economics change the scope of work set out in Attachment S unless FERC first issues an order approving such change, termination, or replacement. In the event that this Agreement is terminated, Potomac Economics shall be reimbursed for any time and expenses properly incurred in the course of this engagement prior to such termination. If you should determine that Potomac Economics is no longer willing or able to serve as the Independent Market Monitor, it will provide not less than 120 days notice before withdrawing from the position of Independent Market Monitor.

The Independent Market Monitor shall report directly to the Midwest ISO Board of Directors. Your primary point of contact with the Midwest ISO will be a Market Monitoring Liaison Officer appointed by the Midwest ISO Board of Directors.

As the Independent Market Monitor and consistent with the requirements of Attachment S, you will notify the Commission upon determining that the Independent Market Monitor has identified a significant market problem that may require: 1) further investigation; 2) a change in the Midwest ISO Tariff or market rules or practices; or 3) action by the FERC and/or one or more state commissions.

We understand that you and Potomac Economics have no present engagements or other relationships that present a conflict of interest or other impediment that would preclude your serving as the Independent Market Monitor. We further understand that you and Potomac Economics are able to conform, and agree to conform while serving as the Independent Market Monitor, to the Independent Market Monitor Conflicts Policy, a copy of which is attached hereto as Exhibit A to Attachment S-1.

In furtherance of this engagement, the Midwest ISO, participants in the Midwest ISO administered markets, and others will be transmitting information in document or other forms in confidence to you and Potomac Economics. Your treatment of this information will be governed by Attachment S.

Work performed shall be billed at the hourly rates negotiated between the Midwest ISO and Potomac Economics. The billing rates may be adjusted annually by mutual agreement of the Midwest ISO and Potomac Economics in January of subsequent years. In the event that the Midwest ISO and Potomac Economics do not reach agreement on adjusted billing rates, the billing rates from the preceding year shall remain in effect. Potomac Economics shall have the unilateral right to petition FERC for relief if it determines that Midwest ISO actions with respect to its billing rates, or any other Midwest ISO action, will compromise its ability to independently monitor and provide objective information about the Midwest ISO's conduct, market rules and procedures.

Professional time and disbursements will be billed on a monthly basis directly to the Midwest ISO. Potomac Economics will provide the Market Monitoring Liaison Officer with a copy of all bills. The Midwest ISO will pass the costs associated with these bills on to its customers pursuant to Schedule 10 of the Midwest ISO Tariff ("ISO Recovery Cost Adder"), but shall render payment of all undisputed amounts within 30 days of receipt of each bill.

An annual budget for the Independent Market Monitoring function shall be prepared by Potomac Economics and submitted to the Market Monitoring Liaison Officer not less than 120 days prior to end of the calendar year. This budget will be available for stakeholder review and Board of Director approval through the Midwest ISO budget process. The annual market monitoring budget approved by the Board of Directors is incorporated by reference herein.

Potomac Economics is responsible for informing the Market Monitoring Liaison Officer when total accrued amounts for services and expenditures reach 75% of the total agreed annual budget. Upon such notification, the Midwest ISO may make a filing at FERC proposing modifications to the scope of work in Attachment S to the Midwest ISO Tariff to manage the costs incurred under this Agreement. Potomac Economics shall have the right to comment on, or protest, any such filing.

This Agreement, and the rights and obligations of the parties thereunder, shall be governed by the laws of the Commonwealth of Virginia. Please confirm your acceptance of this Agreement on behalf of yourself and Potomac Economics by executing and dating this letter and returning it to us.

We look forward to your working with the Midwest ISO as it brings into being and maintains robust, competitive and reliable electric markets in its region.

Sincerely,

/s/ James Torgerson
James Torgerson
Chief Executive Officer
Midwest Independent Transmission System Operator, Inc.

Agreed:

Potomac Economics, Ltd.

By: /s/ Dr. David B. Patton
Dr. David B. Patton
President
Potomac Economics, Ltd.

Date: June 27, 2002

EXHIBIT A TO ATTACHMENT S-1

INDEPENDENT MARKET MONITOR CONFLICTS POLICY

The Independent Market Monitor ("IMM"), and other members or employees of the IMM's firm, shall conform to the following rules while the IMM is retained as such by the Midwest ISO, unless the Market Monitoring Liaison Officer determines, in its sole discretion, that waiver of a rule would not compromise the independence or integrity of the IMM in the performance of his or her responsibilities for the Midwest ISO:

1. The IMM, and members of his or her firm assisting on market monitoring matters for the Midwest ISO, may not have an equity or other financial interest in a participant in a market for electric energy or ancillary services in the Midwest ISO's region ("Market Participant") or in a parent, subsidiary or affiliate of a Market Participant.

2. The IMM, and other members or employees of his or her firm assisting on market monitoring matters for the Midwest ISO, may not: (i) undertake a matter that could benefit from non-public information to which the IMM or other members or employees of his or her firm have access in the course of services performed for the Midwest ISO; or (ii) use any such information for any purpose other than carrying out the responsibilities assigned to the IMM or his or her firm under the Market Monitoring Plan or by the Midwest ISO.

3. The IMM and other members or employees of his or her firm may not undertake a matter for or on behalf of an Interested Party involving the structure or performance, or the rules, standards and procedures, of a market for electric energy or ancillary services of the Midwest ISO. For purposes of these rules, the term "Interested Party" shall mean: (a) a Market Participant; or (b) a person or entity with a significant financial or policy interest in the organization, governance or operations of the Midwest ISO but shall not include the Midwest ISO itself or any predecessor organizations.

4. The IMM and the other members or employees of his or her firm may undertake other matters not precluded by any of the foregoing rules for a Market Participant, or a parent, subsidiary or affiliate of a Market Participant, if the matter is disclosed to the Market Monitoring Liaison Officer and it determines, in its sole discretion, that undertaking the matter would not compromise the independence or integrity of the IMM in the performance of his or her responsibilities for the Midwest ISO.

5. The IMM and other members or employees of his or her firm shall conform to the standards of conduct and other policies for independent contractors performing services for the Midwest ISO as may be adopted from time to time by the Board of Directors of the Midwest ISO as applicable.

ATTACHMENT T

Retail Terms and Conditions

The rates, terms and conditions for retail transmission services listed in this Attachment T shall be as stated in the Tariff, except as set forth below. In the event there are differences between any provision of this Attachment and the Tariff, this Attachment T shall in all cases control. To the extent possible, the provisions of this Attachment T have been numbered to correspond with the provisions of the Tariff that would otherwise apply.

Michigan – Upper Peninsula Retail Access

34.2(a) Network Load Calculation for Michigan Customer Choice Program: Network Customers who serve load under the Michigan Customer Choice and Electricity Reliability Act program (such program being pursuant to Michigan Act No. 141 (2002), as amended from time to time) (“the participants”), shall have transmission service for such load billed using a Load Ratio Share that is calculated in each service month. The monthly Network Load shall be the product of the Network Customer’s maximum scheduled hourly demand times eighty-five percent (85%).

34.2(b) Existing Network Customers' Load Ratio Share Adjustment:

The Load Ratio Share of Network Customers taking service prior to January 1, 2002, shall be adjusted to the extent that the participants referred to in Section 34.2(a) replace the power sales service of such pre-existing Network Customers and contract for either Long-Term Firm Point-To-Point Transmission Service under Part II of this Tariff or Network Integration Transmission Service under Part III of this Tariff. For the purposes of determining the Load Ratio Share of Network Customers taking service prior to January 1, 2002, Network Load shall be adjusted monthly. The adjustment shall be equal to the sum of the participants' Network Loads, as determined in Section 34.2(a), and such participants' Long-Term Firm Point-To-Point Transmission Service capacity reservations that supplanted the Network Customer's Network Load.

Illinois Retail Access

1.0.1 Alternative Retail Electric Supplier (“ARES”): An Alternative Retail Electric Supplier as defined in Section 16-102 of the Illinois Public Utilities Act, 220 ILCS 5/16-102.

1.7.1 Customer Self Manager (“CSM”): A retail customer as described in Section 1.11(ii) in this Attachment T that directly manages its own procurement of electric power and energy services and its own use of transmission services, rather than utilizing a RES for such purposes; provided, however, that a CSM may, at times, use an agent to discharge some of its responsibilities.

1.11 Eligible Customer: (i) Any electric utility (including the Transmission Owner and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale is an Eligible Customer under the Tariff. Electric energy sold or produced by such entity may be electric energy produced in the United States, Canada or Mexico. However, with respect to transmission service that the Commission is prohibited from ordering by Section 212(h) of the Federal Power Act, such entity is eligible only if the service is provided pursuant to a state requirement that the Transmission Owner offer the unbundled transmission service, or pursuant to a voluntary offer of such service by the Transmission Owner (ii) Any retail customer taking unbundled transmission service pursuant to a state requirement that a Transmission Owner offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Owner is an Eligible Retail Customer (“ERC”) under the Tariff.

1.41.1 Retail Electric Supplier (“RES”): Any ARES or any Illinois Electric utility as defined in Section 16-102 of the Illinois Public Utilities Act, 220 ILCS 5/16-102 and, by reference, Section 3-105 of the Illinois Public Utilities Act, 220 ILCS 5/3-105 (or any agent of any such electric utility to the extent the electric utility provides tariff services to retail customers through that agent) other than the Transmission Provider. A utility that is not an Illinois Electric Utility as defined above is not a RES unless it qualifies as an ARES as defined in Section 1.0.1, in accordance with Illinois law, rules and regulations.

2.2 Reservation Priority For Existing Firm Service Customers: Existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more or any retail customer as defined in Section 1.11(ii) of this Attachment T, have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed, or when Bundled Load customer first requests unbundled transmission service. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Owner or elects to purchase capacity and energy from another supplier.

If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service the existing firm service customer must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current just and reasonable rate, as approved by the Commission, for such service. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms of one year or longer or when a Bundled Load customer first requests unbundled transmission service. If competing existing firm service requirements customers apply for service that cannot be fully provided, the priority rights will be ranked in accordance with first-come, first-served principles. If firm service customers tie, then the capacity for which they receive priority rights under this Tariff shall be apportioned on a pro rata basis.

7.3 Customer Default: For retail customers, upon the occurrence of a default, the Transmission Provider may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request; provided that, so long as Transmission Owner's retail service tariffs subject to the jurisdiction of the State of Illinois provide for continuation of service to affected retail customers as described in Section 1.11(ii), by another supplier that is a Transmission Customer, then the Transmission Provider may, upon default by a Transmission Customer who is not such a retail customer, immediately terminate Transmission Service to the defaulting Transmission Customer for the load of any such retail customers and provide electric utility service to affected retail customers only when the retail load of the defaulting Transmission Customer has been reassigned by a state authority to a new supplier, in accordance with a state retail access program.

In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy, or in the case of a state-required retail access program that provides for continuation of retail service to affected retail customers by another supplier that is a Transmission Customer, the Transmission Provider may immediately terminate Transmission Service as provided above.

7.4 Retail Supplier De-certification: In the event that the State of Illinois de-certifies a Transmission Customer who is not a retail customer under Section 1.11(ii), then Transmission Provider may immediately terminate Transmission Service to the de-certified Transmission Customer for the load of the retail customers supplied by such Transmission Customer, provided that Transmission Owner's retail service tariffs subject to the jurisdiction of the State of Illinois provide for continuation of service to affected retail customers as described in Section 1.11(ii) by another supplier that is a Transmission Customer.

24.1 Transmission Customer Obligations: For retail customers, as defined in Section 1.11 of this Attachment T, the requirements of this Section 24.1 will be satisfied by the provision of metering that complies with the rules and regulations of the Illinois Commerce Commission concerning metering and any applicable tariffs of the Transmission Owner except for the situation where special equipment is required for dynamic scheduling, which would be covered under a separate agreement.

29.2 Application Procedures:

- (iii) A description of the Network Load at each delivery point. This description should separately identify and provide the Eligible Customer's best estimate of the total loads to be served at each transmission voltage level, and the loads to be served from each Transmission Provider substation at the same transmission voltage level. The description should include a ten (10) year forecast of summer and winter load and resource requirements beginning with the first year after the service is scheduled to commence. For retail customers as defined in Section 1.11 of this Attachment T, the Transmission Provider will be responsible for the 10-year load forecast, and will not require the submission of a 10-year resource forecast, so long as the Customer provides a list of resources sufficient to cover load for the period of service requested. The Transmission Provider in no way agrees that Retail Electric Suppliers are not responsible for serving the load they agree to serve.

- (vii) Service Commencement Date and the term of the requested Network Integration Transmission Service. The minimum term for Network Integration Transmission Service is one year or for any shorter period necessary to accommodate retail access under Illinois law.

29.4 Network Customer Facilities: For retail customers, as defined in Section 1.11 of this Attachment T, this requirement will be satisfied by the installation of facilities on the customer side of the interconnection between the Transmission Owner and the customer.

Ohio Retail Access:

1.30 Network Load: The load that a Network Customer designates for Network Integration Transmission Service under Part III of the Tariff. The Network Customer's Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where an Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load. Network Load may be calculated through demand metering or through other methods, with such other methods to be specified in the Transmission Customer's network Service Agreement.

1.43 Point-To-Point Transmission Service: The reservation and transmission of capacity and energy on either a firm or non-firm basis from the Point(s) of Receipt to the Point(s) of Delivery under Part II of the Tariff. Firm Point-to-Point Transmission Service is not available for purposes of transmitting energy to Unbundled Retail Customers over transmission lines rated less than 138 kV.

1.63 Unbundled Retail Customers: Retail electric customers who are (i) taking service under this Tariff in Ohio; and (ii) receiving unbundled competitive retail electric service pursuant to Chapter 4928 of the Ohio Revised Code.

2.3 Priority for Unbundled Retail Customers: A Transmission Customer requesting Network Integration Transmission Service for purposes of delivering energy solely to Unbundled Retail Customers shall have the same priority for requesting and receiving service as would an existing Network Integration Transmission Service Transmission Customer requesting service under this Tariff.

ADDITIONAL PROVISIONS FOR BILLING AND PAYMENT:

7.3 Customer Default: In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist.

Upon the occurrence of a default, the Transmission Provider may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request; provided that, so long as the Transmission Provider's retail service tariffs subject to the jurisdiction of the State of Ohio provide for continuation of service to Unbundled Retail Customers upon default or de-certification of a supplier, then the Transmission Provider may, upon default by a Transmission Customer or de-certification by the appropriate state authority of a supplier who is a Transmission Customer, and reassignment of such Transmission Customer's Unbundled Retail Customers to a new supplier under authority of Ohio Law, immediately terminate Transmission Service to the defaulting or decertified Transmission Customer for the load of such Unbundled Retail Customers and provide electric utility service to the affected Unbundled Retail Customers in accordance with a state retail access program. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the

Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy, or in the case of a state required retail access program that provides for continuation of retail service to affected Unbundled Retail Customers immediately terminate Transmission Service as provided above.

Additional Provisions for the Designation of Network Resources:

30.2 Designation of New Network Resources: The Network Customer may designate a new Network Resource by providing the Transmission Provider with as much advance notice as practicable. A Transmission Customer may seek to designate a new Network Resource intended solely to supply energy to Unbundled Retail Customers on a day-ahead basis, by 10:00 a.m. of the prior day. Such a day-ahead designation is subject to the approval of the Transmission Provider, and will not be approved if there is insufficient available transfer capacity, or if the Transmission Customer has failed to submit a notification under Section 30.3 of the Tariff of simultaneous termination of a Network Resource or Resources of equal or greater size. A designation of a new Network Resource must be made by a request for modification of service pursuant to an Application under Section 29.

ATTACHMENT U

Process for the Use of Network Resources Outside of the Transmission Provider and Resolving Competing Requests for Transmission Service Among Network Customers and Between Point-to-Point and Network Customers

1. Requests by a Network Customer to Designate Network Resources Located Outside of the Transmission Provider Transmission System

Requests by a Network Customer to designate a Network Resource that is located outside of the Transmission Provider Transmission System must be submitted on the Transmission Provider OASIS in the same manner, and including the same information as requests to designate a Network Resource within the Transmission Provider Transmission System. The queue position for a Network Resource will be determined by the earlier of the date of the first ten (10)-year forecast applicable to such a resource under this Tariff, or the time of the OASIS request seeking to designate the Network Resource. Network Resources do not have to be designated at the time of providing the forecasts. In order to make available to other customers capacity that will not be needed on a short-term basis (*i.e.*, within the next twelve (12) months) to serve Network Customer load from Forecast Network Resources (FNRs), a Network Customer must designate Network Resources to be used within the next twelve (12) months by an OASIS request for such designation. The twelve (12)-month designation period is to be made on the variable date consistent with the applicable timing requirements of Attachment J of this Tariff for like term Firm Point-to-Point Transmission Service. Designation of a new Network Resource that has not previously been identified as an FNR in the annual forecast submittals by Network Customers will be evaluated for available capacity, and if available, the designation will be accepted. As per Section 30.2 of this Tariff, the Network Customer must provide the Transmission Provider with as much advance notice as practicable when designating a new Network Resource.

Requests by a Network Customer to utilize resources located outside of the Transmission Provider Transmission System on a non-firm basis (*i.e.* non-designated resources) must also be submitted on the Transmission Provider OASIS and shall be made in accordance with the timing requirements for a like term of Non-Firm Point-to-Point Transmission Service as specified in Attachment J to this Tariff. For example, if a customer desires to arrange for the utilization of a non-designated resource for a day, the customer would make a request on the Transmission Provider OASIS for this type of service (*e.g.* daily non-firm network, non-designated) in accordance with the same timing requirements specified in Attachment J to this Tariff for Non-Firm Daily Point-to-Point Transmission Service (*i.e.*, no later than 1200 hrs day/no earlier than three (3) days prior). When making a request to designate a Network Resource located outside of the Transmission Provider Transmission System, the Network Customer must specify the information required in Section 29.2¹ and consistent with Sections 30.1 and 30.7 of this Tariff. The Transmission Provider has posted on its OASIS the Transmission Provider Request to Designate a Network Resource form to be used to request a designated Network Resource. In addition to this information, the customer must specify in the OASIS request the Point of Receipt (“POR”) and source. The POR and source must reflect the location of the Network Resource that is to be utilized.

¹ With the exception that the approximate variable generating cost for redispatch computations is not required because the Midwest ISO will be applying a bid-based redispatch for congestion management purposes.

The POR should indicate the Control Area that contains the Network Resource. The source should indicate the source Control Area or the aggregation of units within the specified Control Area if the Network Resource is from system purchased power, or otherwise should indicate the specific unit or generating station that is being designated. In addition, the capacity field on the OASIS request must include the capacity of the Network Resource. When utilizing the Transmission Provider Request to Designate a Network Resource form, the Network Customer must also certify that all Commission requirements² for Network Resource have been met (or expect to be met before the request is accepted) at the time a request is submitted on the Transmission Provider OASIS. The request for designation will not be accepted until the Transmission Provider receives the Designated Network Resource Form containing all required information.

The only additional information required for Network Resources located outside of the Transmission Provider Transmission System as compared to those located within the Transmission Provider Transmission System, is certification to the Transmission Provider that Firm Transmission Service for facilities not within the Transmission Provider has been obtained (or has been submitted by other Transmission Providers). The Network Customer also agrees to notify the Transmission Provider when these requests are confirmed. The Transmission Provider reserves the right to retract its approval of the designation of a resource in the event that the customer fails to provide this notification or if the transmission service request submitted by other Transmission Providers is denied.

² With the exception that the approximate variable generating cost for redispatch computations is not required because the Midwest ISO will be applying a bid-based redispatch for congestion management purposes.

2. Resolving Competing Requests for Transmission Service Between Point-to-Point and Network Customers

All existing Network Customers and Point-to-Point Customers with Firm Transmission Service contract terms of one year or more have an ongoing right to such service. The Transmission Provider will ensure that transmission capacity exists to reliably meet these obligations by planning the system based on the Firm Point-to-Point Transmission Service obligations and the ten (10) year forecasts of Network Resources and Network Load, including all information required of Network Customers in Section 29.2 of this Tariff. In planning to meet the Point-to-Point Transmission Service obligations, the Transmission Provider will provide for the continuing right of eligible Point-to-Point Customers to continue their service in the capacity and with the source and sink specified in the original contract. Planning to meet the needs of the Network Customers is based on the information requirements for current and Forecasted Network Resources (“FNRs”) (Section 29.2 (v and vi) of this Tariff) that include specific unit information, including location on the transmission system or description of purchased power forecasted as a Network Resource. The Transmission Provider will resolve competing requests for transmission service among Network Customers as provided for in Section 3 of this Attachment U. Network Resources do not have to be designated at the time of providing the forecasts. In order to make available to other customers capacity that will not be needed on a short-term basis (i.e., within the next twelve months) to serve Network Customer load from FNRs, a Network Customer must designate Network Resources to be used within the next twelve months by an OASIS request for such designation. Specifically, the twelve-month designation period is to be made on the variable date consistent with the applicable timing requirements of Attachment J of this Tariff for like term Point-to-Point Transmission Service.

The capacity reservation associated with previous FNRs is queued at the time of the forecast submittal, but is released for use by other customers in the short-term, only if the Network Customer does not designate the previous FNR within the timing requirements of Attachment J. The Transmission Provider will decrement Available Flowgate Capability (“AFC”) for each rolling twelve-month period to reflect only those previously identified FNRs that are needed. Designation of a new Network Resource that has not previously been identified as a FNR in the annual forecast submittals by Network Customers will be evaluated for available capacity, and if available, the designation will be accepted. However, neither the newly designated Network Resource, nor a new FNR, need be a resource specifically identified in previous 10-year forecasts. As per Section 30.2 of the Transmission Provider OATT, the Network Customer must provide the Transmission Provider with as much advance notice as practicable when designating a new Network Resource.

When evaluating new requests for Firm Point-to-Point Transmission Service on the Transmission Provider Transmission System, the Transmission Provider will make transmission capacity available to Point-to-Point Customers until such time as that capacity is needed to serve existing Network Customer load. The determination of available capacity will be based on the annual submittals by Network Customers of forecasted network load and FNRs. If at the time of a request for new Firm Point-to-Point Transmission Service, the Transmission Provider determines that sufficient capacity will not be available to accommodate both the forecasted load growth of existing Network Customers, and the new request for Point-to-Point Transmission Service, the Service Agreement for the Point-to-Point Transmission Service request will reflect this limitation to the roll-over rights of the new service.

3. Planning for Forecasted Load Growth and Forecasted Network Resources of Network Customers and Resolving Competing Requests for Transmission Service Among Network Customers

Network Customers are required under section 29.2 of this Tariff to provide an annual forecast of network load growth and Network Resources. Because these annual forecasts could annually identify a different set of FNRs and an updated load forecast, the Transmission Provider will perform an annual evaluation of the capability of the Transmission System to reliably accommodate these new forecasts in addition to ongoing Firm Point-to-Point Transmission Service obligations. In the event that this evaluation determines that there is not sufficient capacity to meet the annually changing forecast needs of all Network Customers along with the ongoing rights of existing Firm Point-to-Point Transmission Service customers, the Transmission Provider will use the following process to resolve these competing requests by existing Network Customers for Transmission Service to serve reasonably forecasted needs:

1. The Transmission Provider will annually request 10-year load forecasts and FNRs in accordance with section 29.2 of this Tariff.
2. The Transmission Provider will model reasonable forecast loads and FNRs in base cases covering the planning horizon (5-10 years).
3. The Transmission Provider will model in this base case Firm Point-to-Point Transmission Service commitments, including roll-over rights, where not previously limited.

4. The Transmission Provider will calculate available capacity for future periods within the planning horizon based on these existing and forecasted commitments.
5. If the Transmission System is over-committed based upon applicable reliability criteria as defined by the local system reliability criteria filed annually with the Commission on Form No. 715, the Transmission Provider will determine in an open stakeholder planning process Network Upgrades needed to reliably meet commitments, by performing a baseline needs facility Study in collaboration with Transmission Owners.
6. The Transmission Provider will determine the contributions of each FNR as indicated in the annual forecasts of the Network Customers, to any violation of applicable reliability criteria.

7. The costs of Network Upgrades will be recovered in accordance with Attachment N to this Tariff. Where Network Upgrades are charged to Network Customers as provided for under Attachment N, Network Customers will share in the charge according to the contributions of each FNR to the reliability criteria violations causing the Network Upgrade.
8. A Network Customer will have an opportunity to make reasonable adjustments to its load forecast and FNRs in order to relieve its contribution to reliability criteria violations (*i.e.*, to correct errors in load forecast, or to withdraw a specified FNR). These adjustments may be made after the annual reliability evaluation, but must be made before the annual needs Facility Study commences.
9. If the Transmission Provider determines that facilities will be over committed before appropriate Network Upgrades can be constructed (*e.g.*, a new FNR appears in the first or second year of the annual forecast for the first time and requires a significant Network Upgrade that can not be completed within the 1-2 year available lead-time) the Transmission Provider will inform the Network Customer that designation of the FNR will not be possible until the Network Upgrade can be completed.

ATTACHMENT V

[RESERVED FOR FUTURE USE PAGES 1689 - 1711]

ATTACHMENT W

FORM OF MARKET PARTICIPANT AGREEMENT

- 1.0 This Market Participant Agreement (“MP Agreement”), dated as of _____, is entered into, by and between the Midwest Independent Transmission System, Inc., (“Transmission Provider”) and _____ (“Market Participant”).
- 2.0 The Market Participant has been determined by the Transmission Provider to be a Market Participant as defined in the Tariff.
- 3.0 The Market Participant agrees to supply the Transmission Provider with any and all information the Transmission Provider deems reasonably necessary in accordance with Good Utility Practice.
- 4.0 The Transmission Provider agrees to provide services to the Market Participant upon a request by an authorized representative of the Market Participant. The Market Participant agrees to take and pay for the requested services in accordance with the provisions of the Tariff and this MP Agreement including, but not limited to, all charges under Schedules 16 and 17 of the Tariff.

- 5.0 Market Participant status under the Tariff shall commence upon execution of this MP Agreement by the Transmission Provider. Service(s) under the Tariff shall commence at the time of the requested service(s) commencement date.
- 6.0 This MP Agreement shall terminate on such date as mutually agreed upon by the Parties.
- 7.0 The Market Participant hereby indemnifies the Transmission Provider for any actions taken by any Designated Agent of the Market Participant including, but not limited to, any Scheduling Agent, Metering Data and Management Agent or any other Agent or Market Participant acting on behalf of this Market Participant.
- 8.0 The Market Participant shall provide written notification of any unexpected material adverse changes in circumstances that may affect the Market Participant's status as a Market Participant, within twenty-four (24) hours of having learned of the change.

9.0 The Market Participant shall notify the Transmission Provider in writing of any non-material adverse changes in circumstances that may affect the Market Participant status at least seventy-two (72) hours prior to the change.

10.0 Any notice or request made to either of the parties to this MP Agreement shall be made to the following representatives:

	<u>Transmission Provider</u>	<u>Market Participant</u>
Title:	Contract Administrator	_____
Address:	701 City Center Drive	_____
	Carmel, IN 46032	_____

10.0 The Tariff, in its entirety, is incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the parties have caused this MP Agreement to be executed by their respective authorized officials.

Transmission Provider

Market Participant

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT X

[RESERVED FOR FUTURE USE PAGES 1694 - 1714]

ATTACHMENT Y

Notification of Potential Generation Resource/SCU Change of Status

This notification of potential change of Generation Resource or Synchronous Condenser Unit (“SCU”) status in accordance with Section 38.2.7.a of the Tariff. An electronic copy of the completed form will be accepted by the Transmission Provider, however, a form will not be considered complete until the original form containing an original signature, including all attachments, is received by the Transmission Provider at the following address: Midwest ISO, Attention: Director of Transmission Planning; 701 City Center Drive, Carmel, IN 46032.

The Transmission Provider may request additional information as reasonably necessary to support operations under the Tariff.

Name of Market Participant owning and/or operating the Generation Resource _____

Type of interest in Generation Resource: Owner of Generation Resource

Operator of Generation Resource

Name of Market Participant owning and/or operating the Synchronous Condenser Unit (“SCU”) _____

Type of interest in SCU: Owner of SCU
 Operator of SCU

Market Participant's state of organization or incorporation _____

Generation Resource/SCU [plant and unit number(s)] _____

As of the ___ of _____, _____, Market Participant has definitely decided that it will [check one]

- decommission and retire the Generation Resource/SCU.
- suspend operation of and mothball the Generation Resource/SCU for a period of not less than _____ months or disconnect the Generation Resource/SCU from the Transmission Provider Transmission System for a period of not less than _____ months. The estimated time to return the mothballed or disconnected Generation Resource/SCU to service is _____ months.

The Generation Resource/SCU is further described as follows:

Location: _____

Number and type of generating unit(s) _____

RMR Capacity in MW: _____

Power Factor Lagging

(i) _____ P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

Power Factor Leading

(i) _____ P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

Delivery Point: _____

Revenue Meter Location (Use Resource IDs): _____

Operational and Environmental Limitations (check and describe all that apply):

(a) Operational

Maximum annual hours of operation: _____

Maximum annual MWh: _____

Maximum annual starts: _____

Other: _____

(b) Environmental

Maximum annual NO_x emissions: _____

Maximum annual SO₂ emissions: _____

Other: _____

I understand and agree that this notification is Confidential Information under the Transmission Provider's Tariff and will not be made public by the Transmission Provider unless the Generation Resource/SCU becomes subject to an SSR Agreement. This notification is not intended to constitute an offer to enter into a binding System Supply Resource Agreement, but is intended only as a notification of the status of the Generation Resource/SCU, in accordance with the Transmission Provider's Tariff.

The undersigned certifies that I am an officer of the Market Participant that owns or operates the Generation Resource/SCU, that I am authorized to execute and submit this notification on behalf of Generation Resource/SCU, and that the statements contained herein are true and correct.

Signature

Name: _____

Title: _____

Date: _____

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, this day appeared _____, known by me to be the person whose name is subscribed to the foregoing instrument, who, after first being sworn by me deposed and said:

“I am an officer of _____, I am authorized to execute and submit the foregoing notification on behalf of _____, and the statements contained in such application are true and correct.”

SWORN TO AND SUBSCRIBED TO BEFORE ME, the undersigned authority on this the _____ day of _____, 20__.

Notary Public, State of _____
My Commission expires _____

ATTACHMENT Y-1

Standard Form System Supply Resource (“SSR”) Agreement

Between
(Participant)
and

The Midwest Independent Transmission System Operator, Inc.

This SSR Agreement (“Agreement”), effective as of ___ of _____, ____ (“Effective Date”), is entered into by and between [insert Participant’s name], a [insert business entity type and state] (“Participant”) and the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”).

Recitals

WHEREAS:

- A. Participant owns or operates a Generation Resource or a Synchronous Condenser Unit (“SCU”) as defined in the Midwest ISO Tariff, and the Midwest ISO requires Participant to supply service in the Midwest ISO Region in order to maintain the Midwest ISO’s system reliability;
- B. Midwest ISO is the Regional Transmission Organization (“RTO”) for the Midwest ISO Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which Midwest ISO and Participant will discharge their respective duties and responsibilities under the Midwest ISO Tariff.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, Midwest ISO and Participant (the "Parties") hereby agree as follows:

Section 1. Unit-Specific Terms.

- A. Start Date: _____ 1, 20__.
- B. Start Time: _____
- C. Unit: _____.

The unit described above may also be referred to as the "Designated Unit" or "Unit" or "SSR Unit" in this Agreement.

- D. Description of Unit [*including location, number of generators, etc.*]:

_____, as may be described in more detail on Exhibit 1 attached hereto. If Unit is a combined cycle generation resource, indicate the Unit's operational capability consistent with the requirements of the Midwest ISO Tariff.

- E. Name Plate Information [*Fill out for applicable type of unit checked in Subsection 1.B above*]

SSR Unit

- (a) SSR Capacity in MW: _____
- (b) Power Factor Lagging
 - (i) _____ P.F. (at Generator Main Leads)
 - (ii) _____ P.F. (at high side of Main Power Transformer)
- (c) Power Factor Leading
 - (i) _____ P.F. (at Generator Main Leads)
 - (ii) _____ P.F. (at high side of Main Power Transformer)

- F. Delivery Point: _____
- G. Revenue Meter Location (Use Resource IDs): _____
- H. Operational and Environmental Limitations (check and describe all that apply):
SSR Unit:
- (a) Operational
 - Maximum annual hours of operation: _____
 - Maximum annual MWh: _____
 - Maximum annual starts: _____
 - Other: _____
 - (b) Environmental
 - Maximum annual NO_x emissions: _____
 - Maximum annual SO₂ emissions: _____
 - Other: _____

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the Midwest ISO Tariff shall be incorporated by reference into this Agreement.
- B. "Midwest ISO Tariff" shall mean the document adopted by the Midwest ISO, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including customer registration) policies, rules, guidelines, procedures, standards, and criteria of the Midwest ISO. For the purposes of determining responsibilities and rights at a given time, the Midwest ISO Tariff, as amended in accordance with the change procedure(s) described in the Midwest ISO Tariff, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

A. Term.

- (1) This Agreement is effective beginning on the Effective Date.
- (2) The “Term” of this Agreement is a period of twelve (12) months; provided, however, that the Midwest ISO, in its sole discretion, may terminate this Agreement prior to the end of the Term by giving ninety (90) days advance written notice to Participant.
- (3) The period beginning on the Start Date and ending when the Agreement terminates is called the “Full Term” of this Agreement.
- (4) An Initial Term may be extended by the Midwest ISO beyond one (1) calendar year if the Midwest ISO provides at least ninety (90) days advance notice of such extension to the Participant.

B. Termination by Participant. Participant may, at its option, immediately terminate this Agreement upon the failure of the Midwest ISO to continue to be certified by the Federal Energy Regulatory Commission as an RTO.

- C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.
- D. Notice. All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or Federal Express delivery. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required hereunder shall be in accordance with the applicable Sections of the Midwest ISO Tariff.

If to Midwest ISO:

701 City Center Drive
Carmel, IN 46032
Tel. No. (317) 249-5400

If to Participant:

[insert information]

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized, and is authorized to do business in the Midwest ISO Region;
- (2) Participant has full power and authority to enter into this Agreement and perform all of Participant's obligations, representations, warranties, and covenants under this Agreement;
- (3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;
- (4) The execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;
- (5) Except as set out in an exhibit (if any) to this Agreement, Midwest ISO has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;

- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) the Midwest ISO has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) the Midwest ISO, in its reasonable judgment, has determined that this Agreement is necessary for system reliability, and Participant has made alternate arrangements satisfactory to the Midwest ISO for the resolution of the Default under the Prior Agreement; Participant is a successor in interest or any Affiliates of Participant;
- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;
- (10) Participant acknowledges that it has received and is familiar with the Midwest ISO Tariff; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.

B. Midwest ISO represents, warrants, and covenants that:

- (1) The Midwest ISO is the RTO certified under 18 C.F.R. §35.34 for the Midwest ISO Region and the subject Generation Resource/SCU is located within the Midwest ISO Region;
- (2) The Midwest ISO is duly organized, validly existing and in good standing under the laws of Delaware, and is authorized to do business in the Midwest ISO Region;
- (3) The Midwest ISO has full power and authority to enter into this Agreement and perform all of Midwest ISO’s obligations, representations, warranties, and covenants under this Agreement;
- (4) The Midwest ISO’s past, present and future agreements or Midwest ISO’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which the Midwest ISO is a party or by which its assets or properties are bound do not materially affect performance of the Midwest ISO’s obligations under this Agreement;

- (5) The execution, delivery and performance of this Agreement by Midwest ISO have been duly authorized by all requisite action of its governing body;
- (6) The Midwest ISO has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (7) The Midwest ISO is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (8) The Midwest ISO is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) The Midwest ISO acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance,” means resulting in a materially adverse effect on Midwest ISO’s performance of its obligations under this Agreement.

Section 5. Participant Obligations.

Participant shall comply with, and be bound by, the Midwest ISO Tariff as it pertains to the provision of SSR Service.

Section 6. Midwest ISO Obligations.

The Midwest ISO shall comply with, and be bound by, all Midwest ISO Tariff provisions.

Section 7. Capacity Tests for SSR Units.

A. Capacity Tests.

- (1) A "Capacity Test" is a one-hour performance test of the SSR Unit by Participant. The capacity as shown by a Capacity Test is called "Tested Capacity" and is determined by the applicable net meter readings during the Capacity Test.
- (2) Midwest ISO may require that a Capacity Test be run at the Midwest ISO's discretion at any time when the SSR Unit is on-line, but the Midwest ISO may not require more than four (4) Capacity Tests in a contract year. The Midwest ISO must give Participant at least two (2) hours advance notice, after the SSR Unit is on line, of a Capacity Test required by the Midwest ISO, unless Market Participant agrees to less than two (2) hours. Participant may perform as many Capacity Tests as it desires, but Participant may not perform a Capacity Test without the prior approval of the Midwest ISO, which approval the Midwest ISO may not unreasonably withhold or delay. The Parties will reasonably cooperate to coordinate a Capacity Test. The Midwest ISO has the right to reasonable advance notice of, and to have personnel present during, a Capacity Test.

- B. Test Report. The Midwest ISO shall give the Capacity Test results in writing (the “Capacity Test Report”) to Participant within twenty-four (24) hours after the test is run.
- C. Effect of Test.
- (1) A determination of Tested Capacity is effective as of the beginning of the hour in which the Capacity Test is started.
 - (2) For all hours in which Tested Capacity is less than SSR Capacity, then Billing Capacity is reduced as set out in Section 9.E below and remains so reduced until a subsequent Capacity Test establishes that Tested Capacity equals or exceeds SSR Capacity.
 - (3) After the Effective Date, the Midwest ISO shall purchase, as part of SSR energy, the electrical energy and/or reactive power produced by the SSR Unit, including ramping energy and/or reactive power, during a Capacity Test requested by the Midwest ISO, net of auxiliary equipment and other electrical requirements of the SSR Unit that are supplied by the SSR Unit. The Midwest ISO shall also purchase, as part of SSR energy, any electrical energy and/or reactive power produced by the SSR Unit during a Capacity Test requested by Participant to attempt to show that Tested Capacity equals or exceeds SSR Capacity, net of auxiliary equipment and other electrical requirements of the SSR Unit that are supplied by the SSR Unit.

Section 8. Operation.

- A. Designated Unit Maintenance. Before the start of each contract year, Participant shall furnish the Midwest ISO with its proposed schedule for Planned Outages for inspection, repair, maintenance, and overhaul of the Designated Unit for the contract year. Participant will promptly advise the Midwest ISO of any later changes to the schedule. The specific times for Planned Outages of the Designated Unit must be approved or rejected by the Midwest ISO within thirty (30) days after submission by a Participant. Requested outages shall only be rejected if necessary to assure reliability of the Midwest ISO System. The Midwest ISO shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the Midwest ISO System is not materially affected by those changes. In all cases, Midwest ISO must find a time for Participant to perform maintenance in a reasonable timeframe as defined by Good Utility Practice.
- B. Planning Data. Participant shall timely report to the Midwest ISO those items and conditions necessary for the Midwest ISO's internal planning and compliance with the Midwest ISO's guidelines in effect from time to time. The information supplied must include, without limitation, the following:
- (1) Availability Plan for the next day (transmitted to the Midwest ISO dispatcher by 6:00 a.m. of the preceding day). The information submitted in the Availability Plan will be consistent with the information submitted in the Resource Plan;
 - (2) Revised Availability Plan reflecting changes in the Plan as soon as reasonably practical, but in no event later than sixty (60) minutes after the event that caused the change; and
 - (3) Status of Designated Unit with respect to Environmental Limitations, if any.

The Midwest ISO shall timely report to Participant the status of the Designated Unit with respect to Operational Limitations.

C. Delivery.

- (1) The Midwest ISO shall notify Participant of the hours and levels, if any, that the Designated Unit is to operate. This information is called the "Delivery Plan." The Midwest ISO shall notify Participant according to the Section 4, Scheduling of the Midwest ISO Tariff. The Midwest ISO shall not notify Participant to operate at levels above those stated in the Availability Plan, and the Midwest ISO shall not notify Participant to operate the SSR Unit in a way that would violate the limitations on operation set out in Section 1 above.
- (2) Participant shall produce and deliver electrical energy and/or reactive power from the SSR Unit to the Delivery Point at the levels specified in the Delivery Plan.
- (3) The Midwest ISO may dispatch the Designated Unit only when necessary to ensure transmission system security, including any emergency situation, the Midwest ISO may not dispatch the Designated Unit if compliance with the dispatch would cause the Designated Unit to exceed the Operational and Environmental Limitations, if any, set forth in Section 1 above or at levels greater than are shown in the Availability Plan. Notwithstanding the foregoing, Participant retains the responsibility for operating the Designated Unit in accordance with limits provided by applicable law.
- (4) During the hours of operation of the SSR Unit specified in the Delivery Plan, Participant may only participate in the Midwest ISO energy market from the SSR Unit in accordance with the relevant conditions in the Midwest ISO Tariff.

Section 9. Payment Provisions.

- A. For the transfer of any funds under this Agreement directly between the Midwest ISO and Participant and pursuant to the Settlement procedures for Ancillary Services described in the Midwest ISO Tariff, the following shall apply:
- (1) Participant appoints the Midwest ISO to act as its agent with respect to such funds transferred and authorizes the Midwest ISO to exercise such powers and perform such duties as described in this Agreement or the Midwest ISO Tariff, together with such powers or duties as are reasonably incidental thereto.–
 - (2) The Midwest ISO shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the Midwest ISO Tariff.
- B. Availability Payments for the SSR Unit. The Midwest ISO shall make availability payments to SSR Units to ensure the SSR Unit is available to produce reactive power and, when required, real energy.

- C. Schedule 2 Payments for SSR Unit. SSR Units shall recover costs associated with Reactive Supply and Voltage Control Services through Schedule 2. Schedule 2 compensation shall be provided along with other compensation to encourage parties not to decommission, place into extended reserve shutdown or disconnect potential SSR Units.
- D. True-Up Provisions for the SSR Unit. At the conclusion of each calendar year, the Midwest ISO shall conduct an annual true-up to match market and other revenues with SSR Unit annual revenue requirements.
- E. Performance-Related Payment Adjustments.
- (1) For a SSR Unit, a “Misconduct Event” means any hour or hours during which Participant is requested to, but does not, deliver to Midwest ISO electrical energy and/or reactive power at a level of at least 98% on each hour (on a kilowatt-hour/hour or MVAR/hour basis) of the level shown in the Availability Plan.
 - (2) Each day that a Misconduct Event continues after Participant receives written notice from Midwest ISO of the Misconduct Event is a separate Misconduct Event. A Misconduct Event is measured on a daily basis.

- (3) Participant is excused from the Misconduct Event payment reduction arising from any Misconduct Event that is (a) not due to intentionally incomplete, inaccurate, or dishonest reporting to Midwest ISO by Participant of the availability of the Designated Unit, or (b) caused by a failure of the Midwest ISO Transmission Grid.
- (4) If a Misconduct Event is not excused, then to reflect this lower-than-expected quality of firmness, Midwest ISO's payments to Participant are reduced by the Unexcused Misconduct Amount of \$10,000 per day.
- (5) Midwest ISO shall inform Participant in writing of its determination if a Misconduct Event is unexcused.
- (6) Midwest ISO may offset any amounts due by Participant to Midwest ISO under this Section 9.E against any amounts due by Midwest ISO to Participant under this Agreement.

Section 10. Default.

A. Event of Default.

- (1) Failure to make payment or transfer funds as provided in the Midwest ISO Tariff shall constitute a material breach and shall constitute an event of default ("Default") unless cured within three (3) Business Days after delivery by the non-breaching Party of written notice of the failure to the breaching Party. Provided further that if such a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default by the breaching Party.

- (2) For any material breach other than a failure to make payment or transfer funds, the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:
- (a) Except as excused under subsection (4) or (5) below, a material breach, other than a failure to make payment or transfer funds, of this Agreement by Participant, including any material failure by Participant to comply with the Midwest ISO Tariff, unless cured within fourteen (14) Business Days after delivery by Midwest ISO of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by the Midwest ISO of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth (4th) such breach shall constitute a Default.
 - (b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings that is dismissed within ninety (90) days thereafter.
 - (c) The Designated Unit's operation is abandoned without intent to return it to operation during the Full Term; or
 - (d) Three or more unexcused Misconduct Events occur during a contract year.

- (3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by Midwest ISO, including any material failure by Midwest ISO to comply with the Midwest ISO Tariff, other than a failure to make payment or transfer funds, shall constitute a Default by the Midwest ISO unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to Midwest ISO. The Midwest ISO must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by the Midwest ISO and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default.
- (4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) calendar days, prompt written notice is provided by the breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within three (3) Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.
- (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) Midwest ISO's Remedies for Default. In the event of a Default by Participant, Midwest ISO may pursue any remedies Midwest ISO has under this Agreement, at law, or in equity, subject to the provisions of Section 12: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the Midwest ISO Tariff does not specify a remedy for a particular Default, Midwest ISO may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.

(2) Participant's Remedies for Default.

- (a) Unless otherwise specified in this Agreement or in the Midwest ISO Tariff, and subject to the provisions of Section 12: Dispute Resolution of this Agreement, in the event of a Default by the Midwest ISO, Participant's remedies shall be limited to:
 - (i) Immediate termination of this Agreement upon written notice to Midwest ISO,
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the Midwest ISO Tariff, and
 - (iii) Specific performance.
- (b) However, in the event of a material breach by Midwest ISO of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to Midwest ISO.
- (c) If as a final result of any dispute resolution Midwest ISO, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the result that refunds are owed by Participant to Midwest ISO, as the settlement agent such Market Participant(s) may request Midwest ISO to allow such Market Participant to proceed directly against Participant, in lieu of receiving full payment from Midwest ISO. In the event of such request, Midwest ISO, in its sole discretion, may agree to assign to such Market Participant Midwest ISO's rights to seek refunds from Participant, and Participant shall be deemed to have consented to such assignment. This subsection (c) shall survive termination of this Agreement.

- (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the Midwest ISO Tariff.

C. Force Majeure.

- (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.
- (2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the Midwest ISO Tariff or under this Agreement, except that the excuse from Default provided by subsection 10.A(5) above is still effective.

- D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 11. Limitation of Damages and Liability and Indemnification.

- A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE MIDWEST ISO BUSINESS PRACTICES, MIDWEST ISO OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE MIDWEST ISO PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

- B. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection 13.A of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the Midwest ISO Tariff (outside of this Agreement).

Section 12. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the Midwest ISO Tariff.
- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 13. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in Delaware and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware that apply to contracts executed in and performed entirely within the State of Delaware, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Delaware, and the Parties hereby waive any defense of *forum non-conveniens*.
- B. Assignment.
- (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with the Midwest ISO):

- (a) Where any such assignment or transfer is to an Affiliate of the Party; or
- (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
- (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notices of Default, and an opportunity for the Financing Person to cure Defaults.

- (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.
- C. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 10.B and the Financing Persons in Section 13.B, (1) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (2) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (3) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

- D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (1) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (2) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.
- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

- G. Entire Agreement. Any Exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying Midwest ISO Tariff described in the Midwest ISO Tariff. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. Midwest ISO's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to Midwest ISO under the Midwest ISO Tariff. Such records shall be retained and shall be available for audit or examination by the Midwest ISO as hereinafter provided. The Midwest ISO has the right during Business Hours and upon reasonable written notice and reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

- J. Participant's Right to Audit Midwest ISO. Participant's right to data and audit of Midwest ISO shall be as described in the Midwest ISO Tariff and shall not exceed the rights described in the Midwest ISO Tariff.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to Midwest ISO of any such conflict affecting Participant. In the event of a conflict between the Midwest ISO Tariff and this Agreement, the provisions expressly set forth in this Agreement shall control.

- M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as provided in Section 9.A.
- N. No State Public Utility Created. This Agreement may not be interpreted or construed as modifying the jurisdictional status of the Midwest ISO, including, but not limited to establishment of the Midwest ISO as a state public utility under the laws of any jurisdiction, as a result of the Midwest ISO's performance under this Agreement.
- O. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:
- (1) The singular includes the plural, and the plural includes the singular.
 - (2) The present tense includes the future tense, and the future tense includes the present tense.
 - (3) Words importing any gender include the other gender.
 - (4) The word "shall" denotes a duty.
 - (5) The word "must" denotes a condition precedent or subsequent.
 - (6) The word "may" denotes a privilege or discretionary power.

- (7) The phrase “may not” denotes a prohibition.
- (8) References to statutes, tariffs, regulations or the Midwest ISO Tariff include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or the Midwest ISO Tariff referred to.
- (9) References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
- (10) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”
- (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
- (12) References to Articles, Sections (or subdivisions of Sections), Exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.
- (13) Unless expressly stated otherwise, references to agreements, the Midwest ISO Tariff and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.
- (14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.
- (15) References to time are to Eastern Standard Time.
- (16) References to any capitalized work or phrase not defined herein shall have the meanings from the Midwest ISO Tariff.

P. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Midwest Independent Transmission System Operator, Inc.:

By: _____

Name: _____

Title: _____

Date: _____

Participant:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1

Detailed Description of SSR Unit

[Describe Generation Unit/SCU more specifically]

ATTACHMENT Z

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is entered into by the undersigned _____ (“Company”) and the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”). Each of “Company” and “Midwest ISO” may be referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the Parties are entering into this Agreement [as a requirement set forth in] The Open Access Transmission Tariff for the Midwest Independent Transmission System Operator, Inc., as approved by FERC and as may be modified from time to time (the “Tariff”);

WHEREAS, the Parties recognize that the successful operation of the Midwest ISO Region is highly dependent on access to certain types of information and, for Midwest ISO to ensure that there is a high degree of wholesale power supply reliability, Midwest ISO needs to have access to certain information;

WHEREAS, in order to meet certain objectives of Midwest ISO, Company is obligated to provide to Midwest ISO certain Confidential Information, and Midwest ISO is obligated to provide to Company certain Confidential Information, some of which may be considered confidential, commercially sensitive or strategic in nature; and

WHEREAS, the Parties are entering into this Agreement to set out how they will share Confidential Information with one another and how such Confidential Information will be used as well as how such confidentiality will be maintained and when it may be disclosed.

ARTICLE ONE

DEFINITIONS

All initially capitalized terms shall have the meanings assigned to such terms in the Tariff, unless otherwise specified below:

1. “Asset Specific Information - Forecast and Post-Settlement” means information including, but not limited to:
 - a. Unit forecast information relating to a particular asset, which is necessary to determine the projected operation of particular generators.
 - b. Information relating to a particular asset, which is necessary to determine the accuracy of settlement.
 - c. Participant input data.
 - d. Capability responsibility data and calculations, for those specific generating facilities for which a Participant(s) has an ownership interest.
 - e. All information, with the exception of bids, offers and meter data, necessary to verify settlement data.

2. “Asset Specific Information - Near Real-Time” means information including, but not limited to, near real-time information related to the particular asset.
3. “Company” has the meaning set forth in the Preamble to this Agreement.
4. “Company Specific Data” means information including, but not limited to:
 - a. Data not yet posted on the OASIS.
 - b. Confidential Information, for which Company, or an agent thereof, has the right to receive the data.
 - c. Invoice and settlement data.
5. “Confidential Information” has the meaning set forth in Article 2 of this Agreement.
6. “Disclosing Party” means the Party furnishing Confidential Information to another Party.
7. “Meter, Bid, and Offer Data” means information including, but not limited to, Confidential Information submitted as inputs to the Energy Markets [or Market Activities].

8. “Midwest ISO” has the meaning set forth in the Preamble to this Agreement.
9. “Midwest ISO Documents” means documents that are or have been approved by Midwest ISO, including, but not limited to, the Midwest ISO Filed Documents, the Reliability Charter, the Midwest ISO Business Manuals and any other system rules, procedures or criteria for the operation of the Midwest ISO system, and administration of Energy Markets [or Market Activities] as contained in the Midwest ISO Filed Documents.
10. “Midwest ISO Filed Documents” means the Tariff and the ISO Agreement.
11. “Midwest ISO Information” means information including, but not limited to:
 - a. Any Company or asset specific information as requested by Midwest ISO, which will be maintained in accordance with this Agreement.
 - b. Any Midwest ISO administrative information not specifically listed in other categories.
12. “Non-Public Transmission Information” means information including, but not limited to:

- a. Information and/or reports that are filed with the NERC.
- b. Information and/or reports that are filed with the applicable coordinating councils.
- c. Information related to the transmission system, which is not posted on the OASIS, including, but not limited to, detailed operations data.
- d. Information relating to specific generators, which is required by transmission personnel to ensure the reliable operation of the Midwest ISO Region.
- e. Midwest ISO transmission operating guides.
- f. Information related to system restoration efforts.

13. "OASIS" means the Open Access Same-Time Information System.
14. "Party" or "Parties" has the meaning set forth in the Preamble to this Agreement.
15. "Public" means any entity other than Midwest ISO or Company, or any officer, director, employee, agent, consultant and advisor of such Parties.
16. "Public Information" means any information that is available to the Public including, but not limited to:
 - a. Public record filings with regulatory agencies.
 - b. Data posted on OASIS.
 - c. Information and/or reports that are required to be filed with FERC, unless specifically required to be filed on a confidential basis.
 - d. Public generator information including system inventory and new applications.
 - e. Energy Markets [or Market Activity] information including any items required to be made public by: (i) the Midwest ISO Filed Documents; (ii) Midwest ISO Documents; and (iii) the items listed in aggregate Energy Market [or Market Activities] results, as posted under "Market Information" on Midwest ISO's website pursuant to this Agreement.

- f. Energy Markets or Market Activities test information including any information equivalent to Public Energy Markets [or Market Activities] information derived from test programs for new markets or market software or simulations of proposed market improvement. Includes any and all information necessary for evaluation of the impacts of a proposed new market or an improvement to an existing market, such as cost-shifting impacts and price impacts under certain conditions.
- g. System aggregate planning data including load forecasts.
- h. Public reports required by the Midwest ISO Documents.
- i. Public Market Monitoring Information including, but not limited to, public reports by the Independent Market Monitor required by the Tariff. Includes ISO's time and expenses in pursuing sanctionable behavior on a case-by-case basis and periodic reports of sanctions imposed and the sanctionable behavior upon which such sanctions were imposed, provided that the information is presented in a manner that does not allow for the identification of Company by name or provide a manner for identifying Company, except as otherwise provided in the Midwest ISO Documents.

- j. Any other information that is not Confidential Information that Midwest ISO determines is appropriate for public dissemination because it will improve system reliability, the efficiency of the Energy Markets [or Market Activities] or public understanding of the Transmission System and the operations of the Transmission System.

17. “Recipient” means the Party acquiring possession of Confidential Information from another Party.

18. “Recipient’s Material” means all memoranda, summaries, notes, analyses, compilations, studies or those portions of other documents prepared by Recipient, [Recipient’s Representatives] and/or Recipient’s affiliates to the extent they contain or reflect such information of the Disclosing Party.

19. “Reliability, Operations, and Area Control Information” means the information including, but not limited to:

- a. External Control Center Information.
 - i. All system operations or planning information that relates to the particular external Control Center.
 - ii. Information that is required to assure the reliable operation of the interconnected bulk power system.
 - iii. Inter-area transmission operating guides that relate to the particular external control area.
- b. Internal (satellites) control center information.
 - i. All system operations or planning information.
 - ii. Information relating to specific generating facilities that is needed to assure the reliable operation of the Midwest ISO Region.
 - iii. Transmission operating guides.
 - iv. Midwest ISO and satellite system restoration plans.

20. “Representatives” means the officers, directors, employees, agents, consultants and advisors of the Recipient.

21. “Tariff” means The Open Access Transmission Tariff for the Midwest Independent Transmission System Operator, Inc., as approved by FERC and may be modified from time to time.

ARTICLE TWO

CONFIDENTIAL INFORMATION

1. Confidential Information. “Confidential Information” as used in this Agreement means any and all information disclosed to Recipient or Recipient’s Representatives, by the Disclosing Party, including any business, technical, marketing, financial or other information, whether in electronic, oral or written form as well as all of Recipient’s Material. More specifically, for the purposes of this Agreement, Confidential Information shall include:

- a. Information that: (i) is furnished by Company (*i.e.*, the Disclosing Party) to Midwest ISO and another Transmission Owner or Participant, (*i.e.* the Recipient), or the Representatives; (ii) constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Disclosing Party or prejudice the position of that Transmission Owner or Market Participant in the Midwest ISO Electricity Markets; (iii) constitutes any business, technical, marketing, financial or other information; or (iv) has been designated in writing by the Disclosing Party as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such Confidential Information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that Disclosing Party seeks confidential treatment for such information.

- b. Information that: (i) is furnished by Midwest ISO (*i.e.* the Disclosing Party) to Company (*i.e.* the Recipient) or the Representatives; (ii) constitutes trade secrets or commercial or financial information the disclosure of which would have an adverse effect on the ability of Midwest ISO to perform its responsibilities under the ISO Agreement and or Tariff; or (iii) has been designated in writing by Midwest ISO as confidential or proprietary either in the document which provided such information, in transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that Midwest ISO seeks confidential treatment for such information.
- c. Information relating to the job status or performance or terms of employment of any Midwest ISO employee.
- d. Any business, technical, marketing, financial or other information that contains information described in [subparagraphs a., b., c., or d., above], and allow for the specific identification of the Disclosing Party, prepared by Disclosing Party or the Recipient and/or its affiliates.

- e. Non-Public Transmission Information.
- f. Company Specific Data.
- g. Asset Specific Information – Near Real-Time.
- h. Asset Specific Information – Forecast and Post-Settlement.
- i. Meter, Bid and Offer Data
- j. Reliability Operations and Area Control Information
- k. Midwest ISO Information.

2. Non-Confidential Information. For the purposes of this Agreement, Confidential Information shall not include:

- a. Information that is or becomes generally available to the Public other than as a result of disclosure by a Recipient.
- b. Information that becomes available to Recipient on a non-confidential basis from a source other than a Party, provided that to the best of the Recipient's knowledge (i) such source is not prohibited from transmitting such information by contractual, legal or other obligation; or (ii) was in Recipient's possession prior to disclosure of the same information by Disclosing Party.
- c. Information that is defined as "Public Information".
- d. Information that can be shown by the Recipient's prior records to have been already known to the Recipient other than through disclosure by a third party which would not be subject to exclusion based on Paragraph iii.b., above.
- e. Is sufficiently aggregated or redacted such that the identity of the Disclosing Party is not identifiable.

3. All Confidential Information, as defined in this Agreement, will be distributed only in accordance with this Agreement. All other data, which is not defined as Confidential Information may be released at the discretion of the [Parties][Midwest ISO].

4. This Agreement does not apply to information shared by Transmission Owners and Market Participants that is not also furnished to Midwest ISO.

ARTICLE THREE

TREATMENT OF INFORMATION

1. Disclosure of Confidential Information.
 - a. Notwithstanding the foregoing, the Parties may disclose Confidential Information of another Party only if such disclosure is permitted in writing by the Disclosing Party, if disclosure is required by order of a court or regulatory agency of competent jurisdiction or dispute resolution pursuant to the ISO Agreement or the Tariff, or as otherwise specifically permitted by this Agreement or in Section 38.9 of the Tariff.

- b. A Party shall provide prompt written notice to the Disclosing Party if either it is compelled by order of a court or regulatory agency of competent jurisdiction to disclose, or receives a request seeking to compel disclosure of, Confidential Information for which it is not the Disclosing Party.
- c. Further, in recognition that Company may be subject to public records and open meeting laws and that certain other demands may be placed on Company to disclose Confidential Information, a Recipient may disclose such Confidential Information if and to the extent required by law or requested in writing pursuant to a public records demand or other legal discovery process, provided, in either event, that the Recipient gives the Disclosing Party prompt written notice of the circumstances that may require such disclosure in time so that the Disclosing Party has a reasonable opportunity to seek a protective order to prevent disclosure.

2. Disclosure of Information to Representatives. Notwithstanding any provision herein to the contrary, the Parties may share Confidential Information with their respective Representatives who by virtue of their participation in Midwest ISO need access to the Confidential Information of a Disclosing Party, provided, however, that the Recipient shall take all reasonable measures to ensure that its respective Representatives do not disclose such Confidential Information to any other employee, representative, or agent of the Recipient or any other person except as permitted under this Agreement.

3. Disclosure of Information Regarding Defaulting Transmission Owners or Market Participants. Notwithstanding any provision herein to the contrary, the information for release to Company identified in this Paragraph 3 shall no longer be deemed “Confidential Information” pursuant to this Agreement if Company is the subject of a voluntary or involuntary bankruptcy petition or has sought relief under bankruptcy or insolvency laws, or that has otherwise defaulted under its Midwest ISO arrangements which default is not, or Midwest ISO reasonably concludes will not be cured within five days of the date of the default. In the case of a payment default as defined in Section 7 of the Tariff or within ten days of the date of its default in the case of any other defaults, the following information with respect to Company’s obligations shall be disclosed by Midwest ISO to its legal counsel, each of Company’s billing contacts, and appropriate state regulatory or judiciary authority (for the 60 calendar day period prior to the date of the bankruptcy, insolvency petition or other default (the “Default Date”) and from the Default Date forward until such time as Company cures the default): (a) the type and available amount of financial assurance in place, (b) any notification provided by Company pursuant to the creditworthiness policy and/or billing policy, specified in Sections 11 and 7 of the Tariff, respectively, to Midwest ISO of a material change in its financial status, (c) any change in the type or available amount of financial assurance provided by Company, (d) whether Company has defaulted on its payment obligations under the billing policy, the amount of any such default, the date of the default, and when or whether the default is cured, (e) whether Company has defaulted on its obligations under the creditworthiness policy specified in Section 7 of the Tariff, the amount of any such default, the date of the default, and when or whether the default is cured, (f) where the financial assurance provided by Company is a bond, whether Midwest ISO has provided notice of default to the surety and whether the surety has given notice of termination of the bond or otherwise disclaimed or refused to honor or delayed in honoring its obligations under the bond, and the response of Midwest ISO to any such notice, (g) whether Company is a net seller or purchaser in the Energy Markets [or with respect to Market Activities], (h) the amount of Company’s purchases in the Energy Markets [or with respect to Market Activities], and (i) whether Company owns a registered Load asset.

4. Non-Public Transmission Information. Notwithstanding any provision herein to the contrary, Non-Public Transmission Information may be made available to the applicable coordinating councils and Company's personnel. The release of relevant transmission outage information to affected generators, to the extent required or desired for coordination of transmission and generation outages, shall be governed by Midwest ISO processes available for such coordination, by the Standards of Conduct and by other applicable FERC regulation.

5. Company Specific Data. Notwithstanding any provision herein to the contrary, Company Specific Data may be made available to active users or agents of Company.

6. Asset Specific Information – Near Real-Time. Notwithstanding any provision herein to the contrary, Asset Specific Information may be made available to Company, or agents thereof, who are joint owners and/or entitlement holders in the asset. The release of relevant generation outage information to affected Transmission Owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by Midwest ISO processes available for such coordination, by the Standards of Conduct and by other applicable FERC regulation.

7. Asset Specific Information – Forecast and Post-Settlement. Notwithstanding any provision herein to the contrary, this Asset Specific Information - Forecast and Post-Settlement and data may be made available to those Transmission Owners or Market Participants, or agents thereof, who are joint owners and/or entitlement holders in the asset. The release of relevant generation outage information to affected Transmission Owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by Midwest ISO processes available for such coordination, by the Standards of Conduct and by other applicable FERC regulation.

8. Meter, Bid and Offer Data. Notwithstanding any provision herein to the contrary:
- a. Midwest ISO shall publish bid and offer information for all Energy Markets [or Market Activities] on its website one hundred eighty (180) days after the day for which each demand-bid and supply offer was in effect, provided that the information is presented in a manner that does not reveal the specific load or supply asset, its owners, or the name of the entity making the bid or offer, but that allows the tracking of each individual entity's bids and offers over time.
 - b. Bid and offer data may be made available to any third party with a generator ownerships share, or agent thereof, for a specified asset. Meter data may be made available to the metering agent for a specified asset. Meter data may be manually distributed to the third party whose unmeted load is calculated based on said meter data.

9. Reliability, Operations and Area Control Information. Confidential Information (under signature of confidentiality agreements that provide rights to Company equivalent to those granted in this Agreement to notice of and opportunity to defend against any release of their Confidential Information) and non-confidential information may be shared among Control Areas for the purposes of increasing markets coordination, including elimination of seams, increasing market efficiency and study purposes of the interconnected bulk power system..

10. Public Information. Notwithstanding any provision herein to the contrary, Public Information may be made available to the Public. Fees may apply to cover process and handling expenses.

11. Midwest ISO Information. Notwithstanding any provision herein to the contrary, Midwest ISO personnel, consultants, counsel, and Board Members may have access to any Midwest ISO Information.

ARTICLE FOUR

INFORMATION REQUESTS TO MIDWEST ISO

1. Except as provided otherwise in the Tariff,] the following steps shall be taken when any entity requests information, that is not Public Information, from Midwest ISO and that the requesting entity is not otherwise authorized to receive information under this Agreement:

- a. If the information is Confidential Information, Midwest ISO, will within a reasonable time of the request notify the Disclosing Party. [Midwest ISO will not release the requested information unless it is authorized to do so in writing by the Disclosing Party or ordered to do so by a court or regulatory authority with jurisdiction over such matters.
- b. The Disclosing Party shall bear any costs reasonably incurred by Midwest ISO in opposing the issuance of such any order by court or regulatory authority requiring disclosure of the Confidential Information.

- c. Notwithstanding the foregoing: (i) upon the request of a regulatory agency, other than FERC or its staff, having appropriate jurisdiction and [subject to an appropriate confidentiality order entered under such agency's procedures sufficient to preserve the confidential nature of the information submitted,] and with advance notice to the Disclosing Party, Midwest ISO may submit Confidential Information to such agency; or (ii) if the FERC or its staff, during the course of an investigation or otherwise, requests information from Midwest ISO that is Confidential Information, Midwest ISO shall provide the requested information to the FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, Midwest ISO shall, consistent with 18 C.F.R §§ 1b.20 and 388.112, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure.
- d. Midwest ISO shall notify any affected Disclosing Party (i) within a reasonable time after Midwest ISO is notified by FERC or its staff, or any other regulatory agency having appropriate jurisdiction, that a request for disclosure of Confidential Information has been received at which time Midwest ISO and the affected Disclosing Party may respond before such information would be made public; and (ii) within a reasonable time after Midwest ISO is notified by FERC or its staff, or any other regulatory agency having appropriate jurisdiction, that a decision to disclose Confidential Information has been made, at which time Midwest ISO and the affected Disclosing Party may respond before such information would be made public.

2. If Confidential Information is requested by the Disclosing Party, Midwest ISO shall provide copies of such information to the Disclosing Party or its designee.

3. If the information is not Confidential Information then Midwest ISO shall determine whether to disclose the information requested.

ARTICLE FIVE
INFORMATION REQUESTS TO TRANSMISSION OWNERS OR
MARKET PARTICIPANTS

1. If any entity requests access to Confidential Information from Company, who is not the Disclosing Party for the requested information, Company shall forward the request to Midwest ISO within a reasonable time, sufficient to enable Midwest ISO to address the information request in a timely manner.

2. If Company cannot, in its good faith judgment, determine the classification status of requested information or otherwise believes that an information request raises policy questions that should be determined by Midwest ISO, then Company shall forward the information request to Midwest ISO within a reasonable time, sufficient to enable Midwest ISO to address the information request in a timely manner.

3. Midwest ISO shall follow the procedures in Article 4 in responding to information requests forwarded to them by Company.

ARTICLE SIX

OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION

1. Except for Recipient's Material, all Confidential Information shall be and remain the property of Disclosing Party, and no right or license is granted to Recipient with respect to any Confidential Information.
2. Upon the request by the Disclosing Party, Recipient agrees to immediately return all Confidential Information to Disclosing Party or to destroy all Confidential Information, including all copies of the same. Upon request, the fact of any such destruction shall be certified in writing to Disclosing Party by an officer of Recipient.
3. Nothing in this Agreement obligates Disclosing Party to disclose any information to the Recipient or creates any agency or partnership relation between them.

ARTICLE SEVEN

REMEDIES

1. Parties acknowledge that remedies at law may be inadequate to protect Disclosing Party against any actual or threatened breach of this Agreement by Recipient, and, without prejudice to any other rights and remedies otherwise available to Disclosing Party, agree to the granting of injunctive relief in favor of Disclosing Party.

2. A Disclosing Party may, at its option, take one or both of the following actions:
(a) apply to any court of equity having jurisdiction for an injunction restraining the Party from an actual or threatened violation of this Agreement relating to Confidential Information provided by such Disclosing Party and (b) submit such actual or threatened violation to arbitration in accordance with the alternative dispute resolution procedures provided in the ISO Agreement.

ARTICLE EIGHT

TERM AND TERMINATION

This Agreement will continue to be in effect as long as the ISO Agreement is in effect, unless and until a Party terminates it earlier by providing a written termination notice to the other Party. Notwithstanding the forgoing, the confidential treatment of information classified as Confidential Information pursuant to this Agreement will be in effect for three years after the Confidential Information is furnished by the Disclosing Party, unless the Parties agree to extend the effectiveness as it relates to specific Confidential Information prior to the termination of the three year period.

ARTICLE NINE

MISCELLANEOUS

1. The Parties acknowledge and agree that this Agreement is intended to comport fully with the antitrust laws and the information access and disclosure provisions of the Standards of Conduct. This Agreement is expressly intended both: (a) to protect against the disclosure of Confidential Information that could facilitate anticompetitive conduct prohibited by the antitrust laws; and (b) to distribute information to the extent and in a manner consistent with preserving the competitiveness and efficiency of Midwest ISO electric markets and the reliability of the wholesale power system.

2. This Agreement is intended to comport and comply fully with the requirements promulgated under 18 CFR Parts 375 and 388, regarding access to Critical Energy Infrastructure Information which would not otherwise be available under the Freedom of Information Act.

3. Company, upon request by Midwest ISO, shall provide assurance that the terms of this Agreement are complied with.

4. Any disputes between the Parties with respect to the provisions contained in this Agreement, shall be handled in accordance with the dispute resolution provisions of the Tariff.

5. This Agreement shall inure to the benefit of and shall be binding upon the Parties' respective successors and permitted assigns. In the event that any one of the provisions contained in this Agreement should be found to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality or enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired by such a finding. No waiver of any provisions of this Agreement shall be valid unless the same is in writing and signed by the party against whom such waiver is sought to be enforced. A waiver or consent given by either party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

6. This Agreement and all Addendums hereto contains the entire agreement of the parties, supersedes any and all prior agreements, written or oral, between them relating to the subject matter hereof, and may not be amended unless agreed to in writing by each party.

7. Any modifications and additions to this Agreement shall be made consistent with the ISO Agreement and the Tariff.

8. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana (without regard to its conflict of laws provisions).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written below.

Date: _____

Company

Signature: _____

Print Name: _____

Title: _____

Company: _____

Address: _____

Email: _____

Phone: _____

Fax: _____

**MIDWEST INDEPENDENT TRANSMISSION
SYSTEM OPERATOR, INC.**

Signature: _____

Print Name: _____

Title: _____

Company: _____

Address: _____

Email: _____

Phone: _____

Fax:

ADDENDUM TO NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

On _____, 20____, _____, officers of the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") and _____, acting as the authorized representative on behalf of _____ ("Company"), entered into a Non-Disclosure and Confidentiality Agreement to allow [_____ and Company or _____ and Midwest ISO] access to certain confidential information at the [Company or Midwest ISO].

[Company or Midwest ISO] wishes to gain access to such confidential information for employees, agents, and consultants of [Company or Midwest ISO] and therefore [_____ and Company or _____ and Midwest ISO] hereby acknowledge and agree that such person is duly authorized to execute this addendum on behalf of [Company or Midwest ISO] and that this addendum and the Non-Disclosure and Confidentiality Agreement shall bind and be enforceable by and against the employees, agents, or consultants of [Company or Midwest ISO] who are listed below.
_____ and [Company or Midwest ISO] further acknowledge and agree that they will notify [Company or Midwest ISO] in writing of any change to the list below

Employees, agents, or consultants subject to this the Non-Disclosure and Confidentiality Agreement:

<u>Print Name</u>	<u>Title</u>	<u>E-mail Address</u>	<u>Signature</u>
1.			
2.			
3.			
4.			
5.			

IN WITNESS WHEREOF, _____ and Company have caused this Addendum to be executed, effective as of the _____ day of _____, 2002.

By: _____

By: _____

Title: _____

Title: _____