

## **NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

### **FOR RESEARCH PURPOSES**

This Non-Disclosure and Confidentiality Agreement (the "Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between Midcontinent Independent System Operator, Inc. ("MISO") and \_\_\_\_\_, ("Researcher") whose principal offices are located at \_\_\_\_\_. MISO and Researcher each may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, MISO is prepared to disclose confidential information under this Agreement to Researcher in connection with Researcher's research efforts, which are more fully described in Appendix A attached hereto (the "Purpose");

WHEREAS, Researcher represents that it desires to receive confidential information pursuant to this Agreement; and,

WHEREAS, MISO and Researcher desire to set forth in writing the terms and conditions of their agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Confidential Information.** "Confidential Information" as used in this Agreement means all information disclosed to Researcher by MISO or its employees, agents, contractors, representatives, consultants and advisors (collectively "Disclosing Party") in connection with the Purpose. Confidential Information includes, without limitation, (i) any and all business, technical, marketing, financial or other information, whether in electronic, oral or written form; (ii) trade secrets, business plans, techniques, methods, or systems, data, know-how, formulae, compositions, designs, sketches, mock-ups, prototypes, photographs, charts, graphs, forms, documents, drawings, samples, inventions, ideas, research and development, customer and vendor lists (including, without limitation, the identity, characteristics, contact persons, product and service needs thereof), rates, price lists, computer software programs and systems, financial statements, and budgets; (iii) all memoranda, summaries, notes, analyses, compilations, studies or those portions of other documents prepared by Researcher to the extent they contain or reflect such information of, or the contents of discussions with the Disclosing Party ("Researcher's Material"), including the contents or existence of discussions or negotiations related to the Purpose; (iv) information not generally known or readily ascertainable; (v) information that provides a competitive advantage for Disclosing Party; and (vi) information that is marked "Confidential" or nonpublic information which under the circumstances surrounding disclosure a reasonable person would conclude should be treated as confidential. Confidential Information shall not include information that (a) is or becomes part of the public domain other than as a result of disclosure by Researcher, (b) becomes available to Researcher on a non-confidential basis from a source other than Disclosing Party, provided that, to the best of Researcher's

knowledge, such source is not prohibited from transmitting such information by a contractual, legal, or other obligation, or (c) was in Researcher's possession prior to disclosure of the same by Disclosing Party.

2. **Non-Use; Protection and Dissemination of Confidential Information.**

Researcher agrees not to disclose, discuss, use, reproduce, duplicate, distribute, copy, reconstruct or in any way communicate, directly or indirectly, the Confidential Information for purposes other than in connection with the Purpose. Except as otherwise provided herein, Researcher shall not disclose, discuss, use, reproduce, duplicate, distribute or in any way communicate, directly or indirectly, the Confidential Information to any other party and will use all reasonable efforts to protect the confidentiality of such information. Researcher will require that Researcher's employees, officers, directors, agents, contractors, representatives, consultants and advisors who need to have access to such Confidential Information in order to assist Researcher in connection with the Purpose (1) are aware of the Researcher's confidentiality obligation hereunder, and (2) agree to be bound by such confidentiality obligations. Researcher shall notify Disclosing Party immediately of any loss, misuse, or misappropriation of any Confidential Information of which Researcher becomes aware.

3. **Ownership and Return.** All Confidential Information, including Researcher's Material, shall be and remain the property of Disclosing Party, and no right or license is granted to Researcher with respect to any Confidential Information. No transfer or creation of ownership rights in any intellectual property comprising Confidential Information is intended or shall be inferred by the disclosure of Confidential Information by Disclosing Party, and any and all intellectual property comprising Confidential Information disclosed and any derivations thereof, shall continue to be the exclusive intellectual property of Disclosing Party. Upon the termination by any Party of the Purpose, or sooner if so requested, Researcher agrees to immediately return all Confidential Information, including Researcher's Material, to Disclosing Party or to destroy all Confidential Information, including all copies of the same, however, Researcher shall not be required to destroy Confidential Information that has become embedded in Researcher's planning models. Upon request, the fact of any such destruction shall be certified in writing to Disclosing Party by Researcher. Nothing in this Agreement obligates Disclosing Party to disclose any information to Researcher or creates any agency or partnership relation between them.

4. **Researcher's Material.** Notwithstanding anything in this Agreement, Researcher may be entitled to retain right, title and interest to any of Researcher's Material for disclosure, at Researcher's discretion, to a third party only upon the prior express written consent of Disclosing Party in the sole and absolute discretion of Disclosing Party. Disclosing Party shall have the right to review and approve or disapprove the disclosure of Researcher's Material to a third party before such disclosure. Researcher may only disclose Researcher's Material in accordance with the terms of Disclosing Party's written approval pursuant to this Section.

5. **Compliance and Protection of Confidential Information.** Researcher represents and warrants that it has practices and procedures adequate to protect against the unauthorized release of Confidential Information received. Researcher must educate its employees, agents, and assigns in the provisions of this Agreement and provide to Disclosing

Party upon request any information necessary to determine compliance with the terms of this Agreement.

6. **Indemnification.** Researcher agrees to indemnify, hold harmless and defend MISO, its employees, principals (owners, partners, shareholders or holders of an ownership interest, as the case may be), agents, contractors, representatives, consultants and/or advisors against any and all liability, loss, costs, damages, expenses, claims or actions, joint or several, arising out of or by reason of any breach of this Agreement by Researcher and/or Researcher's employees, agents, contractors, representatives or consultants, or arising out of or by reason of any act or omission of Researcher and/or Researcher's employees, agents, contractors, representatives or consultants in the execution, performance, or failure to adequately perform their obligations under this Agreement. For purposes of this Section, to "indemnify" means to defend and pay all expenses (including reasonable attorneys' fees) and satisfy all judgments (including costs and reasonable attorneys' fees) which may be incurred or rendered against MISO, its employees, principals (owners, partners, shareholders or holders of an ownership interest, as the case may be), agents, contractors, representatives, consultants and/or advisors.

7. **Compelled Disclosure.** If Researcher is requested or required by legal or administrative process to disclose any Confidential Information, Researcher shall promptly notify Disclosing Party of such request or requirement so that Disclosing Party may seek an appropriate protective order or other relief. In any case, Researcher will (a) disclose only that portion of the Confidential Information that its legal counsel advises is required to be disclosed, (b) use its reasonable efforts to ensure that such Confidential Information is treated confidentially, including seeking an appropriate protective order, and (c) notify Disclosing Party as soon as reasonably practicable of the items of Confidential Information so disclosed.

8. **Remedies.** The Parties acknowledge that remedies at law may be inadequate to protect Disclosing Party against any actual or threatened breach of this Agreement by Researcher, and, without prejudice to any other rights and remedies otherwise available to Disclosing Party, agree to the immediate granting of preliminary and final injunctive relief (without prior notice and without posting any bond) in favor of Disclosing Party to enjoin and restrain any breach or violation, either actual or anticipatory, of this Agreement.

9. **Purpose.** None of the Parties will be under any legal obligation of any kind whatsoever with respect to the Purpose by virtue of this Agreement, except for the matters specifically agreed to herein. No representation or warranty is made by the Disclosing Party as to the accuracy or completeness of any information provided to the Researcher.

10. **Term and Termination.** Researcher's obligations under this Agreement shall be effective on the date set forth above and shall be perpetual, notwithstanding any expiration, cancellation or termination of this Agreement. Upon termination of the Agreement, Researcher shall either promptly (1) deliver or cause to be delivered to Disclosing Party or (2) certify to the Disclosing Party the destruction of, all Confidential Information, including all copies of the Confidential Information in Researcher's possession or control including, without limitation, originals and copies of documents, customer lists, prospect lists, price lists, operations manuals, and all other documents reflecting or referencing the Confidential Information, as well as all other materials furnished to or acquired by Researcher to facilitate the Purpose of the Agreement.

11. **Agency.** This Agreement is binding on Researcher, its employees, agents, contractors, representatives, consultants, advisors, successors and assigns. In the event of a dispute regarding liability for breach of this Agreement, common law agency principles apply.

12. **Waiver.** No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by an authorized representative of the Party making the waiver. The failure of either Party in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasion.

13. **Modification.** This Agreement may not be amended except in a writing signed by authorized representatives of both Parties.

14. **Governing Law.** Indiana law shall govern the interpretation and implementation of the Agreement and the resolution of any dispute between the parties regarding the effect of the Agreement without giving effect to principles of conflicts of law, and shall supplement, but not replace, the Uniform Trade Secrets Act as enacted by the State of Indiana. Each Party hereby submits itself for the sole purpose of this Agreement and any controversy arising hereunder to the exclusive jurisdiction of the federal or state courts located in the State of Indiana serving the counties of Hamilton and Marion, and any courts of appeal therefrom, and waives any objection (on the grounds of lack of jurisdiction, or forum not convenient or otherwise) to the exercise of such jurisdiction over it by any such courts.

15. **Severability and Survival.** Should any clause, portion or paragraph of this Agreement be unenforceable or invalid for any reason, such unenforceability or invalidity will not affect the enforceability or validity of the remainder of this Agreement, and any court having jurisdiction is specifically authorized and encouraged by the Parties to hold inviolate all portions of this Agreement that are valid and enforceable without consideration of any invalid or unenforceable portions hereof. The headings of the sections in this Agreement are for the purposes of convenient reference only and are not intended to be part of this Agreement, or to limit or affect the meaning or interpretation of any of the terms hereof.

16. **Assignment and Succession.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. Any successor to or assignee of MISO shall assume its rights and obligations under this Agreement with or without notice to Researcher. Researcher may not assign its rights hereunder without the written permission of MISO.

17. **Attorney's Fees.** If Researcher breaches or defaults in the performance of any of the covenants, agreements, representations, or warranties described in this Agreement, then in addition to any and all of the rights and remedies which MISO may have against Researcher, Researcher will also be liable to and pay MISO its court costs and reasonable attorney's fees incurred in enforcing MISO's covenants, agreements, representations and warranties herein.

18. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgment of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

if to MISO, to: 720 City Center Drive  
Carmel, Indiana 46032  
Attn: General Counsel  
Facsimile No.: (317) 249-5912

if to \_\_\_\_\_, to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

19. **Subject to Approval.** Researcher hereby expressly acknowledges and agrees that the validity and effectiveness of this Agreement is subject to the written approval of the MISO Transmission Owners' Committee in the sole and absolute discretion of the MISO Transmission Owners' Committee, who may review Appendix A hereto. Upon execution of this Agreement by Researcher, Disclosing Party shall present this Agreement to the MISO Transmission Owners' Committee for review and approval. Disclosing Party shall not execute this Agreement or disclose any Confidential Information to Researcher prior to approval of the MISO Transmission Owners' Committee.

20. **Entire Agreement.** The Parties agree that this Agreement constitute their entire agreement with respect to the subject matter hereof and that it supersedes any prior agreements or understandings between them, whether written or oral.

Researcher acknowledges that it has read the Agreement, had the opportunity to discuss it with counsel, and is executing it with an understanding of its provisions. This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same document.

*remainder of page left intentionally blank*

[signatures appear on following page]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed, effective as of the day, month and year written above.

**Midcontinent Independent System  
Operator, Inc.**

**Researcher:**

\_\_\_\_\_

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

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

Print name: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

## **APPENDIX A**

### **Description of Research**

1. Description of Confidential Information requested:
2. Description of purpose for which Confidential Information is requested:
3. Description of the length of time the requested Confidential Information will be used or needed in connection with the Purpose, as defined herein:
4. Description of any work (*e.g.*, Researcher's Material, as defined herein) that will result from the purpose described above:
5. Description of intended use for resulting works described above, including any intended recipients of the works:
6. Description of access that MISO or its stakeholders will receive to the resulting works described above:
7. Description of value that MISO and/or its stakeholders will receive from the resulting works described above:

**Researcher acknowledges and agrees that additional information may be required in order to obtain the required approval of the MISO Transmission Owners' Committee, as provided herein. Upon request from Disclosing Party, Researcher consents to providing additional information, as necessary.**