

INFORMATION ONLY

UNIVERSAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Universal Non-Disclosure and Confidentiality Agreement (the "Agreement") is entered into on _____ and effective as of _____ (the "Effective Date"), by and between Midcontinent Independent System Operator, Inc. ("MISO") and _____, ("Company") whose principal offices are located at _____. MISO and Company 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 Company in connection with MISO's business with, or possible engagement of, Company (the "Purpose");

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

WHEREAS, MISO and Company 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 Company 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 Company to the extent they contain or reflect such information of, or the contents of discussions with the Disclosing Party ("Company'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

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result of disclosure by Company, (b) becomes available to Company on a non-confidential basis from a source other than Disclosing Party, provided that, to the best of Company's knowledge, such source is not prohibited from transmitting such information by a contractual, legal, or other obligation, or (c) was in Company's possession prior to disclosure of the same by Disclosing Party.

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

Company 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. Company 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. Company will require that Company's employees, officers, directors, agents, contractors, representatives, consultants and advisors who need to have access to such Confidential Information in order to assist Company in connection with the Purpose (1) are aware of the Company's confidentiality obligation hereunder, and (2) agree to be bound by such confidentiality obligations. Company shall notify Disclosing Party immediately of any loss, misuse, or misappropriation of any Confidential Information of which Company becomes aware.

3. **Ownership and Return.** All Confidential Information, including Company's Material, shall be and remain the property of Disclosing Party, and no right or license is granted to Company 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, Company agrees to immediately return all Confidential Information, including Company's Material, to Disclosing Party or to destroy all Confidential Information, including all copies of the same, however, Company shall not be required to destroy Confidential Information that has become embedded in Company's planning models. Upon request, the fact of any such destruction shall be certified in writing to Disclosing Party by Company. Nothing in this Agreement obligates Disclosing Party to disclose any information to Company or creates any agency or partnership relation between them.

4. **Compliance and Protection of Confidential Information.** Company represents and warrants that it has practices and procedures adequate to protect against the unauthorized release of Confidential Information received. Company 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.

5. **Indemnification.** Company 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 Company and/or Company's employees, agents, contractors, representatives or consultants, or arising out of or by reason of any act or omission of Company and/or Company's employees, agents, contractors,

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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.

6. **Compelled Disclosure.** If Company is requested or required by legal or administrative process to disclose any Confidential Information, Company 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, Company 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.

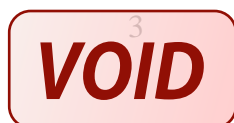
7. **Remedies.** The Parties acknowledge that remedies at law may be inadequate to protect Disclosing Party against any actual or threatened breach of this Agreement by Company, and, without prejudice to any other rights and remedies otherwise available to Disclosing Party, agree to the immediate granting 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.

8. **Limitations.** 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 Company.

9. **Term and Termination.** Company'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, Company 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 Company'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 Company to facilitate the Purpose of the Agreement.

10. **Agency.** This Agreement is binding on Company, 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.

11. **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.

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

13. **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.

14. **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.

15. **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 Company. Company may not assign its rights hereunder without the written permission of MISO.

16. **Attorney's Fees.** If Company 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 Company, Company 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.

17. **Employees Bound by Agreement.** The representative executing this Agreement hereby acknowledges and agrees that he/she is duly authorized to execute this Agreement on behalf of Company and that this Agreement shall bind and be enforceable by and against the employees, agents, or consultants of Company. The authorized representative of Company further acknowledges and agrees that only those employees who are listed on the attached Appendix A incorporated herein shall be authorized to receive Confidential Information directly from MISO and that he/she will notify MISO in writing of any modification to Appendix A prior to releasing Confidential Information to those employees listed on Appendix A.

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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. **Applicable Laws and Regulations.** The Parties agree that performance under Agreement shall be pursuant to all Applicable Laws and Regulations, as defined in MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”).

20. **Entire Agreement.** The Parties agree that this Agreement, including Appendix A incorporated herein and as modified, 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.

Company 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.

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[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.**

Company:

By: _____

By: _____

Print name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

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APPENDIX A

TO UNIVERSAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

Company, _____ Employees, Agents, or Consultants subject to Confidentiality Agreement as of this _____ day of _____, 20_____:

Print Name

Title

E-mail Address

Function
(Transmission/Reliability, Merchant/Market, or N/A*)

1.



2.

3.

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10.

(Attach Additional Pages If Necessary)

* An individual who is an employee of a Transmission Provider (as defined in 18 C.F.R. § 358.3(k)) may not be subject to the FERC functional separation requirements (i.e., "N/A" designation) under certain circumstances in accordance with FERC Order No. 717 and the FERC regulations therein adopted. If an individual would receive information subject to this Agreement, the copy of this Appendix A executed for that individual must be accompanied by **written confirmation** from Company stating the following: (1) the designated individual is not engaged in transmission or marketing functions (i.e., day-to-day duties and responsibilities for planning, directing, organizing or carrying out operations); (2) the individual has received training on the Standards of Conduct; and (3) the individual undertakes to comply with such Standards, including in particular the "no conduit rule" set forth in 18 C.F.R. § 358.6.

NOTE: Any changes to the information on this Appendix A must be sent immediately by e-mail to the MISO Client Relations Department at clientrelations@misoenergy.org.