

INFORMATION ONLY

UNIVERSAL PLANNING NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT FOR SECTOR MEMBERS

This Universal Planning Non-Disclosure and Confidentiality Agreement for Sector Members (the “Agreement”) is entered into by and between the Midcontinent Independent System Operator, Inc. (“MISO”) and _____, (“Sector Member”) whose principal offices are located at _____. MISO and Sector Member each may be referred to individually as a “Party” or collectively as the “Parties.” The effective date (“Effective Date”) of this Agreement is the last date shown for execution by each of the Parties.

WHEREAS, MISO is prepared to disclose Confidential/CEII data under this Agreement to Sector Member that participates in an Advisory Committee sector in connection with provisions in Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”) relating to the disclosure of information used to develop the MISO Transmission Plan and Sector Member’s corresponding use of the data for that planning;

WHEREAS, Sector Member represents that it desires to receive Confidential/CEII data pursuant to this Agreement; and,

WHEREAS, MISO and Sector Member 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. **Definitions -For purposes of this Agreement:**
 - a. “Confidential Information,” as used in this Agreement, means all information disclosed to Sector Member 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 Sector Member to the extent they contain or reflect such information of, or the contents of discussions with the Disclosing Party (“Comingled Material”), including the contents

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- 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 Sector Member, (b) becomes available to Sector Member on a non-confidential basis from a source other than Disclosing Party, provided that, to the best of Sector Member’s knowledge, such source is not prohibited from transmitting such information by a contractual, legal, or other obligation, or (c) was in Sector Member’s possession prior to disclosure of the same by Disclosing Party.
- b. The term “CEII” shall include specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure. Narratives such as the descriptions of facilities and processes are generally not CEII unless they describe specific engineering and design details of critical infrastructure.
 - c. “Confidential/CEII data” is a term that recognizes that CEII is normally included in the contents of disclosures related to the Purpose. The terms of this Agreement shall apply equally to all information disclosed in connection with the Purpose to the extent not covered by one of the exceptions stated in Section 1.a.
 - d. “Purpose” means the release of Confidential/CEII data used by MISO to develop the MISO Transmission Expansion Plan (“MTEP”) and Sector Member’s corresponding use of such data to participate in the MTEP process, as provided under Attachment FF of the Tariff (or any substantially similar successor provision). The “Purpose” does not include any other use of the data by Sector Member.
 - e. The term “Recipient” means someone who has executed a CEII NDA and is approved to receive CEII.

2. **Non-Use; Protection and Dissemination of Confidential/CEII Data.** Sector Member agrees not to disclose, discuss, use, reproduce, duplicate, distribute, copy, reconstruct or in any way communicate, directly or indirectly, the Confidential/CEII data for purposes other than in connection with the Purpose. Sector Member shall not disclose, discuss, use, reproduce, duplicate, distribute or in any way communicate, directly or indirectly, the Confidential/CEII data to any other party and will use all reasonable efforts to protect the confidentiality of such information. Sector Member will require that Sector Member’s employees, officers, directors, agents, contractors, representatives, consultants and advisors who need to have access to such Confidential/CEII data in order to assist Sector Member in connection with the Purpose (1) are



aware of the Sector Member's confidentiality obligation hereunder, and (2) agree to be bound by such confidentiality obligations. Sector Member shall notify Disclosing Party immediately of any loss, misuse, or misappropriation of any Confidential/CEII data of which Sector Member becomes aware.

3. **Ownership and Return.** All Confidential/CEII data, including Comingled Material, shall be and remain the property of Disclosing Party (or persons providing information to Disclosing Party), and no right or license is granted to Sector Member with respect to any Confidential/CEII data. No transfer or creation of ownership rights in any intellectual property comprising Confidential/CEII data is intended or shall be inferred by the disclosure of Confidential/CEII data by Disclosing Party, and any and all intellectual property comprising Confidential/CEII data 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, Sector Member agrees to immediately return all Confidential/CEII data, including Comingled Material, to Disclosing Party or to destroy all Confidential/CEII data, including all copies of the same, however, Sector Member shall not be required to destroy Confidential/CEII data that has become embedded in Sector Member's planning models. Upon request, the fact of any such destruction shall be certified in writing to Disclosing Party by Sector Member. Nothing in this Agreement obligates Disclosing Party to disclose any information to Sector Member or creates any agency or partnership relation between them.

4. **Compliance and Protection of Confidential/CEII Data.** Sector Member represents and warrants that it has practices and procedures adequate to protect against the unauthorized release of Confidential/CEII data received. Sector Member 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.** Sector Member 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 Sector Member and/or Sector Member's employees, agents, contractors, representatives or consultants, or arising out of or by reason of any act or omission of Sector Member and/or Sector Member'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.

6. **Compelled Disclosure.** If Sector Member is requested or required by legal or administrative process to disclose any Confidential/CEII data, Sector Member 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, Sector Member will (a) disclose only

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that portion of the Confidential/CEII data that its legal counsel advises is required to be disclosed, (b) use its reasonable efforts to ensure that such Confidential/CEII data is treated confidentially, including seeking an appropriate protective order or agreement, and (c) notify Disclosing Party as soon as reasonably practicable of the items of Confidential/CEII data 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 Sector Member, and, without prejudice to any other rights and remedies otherwise available to Disclosing Party, agree to not oppose 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 Sector Member.

9. **Term and Termination.** Sector Member's obligations under this Agreement shall begin on the Effective Date and shall be perpetual, notwithstanding any expiration, cancellation or termination of this Agreement. Upon termination of the Agreement, Sector Member 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/CEII data (or rendering it electronically unrecoverable), including all copies of the Confidential/CEII data in Sector Member'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/CEII data, as well as all other materials furnished to or acquired by Sector Member to facilitate the Purpose of the Agreement.

10. **Agency.** This Agreement is binding on Sector Member, 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.** Except as specified elsewhere in this Agreement, 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

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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 Sector Member. Sector Member may not assign its rights hereunder without the written permission of MISO.

16. **Attorney's Fees.** If Sector Member 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 Sector Member, Sector Member 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. **Sector Member Representatives 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 Sector Member and that this Agreement shall bind and be enforceable by and against the employees, agents, or consultants of Sector Member. Only those persons who are listed on the attached Appendix A who are not designated as having a "Merchant/Market" function – herein incorporated into this Agreement as updated from time to time by a person identified on Appendix A for Sector Member – shall be authorized to receive Confidential/CEII data directly from MISO. Such persons who receive Confidential/CEII data are responsible for preventing persons having day-to-day duties and responsibilities for marketing functions from also receiving the Confidential/CEII data. Persons listed on Appendix A shall also be required to execute an individual CEII non-disclosure agreement before being eligible to be a Recipient of CEII data. Sector Member shall timely notify MISO in writing of any modification to Appendix A, which shall be transmitted to help@misoenergy.org (requiring acknowledgment of complete transmission from recipient) or a successor electronic in-box as may be designated by MISO on the customer relations portion of the MISO website.

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18. **Notices.** 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 email (with acknowledgment of complete transmission from recipient) 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
Email: legalnotice@misoenergy.org

if to Sector Member, to: _____

Email: _____

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 Tariff.

- **Entire Agreement.** The Parties agree that this Agreement, including Appendix A incorporated herein and as modified from time to time, 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.

Sector Member 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, the Effective Date being the last date shown for execution by each of the Parties

**Midcontinent Independent
System Operator, Inc.**

Sector Member:

By: _____

By: _____

Print name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Phone: _____

Phone: _____

Email: _____

Email: _____

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**APPENDIX A
TO UNIVERSAL PLANNING NON-DISCLOSURE AND CONFIDENTIALITY
AGREEMENT
FOR SECTOR MEMBERS**

Sector Member, _____, designates its Employees, Agents, or Consultants as provided in a Non-Disclosure and Confidentiality Agreement as of this _____ day of _____, 20____ :

<u>Print Name</u>	<u>Title</u>	<u>E-mail Address</u>	Function (Transmission/Reliability, Merchant/Market, or N/A [*])
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

(Attach Additional Pages If Necessary)

* An individual 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 person authorized by Sector Member to provide this Appendix A that identifies such an individual certifies and confirms 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 timely sent by e-mail to the MISO Client Services and Readiness Department at help@misoenergy.org.

