

**APPENDIX 8 TO GIP**

**FACILITIES CONSTRUCTION AGREEMENT**

entered into by the

**Midcontinent Independent System Operator, Inc.,**

And

**[Customer]**

And

**[Transmission Owner]**

entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

## FACILITIES CONSTRUCTION AGREEMENT

**THIS FACILITIES CONSTRUCTION AGREEMENT** (sometimes hereinafter referred to as “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among \_\_\_\_\_, organized and existing under the laws 20\_\_, of the State of \_\_\_\_\_ (“Customer”), the **Midcontinent Independent System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (“Transmission Provider”) and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ ( “Transmission Owner”). Customer, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.”

### RECITALS

**WHEREAS**, Transmission Owner and Customer each owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

**WHEREAS**, Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing reliable transmission service on the transmission facilities under its control; and

**WHEREAS**, Customer intends to own, and operate, or manage [ Customer’s Interconnection Facilities relating to the \_\_\_\_ MW generating facility] [Customer’s Connection Facilities relating to the \_\_\_\_ MW MHVDC Transmission Line] located in \_\_\_\_\_ County, \_\_\_\_\_ (“Facility”) with an expected Commercial Operation Date of (as defined in the (G)IA) of [DATE] \_\_\_\_\_ pursuant to the [GIA] [TCA] (“(Generator) Interconnection Agreement” or “(G)IA”), [to be] entered into by and among Customer, [Transmission Provider or host transmission provider] \_\_\_\_\_ and Transmission Owner or host transmission owner] \_\_\_\_\_ and will interconnect to the transmission

system of [Transmission Provider or host transmission provider] \_\_\_\_\_,  
which system is either adjacent to or part of the Transmission System; and

**WHEREAS**, the Transmission System is affected by the interconnection of the Facility to the [Transmission Provider or host transmission provider] \_\_\_\_\_ transmission system and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such interconnection; and

**WHEREAS**, Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Customer for the purpose of facilitating the interconnection of the Facility by the construction of necessary Network Upgrades to the Transmission System;

**NOW, THEREFORE**, in consideration of and subject to the mutual covenants contained herein, it is agreed:

## **ARTICLE 1**

### **DEFINITIONS**

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 shall have the meanings specified in the Tariff:

- 1.1** “Applicable Laws and Regulations” shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide.
- 1.2** “Applicable Reliability Council” shall mean the reliability council of NERC applicable to the Local Balancing Authority of the Transmission System to which the Facility is directly interconnected.
- 1.3** “Applicable Reliability Standards” shall mean Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under Section 215 of the Federal Power Act, as applicable.
- 1.4** “Breach” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Article 9.1.
- 1.5** “Breaching Party” shall mean a Party that is in Breach of this Agreement.
- 1.6** “Commercial Operation” shall mean the status of a Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation, pursuant to its MISO GIA or TCA or (G)IA (if applicable), or has commenced

transmitting electricity for sale, excluding electricity transmitted during Trial Operation, pursuant to its TCA.

- 1.7** “Commercial Operation Date” or “COD” of a Facility shall mean the date on which the Facility commences Commercial Operation pursuant to MISO GIA or TCA or (G)IA (if applicable) .
- 1.8** “Common Use Upgrade” or “CUU” shall mean a Interconnection Facility or Connection Facility Network Upgrade, System Protection Facility, or any other classified addition, alteration, or improvement on the Transmission System or the transmission system of an Affected System, not classified under Attachment FF as a Baseline Reliability Project, Market Efficiency Project, or Multi-Value Project, that is needed for the interconnection of multiple Customers’ Facilities and which is the shared responsibility of such Customers.
- 1.9** “Confidential Information” shall mean any proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, or any other information as specified in Article 12, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by another Party.
- 1.10** “Customer” shall mean, for purposes of this Agreement, an Interconnection Customer or Affected System Interconnection Customer as defined in the GIP set forth in Attachment X or an MHVDC Connection Customer as defined in the MHCP set forth in Attachment GGG.
- 1.11** “Default” shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 9 of this Agreement.

- 1.12** “Effective Date” shall mean the date on which this Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.
- 1.13** “FERC” shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.
- 1.14** “Force Majeure” shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure.
- 1.15** “Generator Interconnection Procedures or “GIP” shall mean the interconnection procedures that are included in the Transmission Provider’s Tariff.
- 1.16** “Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.17** “Governmental Authority” shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental

authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Customer, Transmission Provider, Transmission Owner, or any Affiliate thereof.

- 1.18** “In-Service Date” shall mean the date upon which Customer reasonably expects it will be ready to begin use of the Network Upgrades and/or System Protection Facilities.
- 1.19** “Local Balancing Authority” shall mean an operational entity or a Joint Registration Organization which is (i) responsible for compliance with the subset of NERC Balancing Authority Reliability Standards defined in the Balancing Authority Agreement for their local area within the MISO Balancing Authority Area, (ii) a Party to Balancing Authority Agreement, excluding MISO, and (iii) shown in Appendix A to the Balancing Authority Agreement.
- 1.20** “Loss” shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party’s performance, or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing, by the indemnified Party.
- 1.21** “NERC” shall mean the North American Electric Reliability Corporation, or its successor organization.
- 1.22** “Network Upgrades” shall mean the additions, modifications, and upgrades to the Transmission System required at or beyond the point at which the Interconnection Facilities or Connection Facilities connect to the Transmission System, Affected System, or Distribution System, as applicable, to accommodate the interconnection of the Facility.

- 1.23** “Non-Breaching Party” shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.24** “Reasonable Efforts” shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.
- 1.25** “Shared Network Upgrade” shall mean a Network Upgrade or Common Use Upgrade that is funded by a Customer(s), including when the Transmission Owner elects to fund the capital cost of such a Network Upgrade or Common Use Upgrade under the MISO GIA or TCA or (G)IA (if applicable), and also benefits other Customer(s) that are later identified as beneficiaries.
- 1.26** “System Protection Facilities” shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission System or other delivery systems or other generating systems from faults or other electrical disturbances occurring at the Facility and (2) the Facility from faults or other electrical system disturbances occurring on the Transmission System or on other delivery systems or other generating systems to which the Transmission System is directly connected.
- 1.27** “Tariff” shall mean the Transmission Provider’s Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.
- 1.28** “Transmission System” shall mean the facilities owned by Transmission Owner and controlled or operated by Transmission Provider or Transmission Owner that are used to provide Transmission Service or Wholesale Distribution Service under the Tariff.

## ARTICLE 2



## TERM OF AGREEMENT

**2.1 Effective Date.** Subject to required regulatory authorizations, including, without limitation, acceptance by FERC under Section 205 of the Federal Power Act, this Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties.

**2.2 Term.**

**2.2.1 General.** This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final repayment, where applicable, by Transmission Owner of the amount funded by Customer for Transmission Owner's design, procurement, construction and installation of the Network Upgrades and System Protection Facilities provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Customer terminates this Agreement after providing Transmission Provider and Transmission Owner with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the Commercial Operation Date for the Generating Facility or MHVDC Transmission Line or the In-Service Date for the CUU or the In-Service Date for the Network Upgrades and System Protection Facilities is adjusted in accordance with the rules and procedures established by Transmission Provider.

**2.2.2 Termination Upon Default.** In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 9 and 10; provided, however, if an event described in part (c) of Article 9.1 has not occurred, and provided the Default does not pose a threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission Owner may terminate this Agreement if Customer is the Breaching Party and Customer (i) has undertaken, in accordance with Article 9.2, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) Calendar Days allowed by Article 9.2, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) Calendar Days for the amount of damage billed to Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. In the event of an occurrence described in part (c) of Article 9.1, and providing the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.

**2.2.3 Consequences of Termination.** In the event of a termination by any Party, other than a termination by Customer due to a Breach by Transmission Owner, Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades and System Protection Facilities (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades and System Protection Facilities, through the date of termination, plus any actual costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of

persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

Terminating Customer is responsible for the financial impact that is caused to another Customer as a result of the termination of this Agreement, Customer's (G)IA, TCA or any of Customer's other FCA(s) or MPFCA(s); financial impact as defined by Section 7.8 of Attachment X. To the extent that the Customer has already paid Transmission Owner for any or all such costs of materials or equipment not taken by Customer or upgrades not yet constructed, Transmission Owner shall promptly transfer such remaining amounts to Transmission Provider, less any costs, including penalties incurred by Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts. Transmission Provider will perform a financial impact analysis in accordance with Section 7.8 of Attachment X to determine the amount that should be refunded to Customer. Transmission Provider shall refund such remaining amounts to Customer, less any financial impact caused by the termination of this Agreement or Customer's (G)IA, TCA, MPFCA(s), or other FCA(s), as determined through the analysis performed in accordance with Section 7.8 of Attachment X. If Customer made its payment(s) through a letter of credit, surety bond, or parental guarantee, Transmission Owner will draw against that letter of credit, surety bond, or parental guarantee in an amount determined through the analysis performed in accordance with Section 7.8 of Attachment X and transfer that amount to Transmission Provider, unless Customer funds the financial impact through another means.

**2.2.4 Material Adverse Change.** In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this

Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) Calendar Days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 14 to resolve any disputes related thereto; Transmission Provider and/or Transmission Owner shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

- 2.3 Regulatory Filing.** In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as a service agreement under the Tariff. If Customer has executed this Agreement or any amendment to this Agreement, Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.

**2.4 Survival.** The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

**2.5 Termination Obligations.** Upon any termination pursuant to this Agreement, Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

### **ARTICLE 3**

## **CONSTRUCTION OF NETWORK UPGRADES AND SYSTEM PROTECTION FACILITIES**

### **3.1 Construction.**

**3.1.1 Transmission Owner Obligations.** Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades and System Protection Facilities identified in Appendix A. All Network Upgrades and System Protection Facilities designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

#### **3.1.2 Suspension of Work.**

**3.1.2.1 Right to Suspend for Force Majeure Event.** Provided that such suspension is permissible under the authorizations, permits or approvals granted for the construction of the Network Upgrades and System Protection Facilities Customer will not suspend unless a Force Majeure event occurs. Customer must provide written notice of its request for suspension to Transmission Provider and Transmission Owner, and provide a description of the Force Majeure event that is acceptable to Transmission Provider. Suspension will only apply to Customer milestones and Interconnection Facilities or Connection Facilities described in the Appendices of this Agreement. Prior to suspension, Customer must also provide security acceptable to Transmission Owner, equivalent to the higher of \$5 million or the total cost of all Network Upgrades, Transmission Owner's System Protection Facilities, and Distribution Upgrades listed in Appendix A of this Agreement. Network Upgrades, System Protection Facilities, and Transmission Owner Interconnection Facilities or Connection Facilities will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades and System Protection Facilities are not needed by any other project; or (3) Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3) security shall be released upon the determination that the Network Upgrades and System Protection Facilities will no longer be constructed. If suspension occurs, Customer shall be responsible for the costs which Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, (ii) in suspending such work, including any costs incurred 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 Transmission

Owner cannot reasonably avoid, and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Owner shall obtain Customer's authorization. Customer shall be responsible for all costs incurred in connection with Customer's denial of authorization to cancel such contracts or orders. Interest as provided in

Article 3.2.2.2 on amounts paid by Customer to Transmission Owner for the design, procurement, construction and installation of the Network Upgrades and System Protection Facilities, shall not accrue during periods in which Customer has suspended construction under this Article 3.1.2. Transmission Owner shall invoice Customer pursuant to Article 6 and use Reasonable Efforts to minimize its costs. In the event that Customer suspends work pursuant to this Article, no construction duration, timelines and schedules set forth in Appendix A shall be suspended during the period of suspension unless ordered by a Governmental Authority, with such order being the Force Majeure event causing the suspension.

**3.1.2.2 Recommencing of Work.** If Customer requests Transmission Owner to recommence such work, Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Customer to suspend the work. In such event, Customer shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the interconnection agreed to by the Parties. Transmission Provider and Transmission Owner have the right to request an Interconnection System Impact Study or Interconnection System Impact Study for Affected System if conditions have materially changed subsequent to the request to suspend. Customer shall be responsible for the costs of any studies required.

**3.1.2.3 Termination in the Event of a Material Modification.** In the event Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its Commercial Operation Date by three (3) years or more, this Agreement shall be deemed terminated unless Customer demonstrates that the change is not a Material Modification under FERC precedent.

**3.1.2.4 Right to Suspend Due to Default.** Transmission Owner reserves the right, upon written notice to Customer, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades and System Protection Facilities upon the occurrence of either a Breach that Customer is unable to cure pursuant to Article 9 or an Event of Default pursuant to Article 9. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 9.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 10. In such events, Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.

**3.1.3 Construction Status.** Transmission Owner shall keep Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Customer determines that the completion of the Network Upgrades and System Protection Facilities will not be required until after the specified In-Service Date, Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades and System



Protection Facilities would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.

**3.1.4 Timely Completion.** Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades and System Protection 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. If any event occurs that will affect the time for completion of the Network Upgrades and System Protection Facilities, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with Customer and Transmission Owner to evaluate the alternatives available to Customer. Transmission Owner and/or Transmission Provider shall also make available to Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is reasonably needed by Customer to evaluate alternatives. Transmission Owner shall, at Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Customer authorizes such actions and the costs associated therewith in advance.

## **3.2 Interconnection Costs and Credits.**

**3.2.1 Costs.** Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades and System Protection Facilities, as identified in Appendix A, in accordance with the cost recovery method provided herein. As required by Section 7.3.2.1 and 7.3.3.1 of Attachment X, Transmission Owner shall have provided Transmission Provider

with written notice if Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities; otherwise, such facilities, if any, shall be solely funded by Customer.

Transmission Owner shall install, at Customer's expense, any Transmission Owner's System Protection Facilities that may be required on the Transmission Owner's Interconnection Facilities or Connection Facilities or the Transmission Owner's transmission or distribution facilities as a result of the interconnection of the Facility and the Customer's Interconnection Facilities or Connection Facilities.

In the event the Network Upgrade(s) are determined to be Shared Network Upgrade(s), Transmission Owner and Transmission Provider shall not be responsible for funding obligations related to the Shared Network Upgrade(s) under separate MISO GIAs or (G)IA (if applicable) and/or TCAs. Transmission Provider shall only be responsible to reimburse those funds to Customer that Transmission Provider receives pursuant to separate MISO GIAs or (G)IA (if applicable) and/or TCAs.

**3.2.1.1 Lands of Other Property Owners.** If any part of the Transmission Owner's Interconnection Facilities or Connection Facilities, , Network Upgrades, System Protection Facilities, and/or Distribution Upgrades is to be installed on property owned by persons other than Customer or Transmission Owner, Transmission Owner shall at Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct,

operate, maintain, test, inspect, replace or remove the Transmission Owner's Interconnection Facilities or Connection Facilities,, Network Upgrades, System Protection Facilities, and/or Distribution Upgrades upon such property.

### **3.2.2 Credits.**

**3.2.2.1 Repayment.** Customer shall be entitled to a cash repayment by Transmission Owner(s) that owns the Network Upgrades, of the amount paid respectively to Transmission Owner, if any, for the Network Upgrades, as provided under Attachment FF of the Tariff, and including any tax gross-up or other tax-related payments associated with the repayable portion of the Network Upgrades, and not repaid to Customer pursuant to Article 3.3.1 or otherwise, to be paid to Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Tariff for Transmission Service with respect to the Generating Facility or MHVDC Transmission Line or the In-Service Date for the CUU or the In-Service Date for the Network Upgrades and System Protection Facilities. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19 a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1 or the Network Upgrades have been determined not to be needed pursuant to this Article 3.2.2.1. Customer may assign such repayment rights to any person.

If the Facility is designated a Network Resource under the Tariff, or if there are otherwise no incremental payments for Transmission Service

resulting from the use of the Facility by Transmission Customer, and in the absence of another mutually agreeable payment schedule any repayments provided under Attachment FF shall be established equal to the applicable rate for Firm Point-To-Point Transmission Service for the pricing zone where the Network Load is located multiplied by the portion of the demonstrated output of the Facility designated as a Network Resource by the Network Customer(s) or in the absence of such designation, equal to the monthly firm single system-wide rate defined under Schedule 7 of the Tariff multiplied by the portion of the demonstrated output of the Facility under contract to Network Customer(s) and consistent with studies pursuant to Section 3.2.2.2 of the GIP.

**3.2.2.2 Amount.** Transmission credits will be based on the final, actual cost of completing the Network Upgrades as provided by the final invoice prepared by Transmission Owner pursuant to Article 6.4 of this Agreement. Any repayment made pursuant to Article 3.2.2.1 shall include (i) the final, actual cost after any true-up amounts have been paid pursuant to Article 6.4, and (ii) interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this Article 3.2 until fully reimbursed. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1.

**3.2.2.3 Alternative Payment Schedule.** Notwithstanding the foregoing, as applicable and consistent with the provisions of Attachment FF of the Tariff, Customer, Transmission Provider, and Transmission Owner, may adopt any alternative payment schedule that is mutually agreeable so long

as Transmission Owner takes one of the following actions no later than five (5) years from the Commercial Operation Date: (1) Return to Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Owner will continue to provide payments to Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.

**3.2.2.4 Impact of Failure to Achieve Commercial Operation.** If the Facility fails to achieve Commercial Operation, but it or another generating facility is later constructed and makes use of the Network Upgrades, Transmission Owner shall at that time reimburse Customer for the remaining applicable amounts that may be refundable pursuant to Attachment FF of the Tariff, that were advanced for the Network Upgrades on their respective systems as described above. Before any such reimbursement can occur, Customer, or the entity that ultimately constructs the Facility, if different, is responsible for identifying the entity to which the reimbursement must be made.

**3.2.2.5 Rights not Relinquished.** Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades,

including the right to obtain refunds or transmission credits for  
Transmission Service that is not associated with the Facility.

### **3.3 Taxes.**

**3.3.1 Indemnification for Contributions in Aid of Construction.** The Parties intend that all payments made by Customer to Transmission Owner for the installation of the Network Upgrades and System Protection Facilities 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 Customer for the installation of the Network Upgrades and System Protection Facilities unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Customer to provide security for Interconnection Facilities or Connection Facilities, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences or any current tax liability under this Article. Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years

open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Owner is determined by any Governmental Authority to constitute income by Transmission Owner subject to taxation, Customer shall protect, indemnify and hold harmless Transmission Owner and its Affiliates, 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 Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Owner, upon the timely written request by Customer and at Customer'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 Customer regarding the conduct of such contest. Customer 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. Customer shall not be required to pay Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) Calendar 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 Customer has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Customer 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 6, Customer shall provide Transmission Owner with credit assurances sufficient to meet Customer's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Owner represents, and the Parties acknowledge, that Transmission Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Customer to Transmission Owner for Network Upgrades and System Protection Facilities is to be treated as an upfront payment in accordance with Rev Proc 2005-35. It is anticipated by the Parties that any amounts paid by Customer to Transmission Owner for Network Upgrades and System Protection Facilities will be reimbursed to Customer in accordance with the terms of this Agreement, provided Customer fulfills its obligations under this Agreement.

**3.3.2 Private Letter Ruling.** At Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Customer to Transmission Owner under this Agreement are subject to federal income taxation. Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Customer's knowledge. Transmission Owner and



Customer shall cooperate in good faith with respect to the submission of such request.

**3.3.3 Other Taxes.** Upon the timely request by Customer, and at Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner. Each Party shall cooperate with the other Parties to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

## **ARTICLE 4**

### **FORCE MAJEURE**

**4.1 Notice.** The Party unable to carry out an obligation imposed on it by this Agreement due to a Force Majeure event shall notify the other Parties in writing or verbally with subsequent notice in writing within a reasonable time after the occurrence of the cause relied on.

- 4.2 Duration of Force Majeure.** Except as set forth in Article 4.3, 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. A Party shall be excused from whatever performance is affected for only the duration of the Force Majeure event 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.
- 4.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

## ARTICLE 5

### INFORMATION REPORTING

- 5.1 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.
- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. In the event of Force

Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 4.

## **ARTICLE 6**

### **CREDITWORTHINESS, BILLING AND PAYMENTS**

**6.1 Creditworthiness.** By the earlier of (i) thirty (30) Calendar Days prior to the due date for Customer'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 Network Upgrades and System Protection Facilities, Customer shall provide Transmission Owner, at Transmission Owner's option, with a form of adequate assurance of creditworthiness reasonably acceptable 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 Transmission Owner, have terms and conditions reasonably acceptable to Transmission Owner and guarantee payment of the amount specified in the next paragraph of this Article 6.1. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to 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 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 Network Upgrades and System Protection Facilities have been placed in service and until Customer fully compensates Transmission Owner for construction of the Network Upgrades and System Protection Facilities, Customer shall, subject to the standards of this Article 6.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Article 3.2.1, as specified in the following paragraph. Customer's estimated liability under Article 3.2.1 is stated in Appendix A.

Customer shall maintain as of the first day of each month beginning on the due date for Customer's first payment under the payment schedule specified in Appendix A, and continuing through to the Commercial Operation Date, a parental guarantee, surety bond or letter of credit in an amount sufficient to cover the applicable costs and cost commitments required of the Party responsible for building the facilities pursuant to the construction schedule developed in this Agreement for designing, engineering, seeking regulatory approval from any Governmental Authority, constructing, procuring and installing the facilities and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes as defined and established under Appendix A.

**6.2 Invoice.** Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due, if any, for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

**6.3 Payment.** Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar 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. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.

**6.4 Final Invoice.** Within six (6) months after completion of the construction of the Network Upgrades and System Protection Facilities, Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrades and System

Protection Facilities and shall set forth such costs in sufficient detail to enable Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)), to Customer any amount by which the actual payment by Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

**6.5 Interest.** Interest on any unpaid amounts shall be calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii).

**6.6 Payment During Dispute.** In the event of a billing dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades and System Protection Facilities under this Agreement as long as Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Customer fails to meet these two requirements, then Transmission Provider may or, at Transmission Owner's request upon Customer's failure to pay Transmission Owner, shall provide notice to Customer of a Default pursuant to Article 9. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accord with the methodology set forth in 18 C.F.R. § 35.19a(a)(2)(iii).

## **ARTICLE 7**

### **ASSIGNMENT**

**7.1 Assignment.** This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Customer shall

have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 6.1. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 8**

### **INDEMNITY**

**8.1 General.** To the extent permitted by law, a Party (the "Indemnifying Party") shall at all times indemnify, defend, and hold the other Parties (each an "Indemnified Party") harmless from Loss, only as provided in the Tariff.

**8.1.1 Indemnified Party.** If an Indemnified Party is entitled to indemnification under this Article 8 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 8.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

**8.1.2 Indemnifying Party.** If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

**8.1.3 Indemnity Procedures.** Promptly after receipt by an Indemnified Party 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 Article 8.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is 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 reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such 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 Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, 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 Party, which shall not be reasonably withheld, conditioned or delayed.

**8.2 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

## **ARTICLE 9**

### **BREACH, CURE AND DEFAULT**

**9.1 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 access or terminate such access rights, as provided under this Agreement or the related MISO GIA, TCA, GIA or (G)IA (if applicable); 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.

**9.2 Notice of Breach, 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 representing 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.

**9.2.1** Upon the occurrence described in part (c) of Article 9.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) Calendar Days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (sometimes hereinafter referred as ("Cure Period")) which shall be thirty

(30) Calendar Days unless such Breach is due to an occurrence under Article 9.1(a) or (c) in which case the cure period will be five (5) Business Days.

**9.2.2** If the Breach is such that it cannot be cured within the Cure Period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such Cure Period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to:

- (a) cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within the Cure Period; or,
- (b) completely cure the Breach within sixty (60) Calendar Days if the Breach occurs pursuant to Article 9.1(b), (d), (e) or (f),

the Breaching Party will be in Default of this Agreement and the non-Breaching Parties may, at their option, either in concert or individually, (1) act to terminate this Agreement for cause by notifying the other Parties in writing, or (2) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

**9.3 Rights in the Event of Default.** Notwithstanding the foregoing, upon the occurrence of an event of Default, any non-Defaulting Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

## **ARTICLE 10**

### **TERMINATION OF AGREEMENT**

**10.1 Expiration of Term.** Except as otherwise specified in this Article 10, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

**10.2 Termination.** In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of another Party in accordance with this Agreement. Subject to the limitations set forth in Article 10.3, 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) unless no longer required by FERC, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.

**10.3 Disposition of Facilities Upon Termination of Agreement.**

**10.3.1 Transmission Provider and Transmission Owner Obligations.** Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:

- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and System Protection Facilities and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network Upgrades and System Protection Facilities;
- (b) may keep in place any portion of the Network Upgrades and System Protection Facilities already constructed and installed; and,
- (c) shall 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 to return the system to its original state, wind-up work).

**10.3.2 Customer Obligations.** Upon billing by Transmission Owner, Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Article 10.3.1 and for the cost of any Network Upgrades and System Protection Facilities described in Appendix A. Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Customer shall pay these costs pursuant to Article 6.3 of this Agreement.

**10.3.3 Pre-construction or Installation.** Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades and System Protection Facilities, Transmission Owner may, at its option, retain any portion of such Network Upgrades and System Protection Facilities not cancelled or returned in accordance with Article 10.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades and System Protection Facilities. To the extent that Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall transfer such amounts to Transmission Provider who then shall assess the financial impact as defined by Section 7.8 of Attachment X. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Customer such facilities as soon as practicable after Customer's payment for such facilities.

**10.4 Survival of Rights.** Termination or expiration 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. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing

adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 12.

## **ARTICLE 11**

### **SUBCONTRACTORS**

**11.1 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.

**11.1.1 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 Parties 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.

**11.1.2 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.

**11.1.3 No Limitation by Insurance.** The obligations under this Article 11 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

## ARTICLE 12

### CONFIDENTIALITY

**12.1 Confidentiality.** Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 C.F.R. Section 388.113(c).

Such confidentiality will be maintained in accordance with this Article 12. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

**12.1.1 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 12 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with Commission policies and regulations.

**12.1.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 12.1.7 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

**12.1.3 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties who may be or are considering providing financing to or equity participation with Customer, or to potential purchasers or assignees of Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 12 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 12.

**12.1.4 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

**12.1.5 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.

**12.1.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as 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 another Party under this Agreement or its regulatory requirements.

**12.1.7 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order 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 will use Reasonable Efforts to obtain reliable



assurance that confidential treatment will be accorded any Confidential Information so furnished.

**12.1.8 Termination of Agreement.** Upon termination of this Agreement for any reason, each Party shall, within ten (10) Business Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 12 shall survive such termination.

**12.1.9 Remedies.** The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 12. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 12, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 12, 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 12.

**12.1.10 Disclosure to FERC, its Staff or a State.** Notwithstanding anything in this Article 12 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its

staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

- 12.1.11** Subject to the exception in Article 12.1.10, any information that a disclosing Party claims is competitively sensitive, commercial or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as the Regional Transmission Organization or a Local Balancing Authority operator including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any

disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party who received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

### **ARTICLE 13**

#### **INFORMATION ACCESS AND AUDIT RIGHTS**

- 13.1 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 those set forth in this Article 13.1 and to enforce their rights under this Agreement.
- 13.2 Audit Rights.** Subject to the requirements of confidentiality under Article 12 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades and System Protection Facilities shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following the Transmission Owner's issuance of a final invoice in accordance with Article 6.4. Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 13.2 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 14

### DISPUTES

- 14.1 Submission.** Any claim or dispute, which a Party may have against another Party, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Tariff.
- 14.2 Rights under the Federal Power Act.** Nothing in this Article 14 shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.
- 14.3 Equitable Remedies.** Nothing in this Article shall prevent a Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

## ARTICLE 15

### NOTICES

- 15.1 General.** Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party 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 Transmission Provider:

MISO  
Attn: Director, Transmission Access Planning  
720 City Center Drive  
Carmel, IN 46032

To Transmission Owner:

To Customer:

**15.2 Billings and Payments.** Billings and payments shall be sent to the addresses shown in Article 15.1 unless otherwise agreed to by the Parties.

**15.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to another Party 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 Transmission Provider:

Voice telephone – (317) 249-5700

Facsimile telephone – (317) 249-5358

Email address –misotap@misoenergy.org or

MISOTransmissionAccessPlanning@misoenergy.org

To Transmission Owner:

To Customer:

**15.4 DUNS #.** If Transmission Owner and Customer have not obtained DUNS numbers by the time this Agreement is executed, Transmission Owner and Customer will forward their DUNS numbers within five (5) Business Days of having obtained such numbers to

Transmission Provider by facsimile telephone or email to the fax number or email set out below:

Transmission Owner

DUNS Number:

Customer

DUNS Number:

**15.5 Notification of In-Service Date.** Transmission Owner will serve to Transmission Provider a copy of Appendix B as forwarded to Customer on the same day to the address shown in Article 15.1, and by facsimile telephone to the numbers set out below:

To Transmission Provider:

Facsimile telephone – (317) 249-5703

And copy to

MISO  
Attn: Director, Transmission Access Planning  
720 City Center Drive  
Carmel, IN 46032

## **ARTICLE 16**

### **MISCELLANEOUS**

- 16.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such 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.
- 16.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state where the Network Upgrades and/or System Protection Facilities referenced in Appendix A are located without regard to its conflicts of law principles.
- 16.3 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.
- 16.4 Amendments and Rights Under the Federal Power Act.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Transmission Owner and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided, however, that each Party shall have the right to protest any such filing and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

- 16.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. 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 Customer, Transmission Owner, and Transmission Provider.
- 16.6 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.
- 16.7 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.
- 16.8 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.
- 16.9 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 17**  
**REPRESENTATIONS AND WARRANTIES**

**17.1 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:

**17.1.1. 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 its organization as stated in the preamble of this Agreement.

**17.1.2 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.

**17.1.3 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 such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.

**17.1.4 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.

**17.1.5 Solvency.** That such Party is financially solvent.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Transmission Provider

**Midcontinent Independent System Operator, Inc.**

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

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

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

Transmission Owner

**[Transmission Owner]**

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

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

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

Customer

**[Customer]**

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

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

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

Project No. \_\_\_\_\_

**Facilities Construction Agreement**  
**APPENDIX A**  
**NETWORK UPGRADES, COST ESTIMATES AND RESPONSIBILITY,**  
**TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND MONTHLY**  
**PAYMENT SCHEDULE**

This Appendix A is a part of the Facilities Construction Agreement between Customer, Transmission Owner, and Transmission Provider.

**1.1 Transmission Owner's [Interconnection Facilities] [Connection Facilities]**

**1.2 Network Upgrades to be installed by Transmission Owner.**

**1.2.1 Transmission Owner Substation Network Upgrades**

**1.2.2 Transmission Owner Transmission Line Network Upgrades:**

**1.2.3 Transmission Owner Transmission Line Permitting**

**1.2.4 Cost Estimates and Responsibility.**

**1.2.4.1 Major Material List of Transmission Owner's Network Upgrades**

**1.3 System Protection Facilities**

**1.4 First Equipment Order (including permitting).**

**1.4.1. Permitting And Land Rights – Transmission Owner Network Upgrades**

**1.5 Transmission Credits.** See Article 3.2.2 of the Agreement.

- 1.6 Construction Schedule.** Where applicable, construction of the Transmission Owner Interconnection Facilities or Connection Facilities, Network Upgrades and Special Protection Facilities is scheduled as follows and will be periodically updated as necessary:

**Table \_\_: Transmission Owner Construction Activities**

<b>MILESTONE NUMBER</b>	<b>DESCRIPTION</b>	<b>START DATE</b>	<b>END DATE</b>
	Initial SynchronizationDate		
	Commercial Operation Date		

Note: Construction schedule assumes Transmission Owner has obtained final authorizations and security from Customer and all necessary permits from Governmental Authorities as necessary prerequisites to commence construction of any of the Network Upgrades and Special Protection Facilities or Transmission Owner Interconnection Facilities or Connection Facilities.

**1.7 Payment Schedule.**

**1.7.1 Timing of and Adjustments to Customer's Payments and Security.**

**1.7.2 Monthly Payment Schedule.** The Customer's payment schedule is as follows.

**Table \_\_: Customer's Payment/Security Obligations for Transmission Owner Network Upgrades and System Protection Facilities.**

<b>MILESTONE NUMBER</b>	<b>DESCRIPTION</b>	<b>DATE</b>
*		
	Initial Synchronization Date	
	Commercial Operation Date	

Note: Customer's payment or provision of security as provided in this Agreement operates as a condition precedent to Transmission Owner's obligations to construct any Network Upgrades or System Protection Facilities, and failure to meet this schedule will constitute a Breach pursuant to Article 9.1 of this Agreement.

#### **1.8 Permits, Licenses and Authorizations.**

**Facilities Construction Agreement**  
**APPENDIX B**  
**NOTIFICATION OF COMPLETED CONSTRUCTION**

This Appendix B is a part of the Facilities Construction Agreement among Customer, Transmission Owner, and Transmission Provider. Where applicable, when Transmission Owner has completed construction of the Transmission Owner Interconnection Facilities or Connection Facilities, Network Upgrades and/or System Protection Facilities, Transmission Owner shall send notice to Customer and Transmission Provider, in substantially the form following:

[Date]

MISO  
Attn: Director, Transmission Access Planning  
720 City Center Drive  
Carmel, IN 46032

Customer Address

Phone:

Fax:

Email:

Re: Completion of Network Upgrade/System Protection Facilities

Dear [Name or Title]:

This letter is sent pursuant to the Facilities Construction Agreement among [Transmission Owner], [Customer], and MISO, dated \_\_\_\_\_, 20\_\_.

On [Date], Transmission Owner completed to its satisfaction all work on the Network Upgrades and/or System Protection Facilities required to facilitate the safe and reliable interconnection and

operation of Customer's Facility. Transmission Owner confirms that the Network Upgrade and/or System Protection Facilities are in place.

Thank you.

[Signature]

[Transmission Owner Representative]



**Facilities Construction Agreement**

**APPENDIX C Exhibits**

This Appendix C is a part of the Facilities Construction Agreement among Customers,  
Transmission Owner, and Transmission Provider.

**Exhibit C1**

**Transmission Owner Site Map**

**Exhibit C2**

**Site Plan**

**Exhibit C3**

**Transmission Line and/or Substation Network Upgrades and System Protection Facilities  
Plan & Profile**

**Exhibit C4**

**Estimated Cost of Transmission line and/or Substation Network Upgrades and System  
Protection Facilities**

	<b>Location</b>	<b>Facilities to be Constructed by Transmission Owner</b>	<b>Estimate in Dollars</b>
		<b>Total:</b>	