

**APPENDIX 9 TO GIP
MULTI-PARTY**

FACILITIES CONSTRUCTION AGREEMENT

entered into by the

Midcontinent Independent System Operator, Inc.,

And

[Customers]

And

[Transmission Owner]

entered into on the ____ day of _____, 20__

MULTI-PARTY FACILITIES CONSTRUCTION AGREEMENT

THIS MULTI-PARTY 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 of the State of _____ (sometimes hereinafter referred to as “__ Customer”), _____, a _____ limited liability company (sometimes hereinafter referred to as “__ Customer(s)”), the **Midcontinent Independent System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (sometimes hereinafter referred to as the “Transmission Provider”), and _____ organized under the laws of the State of _____ (sometimes hereinafter referred to as the “Transmission Owner”). Customers, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.” When it is not important to differentiate among them, Customers each may be referred to as “Customer” or collectively as the “Customers.”

RECITALS

WHEREAS, Transmission Owner and Customers each own electric facilities and are engaged in one or more of the following generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, each Customer has interconnected with or will interconnect with the [Transmission Provider or host transmission provider]’s transmission system; 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, Customers intend to own and operate their respective facilities in accordance with their respective Large Generator Interconnection Agreements, (Generator) Interconnection Agreements, and/or Transmission Connection Agreements (as applicable); and

WHEREAS, Customers' facilities cause the need for and share responsibility for the same Network Upgrade or System Protection Facilities on the ____ [Transmission Owner's Transmission System] _____, the Common Use Upgrade ("CUU"); and

WHEREAS, Transmission Provider has ascertained the extent to which each Customer's project impacts the constraint on [Transmission Owner's Transmission System] _____ and causes the need for the CUU, and on that basis has calculated the costs of the CUU to be allocated to each Customer as set forth in Appendix A; and

WHEREAS, Customers, Transmission Provider and Transmission Owner have agreed to enter into this Agreement for the purpose of facilitating the interconnection of their facilities by the construction of the necessary CUU 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 in which the CUU is located.
- 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 a Facility commences Commercial Operation pursuant to MISO GIA or TCA or (G)IA (if applicable).
- 1.8** “Common Use Upgrade” or “CUU” shall mean an 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 Transmission Owner reasonably expects it will have completed the CUU.
- 1.19** “(Generator) Interconnection Agreement” or “(G)IA”)” shall mean the applicable (Generator) Interconnection Agreement by and between [Transmission Provider or host transmission provider], applicable transmission owner, and Customer.
- 1.20** “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 its 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.
- 1.21** “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.
- 1.22** “NERC” shall mean the North American Electric Reliability Corporation, or its successor organization.

- 1.23** “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 Facilities.
- 1.24** “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.
- 1.25** “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.
- 1.26** “Shared Network Upgrade” shall mean a Network Upgrade or Common Use Upgrade that is funded by 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.
- 1.27** “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.
- 1.28** “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.

- 1.29** “Transmission Connection Agreement” or “TCA” shall mean the applicable Transmission Connection Agreement by and between Transmission Provider, _____, and Customer .
- 1.30** “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 (i) this Agreement is made and entered into by the Parties, and (ii) the total amount of generation executing this Agreement meets or exceeds the value specified in Appendix A, Section 1.0.

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 by Transmission Owner of the refundable amount due from Transmission Owner to Customers under the terms of this Agreement for Transmission Owner's design, procurement, construction and installation of the CUU provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination as permitted or provided for under Appendix A of this Agreement; or (iv) all Customers terminate 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 Customers have 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 and removal rights described in Article 10.2 and in addition, if one or more Customers (but not all) are in Default, Transmission Owner or Transmission Provider may terminate the participation of the defaulting Customer(s) without terminating this entire Agreement; 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, if a Customer is the Breaching Party then neither Transmission Provider nor Transmission Owner may terminate the participation of such Customer if such 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 such 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. Notwithstanding the foregoing, Default by one or more Customers shall not provide the other Customers either individually or in concert, with the right to terminate the entire Agreement. The non-Breaching Parties may, in concert, initiate the removal of a Customer that is a Defaulting Party from this Agreement. Transmission Provider shall not terminate this Agreement or the participation of any Customer without provision being made for Transmission Owner to be fully reimbursed for all of its costs incurred under this Agreement.

An event of Default by a Customer will also result in the withdrawal of that Customer's associated Interconnection Request from the Transmission Provider's queue and Transmission Provider may declare a breach under Customer's related GIA, if any.

2.2.3 Consequences of Termination. In the event of a termination by or of any Party, other than a termination by Customer due to a Breach by Transmission Owner, each Customer whose participation in this Agreement is terminated must pay to the Transmission Owner the Customer's proportionate share of all amounts still due and payable for construction and installation of the CUU (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 CUU, through the date of termination and, in the event of the termination of the entire Agreement, 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. The cost responsibility of other Customers shall be adjusted, as necessary, based on the payments by a Customer that is terminated from the Agreement.

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 MPFCA(s) or FCA(s); financial impact as defined by Section 7.8 of Attachment X. To the extent that the Terminating 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, FCA(s), or other MPFCA(s), as determined through the financial impact 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 financial impact 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.

A Customer's irrevocable security will not be refunded in the event Customer is terminated from the Agreement, unless otherwise provided for in Article 6.1. Excess security will be refunded or released if any funds remain when the CUU is placed in service or if Transmission Provider determines that the CUU is no longer needed. The irrevocable security of a terminated Customer will be applied to the terminated Customer's proportionate share of the cost of the CUU. Other Customers that are parties to the Agreement will share the remaining CUU costs proportionately.

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. A material change in law or regulation affecting a Customer's ability to perform under this Agreement will not suspend any other Customer's obligations to perform under this Agreement.

2.2.5 Transmission Provider's Option to Add New Interconnection Requests or Affected System Interconnection Requests and Restudy. In addition to the Transmission Provider's 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, Transmission Provider may, at its sole option after reasonable consultation with Transmission Owner, add other customers as parties to this Agreement at any time, provided that their generator interconnections impact the same CUU, the inclusion of those parties in this Agreement is consistent with Good Utility Practice, and provided that the addition is made prior to the

completion of the CUU and the CUU scope, completion schedule or cost is not changed unless the change is mutually agreed to by all the Parties, and such agreement shall not be unreasonably withheld or delayed. The addition of such other parties to this Agreement will result in the reallocation of costs among Customers and may result in the need for a restudy as provided under this Article 2.2.5. Each new Customer added as a party must provide irrevocable security pursuant to Article 6.1. As a condition of executing this Agreement, each Customer agrees that additional parties may be added to this Agreement without the renegotiation or prior consent of Customers, provided that such addition is consistent with other provisions of this Agreement. This provision does not affect each Customer's right to seek dispute resolution under Article 14 or 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.

In the event one or more Interconnection Requests or Affected System Interconnection Requests represented by Customers under this Agreement either withdraws from the Agreement or fails to cure a Breach resulting in termination of the Interconnection Request of Affected System Interconnection Request from this Agreement, Transmission Provider shall attempt to add similarly situated Interconnection Request(s), pursuant to this Article 2.2.5, to replace the withdrawn or terminated Interconnection Request(s). If Transmission Provider is unable to identify similarly situated Interconnection Request(s), and Transmission Provider deems it likely that another CUU would be more prudent, Transmission Provider may, in its sole discretion after reasonable consultation with Transmission Owner, reevaluate the need for the Common Use Upgrade, and if still required, reallocate the cost and responsibility for any Common Use Upgrade without a restudy and provide notice to each Customer. The Parties agree to amend Appendix A to this MPFCA to reflect the results of any cost reallocation required under this Article 2.2.5. If an Interconnection Request or Affected

System Interconnection Request is withdrawn or terminated and Transmission Provider does not replace it, Transmission Provider will provide the remaining Customers with an analysis stating whether or not the same CUU is needed and the re-allocated costs for which each Customer is responsible.

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. Each Customer that has executed this Agreement or any amendment to this Agreement 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 or termination of the participation in this Agreement of a Customer, each Customer shall be responsible for the payment of its proportionate share 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. The cost responsibility of the other Customers shall be adjusted as necessary.

ARTICLE 3

CONSTRUCTION OF THE COMMON USE UPGRADES

3.1 Construction.

3.1.1 Transmission Owner Obligations. Transmission Owner shall (or shall cause such action to) design, procure, construct and install, Customers shall pay, consistent with Article 3.2, the cost of the CUU identified in Appendix A. The CUU 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 Right to Suspend Due to Inadequate Funding. Transmission Owner reserves the right, upon written notice to Customers, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the CUU, upon the occurrence of a Default, including a Default caused by a Customer's failure to provide irrevocable security pursuant to Article 6.1 that the remaining Customer(s) does not (do not) cure 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, Customers 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 Customers and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. A Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to all other Parties. If, at any time, a Customer determines that the completion of the CUU will not be required until after the specified In-Service Date, such Customer will provide written notice to all other

Parties of such later date for the completion of the CUU. Transmission Owner may delay the In-Service Date of the CUU accordingly, but only if agreed to by all other Customers.

3.1.4 Timely Completion. Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the CUU 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 CUU, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify all other Parties. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with Customers and Transmission Owner to evaluate the alternatives available to Customers. Transmission Owner and/or Transmission Provider shall also make available to Customers 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 Customers to evaluate alternatives. Transmission Owner shall, at any 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 (1) Customer(s) jointly authorize such actions, such authorizations to be withheld, conditioned or delayed by a given Customer only if it can demonstrate that the acceleration would have a material adverse effect on it, and (2) the requesting Customer funds the costs associated therewith in advance or all Customers agree in advance to fund such costs based on such other allocation method as they may adopt.

3.2 Interconnection Costs and Credits.

3.2.1 Costs. Customers shall pay to Transmission Owner costs associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing,

and testing the CUU, as identified in Appendix A, in accordance with the cost recovery method provided herein. Except as expressly otherwise agreed, Customers shall be collectively responsible for these costs, based on their proportionate share of cost responsibility, as provided in Appendix A. 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 the applicable Customer.

Transmission Owner shall install at Customers' 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 Customers' Interconnection Facilities or Connection Facilities.

In the event the CUU is determined to be a Shared Network Upgrade, Transmission Owner and Transmission Provider shall not be responsible for funding obligations related to the Shared Network Upgrade under separate MISO GIAs or (G)IA (if applicable) and/or TCAs. Transmission Provider shall only be responsible to reimburse those funds to Customers 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(s) 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. Each Customer shall be entitled to a cash repayment by Transmission Owner that owns the CUU, of the reimbursable portion of the amount such Customer paid to Transmission Owner, if any, for the CUU, as provided under Attachment FF of the Transmission Provider Tariff, as detailed in Appendix A, and including any tax gross-up or other tax-related payments associated with the repayable portion of the CUU, 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 Services 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 the CUU through the date on which Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Transmission Owner has suspended construction pursuant to Article 3.1.2

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.

To the extent one or more of the Generating Facilities are designated as Network Resource(s) under the Tariff, or if there are otherwise no incremental payments for Transmission Service resulting from the use of such Generating Facility(ies), 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 using such Generating Facility(ies) is located multiplied by the portion of the demonstrated output of the Generating Facility(ies) designated as Network Resource(s) by the applicable 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 Generating Facility(ies) 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 each Customer's payments, which will be based on the final, actual cost of completing the CUU 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 to a given Customer shall be based on (i) the Customer's final, actual cost-based payments 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 CUU through the date

on which Customer receives a repayment of such payment pursuant to this Article 3.2 until refundable payments have been fully reimbursed.

3.2.2.3 Alternative Payment Schedule. Notwithstanding the foregoing, as applicable and consistent with the provisions of Attachment FF of the Tariff, any 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 that Customer the refundable portion of any amounts advanced by that Customer for CUU not previously repaid, or (2) declare in writing that Transmission Owner will continue to provide payments to that 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 the refundable portion of all amounts advanced by that Customer for CUU not previously repaid; however, full reimbursement of the refundable portion of such Customer's payments shall not extend beyond twenty (20) years from the Commercial Operation Date.

3.2.2.4 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 each 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 CUU, including the right to obtain refunds or transmission credits for transmission service that is not associated with the Generating Facility.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. The Parties intend that all payments made by Customers to Transmission Owner for the installation of the CUU 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 Customers for the installation of the CUU unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Customers 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 Customers to provide security for Interconnection 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. Customers 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, Customers shall jointly and severally, but preserving all rights of contribution, 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 each Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Owner, upon the timely written request by any one or more of Customers and at the expense of such requesting Customer(s), 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 the requesting Customer(s) regarding the conduct of such contest. Customer(s) who requested the action 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(s) 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 any Customer has already made payment to Transmission Owner, Transmission Owner shall promptly refund to such Customer any

payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or to which Transmission Owner may be entitled with respect to such payment. In accordance with Article 6, each Customer shall provide Transmission Owner with credit assurances sufficient to meet such 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 the CUU is to be treated as an upfront payment in accordance with Rev Proc 2005-35. It is anticipated by the Parties that certain amounts paid by each Customer to Transmission Owner for the CUU will be reimbursed to such Customer in accordance with the terms of this Agreement, provided such Customer fulfills its obligations under this Agreement.

3.3.2 Private Letter Ruling. At the request and expense of any Customer(s), 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 such Customer(s) to Transmission Owner under this Agreement are subject to federal income taxation. Each Customer desiring such a request 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 such Customer's knowledge. Transmission Owner and the affected Customer(s) shall cooperate in good faith with respect to the submission of such request.

3.3.3 Other Taxes. Upon the timely request by any one or more of Customers, and at the sole expense of such Customer(s), 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 such Customer(s) may be required to reimburse Transmission Owner under the terms of this Agreement. Customer(s) who requested the action 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. The requesting Customer(s) 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 Customers 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, Customers 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 or to provide and maintain irrevocable security 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 any other Party's facilities and equipment and which has been reasonably requested by such 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 CUU, each Customer shall provide Transmission Owner with a form of irrevocable security reasonably acceptable to Transmission Owner as an adequate assurance of creditworthiness for Customer's proportionate share of responsibility for the CUU. A Customer's irrevocable security will not be refunded in the event Customer is terminated from the Agreement, except as provided in this Article. Pursuant to Article 2.2.5, MISO may restudy any time that a Customer is terminated from the Agreement. If a Customer fails to provide acceptable irrevocable security pursuant to Article 6.1, Customer will be terminated from this Agreement, its Interconnection Request will be withdrawn from the Transmission Provider's interconnection queue, and Transmission Provider may declare a breach under Customer's related MISO GIAs or (G)IA (if applicable) and/or TCAs, if any, and seek termination thereof. If a Customer is terminated from the Agreement, Transmission Owner will retain the irrevocable security of all remaining Customers, and Transmission Provider will determine whether to add additional customer(s) as parties to this Agreement pursuant to Article 2.2.5. Additionally, whether or not an additional Customer is added to this Agreement, Transmission Provider shall adjust the proportionate share of the costs to be borne by the remaining Customers when a Customer has been terminated from this Agreement. If the addition of a Customer to the Agreement results in a reduction of cost estimates, the cost estimates of all remaining Customers will be reduced proportionately. It is expressly understood that a Customers' proportionate share of the responsibility for the costs of the CUU may increase or decrease. If such cost adjustment causes the cost estimate for any of the remaining Customers to increase by more than twenty-five (25) percent above the cost estimate set forth in Appendix A, any such Customer whose proportionate share of

the cost estimate increases by more than twenty-five (25) percent may withdraw from the Agreement within thirty (30) Calendar Days of the date that Transmission Provider notifies Customer of the redetermination of its proportionate share of the cost responsibility. If a Customer withdraws pursuant to this option, the unused portion of its irrevocable security will be released or refunded, but Transmission Provider may declare a breach under Customer's related MISO GIAs or (G)IA (if applicable) and/or TCAs, if any, and its Interconnection Request will be withdrawn from the Transmission Provider's interconnection queue. If a Customer's withdrawal under this option causes the cost estimate for any of the remaining Customers to increase by more than twenty-five (25) percent from the estimate in Appendix A, that Customer may also withdraw pursuant to this paragraph.

When a Customer withdraws from the Agreement as a result of an increase of more than twenty-five (25) percent in its cost estimate pursuant to the paragraph above, Transmission Provider will notify all Parties to the Agreement of the withdrawal and will provide a revised cost estimate of each Customer's responsibility for the cost of the CUU within thirty (30) Calendar Days. Within thirty (30) Calendar Days of receiving such notification, each remaining Customer(s) must either withdraw or submit additional security necessary to cover its revised cost responsibility. Failure to provide such additional security will be a Breach of the Agreement and any Customer that does not provide additional security within thirty (30) Calendar Days of receiving the cost allocation notice will be deemed withdrawn from the Agreement and Transmission Provider may declare a breach under Customer's related MISO GIAs or (G)IA (if applicable) and/or TCAs, if any, and its Interconnection Request will be withdrawn from the Transmission Provider's interconnection queue. If such cost adjustment causes the cost estimate for any of the remaining Customers to increase by more than twenty-five (25) percent above the cost estimate provided in response to the prior withdrawal, MISO will perform a restudy of the CUU unless the parties agree to proceed without a restudy.

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 CUU has been placed in service and until Customers have fully compensated Transmission Owner for construction of the CUU, each 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. Each Customer's estimated liability under Article 3.2.1 is stated in Appendix A. If a Customer provides the entire payment it must remit under the payment schedule as of the date of first payment, it need not provide additional security unless cost allocation changes pursuant to this Article 6.1 or additional funds are required by Transmission Owner to complete the CUU and allocated among Customers according to their proportionate shares.

- 6.2 Invoice.** Transmission Owner shall submit to each Customer, 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 another 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 CUU, unless otherwise agreed to under Appendix A, Transmission Owner shall provide an invoice of the final cost of the construction of the CUU and shall set forth such costs in sufficient detail to enable each 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 each 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 CUU as long as each 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 any Customer fails to meet these two requirements, then Transmission Provider may or, at Transmission Owner's request upon a Customer's failure to pay Transmission Owner, shall provide notice to such 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 Transmission Owner and Transmission Provider; 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 any Customer shall have the right to assign this Agreement, without the consent of any Party, for collateral security purposes to aid in providing financing for its Generating Facility, provided that such Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by any 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, including failure to provide appropriate irrevocable security, as applicable under Article 6;
- (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 any related MISO GIAs or (G)IA (if applicable) and/or TCAs;
- (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, any Party aggrieved by the 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 Parties in advance. Upon receiving written notice of a 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. 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 Parties in writing within five (5) Business Days after the commencement of such occurrence.

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 shall be in Default of this Agreement and the non-Breaching Parties may, at their option, (1) act in concert to amend the Agreement to remove a Customer that is in Default from this Agreement for cause and to make other changes as necessary or (2) either in concert or individually, 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. Alternatively, if a Customer is the Breaching Party and the Breach results from a failure to provide payments or security under Article 9.1, the other Customers, either individually or in concert, may cure the Breach by paying the amounts owed or by providing adequate security, without waiver of contribution rights against Customer in Default. Such cure for the Breach of a Customer is subject to the reasonable consent of Transmission Provider and Transmission Owner. Transmission Owner may also cure such Breach by funding the proportionate share of the CUU costs related to the Breach of Customer. Transmission Owner must notify all parties that it will exercise this option within thirty (30) Calendar Days of notification that a Customer has failed to provide payments or security under Article 9.1. Transmission Owner may recover such costs as allowed by the Tariff until such time as, pursuant to Article 2.2.5, a customer(s) is allocated capacity of the CUU.

- 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 and Removal.** Subject to the limitations set forth in Article 10.3, in the event of a Default, termination of this Agreement, as to a given Customer or in its

entirety, shall require a filing at FERC of a notice of termination, which filing must be accepted for filing by FERC.

10.3 Disposition of Facilities Upon Termination of Agreement Due to Default.

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

- (a) shall, prior to the construction and installation of any portion of the CUU described in Appendix A and to the extent possible, cancel any pending orders of, or return, such equipment or material for the CUU;
- (b) may keep in place any portion of the CUU 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, each Customer shall reimburse Transmission Owner for its share of any costs incurred by Transmission Owner in performance of the actions required or permitted by Article 10.3.1. 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. Each 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 CUU, Transmission Owner may, at its option, retain any portion of the CUU 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 the CUU. To the extent that Customers have 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, and one or more of Customers wish to purchase such facilities, Transmission Owner shall convey and make available to the applicable Customer(s) such facilities as soon as practicable after receiving 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) Calendar 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 CUU shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following Transmission Owner's issuance of a final invoice in accordance with Article 6.4. Customers may jointly or individually, at the expense of the requesting Party(ies), during normal business hours and upon prior reasonable notice to the other Parties, audit such accounts and records, provided, however, that Transmission Owner shall not be required to cooperate with more than one audit per quarter (accordingly, if more than one Customer wishes to conduct an audit within a given calendar quarter, they must do so jointly). 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 Transmission Provider 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.

Transmission Provider:

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

Transmission Owner:

Customer:

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:

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

To Transmission Owner:

To Customer:

- 15.4 DUNS #.** If either Transmission Owner or any Customer has not obtained a DUNS number by the time this Agreement is executed, each such Party will forward its DUNS number within five (5) Business Days of having obtained such number 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 Customers 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 CUU is 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 Customers 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 each 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.

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: _____

Customer

[Customer]

By: _____

Name: _____

Title: _____

Customer

[Customer]

By: _____

Name: _____

Title: _____

Transmission Owner

[Transmission Owner]

By: _____

Name: _____

Title: _____

Project No. _____

Facilities Construction Agreement

APPENDIX A

THE CUU, COST ESTIMATES AND RESPONSIBILITY, TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND PAYMENT SCHEDULE

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

1.0 Each individual Customer is responsible for a proportionate percentage share of the CUU estimated cost based on its proportionate impact on the constrained facilities causing the need for the CUU. Constrained facilities are those CUU facilities that are being upgraded in Section 1.2. [Customer] is seeking [interconnection service][injection rights] for [Number] MW, [Customer] is seeking [interconnection service][injection rights] for [Number] MW, [Customer] is seeking [interconnection service][injection rights] for [Number] MW, [Customer] is seeking [interconnection service][injection rights] for [Number] MW.

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

1.2 CUU to be installed by Transmission Owner.

1.2.1 Transmission Owner Substation CUU

1.2.2 Transmission Owner Transmission Line CUU:

1.2.3 Transmission Owner Transmission Line Permitting

See [Exhibit] [Section]

1.2.4 Cost Estimates and Responsibility. Customers and Transmission Owner hereby acknowledge and agree that the cost indicated below is only an estimate and that Customers shall reimburse Transmission Owner for all actual costs, as determined pursuant to Article 3.2 of this Agreement associated with the construction and installation by Transmission Owner of the CUU.

1.2.4.1 The total cost for the CUU is estimated at _____ (See Table 2) in 20__ dollars. This estimate is expected to be within 20% of the actual cost. It will take approximately ____ to complete the project commencing upon receipt of funding from Customers.

1.2.4.2 Customers' liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under Article 3.3.1 of this Agreement is _____.

Details are in the Interconnection Facilities Study report.

Major Material List of Transmission Owner's CUU (See Exhibit A6 for detailed list)

Table 2 - CUU (Customer funded but refunded in accordance with and to the extent provided in Attachment FF of the Transmission Provider Tariff):

Type	Description	Cost

	TOTAL COST	
--	-------------------	--

The Common Use Upgrades cost for a Group Study will be allocated based on the MW impact from each project on the constrained facilities in the Base Case in accordance with Good Utility Practice. With all Group Study projects in the Base Case, all constraints will be identified and a distribution factor from each project on each constraint will be obtained. Finally, the Common Use Upgrades cost will be allocated based on the pro rata share of the MW contribution on the constraints alleviated by those Common Use Upgrades from each project.

1.3 First Equipment Order.

1.4 Transmission Credits. See Article 3.2.2 of the Agreement.

1.5 Construction Schedule. Where applicable, construction of the CUU and Interconnection Facilities is scheduled as follows and will be periodically updated as necessary:

Table 3: Transmission Owner Construction Activities

MILESTONE NUMBER	DESCRIPTION	START DATE	END DATE

After receipt of advance payments (or security, to the extent permitted by Transmission Owner in lieu of advance payment) from Customer in accordance with Section 1.6, below, Transmission Owner will make reasonable best efforts to coordinate its work in order to meet the In-Service Date reflected in Table 3 for the CUU. The exact schedule

will be dependent upon outages required to the various existing facilities. It is expected that some of the CUU work may be done in parallel. The estimated duration of the work for the CUU is estimated as shown in Table 3.

1.6 Payment Schedule.

1.6.1 Timing of and Adjustments to Customers' Payments and Security.

Notwithstanding the requirements of Article 6.1 of the Agreement, Customers shall make the advance payments or, if a Customer cannot provide advance payments because Governmental Authority approvals have not yet been granted, provide irrevocable security, to Transmission Owner as set forth in the schedule in Table 4 in Section 1.6.2 of this Appendix A. Transmission Owner shall not be required to send to Customers an invoice or notice for such initial payments or security; rather, such payment (or security) shall be provided by Customers by the date specified in Table 4 below. Subsequent payments shall be pursuant to invoices issued by Transmission Owner in accordance with Section 1.6.2.

1.6.2 Payment Schedule. The Customers' payment schedule is as follows.

Initial payments shall be made pursuant to Table 4 below. Failure by any Customer to provide payments (or security acceptable to Transmission Owner, where applicable) by the due date in the table below to Transmission Owner is a Breach pursuant to Article 9.

If, at any time during the course of Transmission Owner's work on the CUU, it becomes aware that the payments it has received and security it then holds will not be sufficient to fully fund the work, Transmission Owner shall submit invoices to Customers for their proportionate shares of the additional funds needed or requests for additional acceptable security. Each Customer shall pay the full amount of the invoice (or, if a Customer cannot provide advance

payments because Governmental Authority approvals have not yet been granted, provide irrevocable security for the full amount) within [] Calendar Days. A Customer's failure to make any such payment (or provide acceptable irrevocable security, where applicable) when due shall constitute a Breach by such Customer.

A Customer that fails to make payments when due will be given a breach notice. Until the Breach is cured in accordance with Article 9, Transmission Owner is relieved from performing under this Agreement. Failure by any Customer to comply with Article 9.2.2(a) or 9.2.2(b) relative to such Breach may, pursuant to Article 2.2.2, result in termination of the Agreement as to that Customer.

Table 4: Customers' Payment/Security Obligations for Transmission Owner Network Substation Upgrades.

MILESTONE NUMBER	DESCRIPTION	DATE
	Customers* to provide Transmission Owner with advance payment or irrevocable security in the amount of _____. Advance payment or irrevocable security will be applied to Transmission Owner's construction of the CUU.	

* Customers' proportionate responsibility for each payment is as follows:

Customer 1 _____.%

Customer 2 _____.%

Customer N _____.%

Note: The Customers' payments or provision of irrevocable security as provided in this Agreement operate as a condition precedent to Transmission Owner's obligations to construct the CUU.

1.6.3 Final Invoice. Within six (6) months after completion of the construction of the Transmission Owner's Network Upgrade, Transmission Owner shall provide an invoice of the final cost of the construction of the Transmission Owner's Network Upgrade and shall set forth such costs in sufficient detail to enable Customers 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 Customers any amount by which the actual payment by Customers for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

1.6.4 Customers shall pay, or Transmission Owner shall refund, any difference between actual costs and actual payments in accordance with this Agreement, no later than thirty (30) Calendar Days after the Transmission Owner's final cost determination. If agreed in writing by the Parties, payments may be made in accordance with a revised schedule.

1.7 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 Customers, Transmission Owner, and Transmission Provider. Where applicable, when Transmission Owner has completed construction of the CUU, Transmission Owner shall send notice to Customers and Transmission Provider, in substantially the form following:

[Date]

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

[Name or Title]

[Customer]

[Address]

Re: Completion of Common Use Upgrades (“CUU”)

Dear [Name or Title]:

This letter is sent pursuant to the Facilities Construction Agreement among [Transmission Owner], [Customers], and MISO, dated _____, 20__.

On [Date], Transmission Owner completed to its satisfaction all work on the CUU described in the _____, 20__ Facilities Construction Agreement between the Parties. Further, Transmission Owner confirms that the CUU have been placed “in service.”

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 CUU Plan & Profile

Exhibit C4

Estimated Cost of Transmission line and/or Substation CUU

	Location	Facilities to be Constructed by Transmission Owner	Estimate in Dollars
		Total:	