

ATTACHMENT HHH

**FORM OF AGREEMENT FOR ELECTRIC STORAGE RESOURCE
LOCATED ON A DISTRIBUTION SYSTEM**

This Agreement for Electric Storage Resource located on a distribution system (“Distribution Located Electric Storage Resource”) (“Agreement”) is entered into by and between _____, with principal place of business located at _____ (“Company”), and the Midcontinent Independent System Operator, Inc. (“MISO”), the Regional Transmission Organization, Reliability Coordinator and Balancing Authority for the MISO Region. The Company and MISO each may be referred to as a “Party,” or collectively as the “Parties.”

RECITALS

WHEREAS, the Company owns, operates or has contractual authority over the [Electric Storage Resource / Project Name] located at _____ (“Facility”); and

WHEREAS, the Facility is interconnected at distribution levels on the distribution system of _____ (“Electric Distribution Company”, or “EDC”); and

WHEREAS, the Facility is an Electric Storage Resource (“ESR”) pursuant to the Tariff; and

WHEREAS, the Company intends for the Facility to participate in the MISO Energy and Operating Reserve Markets as an Electric Storage Resource; and

WHEREAS, the Company: 1) is responsible for the operation of the Facility where the Facility is physically located; 2) agrees that the Facility meets all of the MISO qualifications to operate in the MISO Energy and Operating Reserve Markets, including, without limitation, the physical and contractual capability as well as transmission access to inject Energy into and

withdraw Energy from MISO's Transmission System; 3) will abide by the Tariff and all applicable Business Practices Manuals and rules as set forth by MISO in the performance of its obligations under this Agreement; 4) will meet all the requirements set forth by the EDC for participation in the MISO Energy and Operating Reserve Markets; and 5) will meet all requirements established by all applicable regulatory bodies having jurisdiction over the Company, Facility, EDC and/or MISO; and,

WHEREAS, all capitalized terms that are not otherwise defined herein have the meaning as defined in the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff ("MISO Tariff") or applicable MISO Business Practices Manuals or other operational procedures; and,

WHEREAS, the Facility is located within the MISO Local Balancing Authority of _____ ("MISO Local Balancing Authority").

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

1. Effective Date. On and after _____, the Facility may participate in the MISO Energy and Operating Reserve Markets as an ESR.
2. Implementation. The Parties undertake to implement the operation of the Facility in the MISO Energy and Operating Reserve Markets in accordance with the following provisions:
 - (a) Registration. The Company must register the Facility in the MISO Energy and Operating Reserve Markets in accordance with this Agreement, the registration processes outlined in the Market Registration Business Practices Manual BPM-001,

- Network and Commercial Model Business Practices Manual BPM-010, and any other applicable MISO registration processes.
- (b) Authority and Procedures. The Company must operate the Facility in a manner consistent with all provisions of the MISO Tariff and applicable Business Practices Manuals or other operational procedures. As the North American Electric Reliability Corporation (“NERC”) registered Reliability Coordinator and Balancing Authority, MISO retains final authority to establish and enforce any applicable protocols and Tariff provisions.
- (c) Distribution Arrangements. The Company must secure and maintain any and all necessary agreements with the EDC to facilitate the operation of the Facility and delivery of Energy to and from the Transmission System. This Agreement does not provide for the reservation or sale of transmission service on the MISO Transmission System or on any other transmission system.
- (d) Modeling and Impact Studies. The Facility must be included in MISO’s Network and Commercial Models. The Company will be responsible for costs of all studies and re-studies associated with the participation of the Facility in the MISO Energy and Operating Reserve Markets. The Company will be responsible for the costs of any Network Upgrades identified in the studies and/or re-studies as needed to support the participation of the Facility in the Energy and Operating Reserve Markets identified in the studies and/or re-studies, consistent with the MISO Tariff.

- i. MISO will perform studies using the criteria and assumptions provided by the EDC. The Company will be responsible for the costs of the studies using the criteria and assumptions provided by the EDC.
 - ii. If the results of the MISO modeling using MISO's criteria and assumptions and/or the results of the studies using the criteria and assumptions of the EDC identify any Network Upgrades or other system improvements required to facilitate the Facility's participation, the Network Upgrades and system improvements must be approved by MISO and/or the EDC, as applicable, and in-service prior to the effective date of the Facility's participation in the Energy and Operating Reserve Markets. The Company is responsible for the costs of those Network Upgrades and system improvements consistent with the MISO Tariff.
 - iii. The Company will not remove from or alter the share of the Facility represented in the Network Model or Commercial Model until the next regularly scheduled Network Model and Commercial Model update.
- (e) Data Measurement – Operating Instructions. The Company must design, construct, operate and maintain systems and communications equipment in order to receive MISO instructions for the operation of the Facility in accordance with the MISO Energy and Operating Reserves Markets Business Practices Manual BPM-002 and MISO Market Settlements Business Practices Manual BPM-005 and other applicable Business Practices Manuals and Operating Procedures.
- (f) Data Measurement – Inter-Control Center Protocol (“ICCP”) and Reliability. The

- Company must design, construct, operate and maintain systems, at the Company's expense, to provide the EDC and MISO with all Facility measurement values required by MISO. The Company's systems must provide the Facility measurement values to MISO pursuant to the MISO ICCP Business Practices Manual BPM-031 and other applicable Operating Procedures and communication standards.
- (g) Settlement data specifications. The Company must meet all measurement requirements specified in Section 38.2.5.e of the Tariff and in the Market Settlements Business Practices Manual BPM-005 through direct metering or its functional equivalent. The Company must provide MISO with all requested reliability and market data. The Company must submit settlement meter data for use in the settlement process of the Energy and Operating Reserve Market in accordance with the Market Settlements Business Practices Manual BPM-005. Settlement meter data collected by the Company shall separately account for all withdrawals and injections at the wholesale and retail levels. The Company shall only provide to MISO meter data associated with wholesale Electric Storage Resource Transactions. The Company shall be responsible for the separate metering and reporting of Electric Storage Resource Transactions in order to prevent Electric Storage Resources from paying twice (i.e., both the wholesale and retail price) for the same charging energy.
- (h) Commitment and Dispatch. MISO will provide commitment and dispatch instructions to the Facility for participation in the MISO Energy and Operating Reserve Markets in accordance with NERC standards, MISO's Tariff, and applicable Business Practices Manuals. MISO will coordinate with the EDC to meet all NERC

standards.

- (i) Non-recallability. To the extent the Facility has obligations under MISO's Tariff, for example as a Capacity Resource, the Facility may not be recalled by the EDC, except as specified in the agreement between MISO and the EDC. If the Facility's non-recallability obligations with the EDC are not documented in a formal agreement, the Facility shall provide MISO with all requested information regarding its obligations with the EDC.
- (j) Notification and performance. The Company will notify MISO of any real-time circumstances that affect the Company's obligation or ability for the Facility to meet MISO's Setpoint Instructions. The Facility is subject to the same performance requirements and applicable charges under the Tariff as any Market Participant in the MISO Energy and Operating Reserve Markets. Deviation and uplift charges for Electric Storage Resource Transactions, including those for Electric Storage Resources connected at the distribution level, shall be settled pursuant to Section 40.3.3.2 of the Tariff. No exceptions to performance requirements will be made during times of Electric Distribution Company directed curtailments.
- (k) Registration Notification. The Company will register the Facility in accordance with the physical capabilities of the portion of the Facility registered with MISO, and subject to the terms of Module C, Module D, and Module E-1 of the Tariff for performance, monitoring, and mitigation. The Company will provide telemetry data consistent with the portion of the Facility registered in MISO according to the Network and Commercial Model update schedule. The Company will notify MISO,

the MISO Local Balancing Authority and the EDC of all changes to the Facility. The Company may not Pseudo-tie the Facility, or any portion of the Facility, into different Balancing Authorities. The Company must ensure that the Facility injections into or withdrawals from MISO's Energy and Operating Reserves Markets do not exceed the MW limits registered and modeled in MISO. In the event that injections of energy from the Facility into MISO exceed the MW limit registered and modeled in the MISO Network Model, the Company forfeits any revenues that could be derived from the injections and withdrawals that exceed the MW limit registered and modeled in the MISO Network Model. Any injections and withdrawals from the Facility into or from MISO's Energy and Operating Reserves Markets that exceed the limit registered and modeled will be considered a material breach of this Agreement pursuant to section 20 below.

3. Metering. The Company will coordinate all aspects of the Facility with the EDC in accordance with the terms of this Agreement and the Tariff.
4. Technical Details. Technical detail specifications for the Facility shall be provided to MISO. The Company shall maintain the Facility and its operations consistent with the specifications provided to MISO for the duration of the Agreement. Failure to maintain and operate the Facility consistent with the specifications provided to MISO will be cause for suspension of the Agreement pursuant to section 9 below.
5. FTR and ARR Rights. This Agreement does not provide the Company with the right to modify any existing Auction Revenue Rights ("ARRs") or Financial Transmission Rights ("FTRs") or to obtain new ARR or FTRs for the Facility. In order for the Company to

obtain ARR or FTR or to convert their eligible Transmission Service to ARR, the Company must satisfy the ARR and/or FTR eligibility criteria and procedures described in the Tariff and the MISO FTR and ARR Business Practices Manual BPM-004.

6. Avoidance of Double Payment for Charging Energy. To the extent the Company is paying retail rates for energy associated with wholesale charging activities, the Company shall provide all necessary information during the registration process in order for MISO to exclude, through a rebate mechanism, settlement at wholesale prices for the same charging energy. The Company shall identify, if appropriate, the Electric Distribution Company or Load Serving Entity that is charging the Company retail rates for charging energy. The Company shall identify any wholesale-related withdrawals that will be charged retail rates, in order for MISO to appropriately rebate the wholesale price paid by the Company for these transactions.
7. Auditing. The Parties must retain all information and records relating to the performance of this Agreement in a manner consistent with all Federal Energy Regulatory Commission (“FERC”) record retention requirements. Each Party reserves the right to audit and examine such information and records at the other Party’s premises during regular business hours and upon advance notice given no less than 15 calendar days prior to such examination.
8. Effective Date. This Agreement is effective on the date of execution by the Parties or, if required, the date this Agreement is accepted by the Commission. Service under this Agreement shall commence on the service date established and mutually agreed by and between the Parties.

9. Suspension.

- a. If an agreement between MISO and the EDC outlines a process for suspension, MISO will follow the process outlined in the joint operating agreement for any suspension of the Facility.
- b. MISO reserves the right to suspend the Facility if:
 - i. the Company no longer meets the terms of the Agreement, including, but not limited to the requirement to provide real-time measurement values, applicable Business Practices Manuals, the MISO Tariff, any provisions of any applicable agreements between MISO and the EDC, other applicable regulatory, legal or reliability requirements;
 - ii. the Company commits a material breach of the Agreement or has failed to cure any breach of this Agreement; or
 - iii. MISO determines that the Facility poses a risk to system reliability or a risk of violation of established reliability criteria.

In the event of a suspension, the Company shall provide to MISO within 10 business days of the date of the notice of suspension, a remedy for the cause of the failure, which MISO will review to determine whether the Facility may be re-activated. The Company may request up to an additional 20 business days to provide to MISO a remedy for the cause of the failure.

- c. Two or more suspensions of the Facility within a 30-day period shall be cause to terminate the Agreement pursuant to section 10 of the Agreement.
- d. The suspension of the Agreement shall not relieve the Company of any of its

obligations pursuant to the Agreement, the MISO Tariff or Business Practices Manuals, or to the EDC.

e. MISO will coordinate the suspension of the Facility with the EDC.

10. Termination. Any Party shall have the right to terminate this Agreement as provided below. Any termination of the Agreement shall be subject to receiving all necessary regulatory approvals for such termination, if required. MISO will coordinate any termination of the Facility with the EDC.

- a. If MISO has an agreement with the EDC that addresses the operation and implementation of the Facility between them, the Party seeking to terminate shall provide notice consistent with that agreement.
- b. Unless otherwise specified in an applicable agreement between MISO and the EDC, MISO shall have the right to terminate this Agreement upon 60 days' notice to the Company if:
 - i. the Company no longer meets the requirements outlined in this Agreement;
 - ii. the Company commits a material default of the terms of the Agreement;
 - iii. the Company has failed to cure any breach of the Agreement;
 - iv. MISO experiences an emergency or other condition which may adversely impact the reliability of the transmission system; or
 - v. the Company no longer meets the requirements for the Facility as outlined in the MISO Tariff or applicable Business Practices Manuals, any agreement with the EDC, or other applicable legal or reliability requirements.
- c. If MISO proceeds to terminate the Agreement due to two or more suspensions during

a 30-day period as outlined in section 9, MISO shall provide notice of termination to the Company and the EDC within 180 days of the second suspension.

- d. The termination of this Agreement shall not relieve the Company of its obligations owed to MISO or to the EDC.
11. Governing Law. This Agreement shall be governed by, and interpreted in accordance with the laws of the State of Indiana, without regard to its conflict of law principles and the Federal Power Act.
12. Conflicts. In the event of a conflict between this Agreement and the Tariff, the Tariff shall prevail.
13. Interpretation. In this Agreement:
- (a) The words “include”, “includes” and “including” are deemed to be followed by the words “without limitation”;
 - (b) References to contracts, agreements and other documents and instruments are construed as references to the same as amended, supplemented or otherwise modified from time to time;
 - (c) References to laws or standards and to terms defined in, and other provisions of, laws or standards are construed as references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time;
 - (d) References to persons or entities are construed to include its successors and permitted assigns and, in the case of a governmental or other regulatory authority (including NERC) or FERC-regulated entity (including MISO), any persons or entities succeeding to its functions and capacities; and

- (e) Any capitalized term used herein but not defined herein shall have the meaning assigned to such term in the Tariff.
14. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable in any jurisdiction, then the Parties agree that the validity, legality, and enforceability of the remaining provisions of this Agreement in such or any other jurisdiction must not in any way be affected or impaired thereby. With respect to any provision held invalid, illegal or unenforceable, the Parties agree to amend this Agreement as necessary to effect the original intent of the Parties.
15. Additional Considerations. Nothing in this Agreement is intended to modify any obligations or rights of the Parties under the MISO Tariff, rate schedules, or contracts. This Agreement does not provide for transmission service or interconnection service, and does not modify the rates, terms, or conditions of any transmission service reservation held by the Company. This Agreement does not designate any additional service under Module B, Module E-1, or Attachment X of the Tariff.
16. Modification. Nothing in this Agreement is intended to modify or limit the right of the Parties to submit proposed changes to this Agreement pursuant to the Federal Power Act, Section 205.
17. Notice. Unless otherwise provided in this Agreement, 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 shall be effective when delivered and may be so given, tendered, or delivered by: (i) recognized national courier; (ii) depositing the same with the United States Postal Service with

postage prepaid for delivery by certified or registered mail, addressed to the Party; or (iii)

personal delivery to the Party, at the address set out in Article 19 of this Agreement.

Notwithstanding the foregoing, notices of any dispute must be made as provided in Attachment HH of the Tariff.

Either Party may change their respective notice information as information changes. A

Party may change their respective notice information by providing a Written Notice to the other Party at least five (5) Business Days prior to the effective date of the change.

Such changes shall not constitute an amendment to this Agreement.

Notice shall be provided as follows:

For MISO:

Midcontinent Independent System Operator, Inc.

Attn: _____

720 City Center Drive
Carmel, Indiana 46032

Primary Point of Contact:

[Name]
Telephone: [Phone]
Email: [Email]

For the Company:

[Enter Company Name]

Attn: [Name]

[Address]

[Address]

Primary Point of Contact:

[Name]
Telephone: [Phone]

Email: [Email]

18. Charges. Nothing in this Agreement authorizes the Company to impose charges without a separately filed tariff or rate schedule being accepted by the Commission.
19. Disputes. Disputes arising under this Agreement must be resolved pursuant to the dispute resolution procedures established in Attachment HH of the Tariff.
20. Breach. A breach is considered a substantive violation of this Agreement. Prior to pursuing a remedy at the Commission for a breach, a non-breaching Party must provide five (5) business days' notice of the breach to the breaching Party. If the breaching Party does not eliminate the breach within five (5) business days after the notice is received by the breaching Party, then the non-breaching Party may pursue remedies in accordance with the dispute resolution clause contained herein.
21. Entire Agreement. This Agreement, which incorporates the Tariff, constitutes the entire understanding and agreement of the Parties, and supersedes any and all previous communications, representations, understandings, and agreements (oral or written) between the Parties with respect to the subject matter hereof. The headings used in this Agreement are for purposes of convenience only and must not be construed to affect the meaning or construction of any of the provisions hereof.
22. Assignment. No Party may assign or transfer any of its rights and/or obligations under this Agreement without the written consent of the other Parties, which consent may not be unreasonably withheld.
23. Waiver. Any waiver at any time by a Party of its rights with respect to any provision of this Agreement or matter arising in connection with this Agreement shall not constitute or

be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement.

24. Incorporation. The Tariff and applicable rate schedules and Business Practices Manuals, including all definitions contained therein, are incorporated into this Agreement in their entirety and made a part hereof. The Company is responsible for satisfying all requirements as established in the Tariff, rate schedules and all other applicable Business Practices Manuals.
25. Representations and warranties. Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law. The Company represents and warrants that it is duly organized or formed, as applicable, validly 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) in which it is incorporated and operates.
26. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all of which constitute one and the same instrument.
27. Attestation. The undersigned representative of the Company attests that the necessary coordination, authorization, accounting, metering and other arrangement and approvals have been secured.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

Midcontinent Independent System Operator, Inc.

By: _____

Name: _____

Title: _____

[Insert name of Company]

By: _____

Name: _____

Title: _____