

**AGREEMENT BETWEEN ELECTRIC DISTRIBUTION UTILITY
AND ALTERNATIVE ELECTRIC SUPPLIER
UNDER MICHIGAN RETAIL ACCESS SERVICE PROGRAM**

THIS AGREEMENT (the "Agreement") is made and entered into between Wisconsin Electric Power Company d/b/a We Energies, a Wisconsin corporation ("Utility") whose business address is 231 W. Michigan Street, Milwaukee, WI 53202, and _____, a(n) _____ ("AES Provider"), whose business address is _____ . The Utility and the AES Provider are sometimes referred to singularly as a "Party" or collectively as the "Parties".

RECITALS:

WHEREAS, Utility owns and operates an electric utility system in Michigan and provides electric utility services to the public in its Michigan service territory under tariff rates, terms and conditions regulated by the Michigan Public Service Commission ("Commission" or "MPSC");

WHEREAS, the MPSC has approved Utility's Retail Access Service Tariff contained in its Rate Book for Electric Service ("Retail Access Service Tariff"), pursuant to Michigan's Customer Choice and Electricity Reliability Act, 2000 PA 141-142 ("Act 141"), to provide the opportunity for retail electric service customers to choose to purchase electricity from Alternative Electric Suppliers (AESs) offering to sell electricity at retail in Utility's service territory, with Utility providing delivery of the electricity to the customers over Utility's existing distribution system, a process sometimes referred to as "Customer Choice";

WHEREAS, AES Provider desires to offer and sell electric Generation Service, as set forth in Utility's Retail Access Service Tariff, to retail electric consumers located in the Michigan service territory of Utility and requires an arrangement with Utility for delivery of the electricity from AES Provider to customers; and

WHEREAS, an agreement between Utility and AES Provider is required under Utility's Retail Access Service Tariff and is necessary, along with the tariff and applicable laws and regulations, to establish and govern the business relationship between the Parties under the Utility's Customer Choice program.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement and subject to the terms and conditions set forth below, the Parties agree as follows:

TERMS AND CONDITIONS

Section 1. General and Administrative Provisions

- 1.1 Purpose and Scope of Agreement:** The Parties in this Agreement are bound by the terms set forth herein and otherwise incorporated by reference. This Agreement shall govern the business relationship between the Parties and constitutes part of Utility's requirements for processing Switch Requests from any AES. Successful completion of this Agreement is necessary before the Utility will accept and process Switch Requests submitted by AES Provider. This Agreement is intended solely for the benefit of the Parties hereto and nothing in this Agreement shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Agreement. Neither Party shall have any right, power, or authority to enter any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. This Agreement is intended by the Parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement, subject to Section 1.2. All prior written or oral understandings or offers pertaining to this Agreement are hereby abrogated and withdrawn.
- 1.2 Other Applicable Requirements:** The relationship of the Parties is governed by this Agreement, Utility's effective Retail Access Service Tariff and other tariffs on file with the Commission, as such may be amended or updated from time to time, any other agreements of the Parties, as well as applicable laws, codes and regulations. Each Party acknowledges that it has read this Agreement and Utility's Retail Access Service Tariff, understands them, and agrees to be bound by their terms. Should a conflict exist or develop between the provisions of this Agreement and the relevant provisions of the Retail Access Service Tariff, Utility's other tariffs, the Midwest Independent Transmission System Operator Inc.'s ("MISO") Energy and Operating Reserve Markets Tariff, or an applicable Open Access Transmission Service Tariff ("OATT"), as approved by the MPSC and the Federal Energy Regulatory Commission ("FERC"), respectfully, the provisions of the approved tariff shall prevail.
- 1.3 Definitions:** The capitalized terms used in this Agreement have the same meaning as the defined terms contained in Utility's Retail Access Service Tariff.
- 1.4 Other Necessary Services:** This Agreement does not cover any transmission or ancillary services that are necessary for AES Provider to market retail electricity to consumers. Any such services shall be obtained, either by AES Provider or its

customer, in accordance with the MISO's Energy and Operating Reserve Markets Tariff or the appropriate OATT under FERC jurisdiction, as required by Utility's Retail Access Service Tariff.

1.5 Term of Agreement: This Agreement shall commence on the date of execution by the last Party to execute this Agreement (the "Effective Date") and shall remain in effect for a period of three (3) years, unless sooner terminated under Section 1.6. The Agreement shall automatically renew for successive one-year periods, also subject to termination during the term under Section 1.6, unless, in situations where AES Provider has no customers participating in the Customer Choice program or a Party desires to negotiate a new agreement, either Party gives written notice of intent to terminate no later than thirty (30) days in advance of the expiration of the term.

1.6 Termination: In the event of a Default (as defined in Section 4 below) by either Party, the other Party may terminate this Agreement by providing written notice to the defaulting Party, as provided in Section 4, without prejudice to any remedies available at law or in equity to the non-defaulting Party. If AES Provider determines that it will cease providing retail electric services in Utility's service territory or otherwise withdraw from the Customer Choice program, it shall give Utility written notice of intent to cease services and/or withdraw from the market at least ninety (90) days prior to the date of cessation or withdrawal. Failure to provide such notice shall be considered an event of Default under Section 4 of this Agreement. This Agreement will then terminate thirty (30) days following the date on which AES Provider ceases to have any active customers in Utility's service territory. The Parties may also terminate this Agreement by mutual consent in the event they enter into a replacement agreement. Upon termination of this Agreement for any reason, without replacement by another mutual written agreement conforming to the requirements of Utility's tariff and applicable law, AES Provider shall no longer be authorized to provide retail electric services in Utility's service territory.

1.7 Not a Joint Venture: Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be separate and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

1.8 Laws and Regulations: Utility and AES Provider are subject to, and shall comply with, all existing or future applicable federal, state and local laws, and all existing or future duly promulgated orders or other duly authorized actions of governmental authorities having jurisdiction over the matters covered in this Agreement. This Agreement is subject to change in the future to reflect any relevant changes required by the MPSC or other Michigan state agency having jurisdiction, by virtue of any federal or state law or regulation, and any changes to the MISO Energy and Operating Reserve Markets Tariff impacting Customer Choice, and such changes shall be deemed to be binding upon the Parties, except where the right to terminate is exercised in accordance with the terms of this Agreement.

1.9 Notices: Any written notice required or appropriate hereunder shall be deemed properly made, given to, or served on the Party to which it is directed, when sent by facsimile, electronic mail or overnight mail or United States mail, postage prepaid, and addressed as follows:

If to the AES Provider:

If to the Utility:

Donald Splinter
Senior Power Marketer – We Energies
333 W. Everett Street – A214
Milwaukee, WI 53203
Phone – 414-221-4650
Fax – 414-221-4210
Email - Donald.Splinter@we-energies.com

Notice of any change of the above addresses shall be given in writing in the manner specified in this Section. Notices received after the close of a business day shall be deemed received on the next business day.

- 1.10 Assignment and Delegation:** Neither Party may assign this Agreement without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld. However, Utility may assign any or all of its rights and obligations under this Agreement, without the AES Provider's consent, to any entity succeeding to all or substantially all of the distribution facilities of Utility located in Michigan. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment in violation of this Article shall be void.
- 1.11 Amendments or Modifications:** No amendment or modification shall be made to this Agreement, in whole or in part, except by an instrument in writing executed by authorized representatives of the Parties, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade.
- 1.12 Rules of Construction:** The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement. The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.
- 1.13 Governing Law:** The laws of the State of Michigan, without regard to principles of conflicts of law, shall govern the formation, validity, interpretation, execution, amendment and termination of this Agreement.
- 1.14 Continuing Obligations:** Cancellation, expiration or early termination of this Agreement shall not relieve the Parties of obligations that, by their nature, survive such cancellation, expiration or termination, including, without limitation, payment of any amounts due, warranties, remedies, promises of indemnity and confidentiality.
- 1.15 Enforceability:** Should any provision of this Agreement be held invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof, unless it materially changes the Agreement.
- 1.16 Waiver of Rights:** No waiver by either Party of any one or more defaults by the other in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character. The failure of either Party to insist in any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder,

shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

Section 2. Conditions Precedent

- 2.1 License and Other Conditions:** Prior to commencing any retail services under this Agreement, AES Provider shall: (a) obtain an alternative electric supplier license from the Commission; (b) obtain any other licenses, permits or authorizations from governmental agencies required to offer and/or sell retail electric services in Utility's customer choice program; (c) complete all applications and/or forms and execute any agreements required for participation in Utility's Customer Choice program; (d) demonstrate to Utility, prior to enrolling any customers, that AES Provider has the requisite technical competence (*e.g.*, communication capabilities) to comply with applicable standards for the exchange of information, as set, and modified from time to time, by Utility or its agent(s); and, (e) if required, provide to Utility the type of financial security or collateral required by Utility to safeguard Utility and its customers from losses or additional costs incurred due to non-performance on the part of the AES Provider. The foregoing requirements represent conditions precedent to Utility's obligations hereunder. AES Provider shall maintain all licenses, permits, authorizations, electronic communications capability and financial security arrangements in good standing throughout the life of this Agreement.
- 2.2 Necessary Services:** Prior to commencing any retail electric services under this Agreement, AES Provider shall have in place suitable arrangements and binding agreements with energy, capacity, transmission and ancillary service providers, including services such as load profiling, customer billing and preliminary settlements (where necessary), sufficient to allow AES Provider to serve its customer electric Load. These arrangements and agreements must be maintained in good standing throughout the life of this Agreement and AES Provider shall furnish Utility with updates if it makes any changes to the necessary arrangements to serve retail customers.
- 2.3 MISO Model:** A MISO Commercial Pricing Node ("CPNode") must be established for the AES Provider prior to the start of any retail electric services under this Agreement. The Company will work with the AES Provider in establishing the appropriate CPNode in the MISO Commercial Model. The Company reserves the right to submit MISO Commercial Model changes pursuant to the MISO Energy and Operating Reserves Tariff which may have an impact on the AES Provider's MISO Model CPNode. Modeling changes that

have an effect on the AES Provider's CPNode will be communicated by the Company to the AES Provider.

Section 3. Basic Obligations of the Parties

- 3.1 Cooperation and Performance:** Utility and AES Provider shall cooperate with each other to provide their respective services to the customers in accordance with applicable laws, regulations, tariffs and agreements, including Utility's Retail Access Service Tariff. Each Party shall exercise diligence and good faith in the performance of its duties pursuant to this Agreement.
- 3.2 Information Exchange:** Utility and AES Provider shall supply to each other all data, materials or other information specified in this Agreement, or otherwise reasonably required by either Party in connection with its obligations under this Agreement, in a thorough and timely manner, subject to privacy and confidentiality rights associated with (i) information about customers or third parties, and (ii) proprietary information of the Parties. AES Provider will comply with any and all information and data transfer protocols that may be adopted, and modified from time to time by Utility or its agent(s).
- 3.3 Service Provided:** Utility agrees to allow the use of its electric distribution system in Michigan for deliveries under the Customer Choice program consistent with its Retail Access Service Tariff, and AES Provider will conduct its retail service activities in Utility's service territory in a manner consistent with that tariff.

Section 4. Events of Default and Remedies for Default

- 4.1 Default:** A Default under this Agreement shall occur if either Party: (a) is the subject of a bankruptcy, insolvency or similar proceeding; (b) makes an assignment for the benefit of its creditors; (c) applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets; (d) violates any material federal, state or local code, regulation, regulatory order and/or statute applicable to the Customer Choice program; (e) fails to pay the other Party when any payment is due; (f) breaches any of the representations and warranties in Section 16; (g) fails to schedule or deliver Power necessary to serve its retail load for three (3) consecutive days; (h) fails to provide the notice specified in Section 1.6; or (i) fails to satisfy any other material obligation under this Agreement or Utility's Retail Access Service Tariff, within the requisite time frames. AES Provider will

also be in immediate Default under this Agreement if it fails to maintain its MPSC license, communications capability or security arrangements in the manner required by Section 2 above.

4.2 Notice and Cure: When a Default occurs, the non-defaulting Party shall give written notice of the Default to the defaulting Party. The defaulting Party shall be allowed a period of three (3) days to cure the default before the non-defaulting Party seeks to invoke remedies or other legal rights. The period for cure begins with receipt of the notice, with notice deemed to have been received as follows: (i) if sent by facsimile or by electronic mail, upon effective transmission; (ii) three days after mailed notice is deposited with the U.S. Postal Service; and (iii) the next business day after delivery to the overnight mail service. This notice and opportunity to cure shall not apply if the specific Default event has occurred more than twice in a consecutive twelve-month period.

4.3 Remedies: In the event of a Default, the non-defaulting Party shall be entitled to: (a) suspend enrolling any new AES Provider customers; (b) pursue any and all available legal and equitable remedies available to it, including proceeding against the collateral provided by the AES Provider to Utility; and/or (c) terminate this Agreement by immediate written notice to the defaulting Party as provided here and in Section 1.6.

Section 5. Limitation of Liability

5.1 Special Damages: Utility shall have no liability to the AES Provider for any consequential, indirect, incidental, special, ancillary, punitive, exemplary, or other damages, including lost profits, lost revenues, or other monetary losses arising out of any acts, errors or omissions of Utility under this Agreement and the Retail Access Service Tariff. Additionally, in no event will the Utility be liable to the AES Provider or Customer for loss of revenue or other losses due to meter or calculation errors or malfunctions.

5.2 Customer Switching: Utility shall switch customers to AES Provider Generation Service consistent with the Retail Access Service Tariff and MPSC requirements and shall have no liability to AES Provider arising out of or related to a customer's decision to switch among competitive electric service providers and/or Utility. Any liability of Utility associated with the process of switching customers shall be strictly limited to situations where the error or delay in switching a customer arises from the willful acts or gross

negligence of Utility and damages shall be limited to those directly attributable to the delay or error.

- 5.3 Claims Limitation:** No claims for payment shall be made by either Party based on errors in settlement, calculations, billing, metering or equipment malfunction, more than three (3) years after the date of the bill, invoice or payment in question. All claims based on other acts, errors or omissions arising under the Customer Choice program must be initiated through the alternative dispute resolution procedure within six (6) months of the incident or such claims are also barred.

Section 6. Indemnification

- 6.1 Indemnity:** AES Provider agrees to indemnify, defend and hold Utility harmless from any and all claims, including claims and actions resulting from bodily injury or death of any person or damage to property, costs, expenses, damages and liabilities, including reasonable attorneys' fees, and all other obligations by or to third parties, arising out of, connected with or resulting from the negligence or misconduct of their respective employees or other agents in connection with their activities within the scope of this Agreement and the Customer Choice program. AES Provider shall assume no liability against claims, damages, expenses or liabilities resulting from the gross negligence or willful misconduct of Utility.
- 6.2 Term of Indemnity:** AES Provider's obligation to defend, indemnify and hold harmless under this Section 6 shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for AES Provider under any statutory scheme, including any workers compensation acts, disability benefit acts or other employee benefit acts.

Section 7. Force Majeure

- 7.1 General Provision:** Neither Party shall be liable for any delay in performing or for failing to perform its respective obligations under this Agreement due to any event of Force Majeure including a catastrophic weather condition (but not temperature, no matter how extreme), flood, fire, lightening, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, walkout, lockout or other labor dispute, work stoppage caused by jurisdictional and/or similar disputes, restraint by court order or public authority, or action or non-action by, or inability to obtain authorization or approval from, any governmental authority, or any combination of these

causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. Financial loss or other economic hardship of either Party shall not constitute an event of Force Majeure under this Agreement.

7.2 Suspension of Obligations: The obligations of either Party, so far as they are affected by a Force Majeure event, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied within a reasonable period of time. During a Force Majeure event, both Parties shall take all reasonable steps to comply with this Agreement notwithstanding the occurrence of the event. This section shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party involved in the strike, walkout, lockout or other labor dispute.

Section 8. Security Arrangements

8.1 Creditworthiness: AES Provider shall furnish security for performance of its obligations in a form and amount acceptable to Utility as required under the provisions of Utility's Retail Access Service Tariff.

Section 9. Load Profiles and Metering

9.1 Load Profiling Information: During the term of this Agreement, Utility may provide historical customer load profile information, for a class or classes that will utilize load profiling. These profiles are for informational purposes only and Utility makes no representations or warranties of any kind regarding the availability, use or accuracy of such load profiles. AES Provider will hold Utility harmless from any and all claims or damages related to or resulting from AES Provider's reliance on or use of the load profiles.

9.2 Tariff Provisions: The Parties shall render performance under this Agreement in accordance with the provisions in Utility's Retail Access Service Tariff governing metering and load profiling.

Section 10. Unauthorized Energy Use

10.1 Prohibitions and Assistance: The Parties shall not participate in, assist in or cause any unauthorized energy use (energy theft) from Utility's distribution system. Either Party must give prompt notice to the other Party regarding situations where energy theft is suspected or evident. The Parties shall cooperate and assist each other in investigating and resolving such situations.

Section 11. Billing and Collection

11.1 Billing Options: Unless other arrangements are made pursuant to Section 11.2, the Customer will receive separate bills from AES Provider and Utility for the different services rendered by each of them.

11.2 Billing Agreement: If Utility offers a consolidated billing service whereby a single consolidated monthly bill would be prepared and submitted by Utility, including the charges for both AES Provider and Utility services, then the Parties shall enter into a separate agreement for terms, conditions and charges for such billing option.

11.3 Settlement Reconciliation: An AES Provider reconciliation calculation, encompassing MISO Energy and Operating Reserves Market, transmission or capacity charges may be required to address any differences between the volumes and associated charges that actually settled in the MISO Energy and Operating Reserve Market versus the volumes that should have been settled in the Energy and Operating Reserve Market. The AES Provider will be responsible for reimbursing the Utility for all such charges incurred by the Utility on behalf of the Customer Choice customers. The Utility will bill the appropriate amounts to the AES Provider upon completion of the reconciliation pursuant to the terms of Utility's Retail Access Service Tariff. Bills are due and payable in accordance with Section 12 below.

11.4 Transmission Service Charges: The AES Provider will be responsible for reimbursing the Utility for American Transmission Company, LLC and MISO transmission charges incurred on behalf of each Customer Choice customer that is not directly billed by the respective transmission service provider to the AES Provider. Bills shall be rendered monthly. Bills are due and payable in accordance with Section 12 below.

Section 12. Payment

12.1 Payment Terms: Although customers will pay each Party for the respective services provided, in situations where a payment obligation arises between the Parties as a result

of the settlement process, payment shall be made consistent with the provisions in Utility's Retail Access Service Tariff.

12.2 Interest: Late payments shall bear interest at an annual rate of 12%.

Section 13. Customer Inquiries

13.1 Cooperation and Referral: The Parties shall cooperate in referring customers to each other in situations where a customer inquiry received by one Party concerns the services of the other Party. Each Party shall maintain data concerning the contact telephone, electronic mail, fax and mailing address of the other for use in customer referrals. Emergency calls regarding service or the distribution system will be addressed by Utility and if AES Provider receives such an emergency call, its service personnel shall immediately refer the call to Utility and remain in contact for sufficient time to verify that the call is received by Utility.

Section 14. Dispute Resolution

14.1 Disputes: All disputes arising between the Parties regarding this Agreement and the Customer Choice program shall be handled in accordance with the dispute resolution procedures contained in the Retail Access Service Tariff.

Section 15. Confidentiality

15.1 Confidential Information: Consumer-specific information ("Customer Information") will not be provided to AES Provider without a customer's affirmative authorization as provided consistent with Utility's Retail Access Service Tariff, and AES Provider shall keep confidential all Customer Information supplied by Utility, unless the AES Provider has the customer's affirmative authorization to do otherwise. All non-public information concerning Utility's business made available by Utility to AES Provider pursuant to this Agreement, including, without limitation, class load profile data and information regarding Utility's computer systems or communications systems (collectively "Confidential Information"), shall be treated as confidential and shall not be disclosed to third parties without written consent of Utility. If Confidential Information is disclosed orally to AES Provider, Utility shall indicate that the information constitutes Confidential Information. If the disclosed Confidential Information is in writing or other non-oral media, Utility shall prominently mark it as "Confidential".

- 15.2 Use of Confidential Information:** AES Provider agrees to use Customer Information and Confidential Information only for purposes of this Agreement and for no other purpose whatsoever. Except as provided in Section 15.1 and Section 15.3, AES Provider agrees that the Customer Information and Confidential Information shall not be disclosed to any third party unless Utility provides written consent to the disclosure. No copies of Customer Information or Confidential Information will be made by AES Provider or any third party unless Utility consents in writing.
- 15.3 Protective Orders:** If AES Provider becomes legally compelled to disclose any of the Customer Information or Confidential Information identified in Section 15.1, then AES Provider shall immediately notify Utility of the requirement to disclose. In such cases, AES Provider shall request protective treatment of the information or cooperate with Utility to enable it to obtain protective treatment of the information. If AES Provider is nonetheless required to disclose information by force of law, then AES Provider shall disclose only that portion of the information directly subject to the legal requirement and exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the information so disclosed.
- 15.4 No Warranty of Accuracy:** AES Provider acknowledges and agrees that Utility does not make any express or implied warranty or representation as to the accuracy or completeness of any Customer Information or Confidential Information that is provided. Neither Utility nor any of its representatives shall have any liability to AES Provider resulting from the use of or reliance upon such information and AES Provider releases and holds Utility harmless therefrom.
- 15.5 Return of Confidential Information:** AES Provider will, upon request of Utility, return Confidential Information. AES Provider shall retain no copies of any Confidential Information returned to Utility.
- 15.6 Remedies:** The Parties agree that monetary damages alone would not be a sufficient remedy for breach of the provisions of Section 15 by AES Provider and, therefore, Utility shall be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for breach of Section 15, however, but shall be in addition to all other remedies available in law or equity to Utility.

Section 16. Representations and Warranties

- 16.1 Organization/Qualification:** Each Party represents that it is duly organized and existing under the laws of its state of incorporation or formation indicated above and is authorized to do business, and is in good standing, in the State of Michigan.
- 16.2 Authority to Execute:** Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the entity on whose behalf this Agreement is executed.
- 16.3 Due Authorization:** Each Party represents and warrants that (a) it has the full power and authority to execute this Agreement and to fulfill its terms and conditions; (b) the execution and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 16.4 No Actions:** Each Party represents and warrants that there are no actions at law, suits in equity, proceedings or claims pending against it before any federal, state, foreign or local court, tribunal or government agency or authority that might materially delay, prevent or hinder the performance of its obligations under this Agreement.
- 16.5 Customer Authorization:** AES Provider represents and warrants that it will obtain written authorization from any customer or prospective customer before it seeks to obtain that customer's historical demand and energy usage data from Utility. This provision does not preclude AES Provider obtaining demand and usage data directly from a customer or prospective customer.
- 16.6 Notice and Duration:** If either Party learns that any of the representations and/or warranties contained in this Agreement has been violated in any material respect, such Party shall immediately notify the other Party in writing. All representations and warranties contained in this Section shall continue for the term of this Agreement.

Section 17. Taxes

- 17.1 Liability for Taxes:** All present or future federal, state, municipal or other taxes imposed on or collectable from AES Provider by any taxing authority shall remain the liability of AES Provider.
- 17.2 Payment of Taxes:** AES Provider shall pay all taxes to the applicable taxing authority to the extent required or permitted by law. If Utility is required to remit any taxes imposed upon Customers directly on account of AES Provider's service(s) to any

applicable taxing authority, other than taxes collected by Utility directly from AES Provider's customers, then AES Provider shall indemnify Utility against, and will pay Utility for, all such tax amounts.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials on the dates written below, to be effective on the later date.

Utility:

**WISCONSIN ELECTRIC
POWER COMPANY**

By: _____

Printed
Name: _____

Title: _____

Date: _____

AES Provider:

By: _____

Printed
Name: _____

Title: _____

Date: _____