

METER DATA MANAGEMENT SERVICES AGREEMENT
BETWEEN
WISCONSIN ELECTRIC POWER COMPANY
AND

THIS METER DATA MANAGEMENT SERVICES AGREEMENT (this "Agreement") is entered into this ___ day of _____, _____ by and between _____ (the "Market Participant") and WISCONSIN ELECTRIC POWER COMPANY (the "MDMS Provider"). Market Participant and MDMS Provider are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Market Participant is a "Market Participant" as such term is defined in the Open Access Transmission and Energy and Operating Reserve Market Tariff for the Midwest Independent Transmission System Operator, Inc. (the "TEM"); and

WHEREAS, Market Participant is also an Alternative Electric Supplier ("AES") eligible to sell electricity at retail in Michigan per Michigan law; and

WHEREAS, all "Market Participants" under the TEM are required to provide meter data to the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") for billing and settlement purposes; and

WHEREAS, MDMS Provider is willing to provide and Market Participant desires to acquire meter data management services on such terms and conditions as are set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions and Interpretation.

1.1 Definitions. Unless the context otherwise requires, the following capitalized terms shall have the meanings ascribed to them below:

"*Business Day*" has the meaning given to such term in the TEM; provided, however, that Business Day shall exclude all days the MDMS Provider observes as holidays.

"*Commercial Pricing Node*" has the meaning given to "Commercial Node" in the TEM.

“*CPT*” means the current prevailing time in Milwaukee, WI.

“*Dispute*” has the meaning given to such term in Section 7 of this Agreement.

“*Dispute Notice*” has the meaning given to such term in Section 7 of this Agreement.

“*Effective Date*” means _____.

“*Initial Term*” has the meaning given to such term in Section 2.2 of this Agreement.

“*Local Security Administrator*” (LSA) has the meaning given to such term in Midwest ISO’s Local Security Administrator (LSA) Policy document.

“*Market Participant*” has the meaning given to such term in the preamble to this Agreement.

“*MDMS Provider*” has the meaning given to such term in the preamble to this Agreement.

“*Meter Data*” has the meaning given to such term in Section 5.3 of this Agreement.

“*Meters*” has the meaning given to such term in Section 5.1(b) of this Agreement.

“*Midwest ISO*” has the meaning given to such term in the recitals to this Agreement.

“*Operating Day*” has the meaning given to such term in the TEMT.

“*Renewal Term*” has the meaning given to such term in Section 2.2 of this Agreement.

“*Representatives*” has the meaning given to such term in Section 3.2 of this Agreement.

“*Settlement Date*” means, in relation to any given Operating Day, the dates on which settlements shall be achieved in respect thereof pursuant to the TEMT and the Midwest ISO’s Business Practices Manuals.

“*TEMT*” has the meaning given to such term in the recitals to this Agreement.

“*Term*” means the Initial Term together with any Renewal Terms.

1.2 Titles and Headings. Section headings in this Agreement are inserted for convenience and ease of reference only and shall not be a part of or affect the meaning or interpretation of this Agreement.

2. Effectiveness and Term.

2.1 Effectiveness. This Agreement and the rights and obligations of the Parties shall become effective as of the Effective Date and shall continue in effect during the Term.

2.2 Initial Term and Renewal Term. The initial term of this Agreement (“Initial Term”) shall commence on the Effective Date and shall terminate at the end of the hour beginning 2300 hours CPT on December 31 of that same year. If neither Party has given written notice to the other Party of its election not to renew this Agreement pursuant to Section 4.1 prior to the end of the Initial Term or any Renewal Term, as the case may be, then this Agreement shall automatically be renewed for an additional term (each, a “Renewal Term”), which will commence at the beginning of the hour ending at 0100 hours CPT on January 1st immediately following the end of Initial Term or the immediately preceding Renewal Term, as the case may be, and shall terminate at the end of the hour beginning 2300 hours CPT on the one (1) year anniversary of the last day of the Initial Term or the immediately preceding Renewal Term, as the case may be.

3. Duties and Responsibilities; Indemnification.

3.1 Duties and Responsibilities. Market Participant agrees that MDMS Provider shall have no duties or responsibilities except those expressly set forth in this Agreement, and shall not be responsible for any action taken or omitted to be taken by it hereunder or under any other agreement, document or instrument referred to or provided for herein or in connection herewith, except for its gross negligence and willful misconduct.

3.2 Indemnification. Market Participant agrees to indemnify, defend and hold harmless MDMS Provider and its officers, directors, employees, contractors and representatives (collectively, the “Representatives”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever (including reasonable attorney fees) which may be imposed on, incurred by or asserted against MDMS Provider or any of its Representatives in any way relating to or arising out of this Agreement or any other instruments, documents or agreements contemplated by or referred to herein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof (including any such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements which may be imposed on, incurred by or asserted against MDMS Provider or any of its Representatives by the Midwest ISO relating to or arising out of this Agreement), provided that Market Participant

shall not be liable for any of the foregoing to the extent they arise from MDMS Provider's or its Representatives' gross negligence or willful misconduct.

4. Expiration and Early Termination.

- 4.1 Expiration of Term. This Agreement shall terminate and be of no further force and effect as of the end of the Initial Term or Renewal Term, as the case may be, if not less than ninety (90) Business Days prior thereto, either Party delivers written notice to the other Party that it has elected, in its sole and absolute discretion, not to renew this Agreement.
- 4.2 Termination for Cause. If either Party defaults in the performance or observance of any of its material obligations under this Agreement and such default continues un-remedied after notice thereof for a period of twenty (20) Business Days, in the case of a payment default, or sixty (60) Business Days, in the case of all other defaults (provided, however, that such sixty (60) Business Days shall be extended for an additional sixty (60) Business Days so long as such default is remedial and the defaulting Party is diligently pursuing a remedy), then the non-defaulting Party may terminate this Agreement by providing the defaulting Party notice thereof no sooner than five (5) Business Days and no later than thirty (30) Business Days after the end of the applicable cure period. If the non-defaulting Party fails to exercise its termination right pursuant to this Section 4.2 within thirty (30) Business Days after the end of the applicable cure period, then the non-defaulting Party's termination right shall no longer be available as a remedy for the specific default which gave rise to its termination right pursuant to this Section 4.2. This Agreement shall terminate and be of no further force and effect as of the date which is five (5) Business Days after the date of the notice of termination delivered pursuant to this Section 4.2.
- 4.3 Termination for Convenience. MDMS Provider may, in its sole and absolute discretion, terminate this Agreement without cause at any time during the Term upon ninety (90) Business Days' prior written notice to Market Participant. This Agreement shall terminate and be of no further force and effect as of the termination date specified in MDMS Provider's notice (which date shall not be any sooner than ninety (90) Business Days after the date of such notice). Additionally, MDMS Provider may terminate this Agreement upon the termination of the Retail Access Service agreement entered into between the Parties pursuant to the MDMS Provider's Retail Access Service Tariff contained in its Rate Book for Electric Service as approved by the Michigan Public Service Commission (the "Retail Access Service Tariff").
- 4.4 Continuing Liability. Notwithstanding any provision to the contrary contained herein, each Party shall remain liable for all payments and liabilities incurred prior to the expiration or early termination of this Agreement.

5. Scope of Services.

5.1 Electric Usage Meters; Read or Estimate Meter Readings.

- (a) Market Participant's Electric Usage Meter(s). The Parties acknowledge and agree that Attachment A contains a current list as of the Effective Date of all Commercial Pricing Nodes for Market Participant that are subject to this Agreement. Market Participant shall promptly notify MDMS Provider in the event of any change in the list of Commercial Pricing Nodes for Market Participant and shall include with such notice an updated Attachment A. Upon receipt and verification by the MDMS Provider of the updated list, based on consultations with Midwest ISO, and after notice by the MDMS Provider to the Market Participant, the updated Attachment A shall become effective and replace in its entirety the then current Attachment A.
- (b) Read and Estimate Meter Readings. MDMS Provider shall obtain readings from the electric usage meters ("Meters") that are settled at the Commercial Pricing Node(s) for Market Participant on the same schedule MDMS Provider has obtained such readings prior to the Effective Date. If for any reason MDMS Provider is unable to obtain a reading from a Meter, then MDMS Provider will estimate the electric usage using information that is available to MDMS Provider. For all non-interval meters that are included in the Commercial Pricing Node(s) for Market Participant, MDMS Provider shall profile the usage for those meters to create hourly usage values pursuant to the terms of the Retail Access Service Tariff.

5.2 Distribution Losses Adjustment. To account for losses occurring on the distribution system, MDMS Provider shall apply to all hourly meter readings or electric usage estimates obtained pursuant to Section 5.1 the loss adjustment factor set forth in the Retail Access Service Tariff.

5.3 Meter Data - Aggregation. MDMS Provider shall aggregate all hourly meter readings and electric usage estimates determined by MDMS Provider pursuant to Section 5.1(b) and adjusted pursuant to Section 5.2 at the applicable Commercial Pricing Node in accordance with Attachment A to arrive at aggregated adjusted hourly data for each Market Participant at each applicable Commercial Pricing Node.

The hourly meter readings and electric usage estimates aggregated and adjusted pursuant to this Section 5.3 at each applicable Commercial Pricing Node shall constitute "Meter Data" for the purposes of this Agreement.

5.4 Submission of Meter Data to Midwest ISO. MDMS Provider agrees to submit electronically all Meter Data to the Midwest ISO in accordance with the timing

requirements set forth in the TEMT and the Midwest ISO's business practice manuals.

5.5 Correction of Meter Data Submitted to Midwest ISO. Market Participant shall review all Meter Data provided to the Midwest ISO by MDMS Provider and shall promptly notify the MDMS Provider of any error in any such data, including a description of any error and, if practicable, what Market Participant believes the correct data should be. Promptly after notification of an error, the MDMS Provider and Market Participant shall attempt to reach agreement on what the correct data should be. When it has been determined that submission of corrected data is appropriate, then corrected Meter Data will be submitted to Midwest ISO by the MDMS provider in as timely a manner as practicable – usually with the next scheduled full submittal of Meter Data by the MDMS Provider to Midwest ISO for the Operating Day. Notwithstanding any provision to the contrary contained in this Agreement, MDMS Provider's submission of corrected data pursuant to this Section 5.5 shall not constitute MDMS Provider's acceptance of such corrected data, and MDMS Provider shall retain all of its rights to dispute such corrected data pursuant to Section 7.

5.6 Digital Certificates. The Market Participant shall designate an LSA which shall provide the MDMS Provider with a digital certificate as required by the TEMT and the Midwest ISO's Business Practices Manuals. The digital certificate is required to effect meter data submittals to Midwest ISO. The Market Participant shall also provide the MDMS Provider with contact information for their LSA and ensure this information is kept current. The Market Participant shall be responsible for troubleshooting certificate problems at Midwest ISO. The MDMS Provider shall notify the LSA and the Market Participant within one business day whenever submission errors occur due to suspected certificate problems. Under no circumstances will the MDMS provider assume the role of LSA.

5.7 Limitation on Liability.

(a) The Parties agree that in no event shall MDMS Provider be liable under this Agreement or otherwise to Market Participant other than for its gross negligence and willful misconduct in accordance with this Section 5.7(a). If, and only if, the performance by MDMS Provider of its obligations under this Agreement is finally determined to have constituted gross negligence or willful misconduct, then, subject to Section 5.7(b), MDMS Provider shall be liable to Market Participant for Market Participant's direct damages, if any, under the TEMT which result from MDMS Provider's gross negligence or willful misconduct.

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Parties agree that in no event shall MDMS Provider be liable under this Agreement or otherwise to Market Participant for failure to submit Meter Data, or other data of any kind to the Midwest

ISO, if corrected data is submitted to the Midwest ISO before the last Settlement Date with respect to such data.

- (c) Notwithstanding any provision to the contrary contained in this Agreement, in no event shall MDMS Provider be liable under this Agreement or otherwise to Market Participant for any exemplary or punitive damages or consequential or indirect loss or damage or any other special or incidental damages of any kind whatsoever arising out of or in connection with the performance or failed performance by MDMS Provider of its obligations or the exercise by MDMS Provider of its rights under this Agreement.

6. Representations and Warranties. Each Party represents and warrants to each other Party, as of the Effective Date, as follows:

6.1 Due Organization; Requisite Power. It is duly formed and validly existing under its state of incorporation and in good standing under the laws of the State of Michigan.

6.2 Requisite Power. It has all requisite corporate power necessary to own its assets and carry on its business as now being conducted or as proposed to be conducted under this Agreement.

6.3 Due Authorization. It has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance by it of this Agreement have been duly authorized by all necessary corporate action on its part.

6.4 Non-Contravention. The execution and delivery of this Agreement and the performance by it of this Agreement do not and shall not violate its governance documents or any law or government approval applicable to it or its property.

6.5 Enforceability. Assuming the due authorization, execution and delivery of this Agreement by the other Party, this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general principles of equity.

7. Dispute Resolution. Any controversy, claim or dispute of whatsoever nature or kind between the Parties arising out of or in connection with this Agreement or its validity or interpretation (each a "Dispute") shall be resolved pursuant to the procedures in Section 5.5 or this Section 7. If a Dispute arises between the Parties, then either Party may provide written notice thereof to the other Party, including a detailed description of the subject matter of the Dispute (the "Dispute Notice"). Upon the issuance or receipt of a Dispute Notice, the representatives of each Party shall in good faith attempt to resolve

such Dispute by informal negotiations within ten (10) Business Days from the date of receipt of such Dispute Notice. If the Dispute is not resolved within ten (10) Business Days following receipt of the Dispute Notice or such later date as the Parties may mutually agree, then each Party shall promptly designate a senior executive responsible for the subject matter of the Dispute who shall have authority to resolve the Dispute. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the Dispute and shall meet within twenty (20) Business Days of the date on which the Parties' Representatives failed to resolve the Dispute pursuant to the immediately preceding sentence, at a time and place mutually acceptable to the senior executives. If the senior executives are unable to resolve the Dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, the Parties may pursue any remedies available.

8. Miscellaneous.

8.1 Applicable Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of Michigan.

8.2 Notices. Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, by facsimile or by email, and any such notice shall become effective (a) upon personal delivery thereof, including, by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, (c) in the case of notice by facsimile, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided promptly by either of the methods set forth in clause (a) or (b) above, or (d) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), (c) or (d) above shall be addressed to a Party as provided below such Party's signature, or to such other address as any Party may designate by written notice to the other Party.

8.3 Amendments and Waivers. Except as provided in Section 5.1(a), this Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument or instruments in writing executed by the Parties. No waiver by any Party of any one or more defaults by any other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations or period of time expressly provided for herein, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of any Party to enforce any provisions hereof shall not be construed to waive such provision (except to the extent provided for in Section 4.2), or to affect the validity of this

Agreement or any part thereof, or the right of any Party thereafter to enforce each and every provision thereof.

- 8.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement shall be prohibited by or deemed invalid under any applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 8.5 Parties Bound. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.
- 8.6 Third-Party Beneficiaries. Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any person or entity other than the Parties and their respective successors and permitted assigns.
- 8.7 Entire Agreement. This Agreement states the rights of the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, oral or written, with respect thereto.
- 8.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.
- 8.9 Survival. Except as provided below, the representations, warranties, obligations and liabilities of each Party contained in this Agreement shall not survive the expiration or early termination of this Agreement. The provisions of Sections 3.2 and 4.4 shall survive the expiration or early termination of this Agreement.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, each of the Parties has caused its duly authorized representative to execute this Meter Data Management Services Agreement as of the date first above written.

MDMS PROVIDER:

MARKET PARTICIPANT:

WISCONSIN ELECTRIC
POWER COMPANY

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Address: Wisconsin Electric
Power Company
333 W. Everett Street
Milwaukee, WI 53203

Address:

Attention:

Attention:

Telephone:

Telephone:

Facsimile:

Facsimile:

Attachment A

List of Market Participant's Commercial Pricing Node(s)

Commercial Pricing Node(s)

