

## NON-DISCLOSURE, USE OF INFORMATION AND LICENSE AGREEMENT

This Non-Disclosure, Use of Information and License Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2004 by and between California Independent System Operator Corporation ("ISO") and \_\_\_\_\_ (the "Receiving Party", which is a Stakeholder in the MD02 process or a representative of a governmental agency whose jurisdiction is affected by the MD02 process).

WHEREAS, Receiving Party has requested a copy of **the ISO's network model ("CRR NM") and certain supporting data, including some thermal limits from the ISO Register, ("Data") used by the ISO when conducting Congestion Revenue Rights Study 1** and will thereby be privy to software and various written materials, visual observations and oral statements regarding the ISO's systems, operations and activities; and

WHEREAS, the ISO is willing to provide such materials to the Receiving Party under suitable contractual limits and protection concerning the disclosure and use of confidential or proprietary information.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the ISO and the Receiving Party agree as follows:

1. **Purpose, Scope and Definition.** The purpose of this Agreement is to permit the Receiving Party to review and use Confidential Information disclosed by the ISO, solely in connection with its use of the CRR NM and Data **to gain a better understanding of the ISO's proposed methodology for distribution of congestion revenue rights as it pertains to Receiving Party.** Confidential Information under this Agreement consists of (i) the CRR NM and Data, and (ii) portions of documents, records and other material forms or representations which Receiving Party may create, including but not limited to models, handwritten notes or summaries, that contain or are derived from such Confidential Information. The ISO shall physically mark each page of materials subject to this Agreement as "CONFIDENTIAL INFORMATION." Similarly, each page of any derivative documentation of Confidential Information prepared by Receiving Party shall be marked as "CONFIDENTIAL INFORMATION."

2. **Non-Disclosure.** Subject to Paragraph 4 below, the Receiving Party shall keep Confidential Information in strict confidence and shall not disclose such information or otherwise make it available, in any form or manner, to any other person or entity (a "third party") other than its employees, consultants and attorneys without the prior written consent of the ISO. The Receiving Party will cause each of its employees, consultants and attorneys who will have access to Confidential Information to acknowledge that they have read this Agreement and agree to abide by all of its terms regarding use and disclosure of Confidential Information by execution of Exhibit A. Notwithstanding the foregoing, a Receiving Party may disclose Confidential Information to another Receiving Party as long as the disclosing Receiving Party and the recipient Receiving Party both have executed the Agreement. To the extent Receiving Party seeks to disclose Confidential Information in a regulatory or adjudicatory process such disclosure shall be subject to an appropriate protective order.

3. **Use of Confidential Information.** The Receiving Party shall use Confidential Information received hereunder only for the purposes identified herein. Any other use shall be only with the prior written consent of the ISO.

a. The CRR NM and Data will be provided to Receiving Party on a royalty-free trial license basis until termination in accordance with Section 6 from the date first written above. The license is strictly for gaining a better understanding of the ISO's proposed methodology for distribution of congestion revenue rights as it pertains to Receiving Party, to be installed on one CPU with one copy for back up or as may necessarily be incorporated into reports, etc. internal to Receiving Party.

b. Receiving Party shall not reverse engineer the CRR NM. Notwithstanding this restriction, Receiving Party may create derivative models to compare against results obtained using the CRR NM, provided that results obtained from a derivative model are identified as having been produced by a derivative model and, if Receiving Party wishes to disclose results obtained from a derivative model in a regulatory or adjudicatory process as permitted by Paragraph 2 of this Agreement, a copy of the derivative model, identification of the changes made to the model, and a copy of the results produced by the derivative model must be provided to the ISO contemporaneous with each such disclosure.

c. Receiving Party understands that California Public Utilities Code Section 352.7 may apply to the terms of this Agreement.

4. **Exceptions to Non-Disclosure.** Notwithstanding Paragraph 2 above, a party to this Agreement shall not have breached any obligation under this Agreement if Confidential Information is disclosed to a third party when the Confidential Information:

(a) was in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement; or

(b) had been received by the Receiving Party at the time of disclosure through other means without restriction on its use, or had been independently developed by the Receiving Party as shown through documentation; or

(c) is subsequently disclosed to the Receiving Party by a third party without restriction on use and without breach of any agreement or legal duty; or

(d) subject to the provisions of Paragraph 5, is used or disclosed pursuant to statutory duty or an order, subpoena or other lawful process issued by a court or other governmental authority of competent jurisdiction.

5. **Notice of Pending Third Party Disclosure.** In the event that a court or other governmental authority of competent jurisdiction issues an order, subpoena or other lawful process requiring the disclosure of Confidential Information, the Receiving Party shall notify the ISO immediately upon receipt. The Receiving Party shall not be in violation of this Agreement if it complies with an order of such court or governmental authority to disclose Confidential Information, after providing notification to the ISO as provided immediately above.

6. Term. This Agreement shall remain in effect unless and until the Federal Energy Regulatory Commission issues a final order regarding the issue of Congestion Revenue Rights within the ISO's proposed market redesign (MD02). Termination shall not extinguish any claim, liability or cause of action under this Agreement existing at the time of termination.

7. Provisions Surviving Termination. The provisions of Paragraphs 2, 3, 4, and 5 shall survive the termination of this Agreement for a period of five (5) years; provided, however, if Receiving Party fails to comply with Paragraph 8, these provisions shall remain in effect until the obligations in Paragraph 8 have been satisfied. The provisions of Paragraph 8 shall continue after termination until satisfied.

8. Return or Destruction of Confidential Information. Upon termination of this Agreement, all Confidential Information in the possession or control of the Receiving Party, including its employees, consultants and attorneys, shall be returned to ISO, including all copies of such information in any form whatsoever, unless otherwise instructed in writing by ISO. In lieu of return, the Receiving Party may certify to the ISO in writing that all such information, in any form whatsoever, has been destroyed.

9. Notices.

(a) Representatives and Addresses. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing, unless otherwise agreed by the Parties, and shall be delivered in person or sent by certified mail, postage prepaid, by overnight delivery, or by electronic facsimile transmission with an original sent immediately thereafter by postage prepaid mail, and properly addressed as follows:

Receiving Party:

Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

ISO: Eric Whitley  
California Independent System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Facsimile: (916) 351-2181

(b) Changed Representatives and Addresses. A party hereto may from time to time change its representative or address for the purpose of notices to that party by a similar notice specifying a new representative or address, but no such change shall be deemed to have been given until such notice is actually received by the party being so notified.

(c) Effective Date of Notices. All notices and other communications required or permitted under this Agreement that are addressed as provided in this Paragraph 9 shall be effective upon delivery if delivered personally, by overnight delivery or by facsimile transmission; if delivered by mail, such notices shall be effective three days following deposit in the United States mail, postage prepaid.

10. Complete Agreement; No Other Rights.

(a) This Agreement contains the complete and exclusive agreement of the Parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, and writings prior to the date of this Agreement, with respect to its subject matter. No change to this Agreement shall be effective unless agreed to in writing by the parties hereto. Any conflict between the language of this Agreement and any mark, stamp, annotation or other language identifying something received hereunder as Confidential Information shall be resolved in favor of this Agreement.

(b) This Agreement is not intended to create any right in or obligation of any party or third party other than those expressly stated herein.

11. No Warranties or Representations. Any Confidential Information disclosed under this Agreement carries no warranty or representation of any kind, either express or implied. The Receiving Parties shall not be entitled to rely on the accuracy, completeness or quality of Confidential Information, even for the purpose stated in Paragraph 1.

THE CRR NM AND DATA IS UNSUPPORTED, PROVIDED "AS-IS" AND COMES WITH NO WARRANTY WHATSOEVER, INCLUDING WITHOUT LIMITATION FITNESS FOR A PARTICULAR PURPOSE OR THAT IT IS NON INFRINGING. ISO DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO RECEIVING PARTY'S USE OF THE CRR NM AND DATA AND RECEIVING PARTY SHALL HAVE NO CLAIM AGAINST ISO UNDER THIS AGREEMENT.

12. Injunctive Relief. Receiving Party agrees that, in addition to whatever other remedies may be available to the ISO under applicable law, the ISO shall be entitled to obtain injunctive relief with respect to any actual or threatened violation of this Agreement by Receiving Party or any third party. If a court of competent jurisdiction finds that Receiving Party has breached the terms of this Agreement, it shall bear all costs and expenses, including reasonable attorneys' fees that may be incurred by the ISO in enforcing the provisions of this paragraph. If said court finds that Receiving Party has not breached the terms of this Agreement, then it shall recover from the ISO its costs and expenses, including reasonable attorneys' fees, it incurred in defending itself in any action brought to enforce the provisions of this paragraph.

13. Receiving Party. The Receiving Party agrees to comply in all respects with any governmental laws, orders or other restrictions which may be imposed from time to time by the government of the United States ("Export Laws") to assure that Confidential Information nor any direct product thereof are (i) exported, directly or indirectly, in violation of the Export Laws, or (ii) are intended to be used for any purposes prohibited by the Export Laws, including without limitation, nuclear, chemical or biological weapons proliferation.

14. Governing Law. This Agreement is made in the State of California and shall be governed by and interpreted in accordance with its laws.

15. Assignment. This Agreement shall be binding upon the parties, their successors, and assigns. Receiving Party shall not assign this Agreement without the ISO's prior written consent.

16. Construction Of Agreement. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against

any party, but shall be construed in the manner that most accurately reflects the parties' intent as of the date they executed this Agreement.

17. Signature Authority. Each person signing below warrants that he or she has been duly authorized by the party for whom he or she signs to execute this Agreement on behalf of that party.

18. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

By: \_\_\_\_\_  
Name: Jim Detmers  
Title: Vice President, Grid Operations  
Date:

RECEIVING PARTY:

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:  
Title:  
Date:

## Exhibit A

### INDIVIDUAL AGREEMENT TO BE BOUND BY NON-DISCLOSURE, USE OF INFORMATION AND LICENSE AGREEMENT

The undersigned, \_\_\_\_\_ (print or type name), employed by \_\_\_\_\_, hereby acknowledges that he or she has received a copy of the Non-Disclosure, Use of Information and License Agreement dated \_\_\_\_\_ between the California Independent System Operator Corporation and the Receiving Party designated therein ("Agreement"). The undersigned hereby acknowledges that the undersigned has read the Agreement and understands the importance of maintaining the confidentiality of Confidential Information (as defined in the Agreement), the provisions of the Agreement relating to such confidentiality, and the limitations on the use of Confidential Information. In consideration thereof, the undersigned agrees to be bound by all of the provisions of the Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_