

MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT
(Request for Proposals)

THIS AGREEMENT is entered into this ____ day of _____, 20____, by and between Wabash Valley Power Association, Inc. (“Wabash Valley”) and _____ (“Respondent”), each a “Party” and collectively, the “Parties.” The Party providing Confidential Information (as hereinafter defined) to the other Party shall hereinafter be referred to as the “Disclosing Party,” and the Party receiving such Confidential Information shall hereinafter be referred to as the “Receiving Party.”

WHEREAS, the Disclosing Party may provide certain proprietary, confidential and trade secret information to the Receiving Party solely in connection with consideration of Wabash Valley’s Request for Proposals (“RFP”) and Respondent’s proposal in response to the RFP (the “Purpose”), and each Disclosing Party desires that all such information will be kept confidential by the Receiving Party and used by the Receiving Party only for the Purpose.

NOW, THEREFORE, the Parties agree to the following:

1. **Confidential Information Definition.** “Confidential Information” hereunder shall mean all information, documents and other materials disclosed by the Disclosing Party to the Receiving Party before, on or after the date hereof including but not limited to all specifications, drawings, sketches, models, samples, reports, plans, forecasts, current or historical data, computer programs, pro formas or documentation and all other technical, financial or business data, written or spoken, and including any confidential information provided to the Disclosing Party by any third party that is subject to a confidentiality agreement between the Disclosing Party and such third party. The term “Confidential Information” also includes, without limitation, the existence of discussions between the Parties concerning the Purpose.

2. **Exclusions from Definition.** Notwithstanding anything in this Agreement to the contrary, the following shall be deemed not to be Confidential Information:

- a. Information already known or at any time learned by Receiving Party, without breach of this Agreement, from a third party that has no duty of confidentiality to Disclosing Party with respect to such information;
- b. Information that already is in or at any time enters the public domain through no wrongful act of Receiving Party; and
- c. Information that has been or is independently developed by the Receiving Party without reference to the Confidential Information.

3. **Nondisclosure and Confidentiality.**

- A. The Receiving Party shall not use the Confidential Information disclosed to such Party for any purpose other than the Purpose.

- B. The Receiving Party shall not reveal the Confidential Information to any person or entity, except such Receiving Party's employees, agents and consultants (or those of its parent companies, subsidiaries or affiliates) who reasonably have a need to know such information for the purpose of furthering the Purpose and who shall be notified of and obligated to maintain the confidentiality of such Confidential Information at least to the extent contemplated hereunder. In addition, the Receiving Party shall use its/his/her best efforts to prevent disclosure of the Confidential Information received by such Party to any person or entity not specifically permitted hereunder to receive such Confidential Information.

4. **Standard of Protection; Prevention of Commingling.** The Receiving Party shall protect Confidential Information disclosed by the Disclosing Party with at least the same degree of care as Receiving Party normally exercises to protect its own proprietary information of a similar nature. The Receiving Party shall segregate the Confidential Information the Receiving Party receives from other materials in order to prevent commingling.

5. **Notification of Compulsory Process, Subpoena.** Notwithstanding anything in this Agreement to the contrary, the confidentiality obligations imposed on the Receiving Party hereunder shall not apply to Confidential Information to the extent that disclosure of such Confidential Information is required under applicable law or by a subpoena or other court or governmental order, decree, regulation or rule; provided, however, that, if such disclosure is required under the circumstances contemplated under this Section, the Receiving Party shall advise the Disclosing Party of such requirement to disclose the Confidential Information as soon as reasonably practicable, time being of the essence, after the Receiving Party becomes aware of such requirement to disclose; and further provided that, upon the request of the Disclosing Party, the Receiving Party shall undertake reasonable lawful efforts to resist such disclosure, limit the Confidential Information to be disclosed and limit the extent to which the Confidential Information so disclosed may be used or made available to third parties.

6. **Intellectual Property; No Representations.** No license or other intellectual property right is either granted or implied by the conveying of information to the Receiving Party by the Disclosing Party. None of the information that is disclosed by the Disclosing Party shall constitute any representation, warranty, assurance, guarantee or inducement to the Receiving Party of any kind. For greater certainty, the Disclosing Party makes no representations or warranties of any nature with regard to its Confidential Information, including, without limitation, the completeness or accuracy of such information and neither Party shall have any liability to the other Party from the use of Confidential Information supplied under this Agreement.

7. **Ownership; Return of Confidential Information.** All Confidential Information shall remain the property of the Disclosing Party and, to the extent still in Receiving Party's possession, shall be returned to Disclosing Party promptly, along with all copies of the same, upon

written request from Disclosing Party to Receiving Party. Notwithstanding the foregoing, the Receiving Party shall be entitled to retain electronically stored data and copies of the Confidential Information to the extent such retention is necessary in order to comply with applicable law, regulation, internal retention policies, or the rules of any professional or regulatory body. Further, the Receiving Party shall not be required to return and shall be entitled to maintain any Confidential Information contained in the Receiving Party's board minutes or board papers and Confidential Information in any of Receiving Party's documents containing advice from advisers or containing legally privileged information. However, all such Confidential Information that is permitted to be retained or maintained by this Section shall remain subject to the terms of this Agreement.

8. **Notification of Disclosure.** The Receiving Party shall promptly notify the Disclosing Party upon discovery of any unauthorized or improper use or disclosure of the Confidential Information, or any other material breach of this Agreement, by the Receiving Party and shall use reasonable efforts and offer reasonable cooperation to regain possession or to prevent further unauthorized use or disclosure of such Confidential Information.

9. **Export Control Compliance.** The Receiving Party specifically acknowledges that use or disclosure of Confidential Information may be subject to export control laws or regulations and warrants that the Receiving Party shall make no use or disclosure of the Confidential Information contrary to such laws or other applicable laws. The Receiving Party shall not transmit or otherwise forward, directly or indirectly, the Confidential Information received hereunder or any portion thereof to any location outside of the United States unless it receives the prior written consent of the Disclosing Party and is in strict compliance with all applicable laws and regulations.

10. **Termination.** This Agreement shall terminate on the fifth (5th) anniversary of the date of this Agreement, whether or not the Parties ultimately pursue the Purpose further.

11. **Survival.** Liability for any and all breach of this Agreement occurring prior to termination of this Agreement shall survive such termination.

12. **Integration.** This Agreement constitutes the entire understanding between the Parties as to the subject matter hereof and supersedes all prior agreements and discussions, whether written or oral, between the Parties as to such subject matter.

13. **Effect of Agreement.** It is expressly understood that this Agreement is not and shall not be construed as any obligation or form of a letter of intent or agreement to enter into the Purpose. Neither Party may rely on this Agreement or the negotiations or exchange of Confidential Information or other documentation between the Parties as a commitment to enter into binding definitive agreements.

14. **No Waiver Unless in Writing.** None of the provisions of this Agreement shall be deemed to have been waived by any act of acquiescence of a Party, and the provisions of this

Agreement shall be waivable only by an instrument in writing signed by the duly authorized officer or representative of the waiving Party or signed by the waiving Party in the case of a waiving Party that is a natural person.

15. **Choice of Law.** This Agreement shall be governed by and interpreted in accordance with the laws in effect in the State of Indiana, including torts, without regard to its choice of law rules and excluding any rule of law that would result in another choice of law.

16. **Remedies for Breach.** The Parties acknowledge and agree that:

- a. The covenants in this Agreement are reasonable under the circumstances and are necessary to protect the Parties and the property of such Parties; and
- b. The breach by one Party of any of the provisions of this Agreement would cause serious and irreparable harm to the other Party that could not be adequately remedied by monetary damages alone.

Each Party, therefore, consents that, in the event of a breach or threatened breach of confidentiality under this Agreement, the other Party is entitled to seek an order specifically enforcing the provisions of this Agreement or an order being issued against such other Party enjoining or restraining it from any breach of the provisions of this Agreement, and agrees that such orders may be issued against such other Party without the necessity of an undertaking as to damages or posting of bond by the other Party seeking any such orders. The provisions of this Section shall not derogate from any other remedy that one Party may have in the event of a breach hereunder by the other Party.

17. **Severability.** If a court of competent jurisdiction would otherwise adjudge, declare or decree all or any portion of the provisions set forth in this Agreement void or unenforceable under the circumstances, the portions hereof that would otherwise be held void or unenforceable shall, automatically and without further act on the part of the Parties or by such court, but only as pertains to those matters or parties before such court, be reduced in scope, territory or duration of time to such an extent that such court would hold the same to be enforceable under the circumstances before such court.

18. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties and their (i) respective successors, including but not limited to any successors by reason of amalgamation or statutory arrangement, and (ii) permitted assigns. This Agreement shall not be assigned by the Receiving Party without the prior written consent of the Disclosing Party. Each attempted assignment hereof, if any, not in compliance with this Section shall be null and void.

19. **Parties' Intent.** The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by

the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.

20. **Choice of Forum.** Exclusive venue and jurisdiction with respect to each lawsuit or court action, if any, under this Agreement must be brought and exclusively maintained in the Marion County Courts of the State of Indiana, it being understood, however, that judgments, orders or decrees resulting from such lawsuits or court actions may be appealed to or enforced in any competent court.

21. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

22. **Amendments.** This Agreement shall not be modified, supplemented or altered in any manner other than in a writing signed by each Party.

Signature page follows.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

Company Name

Wabash Valley Power Association, Inc.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____