



Smart Grid Test Bed Services Agreement

This Smart Grid Test Bed Agreement (“Agreement”) is entered into as of _____, 20____, and is by and among _____, organized and existing under the laws of the State of _____, (“Customer”), and **Ameren Illinois Company**, d/b/a Ameren Illinois, a corporation organized and existing under the laws of the State of Illinois (“Ameren”).

RECITALS

WHEREAS, Ameren owns electric facilities and is engaged in the transmission and distribution of electric power and energy; and

WHEREAS, Ameren has established a testing program, referred to as the Smart Grid Test Bed, for the purpose of testing, analysis and documentation of how new distribution equipment and Smart Grid systems function in on-grid application and to evaluate Smart Grid commercial technologies or systems function as designed; and,

WHEREAS, the Test Bed will test and analyze the application of Customer’s Product in an on-grid condition to validate the Customer’s business models or services by testing the functional aspects of specific equipment or to provide verification that the Customer’s services/business models provide the intended results based upon the Customer’s proposals; and,

WHEREAS, the Smart Grid Test Bed program also establishes the necessary infrastructure to perform Ameren-sponsored testing of the electric distribution system; and,

WHEREAS, Customer has requested Ameren test and analyze the application of Customer’s Product in an on-grid condition to document its performance characteristics; and

WHEREAS, Customer and Ameren have agreed to enter into this Agreement for the purpose of such analysis.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1 DEFINITIONS

In addition to terms defined elsewhere in the Agreement, for purposes of this Agreement, the following terms shall have the meanings set forth below.

- 1.1 “Product” shall mean _____ as described in Initial Application Form.
- 1.2 “Services” shall mean the testing, analysis, _____ as described in Initial Application Form.
- 1.3 “Smart Grid” shall mean _____

- 1.4 “Test Bed” shall mean the Smart Grid Test Bed wherein the Customer’s Product will be located for the purpose of performing the Services.

ARTICLE 2 TERM OF AGREEMENT

- 2.1 **Effective Date.** This Agreement shall become effective on the date on which the last Party’s signature is made.
- 2.2 **Term.** This Agreement shall continue in full force and effect until the completion of the Services Ameren reserves the right to suspend or terminate all or any portion of the Services under this Agreement at any time upon notice to the Customer.
- 2.4 **Survival.** The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

ARTICLE 3 SCHEDULE

Ameren shall use reasonable efforts to test and analyze the Product in accordance with the schedule set forth in Initial Application Form, which schedule may be revised from time to time by mutual agreement of the Parties. If requested, Ameren shall provide Customer with a progress report on the status of the Product’s Services.

ARTICLE 4 PAYMENT

Prior to Ameren beginning work on the Product, Customer shall pay to Ameren the total estimated Services cost. The estimated cost for the Services and the prepayment amount is as follows:

Fees for Services

- A non-refundable \$50 fee must be provided with the Smart Grid Test Bed Initial Application Form prior to the start of the Services.
- An engineering assessment fee of \$400 will be required with the submittal of a Supplemental Information Form to compensate Ameren for engineering resources to analyze the Customer request. If Ameren’s engineering assessment expense is less than \$400, the remaining balance will be applied toward the cost of the Services.
- Current labor rates for Services are as follows:
 - Test Bed technician - \$108/hour straight time and \$127/hour overtime.
 - Test Bed engineer - \$119/hour straight time and \$179/hour overtime.
- Labor rates may be adjusted as necessary, and Ameren will provide notice of same. The adjusted labor rates will go into effect immediately

- Customers requiring Test Bed site infrastructure modifications or additions will be charged the actual loaded costs according to Ameren's current policies and procedures, which may include additional charges beyond the labor rates

After completion of the Services, Ameren shall prepare and provide Customer a final invoice that sets forth the cost for the Services. If the amount of the final cost to complete the Services is less than the amount already paid by the Customer, Ameren shall refund such amount with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)). If the amount of the actual cost to complete the Services is greater than the amount already paid by the Customer, Customer shall pay the amount due set forth in the final invoice.

The Customer shall pay, or Ameren shall refund, any difference between actual costs and actual payments set forth in the final invoice in accordance with this Agreement and no later than thirty (30) days after receipt of the final invoice

ARTICLE 5 PRODUCT OR EQUIPMENT DAMAGE

The Customer acknowledges and agrees that given the unique nature of the Product and Services to be provided, and Ameren's relative inexperience with such matters, there is the possibility of damage occurring to the Product as a result of the Services. Customer hereby waives any claim, demand, suit or cause of action, liabilities, costs and expenses, known and unknown, against Ameren for damage to the Product; provided Ameren was not willful and wantonly negligent in the application of the Services related to the Product. In addition to any indemnification rights provided to Ameren herein, Customer shall compensate Ameren for any damage to Ameren's property, equipment or electric facilities due to (a) any breach of this Agreement by Customer; (b) the operation of or failure of operation of Customer's Product; or (c) any negligent act or omission by Customer, its officers, agents, employees, contractors or subcontractors.

ARTICLE 6 LIMITATION ON LIABILITY

Except as expressly provided otherwise in this Agreement, no Party shall have any liability to the other Party, whether based on contract, warranty, tort, strict liability, or any other theory, for any lost profits, lost revenues, lost use of facilities, lost data, attorney's fees, or any other indirect, incidental, consequential, special, exemplary, or punitive damages, regardless of whether or not a Party has knowledge that such damages may occur. Customer acknowledges that their Product may be placed into use along with other customer products as part of the Test Bed process. Customer agrees that Ameren and other customers with products located within the Test Bed will not be liable to Customer for damage to the Product.

**ARTICLE 7
INDEMNIFICATION**

The Parties shall indemnify, defend and hold harmless each other (and their directors, officers, employees, and agents) for any Third-Party Claims arising from the indemnifying Party's negligence or willful misconduct, or the negligence or willful misconduct of the indemnifying Party's employees, agents, suppliers, contractors or subcontractors in connection with the performance of this Agreement. "Third Party Claims" means all claims, demands, losses, costs, expenses, damages (including, without limitation, direct, indirect, incidental, consequential, special, exemplary, and punitive damages), judgments, actions, payments made in settlement, arbitration awards, and liabilities, including reasonable attorney's fees, arising out of death, bodily injury or property damage brought by any individual, entity, partnership, association, or governmental authority which is not a Party to the Agreement (each a "Third Party").

**ARTICLE 8
PATENT INDEMNIFICATION**

Customer shall be responsible for the acquisition of all rights, permits or licenses necessary to be utilized by Ameren in the performance of the Services. Customer shall defend, indemnify and hold Ameren harmless from any and all claims, demand, suit or cause of action, liabilities, costs and expenses, including without limitation, attorneys' fees resulting from any claim that any application, designs or processes used by Ameren in its performance of the Services for the Product under this Agreement or any part thereof constitutes an infringement of any patent of the United States or any other country.

**ARTICLE 9
FORCE MAJEURE**

If a Party is delayed in or prevented from carrying out its obligations under this Agreement (other than an obligation to make payment when due) because of a Force Majeure event, that Party will not be deemed in breach of this Agreement, provided that Party: (1) promptly notifies the other Parties of the Force Majeure event and confirms with notice in writing, pursuant to the Notice provisions of this Agreement, as soon as feasible; (2) uses commercially reasonable efforts to mitigate the effects of the Force Majeure event, remedy its inability to perform, and resume full performance of its obligations under this Agreements; (3) keeps the other Parties reasonably apprised of efforts to overcome the Force Majeure event; and (4) provides written notice of the resumption of performance under this Agreement. Nothing contained in the Agreement, however, will require a Party to prevent or settle a labor dispute against its will.

**ARTICLE 10
NOTICES**

Any notice, authorization, invoice, or consent required or permitted under this Agreement will be deemed properly given if: (1) provided in writing and delivered in person; (2) delivered to a nationally recognized overnight courier service and properly addressed with the delivery charges

prepaid; or (3) sent by electronic communication or facsimile, with conformation of successful transmission, to the intended recipient as follows:

To Ameren:

Email to TAC@ameren.com

Fax to 314-641-3729

To Customer:

A Party may change its notice information by giving notice in accordance with this Article.

ARTICLE 11 DISPUTES

Nothing in this Agreement is intended to restrict the rights of any Party to file a complaint with the Illinois Commerce Commission (ICC) regarding matters properly under the ICC jurisdiction.

ARTICLE 12 INSURANCE

Customer and any subcontractors shall obtain and maintain in force for the entire life of this Agreement the following insurance and name Ameren Corporation, its subsidiaries and affiliates as additional insured on a primary and non-contributory basis and include a severability of interest provision:

- 12.1 **Commercial General Liability** insurance on the premises and Services covered by this Agreement and specifically including, without limitation, products /completed operations and contractual liability insurance, with combined single limits, per accident, of not less than \$1,000,000 for bodily injury, including death, and property damage.
- 12.2 **Worker's Compensation** insurance with statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
- 12.3 **Comprehensive Auto Liability** insurance which has minimum combined single limits for bodily injury and property damage of \$1,000,000 per accident. The Comprehensive Auto Liability shall include owned and blanket non-owned and hire coverage.

12.4 **Commercial Umbrella Liability** insurance with limits of not less than \$2,000,000 per occurrence. Such umbrella shall be excess over all other coverage required in Article 12, except Worker's Compensation.

Customer shall require their insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against Ameren, its directors, officers, agents and employees, and Customer shall indemnify Ameren against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

Customer shall, before the commencement of any Services, furnish Ameren with a certificate from an insurance carrier acceptable to Ameren stating that such insurance policies are in force. Customer shall notify Ameren of any notice received or knowledge acquired by Customer of any cancellation or threat of cancellation of any policy issued to meet the requirements of this Article 12. Such notice shall be in writing (by first class mail) given in no less than thirty (30) days from receipt of such notice or knowledge. Failure to so notify Ameren shall constitute a material breach of this Agreement. Upon receipt of such notice of cancellation, Ameren may terminate this Agreement and Services until such time as Customer has provided Ameren with a certificate of insurance required under this provision. Such notice shall be addressed to the contact person for Ameren listed in Article 10 of this Agreement.

SECTION 13 CONFIDENTIALITY

Customer agrees to keep confidential during and subsequent to the period of this Contract all information and materials provided by Company or prepared by Customer in performance of this Contract. The foregoing is not intended to prohibit disclosures to the extent reasonably required to perform the Services.

ARTICLE 14 MISCELLANEOUS

Governing Law – This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Illinois, without reference to its rules relating to choice of law, except to the extent preempted by the laws of the United States of America.

Relationship of Parties; No Third-Party Beneficiaries – Nothing contained in this Agreement will be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to or between Customer and Ameren. Each Party will be individually responsible for its own covenants, obligations, and liabilities under this Agreement. Nothing in this Agreement will be construed to create a duty to, any standard of care with reference to, or any liability or inference of liability to a Third Party.

No Conflicting Agreement or Obligations – Each Party represents and warrants that the execution of this Agreement, and the performance of its obligations under it, have been duly authorized and do not conflict with any other agreements or binding obligations applicable to it.

Assignment – This Agreement will inure to the benefit of, and be binding upon, the Parties and their respective successors and assignees. Any Party may assign, transfer, or subcontract all or any part of its rights and obligations under this Agreement, provided that the Party whose rights and obligation have been assigned, transferred, or subcontracted will continue to have the primary responsibility for all of its obligations set forth in this Agreement unless relieved of its obligations by written consent of the other Party.

Recitals, Headings and Subtitles – The recitals, headings, and subtitles in the Agreement are for the convenience of the Parties and are not to be used for its construction or interpretation.

Entire Agreement; Amendment – This Agreement sets forth the entire agreement, and supersedes any and all prior agreements, of the Parties with respect to the subject matter. No amendment of any provision of this Agreement will be valid unless set forth in a written amendment hereafter signed by authorized representatives of all Parties.

Waiver – Any waiver at any time by any Party of its rights with respect to any breach of this Agreement, or with respect to any other matter arising in connection with this Agreement, will not constitute or be deemed a waiver with respect to any other breach or other matter arising in connection with this Agreement.

Counterparts – this Agreement may be executed in counterparts, which taken together will constitute a single original document.

Execution and Effective Date – This Agreement has been executed by duly authorized representatives of the Parties and shall become effective as of the last signature date written below.

[SIGNATURES OF THE PARTIES FOLLOWS]

Ameren Illinois Company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

