December 18, 2012

PJM Stakeholders  
*(via posting on PJM.com)*

PJM Membership  
*(via Members Committee majordomo)*

Re: Publication for Comment of Draft RFP for Market Monitoring Services

Dear PJM Community:

Today the PJM Board of Managers is posting for public consideration and comment a draft request for proposals (RFP) and related documentation associated with the provision of market monitoring services.

The Board shares in the opinion that robust market monitoring is absolutely critical to PJM's mission in administering fair and efficient wholesale markets, both in guarding against manipulation and the exercise of market power and in evaluating the efficacy of market design. Since August 1, 2008, this important function for PJM has been provided by an external contractor – Monitoring Analytics, LLC – under a contract due to expire on July 31, 2014. Pursuant to Attachment M of the PJM Tariff, the Board (as opposed to PJM management) is expressly charged with the administration of the contract for external market monitoring services. After careful deliberation, the Board has decided to issue an RFP to provide a competitive environment to consider proposals that might be offered for market monitoring beginning August 1, 2014.

In reaching this decision, the Board was mindful of (i) the critical importance of the services in question and, (ii) its fiduciary obligations and tariff-prescribed role to ensure PJM is procuring the most effective market monitoring services at an appropriate cost. The Board concluded that the most responsible course of action available to discharge its duties in this regard was to issue an RFP to explore all options, including the option of continuing its contractual relationship with the incumbent provider, Monitoring Analytics.

Importantly, today's action is *not* the issuance of an RFP. Rather, the Board is committed to ensuring a fair and balanced solicitation and selection process, as anticipated under Attachment M, and to that end, is making public the RFP and related documents in *draft* form.
Today's posting will begin a 120-day process (provided for in Attachment M) that is expected to culminate in a filing with the Federal Energy Regulatory Commission of a proposal to consider and select an independent contractor to provide market monitoring services for PJM beginning August 1, 2014. Once finalized, the RFP and related documents will serve as the centerpiece of such proposal. Attachment M provides any interested party, including the Organization of PJM States, a 45-day opportunity to provide comment on the solicitation and selection process proposed by the Board and posted today. However, the Board believes it has discretion to extend this period and, therefore, advises that parties will have approximately 75 days, until close of business, Monday, March 4, 2013, to submit written comments. All comments should be addressed to the PJM Board of Managers and will be posted publicly, in accordance with PJM's typical ex parte communication practices.

The Board will consider all comments and revise, as appropriate, the necessary documents. Thereafter, the Board will expect to finalize its proposed process within the 120 day period and file such process with FERC. This will commence another opportunity for interested parties to file comment on the proposed process. Only after receipt of a FERC order accepting a solicitation and selection process will the Board formerly issue an RFP to solicit proposals for service.

On behalf of the full Board, let me thank our stakeholders in advance for their attention to this matter. We hope you share our expectation that, whatever the outcome realized, this process should benefit PJM by allowing for a healthy evaluation of the market monitoring services function. We look forward to engaging with all stakeholders in this valuable exercise.

Respectfully,

Dr. Jean Kinsey
Chairperson, PJM Board Competitive Markets Committee

cc: PJM Board of Managers
Request-for-Proposal for
The Purpose of Engaging an Independent Market Monitor

Prepared by:
PJM Interconnection, L.L.C.
955 Jefferson Ave
Norristown, PA 19403
Attachments

Attachment M of the PJM Open Access Transmission Tariff and Appendix to Attachment M

Draft Services Agreement

PJM Use and Nondisclosure Agreement
Section I – Company and Project Background

I.A  Company Background

PJM Interconnection, L.L.C. (“PJM”) is a Regional Transmission Organization (“RTO”) that operates a multi-state electric transmission grid, functions as a reliability coordinator, and administers wholesale markets for energy, capacity, and related services in portions of the Mid-Atlantic, Southeastern and Midwestern United States pursuant to an Open Access Transmission Tariff (“PJM Tariff”), an Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), and other governing documents and rules. PJM operates under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”).

PJM coordinates the operation of over 1,300 generating units providing over 185,000 megawatts of installed generating capacity over a grid of more than 59,000 miles of high voltage transmission circuits. PJM ensures the reliability of the high-voltage electric power system serving approximately 60 million people in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

In addition to ensuring the reliable supply of energy, PJM administers the wholesale electricity markets in which market participants buy and sell electric energy, generating capacity and transmission rights. PJM also plans regional transmission expansion improvements to maintain grid reliability and relieve congestion.

PJM is a limited liability company with membership open to all wholesale electric market participants. PJM operates independently from transmission owners, power generators, power marketers, electric distributors and end-users.

PJM is governed by an independent Board of Managers (“Board”) that has a fiduciary responsibility to oversee the functioning of PJM as an RTO in accordance with policy and rules established by the FERC, most notably pursuant to Order No. 888 and Order No. 2000. To assist in meeting this responsibility, the Board retains an external market monitoring organization to provide an independent assessment of the integrity of the design and outcomes of PJM’s operations. Given the nature of the function, the external market monitor is accountable directly to the Board, whose job is to evaluate the quality, cost and efficiency of the services performed by the market monitor. Pursuant to its responsibilities under Attachment M of the PJM Tariff (“Attachment M” is attached here as Exhibit A), the Board is responsible for the process by which the contract for market monitoring services is renewed or terminated.
I.B  **Purpose**

The purpose of this Request for Proposal (“RFP”) is to invite proposals for services required by PJM to provide independent market monitoring of its markets and operations as set forth in Attachment M. Independent market monitoring plays a critical role in ensuring PJM's wholesale electricity markets operate competitively and fairly. As more fully set forth in Attachment M of the PJM Tariff, independent market monitoring tasks include:

i) observing the conduct of market participants to identify anomalous or suspect behavior that evidence a scheme to manipulate prices, distort market outcomes or avoid the intended application of market rules; and

ii) evaluating, reporting and commenting on PJM's market design and market implementation.

PJM has provided for an external market monitoring function since August 1, 2008. The establishment of this external market monitoring function is described in the FERC order approving Attachment M of the Tariff in Allegheny Electric Cooperative, Inc. v. PJM Interconnection, L.L.C., 122 FERC ¶ 61,257 (2008), order on implementation, Letter Order, Docket Nos. EL07-56-004, EL07-58-004 (Aug. 7, 2008). The external market monitoring services are currently provided by Monitoring Analytics, LLC. The contract term for those services expires on August 1, 2014. This RFP invites proposals to provide these services after August 1, 2014, in accordance with Section III.F.2.B of Attachment M of the PJM Tariff.

**Section II – Information to Applicants**

II.A  **General Information**

The key dates for the RFP process are listed below:

- All communication regarding this RFP will be first directed to JoAnn Murphy (610-666-4324 or murphi@pjm.com) of PJM's Procurement Division. Issues arising under this RFP may be referred by PJM's Procurement Division to PJM's Office of General Counsel.

- The RFP will be posted on the PJM website ([www.pjm.com](http://www.pjm.com)) [shortly after the FERC Order].

- Expression of interest and intent to bid must be provided [within 30 days of the FERC Order] via e-mail to JoAnn Murphy.

- Questions for clarification must be submitted [within 30 days of the FERC Order].

- Answers to questions will be posted on the PJM website where disclosure to all Applicants of the information provided by such answer would promote a fair and evenhanded application process. Answers to questions of a ministerial nature or that are unique to a particular applicant will be provided directly and only to persons submitting such questions. Answers to all questions will be provided [within 45 days of the FERC Order].
• Written proposals must be submitted [within 60 days after the posting of the RPF] in electronic form via e-mail to JoAnn Murphy.

• After review of proposals, up to 3 Applicants will be asked to present their proposals orally [within 90 days after the FERC Order].

• Selection of a proposal among Applicants will occur [90 days after the FERC Order].

These dates are subject to change in accordance with any order of the FERC that may pertain to this RFP. See Section II.B.

PJM reserves the right to amend the RFP at any time before the specified due date for proposals. After the proposal due date, amendments to the RFP shall be sent only to Applicants who submitted a proposal.

Before the proposal due date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to PJM signed by the Applicant and mailed to JoAnn Murphy.

After the proposal due date, Applicants that have submitted proposals shall keep their proposals open for acceptance by PJM for a period of 120 days.

All proposals shall be kept confidential by PJM to the extent permitted by law, except that PJM may disclose publicly the selected proposal in announcing and describing its decision under this RPF.

All costs incurred by the Applicant in the preparation of the proposal will be borne by the Applicant.

No oral or written statements made by PJM personnel shall be considered addenda to or part of this RFP unless the statement is confirmed in writing and identified as a written addendum to this RFP.

No liability is assumed for errors or omission in this RFP or any information, correspondence, notices, or other documentation related to this RFP. During the evaluation process, it will be assumed that respondents received all amendments and addenda for this RFP.

PJM reserves the right to reject any or all Applicant proposals after evaluation.

PJM reserves the right to seek proposal clarification with any Applicant to assist in its decision making.

II.B Regulatory Requirements

In accordance with sections III.F.3.b (3) and III.F.3.d of Attachment M to the PJM Tariff, this RFP is subject to the approval and potential modification by FERC. The RFP has been filed with the Commission and has been subject to comment by the Market Monitor, OPSI Advisory Committee, and other interested stakeholders. While the RFP in its present form has been accepted by FERC decision [CITE] subsequent modification by regulatory decision may affect the RFP at any time.
In accordance with Attachment M of the PJM Tariff, the selection of an entity to provide market monitoring services pursuant to this RFP and the services contract between PJM and such entity may be subject to challenge by third parties. An Applicant selected pursuant to this RFP understands and acknowledges that any orders of FERC (or any court reviewing action by FERC) may alter the terms, potentially to the point of abrogating this RFP or the Services Agreement to be executed pursuant to this RFP. In such cases, as will be detailed more fully in the Services Agreement, the parties in good faith will negotiate to endeavor to restore the fundamental arrangement contemplated by the RFP and associated Services Agreement, modified only to the extent necessary to conform to regulatory dictate.

Section III.E. of Attachment M to the PJM Tariff sets forth the terms pertaining to the budget for market monitoring and the compensation of the entity providing market monitoring services. Applicants will provide an initial fixed annual price for the Services Contract, which price (prorated as necessary) will remain in effect until December 31, 2015, and an estimated budget for each of the years commencing January 1, 2016, January 1, 2017 and January 1, 2018. Applicants understand and acknowledge that the contract price of the Services Contract for each of the years commencing January 1, 2016, January 1, 2017, and January 1, 2018 may be modified in accordance with the budget process set forth in Attachment M.

II.C Qualification Requirements of Applicants

The Applicant must demonstrate capability to offer a broad area of technical expertise, resource capability and organizational efficiency needed to perform the market monitoring services set forth in Section III of this RFP. As necessary, Applicants will describe any intention to use subcontractors, and identify such potential subcontractors, to provide or supplement required services, including but not limited to legal, analytics and information technology support.

Necessary Qualifications:

- Technical knowledge of complex, rule-defined organized wholesale electric energy markets.
- Demonstrated understanding of the transmission operation, planning and interconnection services functions of an RTO sufficient to evaluate how practices and behaviors in those environments can lead to non-competitive, unfair or discriminatory market outcomes.
- Experience working with or testifying before regulatory agencies.
- Experience in developing and analyzing economic models.
- Demonstrated experience in gathering and analyzing large data sets, including ability to examine such data sets to identify anomalous patterns of participant behavior or suspect market outcomes (“forensic analysis” of data) in order to uncover fraudulent, manipulative or otherwise undesirable conduct by participants in PJM markets operations and planning environments.
- Clear and articulate written and oral communication skills for both technical and for lay-person reports.
- Principals with unquestioned professional integrity, discretion and no conflict of interest in undertaking the Independent Market Monitor position.
- A clear, comprehensive and cost competitive proposal to perform the market monitoring services functions called for by this RFP.
Desirable qualifications:

- Principals with advanced degrees (M.S. or Ph.D.) in economics, statistics, or related fields.
- Principals with experience, which may include academic training, in financial markets, such as capital formation, market risk assessment and management, and investment evaluation or decision-making, particularly in the electric power sector.
- Principals with demonstrated ability to provide analysis and reports in a timely, responsive and consistent manner.
- Principals with demonstrated ability to engage effectively with stakeholders and boards and to collaborate with stakeholders to gather information and report findings.
- Principals with ability to bring a pragmatic perspective to a real-world application of economic principles in a complicated, highly regulated, rule-designed market.
- Experience in identifying, investigating, or enforcing matters related to illegal, fraudulent, or unethical/manipulative market participant behavior.

II.D Evaluation Criteria of Responses

The responses will be evaluated according to, but not restricted to, the following criteria:

- Meeting the necessary qualifications and the extent to which the Applicant brings the desired qualifications, as stated in Section II C of this RFP;

- The Applicant's demonstration of its capabilities to provide the services required given the broad areas of technical expertise and periodic reporting related to the performance of market monitoring. Areas of expertise include, but are not limited to, technical knowledge of energy markets, written and oral communication skills, data gathering expertise, historical relationships with regulatory agencies, and development of economic models;

- The Applicant's submission of a comprehensive plan for performing the functions described in this RFP;

- The Applicant's demonstration of resource availability and ability to ensure timely responsiveness and consistent performance in meeting the requirements as specified in this RFP;

- Demonstration by the Applicant of an ongoing business capability – namely, one that is financially sound, well managed, demonstrating appropriate controls and corporate policies – through financial statements, documents describing organizational structure, etc.;

- Demonstration by the Applicant of continuing independence from PJM or any PJM stakeholder (direct or indirect) or market participant;

- The Applicant's organization, personnel, systems and technical capabilities to provide services;
• The Applicant’s ability and experience to meet the present PJM requirements for the services proposed; and

• The Applicant’s response to the specifications, including, but not limited to, cost competitiveness of the budget.

II.E **Terms, Conditions & Confidentiality**

Also enclosed is the PJM Use and Nondisclosure Agreement. Any questions, specifically concerning the PJM General Terms and Conditions shall be directed to Vincent P. Duane, General Counsel of PJM at duanev@pjm.com or 610.666.4367.

Unless the Applicant already has signed terms on file with PJM, all exceptions to PJM’s General Terms and Conditions must be included with responses to this RFP.

The PJM Use and Nondisclosure Agreement must be signed and returned to PJM prior to the time any questions regarding this RFP are being entertained. If the Applicant has previously signed the Use and Nondisclosure Agreement with PJM, the Applicant shall forward a fully executed copy of the Use and Nondisclosure Agreement to PJM, with the response to this RFP.

Any and all communication during the RFP process should be conducted solely through the contacts identified in Sections II.A and II.E, as appropriate. During the application process, there shall be no direct communications related to this RFP between the Applicant and PJM personnel other than the contacts identified in this RFP. Any deviation from this direction by an Applicant may result in immediate disqualification from the application process.

II.F **Disclosure of Interest**

All Applicants shall make full disclosure in writing at the time of their application of any business relationships with PJM personnel or business relationships with any PJM members or their personnel, including but not limited to the following:

• Ownership of shares or interests of the Applicant by any PJM personnel, PJM market participant, personnel of any PJM market participant or stakeholder (direct or indirect).

• Detail of any directorships in the Applicant entity or employment by the Applicant’s entity of any PJM personnel or personnel of any PJM market participant.

• Contractual relationships with PJM, PJM employees, any stakeholder in the PJM market or other independent system operators or RTOs.
By submission of a proposal, the Applicant certifies that:

- Either (i) no relationship between the Applicant and PJM or a PJM market participant or stakeholder (direct or indirect) exists that would contravene the Code of Ethics set forth in Section XI of Attachment M of the PJM Tariff, or (ii) to the extent such a relationship exists, it will be terminated prior to performing under the Services Agreement; and

- No relationship between the Applicant and PJM or a PJM market participant or stakeholder (direct or indirect) will be established that would contravene the Code of Ethics set forth in Section XI of Attachment M of the PJM Tariff under the term of the Services Agreement.

Section III – Market Monitoring Requirements

III. Market Monitoring Services

A. The services to be provided by the Market Monitor are set forth primarily in the PJM Market Monitoring Plan, set forth in Attachment M (including the appendix thereto) to the PJM Open Access Transmission Tariff, and attached to this RFP. It is understood that the selected Applicant will perform for PJM only those services described in the Tariff as reserved for the Market Monitor. It shall not provide other services outside those specified in the Tariff either under the attached Services Agreement or in its capacity or holding itself out as the Market Monitor for PJM unless specifically agreed to in writing by PJM.

B. The Market Monitor shall be required to enter into a Services Agreement with PJM, a draft of which is attached to this RFP. Other agreements as necessary also may be required.

Section IV – Specifications/Format of Responses Required

Responses to this RFP shall be no longer than 25 pages in length, not including appendices (such as resumes, references and budgets). Responses shall include:

- A statement indicating why the applicant seeks this engagement and why it believes an independent market monitor is important for well-functioning electricity markets (300-500 words);

- Description of qualifications, with references as appropriate to the Qualifications and Evaluation Criteria enumerated above in Section II;

- Description of relevant experience of key principals and biographies (resumes) of key principals or management that are envisioned to perform the functions under the Services Agreement;
• Description of how Applicant will satisfy the requirements in Attachment M and the PJM Tariff, with reference to expected systems, personnel and proposed sub-contracting (if any);

• Any proposed revisions to the attached form of Services Agreement;

• Provision of an initial fixed annual price for services for the attached Services Agreement, which annual price (prorated as necessary) will remain in effective through December 31, 2015 and expected annual budgets for the remaining term of the agreement (i.e. years commencing January 1, 2016, January 1, 2017, and January 1, 2018);

• Description of other similar engagements;

• Resumes for key principals, including a complete list of educational and employment experience and publications;

• A list of 3 professional references that may be contacted by the evaluation committee; and

• Any other information Applicant thinks it would be appropriate for PJM to consider.
(Indicative)
Market Monitoring Services Agreement
By And Between
PJM Interconnection, L.L.C.
And

_________________________
Market Monitoring Services Agreement

This Market Monitoring Services Agreement ("Agreement") is entered into as of this ___ day of ____________, 20__, by and between PJM Interconnection, L.L.C. ("PJM"), a Delaware limited liability company with an address at 955 Jefferson Avenue, Valley Forge Corporate Center, Norristown, PA 19403 and _____________________ the ("IMM"), a ________________ a company with an address at __________________________________. PJM and the IMM shall be referred to herein individually as a “Party” and collectively as “the Parties.”

RECITALS:

WHEREAS, PJM is a regional transmission organization ("RTO") that provides grid operations and reliability functions and administers wholesale markets for energy, capacity and energy-related services in portions of the Mid-Atlantic, Southeastern and Midwest United States pursuant to an Open Access Transmission Tariff ("PJM Tariff"), an Operating Agreement and other documents and rules;

WHEREAS, as an RTO, PJM is required to provide independent market monitoring of its markets and operations affecting market outcomes;

WHEREAS, the IMM has the qualifications and ability to perform said external market monitoring services for PJM;

WHEREAS, PJM desires to engage the IMM, pursuant to the terms and conditions of this Agreement, as an independent contractor to perform the market monitoring services set forth in Attachment M of the PJM Tariff;

WHEREAS, the IMM desires to undertake the performance of such Services, pursuant to the terms and conditions of this Agreement;

WHEREAS, the Parties acknowledge that PJM, its Members, and Authorized Government Agencies are entitled to strong, robust and independent market monitoring, including monitoring of PJM market design, market implementation and operations decisions affecting market outcomes;

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

   Terms capitalized and not otherwise defined herein shall have the meanings set forth in Attachment M of the PJM Tariff. For purposes of this Agreement, the following terms shall have the following meanings:

   1.1 "Agreement" means this Market Monitoring Services Agreement between PJM and the IMM.

   1.2 "Attachment M" means Attachment M to the PJM Tariff, as may be amended from time to time.
1.3 “Confidential Information” means (i) in the case of information provided by PJM to the IMM, any documents, data or other information where confidentiality is protected under the Operating Agreement or Attachment M as applied by PJM or other information that PJM advises is confidential; and (ii) in the case of information provided by the IMM to PJM, any documents, data or other information that the IMM advises is confidential.

1.4 “Commencement Date” means _________________.

1.5 “IMM” has the meaning set forth in the first paragraph of this Agreement.

1.6 “Interested Party” has the meaning set forth in Section 15.2(vi) of this Agreement.

1.7 “Party” or “Parties” has the meaning set forth in the first paragraph of this Agreement.

1.8 “PJM Code of Conduct” means the PJM Code of Conduct, Policy No. PJM-050-070-1-0.400, approved as of December 12, 2006.

1.9 “PJM Liaison” has the meaning set forth in Attachment of M. The function of the liaison will be to facilitate communications between PJM employees and the Market Monitoring Unit, as defined in Section V.E of Attachment M.

1.10 “PJM Member” means a member of PJM Interconnection, L.L.C.

1.11 “PJM Region” shall have the meaning set forth in Part I of the PJM Tariff.

1.12 “PJM Standards of Conduct” means the PJM “FERC Order No. 889 Standards of Conduct” set forth in the PJM Code of Conduct.

1.13 “Services” has the meaning set forth in Section 6.

2. Responsibility For Administering Contract.

Any question or issue arising out of the performance of this Agreement, or the respective rights and obligations of the Parties ultimately shall be administered by the PJM Board or a subcommittee thereof, on behalf of PJM, and by the Market Monitor, on behalf of the IMM. Notwithstanding the foregoing, any dispute arising out of the performance of this Agreement that the above-described counterparty representatives are unable to resolve shall be subject to resolution by the Commission in accordance with its applicable procedures, except as provided for in Section 11 of this Agreement.

3. Term.

The initial term of this Agreement shall be 4 years commencing on the Commencement Date.

4. Termination.

Any termination of this Agreement shall be in accordance with the provisions regarding termination set forth in Attachment M of the PJM Tariff.
5. Payment.

5.1 Rate.

In payment for the Services to be performed by the IMM under this Agreement, effective upon the Commencement Date, PJM shall collect from Market Participants and pay the IMM the rate established pursuant to the budgeting process described in Attachment M of the PJM Tariff. For the first 17 months of the Agreement (August 1, 2014 – December 31, 2015), the rate for the Services shall be based upon the fixed price for Services submitted in response to the Request-for-Proposal issued by PJM in November 2013.

5.2 Schedule 9-IMM.

PJM shall collect and pay to the IMM the rate set forth in Section 5.1 pursuant to Schedule 9-IMM of the PJM Tariff.

5.3 Expenses and Capital Expenditures.

For the Services it is rendering to PJM, the IMM shall pay for all of its expenses, including capital expenditures, office overhead, administrative support, rent, utilities and other support services.

5.4 Taxes.

PJM shall not withhold any amounts for payment of any local, state or federal taxes from the compensation of the IMM hereunder. The IMM shall be responsible for all taxes arising from compensation and other amounts paid under this Agreement, and shall be responsible for all payroll taxes, and payment for the provision of fringe benefits to its employees. The IMM understands that it is responsible to pay, according to law, the IMM’s taxes and the IMM shall, when requested by PJM, properly document to PJM that any and all federal and state taxes have been paid.


The IMM shall perform the market monitoring responsibilities set forth in Attachment M (“Services”).

7. Location and Physical Access.

The IMM shall retain office space located in close proximity to the PJM campus in Norristown, PA.


8.1 IMM Data Access.

The IMM shall have access to data and information from PJM as set forth in Attachment M, which access will be implemented in accordance with the separate service level agreement.

8.2 PJM Data Access.

The IMM shall share all the IMM data with PJM as reasonably required to understand the IMM conclusions and analyses.
9. **Informal Communications.**

The IMM may communicate informally (e.g. via email, telephone, or face-to-face communications) with any PJM employee as necessary to carry out the implementation of the Plan; provided that such communications are reasonable and offer appropriate time for the employee to respond consistent with the employee’s other duties.

10. **Staffing.**

10.1

The Market Monitor shall have the full authority and responsibility to manage the IMM without PJM’s involvement, including but not limited to making all human resources decisions, hiring of employees, firing of employees, and determining the compensation of employees of the IMM.

10.2

The IMM shall maintain a staff or otherwise provide for subcontractors with the necessary expertise to perform the Services.

11. **Dispute Resolution.**

11.1 **Applicability.**

This Section 11 shall apply to any disputes between the IMM and PJM under sections IV.C, V.A, and V.E of Attachment M or any provisions of this Agreement implementing these sections of Attachment M. Notwithstanding the foregoing, nothing in this Section 11 shall limit any obligations of the IMM set forth in sections IV.I.1 and IV.I.2 of Attachment M.

11.2 **Procedures.**

For any dispute between the IMM and PJM for which this Section 11 is applicable, the Parties shall use the procedures set forth in this Section 11.2.

(a) The Parties shall refer any continuing dispute between the IMM and PJM to the PJM Liaison. The PJM Liaison shall attempt to facilitate resolution of such dispute by facilitating discussions among appropriate PJM employees and management and the IMM.

(b) If the PJM Liaison is unable to facilitate the resolution of any continuing dispute to the satisfaction of either the IMM or PJM within 7 business days, or such other time as the Parties may agree, then either Party may refer on a non-public, confidential basis any continuing dispute to the Commission’s Dispute Resolution Service and request that the dispute resolution service attempt to mediate the dispute.

(c) If the Commission’s Dispute Resolution Service is unable to resolve any continuing dispute to the satisfaction of either the IMM or PJM within 15 business days, or such other time as the Parties may agree, then either Party may refer such dispute to the PJM Board or a designated committee of the PJM Board for assistance in resolving the dispute. The PJM Board or designated committee shall have the opportunity to attempt to resolve the dispute within 15 business days or such other time as the Parties may agree.
(d) No formal proceeding may be commenced with the Commission regarding any dispute for which this Section 11 is applicable without first exhausting the procedures set forth in the foregoing Sections 11.2(a)-(c).

11.3 Data Preservation.

Upon the initiation of the procedures set forth in Section 11.2, the Parties shall preserve any data or information that is the subject of such dispute pending resolution of such dispute.

11.4 Excepted Disputes.

Notwithstanding the procedures set forth in Section 11.2, upon a notice or referral pursuant to section IV.I.1 or IV.I.2 of Attachment M, the Commission Staff may recommend with regard to any dispute that modified procedures be utilized for the dispute or that the Parties commence formal proceedings before the Commission without first exhausting the procedures set forth in Section 11.2.

12. Independent Contractor.

Nothing herein shall be construed to create an employer-employee relationship between PJM and the IMM. The IMM is an independent contractor and not an employee or affiliate of PJM or any of its subsidiaries or affiliates. The consideration set forth in Section 5 shall be the sole consideration due to the IMM for the Services rendered hereunder. The IMM will not represent to be or hold itself out as an employee of PJM. No workers’ compensation or other insurance shall be obtained by PJM covering the IMM or the IMM’s employees.

13. Budget and Auditing.

The procedures for the submission and approval of budgets and for independent financial auditing shall be as set forth in Attachment M.


The IMM shall have no authority to use the PJM name, logo, trademarks, service marks, copyrights or other branding on any material that it creates. Notwithstanding the foregoing, the IMM may hold itself out publicly as “the Independent Market Monitor for PJM.”

15. Conflicts of Interest.

15.1 IMM Conflicts Policy.

(i) The IMM shall have the Conflicts Policy set forth in this Section 15. The IMM will use its best efforts to assure that all its employees comply with the Conflicts Policy and shall take appropriate disciplinary actions against employees who violate the policy.

(ii) The IMM and employees of the IMM assisting on market monitoring matters for PJM, and their spouses and dependent children, may not have a direct equity or other financial interest in a Market Participant or in a parent, subsidiary, or affiliate of a Market Participant. (The term “direct” is meant to exclude investments such as mutual funds in which a person has no direct control, with the exception of sector-specific mutual funds.).
(iii) The IMM and employees of the IMM assisting on market monitoring matters for PJM, may not undertake a matter for a third party where such representation would require disclosure of market-sensitive or proprietary information of PJM.

15.2 Prohibited Engagements and Conduct by the IMM.

(i) Neither the IMM nor its employees will be engaged to provide advice, or undertake a matter for or on behalf of, any entity on any entity's participation in the PJM markets, except as otherwise authorized under subparagraphs (iii) and (v).

(ii) Neither the IMM nor its employees will be engaged by any entity in any litigation, open regulatory docket, alternative dispute resolution procedure, or arbitration with PJM, except as otherwise authorized under subparagraphs (iii) and (v).

(iii) Neither the IMM nor its employees will be engaged to appear on behalf of or against any entity before a state regulatory commission within the PJM Region in any new engagement in the electricity business (after the date of this Agreement) except as authorized under the PJM Tariff, as requested by a state regulatory commission, or as otherwise required by law.

(iv) Neither the IMM nor its employees shall accept any engagement by any market participant outside of the PJM Region that would require the IMM to take a position adverse to any PJM member or inconsistent with any IMM position taken in the PJM Region.

(v) Neither the IMM nor its employees will be engaged to appear on behalf of or against any entity before the Commission on any matter within the PJM Region in any new engagement in the electricity business (after the date of this Agreement) except as authorized under the PJM Tariff, as requested by FERC, or as otherwise required by law.

(vi) Before the IMM accepts any engagement on behalf of or against an Interested Party, it must inform the PJM general counsel and the PJM Board of such potential engagement and provide the PJM Board with an opportunity to state its objection to such representation on the ground the engagement would present a conflict of interest or result in the material appearance of conflict. At the discretion of the IMM, the IMM may notify the PJM general counsel that the proposed engagement is confidential and request that the general counsel disclose the proposed engagement only to a PJM Board subcommittee in a manner which limits the disclosure of nonpublic information. Within seven (7) business days of being informed of the potential engagement by the IMM, the PJM Board shall state any objection to such potential engagement. If the IMM disagrees with the PJM Board’s determination regarding the potential engagement by the IMM, the Parties shall jointly engage the Commission’s Dispute Resolution Service to determine whether the engagement would present a conflict of interest or result in the material appearance of a conflict. Unless the Commission’s Dispute Resolution Service finds no conflict of interest the IMM shall be precluded from accepting the challenged engagement. For these purposes, the term “Interested Party” means (x) a Market Participant; (y) a state regulatory commission within the PJM Region; or (z) a person or entity with a significant financial interest in the organization, governance or operation of PJM but shall not include PJM itself.

(vii) The IMM employees shall not accept gifts, payments, favors, meals, transportation, entertainment, or services (individually, “Gift,” and collectively, “Gifts”), of other than nominal value within a calendar year from PJM, Authorized Government Agencies, any
market participant, contractor, supplier or vendor to the IMM. Gifts not exceeding One Hundred Fifty Dollars ($150) shall be deemed to be of “nominal value.” Similarly, neither the IMM nor any IMM employee shall offer any Gift to any public official or Market Participant unless such Gifts are legal, not offered for specific gain or reciprocal action, follow generally accepted ethical standards, and are of nominal value.

15.3 Compliance with All Applicable Laws.

The IMM will use its best efforts to assure the compliance of the IMM and its employees with all applicable laws, including but not limited to those referenced in the PJM Code of Conduct.


(a) Neither Party shall solicit the employment of the employees of the other Party either directly or indirectly.

(b) Notwithstanding paragraph (a), neither Party shall be prohibited from giving consideration to any application for employment submitted by an employee of the other Party, in the absence of solicitation under paragraph (a).

(c) Should an employee of one Party, in the absence of solicitation under paragraph (a) by the other Party, seek or begin employment with the other Party, then PJM and the IMM shall establish a reasonable transition period for the Party losing the employee to restore the functionality that would be lost as a result of the employee’s departure.

17. Confidentiality.

The IMM and its employees and contractors shall comply with the confidentiality provisions set forth in Attachment M of the PJM Tariff.


During the term of this Agreement, PJM and the IMM shall have reciprocal licenses to use each others’ intellectual property in connection with, in the case of the IMM, its rights and obligations under this Agreement and, in the case of PJM, its rights and obligations as an RTO.


The Parties agree that physical and cyber security is of utmost importance and critical to the operations of PJM. Accordingly, the Parties agree to the following security provisions:

(a) Upon reasonable notice and during normal business hours, PJM shall have the right to go onto the IMM’s property or web site to evaluate the IMM’s physical and logical security annually or as reasonably necessary. The IMM shall provide information reasonably necessary for PJM to complete its security evaluation.

(b) At PJM’s expense, the IMM shall comply and demonstrate compliance with any reasonable written recommendations resulting from PJM’s physical and logical security evaluation of the IMM’s site.
(c) The IMM is required to immediately notify PJM of all known attempted and/or successful breaches to the IMM’s security by any unauthorized third party(ies) that has or reasonably may result in access to or exposure of PJM’s data or the IMM’s performance of the Services. The IMM agrees to take commercially reasonable efforts to detect any unauthorized access attempts.

(d) The IMM’s use of the service of any person who is not an employee of the IMM or of the service of any entity or organization in the performance of the Services is subject to the requirements of this Agreement, including the confidentiality requirements and required security provisions for entities, persons, or organizations that may have access to PJM information.

(e) PJM reserves the right to have a background investigation performed on any employee, representative or subcontractor of the IMM who will be performing Services for PJM, regardless of location, prior to commencement of, or during, such engagement. Such background investigation shall be performed in the same manner and using the same disqualification standards as PJM uses for similarly situated PJM employees or contractors that have access to comparable information or perform similar functions. If any employee, representative or subcontractor of the IMM is disqualified from working on an engagement as a result of a finding in the background investigation, the IMM will be immediately notified. PJM shall disclose to a single human resources employee of the IMM, as designated by the IMM, the details of any background investigation that results in a disqualification, which information shall not be shared with any other person, excepting the IMM counsel, unless required in the course of the resolution of a dispute under this Agreement, in connection with legal process, or as otherwise required by law; otherwise, PJM shall not be obligated to disclose to the IMM any specific details of the background investigation findings which resulted in the disqualification. Within a commercially reasonable period of time after receiving written notification of disqualification, the IMM shall be responsible for replacing such disqualified employee, representative or subcontractor with a suitable replacement candidate, subject to the reasonable approval by PJM based on the required background investigation.

20. **Force majeure.**

Neither Party shall be considered to be in default in the performance of its obligations under this Agreement to the extent that the performance of any such obligation is prevented or delayed by any cause which is beyond the reasonable control of the affected party.

21. **Liability.**

The provisions regarding liability to third parties set forth in Attachment M to the PJM Tariff shall apply with respect to this Agreement. Any monetary liability as between PJM and the IMM shall be limited in amount to the rate paid to the IMM as set forth in Section 5 of this Agreement. This limitation on damages shall not affect either Party’s rights to obtain equitable relief as otherwise provided in this Agreement. The provisions regarding liability shall continue in full force and effect notwithstanding the expiration or termination of this Agreement with respect to events that occurred prior to such termination.

22. **Indemnification.**

Each Party shall indemnify and hold harmless the other Party, and the other Party’s employees, from and against any and all loss, liability, damage, cost or expense to third parties, including damage and liability for
bodily injury to or death of persons, or damage to property or persons (including reasonable attorneys’ fees and expenses, litigation costs, consultant fees, investigation fees, penalties or fines, and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) (collectively, “Loss”) to the extent arising out of, in connection with, or resulting from the negligence or willful misconduct of the indemnifying Party or its contractors, including but not limited to any claims arising under any employment law; provided, however, that no Party shall have any indemnification obligations under this Section 22 in respect of any Loss to the extent the Loss results from the negligence or willful misconduct of the Party seeking indemnity.

23. No Third Party Beneficiaries.

The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations under this Agreement. The Parties to this Agreement intend and expressly agree that only Parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party’s performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.


The PJM Board and the IMM shall meet periodically, as determined by the PJM Board, to review the IMM’s performance under this Agreement and to review whether any changes to the Agreement are necessary or desirable. The performance review shall include, but not be limited to, a review of the IMM’s prioritization and performance of its functions and responsibilities under Attachment M of the PJM Tariff. In order for the PJM Board to ensure the IMM is adequately performing the functions and responsibilities under this Agreement, the IMM shall keep the Board informed of its activities, including apprising the PJM Board of any referrals of suspected market violations to the Commission. In advance of the performance reviews pursuant to this paragraph, the IMM shall prepare for the PJM Board a description of its activities since the last review that it has undertaken in furtherance of its functions and responsibilities, identifying the prioritization of the activities and the bases (such as the extent of expected impacts upon market outcomes expected from the activities) for the prioritizations.

The PJM Board shall notify the IMM in writing as soon as practicable if it determines that the IMM has acted (or failed to act) in a manner that the PJM Board believes is not adequate performance of the IMM’s functions set forth in the Plan (“inadequate performance”). The notice shall specify in detail the nature of the alleged inadequate performance. The PJM Board and the IMM shall meet within 10 days after the delivery of the notice to discuss (i) whether the alleged inadequate performance arose from causes beyond the IMM’s control or without fault or negligence on the IMM’s part; (ii) the efforts that the IMM proposes (if any) to make to remedy the alleged inadequate performance; and (iii) the procedures which the IMM should implement to avoid future inadequate performance of the type alleged in the notice.


Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received, provided that any
facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

If to the IMM:

_______________________________
_______________________________
_______________________________

If to PJM:

PJM Interconnection, L.L.C.
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497
Attn: President
Facsimile: (610) 666-4281

With a copy to:

PJM Interconnection, L.L.C.
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497
Attn: General Counsel
Facsimile: (610) 666-4281

26. Disputes.

Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be presented to the Commission for resolution, subject to any applicable requirements of Section 11. The IMM shall provide all Services under this Agreement and PJM shall make all payments under this Agreement until the Commission orders otherwise.

27. Expression of Professional Opinion.

The IMM's public expression of its professional opinion in the performance of its duties as set forth in the Plan, including any criticism or comment as to PJM market rules, market design, mitigation, or operations, shall not be grounds for termination, threatening termination, or holding back or impeding payment under Section 5 of this Agreement.

28. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. Notwithstanding the foregoing, it is the express understanding of the Parties that nothing in this Agreement is intended, nor shall it be deemed, to change or amend any terms or conditions of the PJM Tariff. Furthermore, in the event of a conflict between any provision of this Agreement and the terms of the PJM Tariff, in particular Attachment M, the PJM Tariff shall in all events be controlling.

29. Assignment.

This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by each Party hereto and its respective successors and permitted assigns. Neither this Agreement, nor the duties to be performed hereunder, shall be assigned, delegated or otherwise disposed of by either Party without the prior written consent of the other Party. Other than as specifically set forth herein, the IMM shall not subcontract any portion of the duties to be performed under this Agreement or under the PJM Tariff without the express
written consent of PJM, which consent shall not be unreasonably withheld. Any assignment of this Agreement without PJM's written consent is unlawful and shall be deemed to be void.


This Agreement shall be governed and construed in accordance with applicable Federal law and the laws of the Commonwealth of Pennsylvania without regard to its principles of conflict of laws.

31. Severability.

If any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction because of present or future laws or any rule or regulation of any governmental body or entity, effective during its Term, such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

32. Modification.

Except as stated in Attachment M, no amendment, modification, termination or attempted waiver of this Agreement, or any provision thereof, shall be valid unless agreed to by the Parties in writing. Any such modification shall be provided to the OPSI Advisory Committee, the IMM Advisory Committee, and PJM members.

33. Compliance with Commission Regulations.

To the extent that the Commission issues any new rule or regulation, or modifies any existing rule or regulation, the parties shall negotiate in good faith to conform this agreement to such Commission rule or regulation.

34. No Waiver.

The waiver by a Party of any instance of another Party's noncompliance with any obligation or responsibility of this Agreement must be in writing and signed by the waiving Party to be effective as a waiver, and shall not be deemed a waiver of any other instances of such other Party's noncompliance.

35. No Agency or Joint Venture.

This Agreement shall not constitute any Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other party unless expressly permitted by such Party. Nothing herein is intended, or to be construed, to create a joint venture or partnership between the Parties.

36. Counterparts.

This Agreement may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.
PJМ INTERCONNECTION, L.L.C. ______________________________

By: ___________________________ By: ___________________________

Date: ___________________________ Date: ___________________________
THIS USE AND NON-DISCLOSURE AGREEMENT, dated as of [Month Date, Year], is by and between PJM Interconnection, L.L.C. ("PJM"), a Delaware Limited Liability Company and [Vendor/Business Partner] ("Vendor"), collectively known as "the Parties".

I. Release of Information. By releasing the Information under the terms of this Agreement, neither Party is waiving their confidentiality and proprietary rights to the Information or to any other data maintained by the other party for the purposes of this agreement.

II. Use of Information. In the context of a specific and/or ongoing business negotiation(s), PJM and Vendor desire to discuss, review and disclose to each other certain information and materials (the "Confidential Information"). Use of the Confidential Information is solely for the purpose of allowing the Parties to discuss, evaluate, finalize, and/or implement one or more business relationship(s).

III. Description of Confidential Information. For the purposes of this Agreement, Confidential Information is all information, whether oral or in writing, and regardless of whether it is stamped or otherwise identified as confidential, provided by the Party disclosing the information ("Disclosing Party") (including information of its members, subsidiaries or affiliates) and shall include, but is not limited to:

1. any information regarding any member, customer or third party affiliate, including but not limited to customer lists, contracts, information, requirements, billing histories, needs and products or services provided to the customer or third party;

2. all financial information, including financial statements, earnings, operating results, salaries, sales data and projections, and cost analyses and similar information;

3. sources and methods of supply;

4. all plans and projections for business opportunities for new or developing business, and the business relationship of the parties hereto;

5. all information relating or belonging to employees; or

6. all information deemed proprietary, or related in any way to the Disclosing Party’s (or its licensor’s) software (including that which may be in various stages of development), methodologies, processes, design concepts, techniques, patents and trade secrets.

Confidential Information shall not include information which is

1. publicly known at the time of disclosure;

2. information required to be disclosed pursuant to a requirement of a governmental agency or law. In such case, the Party receiving the Confidential Information ("Receiving Party") shall provide prior written notice of such requirement to Disclosing Party as soon as reasonably possible;

3. acquired by the Receiving Party before receiving such information from the Disclosing Party and without restriction as to use or disclosure;

4. furnished to the Receiving Party by a third party, without restriction as to use or disclosure; or

5. information independently developed by the Receiving Party

IV. Confidentiality and Non-Disclosure Obligations. Each Party shall treat all Confidential Information it receives from the other Party as confidential or proprietary and shall protect against the unauthorized disclosure of such Confidential Information to third parties, and shall use the
Confidential Information for the mutual business purpose of both Parties hereto and not for its own benefit or the benefit of third parties. Each Party agrees that they do not, by virtue of this Agreement or otherwise, acquire title, or any other rights not specified hereunder, to the Confidential Information.

Each Party reserves the right to impose in writing further restrictions upon the disclosure of the Confidential Information in addition to and beyond those specified in this Agreement.

Upon the completion of the agreed upon use of the Confidential Information, or at the request of the Disclosing Party, all copies of such Confidential Information shall promptly be returned to the Disclosing Party, or destroyed, and evidence of such destruction provided to the Disclosing Party. The Parties agree not to make copies of the Confidential Information without the express consent of the Disclosing Party.

V. **Indemnity and Hold Harmless.** Violation of this Agreement by the unauthorized use or disclosure of Confidential Information may cause irreparable damage to the Disclosing Party. Accordingly, in the event of such violation or threatened violation by the Receiving Party, the Receiving Party agrees to indemnify and hold harmless, and if requested, defend the Disclosing Party against any and all liability and claims which may arise from the Receiving Party having released the Confidential Information. The remedies available to the Disclosing Party as a result of any breach of the terms of this Agreement include, but are not limited to, damages and injunctive relief, as well as any other remedies available to it in law or equity.

VI. **Assignment; Binding Effect on Successors.** Rights and duties under this Agreement may be assigned and delegated only with the prior express written consent of the other Party; any attempted assignment or delegation in violation of this provision shall be null and void at the election of the other Party. Notwithstanding the foregoing, this Agreement shall be binding upon the successors and assignees of the Parties.

VII. **Severability.** If any provision or portion of a provision of this Agreement shall be held invalid in a court of law, such provision or portion thereof shall, if feasible, be modified to be enforceable; and if the offending provision cannot be so modified, it shall be stricken and the remaining provisions shall be construed as if the invalid provision were not included in this Agreement.

VIII. **Term.** This Agreement will remain in effect for perpetuity unless no contractual agreements have been signed between the Parties, in which case it will terminate five (5) consecutive years from the date of the last disclosure of Confidential Information.

IX. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania as if executed and wholly performed within said Commonwealth. Further, the venue for any litigation arising out of this Agreement shall be exclusively within the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their duly authorized undersigned officers or representatives, as of the day and year first above written.

PJM Interconnection, L.L.C.  [Vendor/Business Partner]

By: ___________________________  By: ___________________________

Name: ___________________________  Name: ___________________________

Title: ___________________________  Title: ___________________________

Date: ___________________________  Date: ___________________________