

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

MAY 17 2007

IN THE MATTER OF MIDWEST ENERGY SEEKING)
COMMISSION APPROVAL TO IMPLEMENT A PAY-AS-YOU-)
SAVE PROGRAM FOR ITS NATURAL GAS SERVICE)
)

Docket No.  Docket Room
07-MDWG-784²TAR

STIPULATION AND AGREEMENT

This Stipulation and Agreement (Agreement) is entered into between and among the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), the Citizens' Utility Ratepayer Board (CURB) and Midwest Energy, Inc. (Midwest) (collectively, "the Parties"). The Agreement is being submitted to the Commission for consideration and approval.

1. On January 29, 2007, Midwest filed a tariff rider to implement a pilot energy efficiency program in its natural gas service areas. The rider was originally identified as the Pay-As-You-Save Rider, but the designation has been changed to the How\$martsm Rider in the amended tariff rider and implementing documents.

2. In conjunction with the tariff filing, Midwest submitted a description of the pilot program and related forms of documents necessary to implement it. The documents were:

- a. Customer-Owned Property Agreement;
- b. Rented/Leased Property Agreement;
- c. Obligation Disclosure;
- d. New Customer Notification; and
- e. Participating Contractor Master Agreement.

Midwest also indicated that a conservation plan remained to be developed, but that it would be specific to each customer. Since the filing, a standard form of the conservation plan has been developed and shared with the Parties. The above-listed documents were intended to be incorporated within and made a part of the How\$martsm pilot program tariff rider.

3. The How\$martsm program is directed primarily toward the low income and rental markets and is intended to overcome market factors that inhibit customers from buying cost effective, resource efficient products. However, residential and commercial property owners are also eligible to participate. Under the program, Midwest will develop a conservation plan for participating customers and pay the upfront costs for approved efficiency measures. The payment obligation for recovering the costs will then be assigned to the premises to be recovered through a monthly line item charge on the customer's utility bill. The payment obligation would transfer to subsequent customers at the same premises until the obligation is repaid in full. The monthly charge will be less than the estimated monthly average savings attributable to the efficiency investment. Under Midwest's proposal, the monthly charge would be treated the same as Midwest's charges for natural gas service under the Commission's Billing Standards. As proposed, failure to make payment could result in disconnection in accordance with Midwest's approved Terms and Conditions. As proposed, bad debts incurred as a result of the program would be recoverable in subsequent rate filings.

4. On February 1, 2007, CURB filed a Petition to Intervene, which Petition was granted by Commission Order dated March 2, 2007.

5. On February 2, 2007, the Commission entered two orders, a Suspension Order, which suspended the tariff filing and deferred the effective date for not more than two hundred forty (240) days, and an Order Assessing Costs.

6. The Parties have engaged in extensive discussions since the proposed tariff rider was filed. These discussions have resulted in numerous revisions to the pilot program and amendments to the implementing documents. Midwest has revised the proposed How\$martsm

Rider to reflect those changes. A copy of the Rider is attached as Exhibit A. Copies of the revised form documents are attached as Exhibit B.

7. The Parties agree conceptually that the How\$martsm pilot program has merit and should be implemented. Except as described in paragraph 8 below, the Parties are in agreement as to the terms and conditions of the pilot program and the language of the implementing form documents attached as Exhibit B hereto.

8. The Parties have not agreed on all matters. Specifically, CURB does not agree that the How\$martsm pilot program should be offered as a tariffed service. However, if the How\$martsm pilot program is offered as a tariffed service, CURB believes that it should be considered a special service under the Commission's Billing Standards, and should not be considered a regular utility service that could result in:

- a. Disconnection for failure to pay charges due under the How\$martsm program per the Commission's Billing Standards.
- b. Bad debts incurred under the How\$martsm program being recoverable in future rate filings.

9. The Parties request the Commission to establish a schedule for filing briefs to address the issues set forth in paragraph 8 above, requiring briefs to be filed on or before June 8, 2007.

10. The terms and provisions of this Agreement have resulted from negotiations between the Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of the Agreement in their entirety, any Party has the option to terminate this Agreement and, if so terminated, none of the Parties hereto shall be bound by, prejudiced, or in any way affected by any of the agreements or provisions hereof. Additionally, each Party

recognizes that the issues identified in paragraph 8 above are material to the other Parties' support of the HowSmartsm program and that the matters identified in paragraph 8 must be resolved by the Commission prior to Midwest making a final decision about implementing this tariff.

11. Unless (and only to the extent) otherwise specified in this Agreement, the Parties shall not be prejudiced, bound by, or affected in any way by the terms of the Agreement: (1) in any future Commission or Court proceeding; (2) in any proceeding currently pending under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in its entirety or in any way conditions its approval of the same. The Commission's approval of this Agreement shall have no precedential effect in any other proceeding.

12. This Agreement does not prejudice or waive any Party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before this Commission or in any Court.

WHEREFORE, the Parties respectfully request that the Commission accept this Agreement in its entirety including the request to establish a briefing schedule to address the issues identified in paragraph 8 above.

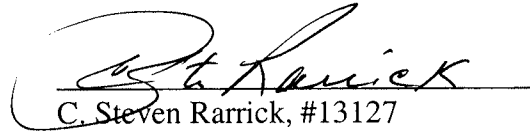
Respectfully submitted,

Michael Lennen *by/for w/permission*
Michael Lennen, #08505
Morris, Laing, Evans, Brock
& Kennedy, Chtd.
300 N. Mead, Ste. 200
Wichita, KS 67202-2722

Attorneys for Midwest Energy, Inc.

Susan B. Cunningham
Susan B. Cunningham, #14083
Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, KS 66604

Attorney for the Commission Staff and
the Public Generally

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line.

C. Steven Rarrick, #13127

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Rd.

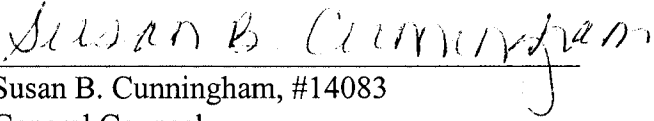
Topeka, KS 66604

Attorney for CURB

VERIFICATION

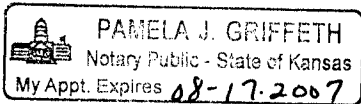
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

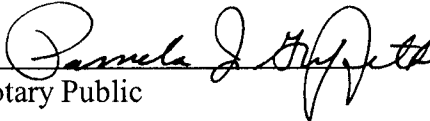
Susan B. Cunningham, being duly sworn upon her oath, deposes and states that she is the General Counsel for the State Corporation Commission of the State of Kansas, that she has read and is familiar with the foregoing *Stipulation and Agreement*, and that the statements contained therein are true and correct to the best of her knowledge, information and belief.



Susan B. Cunningham, #14083
General Counsel
State Corporation Commission of the
State of Kansas

SUBSCRIBED AND SWORN to before me this 7th day of May, 2007.





Notary Public

My Appointment Expires: August 17, 2007

CERTIFICATE OF SERVICE

07-MDWG-784-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Stipulation and Agreement was placed in the United States mail, postage prepaid, or hand-delivered this 17th day of May, 2007, to the following:

NIKI CHRISTOPHER, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604
Fax: 785-271-3116
n.christopher@kcc.state.ks.us
**** Hand Deliver ****

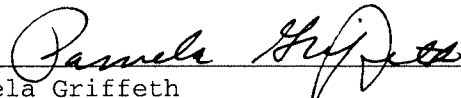
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Pamela Griffeth
Administrative Specialist

THE STATE CORPORATION COMMISSION OF KANSAS

Index No. 2

MIDWEST ENERGY, INC.

(Name of Issuing Utility)
Company Wide

(Territory to which schedule is applicable)

SCHEDULE Table of Contents

Replacing Schedule Table of Contents Sheet 2

which was filed September 7, 2006

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 2 of 3 Sheets

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Issued	Month	Day	Year
Effective	Upon Commission Approval		
By	Month	Day	Year
	<i>Ernest A. Lehman</i>		
Ernest Lehman	Signature of Officer		President
			Title

THE STATE CORPORATION COMMISSION OF KANSAS

Index No. 70

SCHEDULE HSG

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Replacing Schedule Initial Sheet 1

Company Wide

(Territory to which schedule is applicable)

which was filed _____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 1 of 4 Sheets

HowSmartSM RIDER

AVAILABLE

The HowSmartSM Rider is available as a pilot program to Customers with premises in Ellis, Graham, Rooks, and Trego counties for the purposes of improving resource efficiency and reducing net Customer bills, irrespective of supplier. The Rider is only available to Customers taking service under Natural Gas Rate Schedules RS-1, COM-1, COMT-1, and COMT-2. Availability shall terminate July 1, 2008.

HowSmartSM INVESTMENT AND REPAYMENT TERMS

1. No up-front investment is required by participating Customers. The initial cost of approved efficiency measures will be paid by the Company.
2. The HowSmartSM repayment obligation shall be assigned to the premises and will survive changes in ownership and/or tenancy.
3. HowSmartSM program costs shall be recovered through a monthly line item HowSmartSM Project Charge on the utility bill.
4. The HowSmartSM Project Charge shall be treated the same as Company's charges for electric and/or natural gas service for purposes of the KCC Billing Standards. Failure to make payment may result in disconnection in accordance with the Company's approved Terms and Conditions.
5. The HowSmartSM Project Charge must be less than 90 percent of the estimated monthly average savings associated with the investment.
6. Company will be responsible for estimating resource savings and developing a Conservation Plan upon which the HowSmartSM Project Charge will be based.

Issued _____	Month	Day	Year
Effective <u>Upon Commission Approval</u>	Month	Day	Year
By <u>Earnest A. Lehman</u>			President
Earnest A. Lehman	Signature of Officer		Title

THE STATE CORPORATION COMMISSION OF KANSAS

Index No. 71

SCHEDULE HSG

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Replacing Schedule Initial Sheet 2

Company Wide

(Territory to which schedule is applicable)

which was filed _____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 2 of 4 Sheets

HowSmartSM RIDER

CONSERVATION PLAN

The Conservation Plan will be developed by the Company and specify measures recommended by the Company to the prospective HowSmartSM Customer. The Conservation Plan includes:

- Estimated Resource Savings – The modeled change(s) in costs of resources consumed at the premise attributable to the efficiency measure(s) recommended. The Company will be solely responsible for savings estimates and will utilize generally accepted modeling software and techniques.
- HowSmartSM Project Charge – The charge to be included on the Customer’s utility bill based on the cost of the proposed measure(s) and the resulting savings. The Company will be solely responsible for calculating the HowSmartSM Project Charge utilizing its standard economic model of discounted cash flows. To the extent available, Company will incorporate grants and low-interest funds into calculation of the HowSmartSM Project Charge for the benefit of Customers who meet qualifying guidelines of such funding sources. In calculating the Project Charge, the Company may add up to five (5) percent of the cost of proposed projects as bid by contractors or vendors to offset HowSmartSM program costs. The annual interest rate used to calculate the HowSmartSM Project Charge shall be no more than the Company’s approved rate of return in its most recent general rate proceeding.
- Number of payments – The number of periods for which the HowSmartSM Project Charge will apply at the premises. In no case shall the duration of the HowSmartSM Project Charge exceed 75 percent of the estimated life of the measure or fifteen (15) years, whichever is less.
- In the event that multiple measures are being completed as part of a Conservation Plan, the Project Charge will not appear on the Customer’s bill until all measures have been completed.

Customer’s and Landlord’s (if applicable) signature of the HowSmartSM Agreement shall indicate acceptance of the Conservation Plan.

<p>Issued _____</p> <p style="padding-left: 100px;">Month Day Year</p> <p>Effective <u>Upon Commission Approval</u> _____</p> <p style="padding-left: 100px;">Month Day Year</p> <p>By <u>Earnest A. Lehman</u> _____ President</p> <p style="padding-left: 100px;">Earnest A. Lehman Signature of Officer Title</p>	
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THE STATE CORPORATION COMMISSION OF KANSAS

Index No. 72

MIDWEST ENERGY, INC.
 (Name of Issuing Utility)
Company Wide
 (Territory to which schedule is applicable)

SCHEDULE HSG

Replacing Schedule Initial Sheet 3

which was filed _____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 3 of 4 Sheets

HowSmartSM RIDER

UNECONOMIC MEASURES

A Customer or Landlord may elect to “buy down” the cost of implementing an efficiency measure so that the HowSmartSM Project Charge will be less than average estimated monthly savings. In this way, measures that might otherwise not yield sufficient economic savings to pay for themselves may still be approved. Prior to Company approval of a Conservation Plan that includes one or more uneconomic measures, the Customer or Landlord must pay the Company the amount required to buy down said measure(s).

NEW STRUCTURES

A Customer or Landlord may utilize this Rider to install high efficiency equipment or measures in new structures. The Company will only invest at a maximum the difference in cost between the lowest allowable or “standard” efficiency equipment or measure required in the structure and the higher efficiency equipment or measures chosen by the Customer or Landlord. Under any circumstances, the HowSmartSM Project Charge to appear on the utility bill must be less than the average estimated cost of resources saved by purchase of the higher efficiency equipment or measures.

RESPONSIBILITIES

Responsibilities, understandings and authorizations of Customer, Company, Landlord (if applicable) and Participating Contractor shall be evidenced by written agreements, notifications and disclosures/consents, the forms of which are made a part of this Rider.

TRANSITION IN ROLES

Unless otherwise specifically set forth in a standard HowSmartSM agreement made part of this Rider, responsibility for outstanding HowSmartSM obligations falls on the successor party when the roles of Customer, Landlord or Tenant change, provided the required disclosure is made and consent to assume the obligation is obtained. For example: If a Tenant purchases an apartment complex, that individual assumes the obligations of Landlord if disclosure is made and consent is obtained.

Issued _____ Month Day Year Effective <u>Upon Commission Approval</u> Month Day Year By <u><i>Earnest A. Lehman</i></u> President Earnest A. Lehman Signature of Officer Title	
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THE STATE CORPORATION COMMISSION OF KANSAS

Index No. 73

SCHEDULE HSG

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Replacing Schedule Initial Sheet

Company Wide

(Territory to which schedule is applicable)

which was filed _____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 4 of 4 Sheets

HowSmartSM RIDER

OTHER

- 1) This Rider only applies to HowSmartSM measures permanently installed as fixtures at the premises. Portable efficiency products such as compact fluorescent lights do not qualify under this Rider. The Company will solely determine permanence of measures or products.
- 2) Premises in which HowSmartSM measures will be installed must be permanently anchored to a foundation.
- 3) At its sole discretion, Company may withhold application of this Rider if:
 - a. The structure has an expected life shorter than the payback period, or
 - b. The structure does not meet applicable public safety or health codes.
- 4) At its sole discretion, Company will determine the maximum HowSmartSM program investment in any year.
- 5) Company shall be allowed to seek recovery of bad debt incurred as a result of this Rider in subsequent rate filings.

Issued _____	Month	Day	Year
Effective <u>Upon Commission Approval</u>	Month	Day	Year
By <u>Earnest A. Lehman</u>	Signature of Officer		President
<u>Earnest A. Lehman</u>	Signature of Officer		Title

THE STATE CORPORATION COMMISSION OF KANSAS

Index No. 74

SCHEDULE Reserved

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Replacing Schedule Reserved Sheet 1

Company Wide

(Territory to which schedule is applicable)

which was filed January 22, 2003

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 1 of 1 Sheets

Index 74 - 100 intentionally left blank

Issued _____	Month	Day	Year
Effective <u>Upon Commission Approval</u>	Month	Day	Year
By <u>Earnest A. Lehman</u>	Signature of Officer		President
Earnest A. Lehman	Signature of Officer		Title

Midwest Energy, Inc.
How\$martsm Conservation Plan

1. MWE Customer Contact Information

Name _____ MWE Premise ID# _____
Address _____ Phone No.(W) _____
City _____ State ____ Zip _____ Phone No. (H) _____

Structure Owner (Complete if different than MWE Customer.)

Name _____ MWE Premise ID# _____
Address _____ Phone No. (W) _____
City _____ State ____ Zip _____ Phone No. (H) _____

2. Contractor Information

Contractor Name (1) _____ Contractor Phone No. _____
Description of bid services _____

Estimated Completion Date _____
Bid Amount: \$ _____

.....
Contractor Name (2) _____ Contractor Phone No. _____

Description of bid services _____

Estimated Completion Date _____
Bid Amount: \$ _____

Midwest Energy, Inc.
How\$martsm Conservation Plan

3. How\$martSM Project Charge

_____ Cost of How\$martSM Conservation Measures

_____ How\$martSM Program Costs Included

_____ Total Interest Costs

_____ Total How\$martSM Costs (sum of above)

_____ Required How\$martSM Surcharge

4. Midwest Energy Saving Estimate

_____ Annual Electricity savings (kWh)

_____ Annual Natural Gas Savings (Therms)

_____ Annual Propane Savings (Gallons)

_____ Annual Other Savings

_____ Average Monthly Bill Savings (\$)

_____ Required Monthly How\$martsm Surcharge (\$).

Payments have been calculated with an interest rate of _____ percent.

_____ Term of How\$martsm Surcharge (months)

5. Acceptance of How\$martsm Conservation Plan

Midwest Energy Customer _____

Structure Owner (if different) _____

By signing above, the Customer and Owner (if different) agree to the terms of the How\$martsm program, including payment of the How\$martsm surcharge as provided in the property agreement. Upon completion of all projects, Midwest Energy will begin including the How\$martsm surcharge as part of customer's regular utility service.

Midwest Energy, Inc.
How\$martsm Conservation Plan

6. Acknowledgement of Project Completion for Contractor Payment

Midwest Energy Customer _____

Structure Owner (if different) _____

Midwest Energy Representative _____

By signing above, Customer and Structure Owner (if different) acknowledge satisfactory completion of projects by contactor(s) and authorizes Midwest Energy, Inc. to pay said contractor(s) for the completed projects. Beginning with the next Midwest Energy utility bill (or as soon as practical thereafter), customer agrees to pay the How\$martsm surcharge as part of their regular utility service.

Midwest Energy How\$martSM
Participating Contractor Master Agreement

(Must Be Signed and Submitted to Midwest Energy Prior to Starting a How\$martSM Project)

Contractor (Business) Name _____ Date _____

Contractor Mailing Address: _____

Contractor Daytime/Evening Phone #s: _____

Contractor is engaged in the business of selling and/or installing resource saving equipment, products and services. By signing this form, Contractor agrees to the provisions of the Midwest Energy (Midwest) How\$martSM program and becomes a participating Contractor. Unless specified otherwise herein, "Customer" refers to the individual or entity that owns the property upon which How\$martSM measures will be installed.

1. CONTRACTOR RESPONSIBILITIES AND UNDERSTANDINGS

- a. Contractor shall submit a binding bid for How\$martSM measures to Customer and provide a copy to Midwest. How\$martSM measures may include equipment, products and/or services that result in resource savings and lower bills. Midwest will be solely responsible for determining whether proposed measures meet the general or economic criteria for inclusion in the How\$martSM program.
- b. Approved How\$martSM measures, specifications and costs for each project shall be as set forth in a Conservation Plan developed by Midwest and made a part of this Agreement. An executed Conservation Plan will be considered an instruction to Contractor to commence work.
- c. Contractor understands that only non-portable efficiency measures installed on premises permanently anchored to a foundation are eligible. Savings must be greater than the monthly How\$martSM Project Charge calculated by Midwest.
- d. Contractor shall be solely responsible for determining the materials and products to be installed, and the means and methods of installation. Contractor shall furnish, at Contractor's own expense, all labor, materials, equipment, and other items necessary to satisfy the binding bid and meet the terms of this Agreement.
- e. Contractor shall complete approved How\$martSM work in a timely manner. Upon completion, Contractor shall instruct Customer and Tenant(s), if applicable, on the proper use, operation and maintenance of How\$martSM measures.
- f. Contractor will provide for timely removal of debris resulting from installation or repairs of How\$martSM projects unless otherwise stipulated in writing with the Customer.

Midwest Energy, Inc. – PO Box 898 – Hays, Kansas 67601

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- g. Contractor is responsible for the conduct of its employees or agents. Contractor will be responsible for any costs associated with damage to property of Customer or Tenant(s) caused by its employees or agents.
- h. Contractor will secure and pay for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the work.
- i. Contractor will give all notices and comply with all laws, ordinances, rules and orders of any public authority bearing on the performance of the work.
- j. Contractor is obligated to make certain that its work conforms to all applicable federal, state and local laws, statutes, building codes and regulations, including but not limited to all applicable EPA/VOSHA/OSHA/NESC and NEC rules and regulations.
- k. Upon post-installation inspection by Midwest, Contractor agrees to replace any equipment or repair any condition resulting in How\$martSM measure performance failing to meet the specifications set forth in the Conservation Plan of any project. Contractor agrees to pay Midwest for the cost of follow-up inspections which result in rework. Any inspection by Midwest or initiation of How\$martSM Project Charge on responsible party's utility bill in no way limits either Contractor's or product manufacturer's liability as set forth herein or under Kansas law.
- l. Contractor shall purchase and maintain such comprehensive general liability and other insurance which will provide protection from claims arising from the result of Contractor's performance on any How\$martSM project. Contractor shall maintain insurance coverage consistent with requirements of any regulatory or licensing body associated with the services provided. Any property damage or bodily injury claims related to the performance of this Agreement in excess of insurance limits or not covered by comprehensive liability, worker's compensation, or automobile liability insurance are the responsibility of the Contractor.
- m. Contractor understands that an independent relationship has been created between Customer and Contractor. Contractor is not an employee or agent of the Midwest. Midwest will not be liable for personal injury or property damage caused by Customer, Tenant(s) (if different from Customer), Contractor or Contractor's agents or employees. Midwest is not a guarantor of products, materials, or work performed by Contractor.
- n. Contractor understands that Midwest's roles under this Agreement are limited to: (1) Conducting energy audits, estimating resource savings, and developing the conservation plan; (2) Providing efficiency guidance to Customer and Contractor; (3) Performing post-installation inspections; (4) Facilitating payment to Contractor for approved How\$martSM measures; (5) Collecting How\$martSM Project Charge revenue from the party responsible for utility bills; and (6) Facilitating dispute resolution.
- o. In the event of any dispute arising over the How\$martSM program between Customers, Tenant(s) and/or Contractors, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution.

- p. Contractor shall be responsible for ensuring that all utilities are properly located, marked and identified through utilization of and compliance with the requirements of the Kansas One-Call "Dig Safe" program. Contractor is responsible for working around existing utilities and agrees to defend, indemnify and hold harmless Midwest and Customer for any and all claims for damages to such utilities.
- q. Contractor understands that failure to abide by the terms of this Agreement may result in disallowance of Contractor's subsequent participation in the How\$martSM program in addition to any other remedies afforded to offended parties. Any such disallowance shall be at Midwest's sole discretion.

2. PAYMENT FOR How\$martSM PROJECTS

- a. Contractor shall notify Midwest when work on a How\$martSM Project is complete. When work is considered complete and satisfactory, Midwest will write a check payable to Contractor for the outstanding balance of the amount agreed upon in the Conservation Plan.
- b. Work shall be considered complete and satisfactory when Customer and Structure Owner (if different) acknowledge that the work is complete and acceptable. Acknowledgement is signified by Customer's and Structure Owner's (if different) signature(s) of acceptance on the Conservation Plan.

3. WARRANTIES

- a. Contractor will warrant to Customer that all materials and equipment furnished under this Agreement will be new, and that all work will be of good quality, free from faults and defects.
- b. Contractor will guarantee its workmanship, including all parts and labor, for a period of one year from date of final payment and acceptance of the work.
- c. Contractor warrants that the resource efficient products designed and installed by the Contractor will meet Customer's requirements.
- d. Contractor will extend to Customer all manufacturer's warranties for material and equipment installed. Contractor agrees to provide copies of all warrantee information to Customer should such information exist. Said warranties will not in any way limit Contractor's obligations as set forth above.

4. INDEMNIFICATION

- a. Contractor shall assume all liability and shall defend, indemnify and hold harmless Customer, Tenant(s) and Midwest, individually, against all liability or loss and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the performance of the Agreement or by conditions created

thereby, or based upon any violation of any statute, ordinance, building code or regulation and the defense of any such claims or actions.

- b. In addition to the indemnification set forth above, Contractor agrees to indemnify, defend and hold harmless the Customer, Tenant(s) and Midwest and any and all of Midwest's officers, employees, contractors and agents from and against any costs or damages resulting from enforcement or nuisance actions brought by any governmental entity or third party arising from the handling, removal and/or disposal of Hazardous Materials from the project, such costs to include but not be limited to costs of remediation, fines, penalties, and legal costs incurred in the defense of such actions either in a court of law or an administrative proceeding including reasonable fees and disbursements of attorneys and consultants, property damage, personal injury and third party claims.

5. TERMINATION

- a. This Agreement may be terminated either by Midwest or Contractor with seven (7) days written notice from one party to the other.
- b. In the event of termination, Contractor will be paid for any work completed to the satisfaction of Customer, less the cost of Midwest's estimate of the additional cost that might be incurred in completing work in progress and started under this Agreement. Midwest may delay such payment until such time as another contractor has signed an agreement to complete the remaining work.

6. CHANGES IN WORK

- a. Contractor shall not make changes to the work which either increase or decrease the Agreement price, without the written approval of Midwest and Customer. Said changes include but are not limited to substitutions or alterations of specified materials or equipment, relocations and replacements. Additional costs for change orders may render proposed measures uneconomic and not acceptable as How\$martSM measures.
- b. The cost or credit resulting from such change shall be determined by lump sum, mutually agreed upon by Customer and Contractor and supported by substantiating data. If the parties are unable to agree, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution.

7. MISCELLANEOUS PROVISIONS

- a. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.
- b. This Agreement may not be assigned nor any of the rights and duties hereunder without the prior written consent of Contractor and Midwest.

- c. Notice from one party to the other under this Agreement shall be deemed to have been properly delivered if forwarded by United States Postal Service, First Class Mail, to the addresses shown in this Agreement.
- d. If any of this Agreement shall be held invalid or ineffective in whole or in part, such determination shall not be deemed to invalidate any of the remaining portions of this Agreement. This agreement is governed by Kansas law.

MIDWEST ENERGY, INC.

CONTRACTOR

Name/Title:

Name/Title:

Midwest Energy How\$martSM Rented/Leased Property Agreement

(For Use When Customer Rents or Leases the Property; Must Be Signed Prior to Starting Work)

Customer/Tenant _____ Date _____ Premise _____

Customer Mailing Address: _____

Service Address: _____

Customer Daytime/Evening Phone #s: _____

Landlord/Property Owner _____ Phone _____

Landlord/Property Owner Address: _____

1. How\$martSM Conservation Plan Summary*

	Project Cost	Required Payments	Monthly Payment**	Estimated Monthly Savings
How\$martSM Project Total				

* Detailed description of measure(s) and specifications for installation included in attached Conservation Plan.
 **Costs on which Monthly Payments are based include an amount up to five percent of the proposed project costs to pay for Midwest Energy's How\$martSM Program costs. Payments have been calculated with an interest cost of ___ percent.

2. INFORMATION ACCURACY

Customer and Landlord have made every effort to provide Midwest Energy (Midwest) with accurate information about the structure and its use to enable Midwest to assess the efficiency of the premises and equipment. Customer and Landlord acknowledge that the accuracy of Midwest's savings estimates depends on the accuracy of information Customer and Landlord provided to Midwest.

3. LANDLORD UNDERSTANDINGS, RESPONSIBILITIES AND AUTHORIZATIONS

- a. Landlord authorizes the installation of the How\$martSM efficiency measures itemized in the Conservation Plan.
- b. Landlord authorizes Midwest to assign the How\$martSM Tariff to this premise. Landlord understands repayment obligations will continue until such time Midwest has been fully reimbursed for costs itemized above. Landlord has no repayment obligations at any time utility service is in the name of the current tenant or future tenants with these exceptions: (1) Landlord will assume the payment obligation at any time utility service is in the Landlord's name. (2) Landlord will assume the payment obligation any time a How\$martSM measure fails or is removed and after Customer notice the Landlord fails to repair or replace it within thirty (30) days. The How\$martSM repayment obligation will revert to the tenant upon repair or replacement of failed measures.
- c. Landlord shall make all the remaining payments upon sale of the property or disclose to and obtain written consent to assume the How\$martSM monthly payment obligation from the successor property owner. Landlord shall disclose the How\$martSM monthly payment obligation to subsequent tenants and obtain their written consent to assume the How\$martSM obligation. **Failure to disclose and obtain their written consent to assume the How\$martSM obligation from subsequent tenants or buyer will: (1)**

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In the case of rentals, transfer repayment responsibility to Landlord (for the initial term of the tenancy only if the Landlord obtains consent to assume the How\$martSM obligation from the tenant prior to the expiration of the initial term of the tenancy), or (2) In the case of property sales, require full repayment of the remaining payments by Landlord within thirty (30) days of the transaction closing. The attached disclosure and consent form shall be used to disclose and obtain consent to assume the How\$martSM obligation from successor owners or tenants.

- d. Selection of the contractor or vendor shall be the responsibility of Landlord. Landlord understands that when an independent contractor installs How\$martSM measures, an independent relationship has been created by virtue of the agreement between Landlord and contractor. Contractor is not an employee or agent of Midwest. Midwest will not be liable for personal injury or property damage caused by Landlord, contractor or contractor's agents or employees. Midwest is not a guarantor of products, materials, or work performed by contractor. This Agreement does not limit or increase Landlord's rights regarding manufacturers, vendors and contractors.
- e. Landlord and Tenant authorize Midwest to issue payments for the products, materials and/or work when an independent contractor or vendor is used. (Labor or installation charges will not be reimbursed for self-installed measures.) Payment will be made to contractor/vendor; receipts for materials and/or work performed must be provided to Midwest. Landlord and Tenant shall be responsible for acceptance of completed work.
- f. Landlord understands that any change order that deviates from the Conservation Plan must be agreed to in writing by Landlord, Customer, Midwest, and the contractor.
- g. Landlord will maintain the installed How\$martSM measure(s) in place for at least as long as there are payments due under this Agreement and be responsible for any required maintenance and repairs unless otherwise agreed to between Landlord and Customer.
- h. Landlord will obtain and maintain property insurance for casualty losses on the premises sufficient to ensure replacement of any measure installed under this program.
- i. Landlord understands that this Agreement does not constitute a loan or create any obligations under Kansas law pertaining to consumer credit or mortgage financing. **Early repayment of How\$martSM obligations shall not result in any prepayment discounts or refunds.**
- j. Landlord warrants that (s)he is the sole owner of these premises and is authorized to sign below. If this is not the case, Landlord agrees to assume all responsibility for costs associated with the installation of How\$martSM measures including but not limited to installation, removal, premises repairs and How\$martSM program costs.

4. CUSTOMER UNDERSTANDINGS, RESPONSIBILITIES AND AUTHORIZATIONS

- a. Customer authorizes Midwest to assign the How\$martSM Tariff to this premise. Customer shall make consecutive monthly payments itemized above to Midwest as part of the utility bill until all payments have been made or until Customer no longer has an account with Midwest at this premise, whichever occurs first. Customer will not be responsible for payments as noted in 3.b.(1) and 3.b.(2) above.
- b. Customer understands that when an independent contractor installs How\$martSM measures, an independent relationship has been created by virtue of the agreement between Landlord and contractor. Contractor is not an employee or agent of Midwest. Midwest will not be liable for personal injury or property damage caused by Landlord, Customer, contractor or contractor's agents or employees. Midwest is not a guarantor of products, materials, or work performed by contractor.
- c. Customer understands that this Agreement does not constitute a loan or create any obligations under Kansas law pertaining to consumer credit or mortgage financing. **Early repayment of How\$martSM obligations shall not result in any prepayment discounts or refunds.**
- d. Customer will promptly report failure of How\$martSM measure(s) to Landlord.

5. AGREEMENT DURATION, TERMINATION AND MISCELLANEOUS PROVISIONS

- a. This Agreement and obligations herein shall remain in full force and effect until the final How\$martSM payment has been made.
- b. The initial How\$martSM amount due will appear on the utility bill following issuance of payments to vendor(s) and/or contractor(s). Payment will be due to Midwest on the same terms as regular utility payments.
- c. If the Customer or Landlord breaches any of the terms of this Agreement without just cause, the party responsible for the breach shall reimburse Midwest for all costs reasonably related to the breach of the agreement. Such costs may include costs for measures, installation, and How\$martSM program administration.
- d. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of all parties to this Agreement.
- e. Notice from one party to the other under this Agreement shall be deemed to have been properly delivered if forwarded by first class mail to remaining parties at addresses noted herein.
- f. For the duration of this agreement, Landlord and Customer agree to allow Midwest to inspect the How\$martSM measure(s) installed pursuant to this agreement at a time mutually agreeable and upon reasonable notice. The parties agree that the Landlord and Customer have the right to be present for any requested inspection. Any such inspection shall not be deemed as endorsement by Midwest of work performed.
- g. In the event of any dispute arising over the How\$martSM program between Customers, Landlords and/or Contractors, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution.
- h. Midwest's How\$martSM program is subject to Kansas Corporation Commission (KCC) jurisdiction and the approved How\$martSM Rider. Complaints regarding the How\$mart program shall be filed with and decided by the KCC.
- i. The provisions of this Agreement shall benefit and bind the successors and assigns of all parties, provided disclosure/consent as required herein is provided/obtained. If any portion of this Agreement shall be held invalid or ineffective in whole or in part, such determination shall not be deemed to invalidate any of the remaining portions of this Agreement.

MIDWEST ENERGY, INC.

CUSTOMER/TENANT

Name/Title:

Name:

LANDLORD/PROPERTY OWNER

Name/Title:

**Midwest Energy How\$martSM
Customer-Owned Property Agreement**

(For Use When Customer Owns the Property; Must Be Signed Prior to Starting Work)

Customer _____ Date _____ Premise _____

Mailing Address: _____

Service Address: _____

Daytime/Evening Phone #s: _____

1. How\$martSM Conservation Plan Summary*

	Project Cost	Required Payments	Monthly Payment**	Estimated Monthly Savings
How\$martSM Project Total				

* Detailed description of measure(s) and specifications for installation included in attached Conservation Plan.

**Costs on which Monthly Payment are based include an amount up to five percent of the proposed project costs to pay for Midwest Energy's How\$martSM Program costs. Payments have been calculated with an interest cost of ___ percent.

2. INFORMATION ACCURACY

Customer has made every effort to provide Midwest Energy (Midwest) with accurate information about the structure and its use to enable Midwest to assess the efficiency of Customer's premises and equipment. Customer acknowledges that the accuracy of Midwest's savings estimates depends on the accuracy of information Customer provided to Midwest.

3. CUSTOMER UNDERSTANDINGS AND RESPONSIBILITIES

- a. Customer will maintain the installed How\$martSM measure(s) in place for at least as long as there are payments due under this Agreement. Customer will be responsible for all required maintenance and repairs.
- b. Customer shall make consecutive monthly payments specified above to Midwest as part of the utility bill until all payments have been made or another party assumes responsibility for utility bill payment at this premise, whichever occurs first.
- c. If any How\$martSM measure should fail to operate properly and upon written notice to Midwest, Customer may suspend payment of How\$martSM obligation for a maximum of sixty (60) days while effectuating repairs. Any such suspension will extend the How\$martSM obligation until all required payments are made. Midwest may refuse suspension of payments if failure of the How\$martSM measure cannot be substantiated.
- d. Customer shall make all the remaining payments upon closing the account or disclose to and obtain written consent to assume the How\$martSM monthly payment obligation from the next responsible party. **Failure to disclose to and obtain written consent to assume the How\$martSM obligation from subsequent tenants or buyer will: (1) In the case of rentals, transfer repayment responsibility to Customer (for the initial term of the tenancy only if Customer obtains consent to assume the How\$martSM obligation from the tenant prior to the expiration of the initial term of the tenancy), or (2) In the case of property sales, require full repayment of the remaining payments by Customer within thirty (30) days of the transaction closing.** The attached disclosure and consent

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form shall be used to disclose to and obtain consent to assume the How\$martSM obligation from the successor customer.

- e. Customer shall sign a How\$martSM Rented/Leased Property Agreement if the Customer elects to lease the property and utility service is placed in the tenant's name.
- f. Selection of the contractor or vendor shall be the responsibility of Customer. Customer understands that when an independent contractor installs How\$martSM measures, an independent relationship has been created by virtue of the agreement between Customer and contractor. Contractor is not an employee or agent of Midwest. Midwest will not be liable for personal injury or property damage caused by Customer, contractor or contractor's agents or employees. Midwest is not a guarantor of products, materials, or work performed by contractor. This Agreement does not limit or increase Customer's rights regarding manufacturers, vendors and contractors.
- g. Customer understands that any change order that deviates from the approved Conservation Plan must be agreed to in writing by Customer, Midwest, and the contractor.
- h. Customer will obtain and maintain property insurance for casualty losses on the premises sufficient to ensure replacement of any measure installed under this program.
- i. Customer understands that this Agreement does not constitute a loan or create any obligations under Kansas law pertaining to consumer credit or mortgage financing. **Early repayment of How\$martSM obligations shall not result in any prepayment discounts or refunds.**
- j. Customer warrants that (s)he is the sole owner of these premises and is authorized to sign below. If this is not the case, Customer agrees to assume all responsibility for costs associated with the installation of How\$martSM measures including but not limited to installation, removal, premises repairs and How\$martSM program costs.

4. CUSTOMER AUTHORIZES MIDWEST TO:

- a. Assign the How\$martSM Tariff to this premise which shall remain in full force until the final How\$martSM payment has been paid.
- b. Issue payments for the products, materials and/or work when an independent contractor or vendor is used. (Labor or installation charges will not be reimbursed for self-installed measures.) Payment will be made to contractor/vendor; receipts for materials and/or work performed must be provided to Midwest. Customer shall be solely responsible for acceptance of completed work.

5. AGREEMENT DURATION, TERMINATION AND MISCELLANEOUS PROVISIONS

- a. This Agreement and obligations herein shall remain in full force and effect until the final How\$martSM payment has been made.
- b. The initial How\$martSM amount due will appear on the utility bill following issuance of payments to vendor(s) and/or contractor(s). Payment will be due to Midwest on the same terms as regular utility payments.
- c. If the Customer breaches any of the terms of this Agreement without just cause, Customer shall reimburse Midwest for all costs reasonably related to the breach of the agreement. Such costs may include costs for measures, installation, and How\$martSM program administration.
- d. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.
- e. Notice from one party to the other under this Agreement shall be deemed to have been properly delivered if forwarded by first class mail to Customer or Midwest addresses noted on this page.
- f. For the duration of this agreement, Customer agrees to allow Midwest to inspect the How\$martSM measure(s) installed pursuant to this agreement at a time mutually agreeable and upon reasonable notice. The parties agree that Customer has the right to be present for any requested inspection. Any such inspection shall not be deemed as endorsement by Midwest of work performed.

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- g. In the event of any dispute arising over the How\$martSM program between Customers, Landlords and/or Contractors, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution.
- h. Midwest's How\$martSM program is subject to Kansas Corporation Commission (KCC) jurisdiction and the approved How\$martSM Rider. Complaints regarding the How\$mart program shall be filed with and decided by the KCC.
- i. The provisions of this Agreement shall benefit and bind the successors and assigns of all parties, provided disclosure and consent as required herein is provided and obtained. If any portion of this Agreement shall be held invalid or ineffective in whole or in part, such determination shall not be deemed to invalidate any of the remaining portions of this Agreement.

MIDWEST ENERGY, INC.

CUSTOMER

Name/Title:

Name:

How\$martSM Obligation Disclosure and Consent

Monthly How\$martSM charges will appear on your Midwest Energy bill to pay for energy efficient products installed at this location to save money. The savings are estimated to be greater than the How\$martSM charges.

Please read and understand prior to signing a lease or purchase agreement for this property.

Property Address: _____

Unit #: _____ Midwest Energy Premise Number: _____

The Customer responsible for paying the Midwest Energy bills at this location will be required to make monthly payments for energy efficient products installed at this location to save money. How\$martSM payments will continue until the required number of payments for these measures has been paid. These measures were installed to lower bills for this location. If you decide to occupy the premises you should receive the estimated savings. Therefore, you will help pay for these measures as long as you receive the savings and there are remaining payments to be paid. The savings are estimated to be greater than the How\$martSM charges.

If you want more information before buying this property or signing a lease, you can call Midwest Energy at (1-800-222-3121) to learn about the:

- Specific measures installed,
- Monthly payment amount,
- Number of payments remaining, and
- Your estimated savings.

When you request utility service, Midwest Energy will send you a How\$martSM Notification form outlining your responsibilities, including:

- Making monthly payments,
- If you rent, promptly reporting to your landlord if a How\$martSM measure stops working, and
- If you own the property, maintaining the measures in good working condition for as long as payments are due.

My signature below indicates that I have read or have had this form read to me. I understand my obligation to make monthly How\$martSM payments for the energy efficient products installed at this location if I choose to rent or buy the premises. I am signing this form before signing any purchase or lease agreement.

(Purchaser/Renter) Signature _____ Date _____

(Purchaser/Renter) Name (print) _____

Important: Both parties should keep a signed copy of this disclosure.

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**Midwest Energy How\$martSM
New Customer Notification**

(For Use When Customer Buys, Rents or Leases Property with Existing How\$martSM Obligations)

Customer _____ Date _____ Premise _____

Mailing Address: _____

Service Address: _____

Daytime/Evening Phone #s: _____

Approximate new service start date: _____, 200__ Occupancy: ___ Owner ___ Renter

In an effort to control energy costs, How\$martSM energy efficient products have been installed at the location noted above where you have requested Midwest Energy (Midwest) service. Monthly How\$martSM charges will appear on your bill. The savings are estimated to be greater than the charges. The specific measures installed and estimated savings are described in the How\$martSM Conservation Plan for this location. A copy of the Conservation Plan is available upon request.

By accepting Midwest service at this location, Customer agrees to accept specific payment obligations regarding these energy efficient measures. If your landlord or the property seller did not disclose these payment obligations prior to the time you signed a lease or purchase agreement, you are not responsible for the How\$martSM repayment. PLEASE NOTIFY MIDWEST ENERGY IF THE PAYMENT OBLIGATION WAS NOT DISCLOSED.

Monthly How\$martSM Obligation \$ _____ Monthly Payments Remaining on Above Date

If Customer is a tenant, Customer is obligated to:

1. Make consecutive monthly payments specified above to Midwest as part of the utility bill until all payments have been made or until Customer no longer has an account with Midwest at this premise, whichever occurs first. Customer is not responsible for How\$martSM obligations in these circumstances: (1) Landlord will assume the payment obligation at any time utility service is in the Landlord's name. (2) Landlord will assume the payment obligation any time a How\$martSM measure fails or is removed and after Customer notice the Landlord fails to repair or replace it within thirty (30) days. The How\$martSM repayment obligation will revert to the tenant upon repair or replacement of failed measures.
2. Promptly notify Landlord of any How\$martSM product failures or maintenance needs. Responsibility for costs of maintenance and repairs shall be governed solely by the lease or rental agreement between the Landlord and Customer, subject to Kansas law.

If Customer is the property owner, Customer is obligated to:

1. Make consecutive monthly payments specified above to Midwest as part of the utility bill until all payments have been made or another party assumes responsibility for utility bill payment at this premise, whichever occurs first. If any How\$martSM measure should fail to operate properly and upon written notice to Midwest, Customer may suspend payment of How\$martSM obligation for a maximum

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of sixty (60) days while effectuating repairs. Any such suspension will extend the How\$martSM obligation until all required payments are made. Midwest may refuse suspension of payments if failure of the How\$martSM measure cannot be substantiated.

2. Maintain the installed How\$martSM measure(s) in place for at least as long as there are payments due and be responsible for all required maintenance and for all costs incurred from failure to properly maintain the measure(s).
3. Make all the remaining payments upon closing the account or disclose to and obtain written consent to assume the How\$martSM monthly payment obligation from the next responsible party. **Failure to disclose to and obtain written consent to assume the How\$martSM obligation from subsequent tenants or buyer will: (1) In the case of rentals, transfer repayment responsibility to Customer (for the initial term of the tenancy only if Customer obtains consent to assume the How\$martSM obligation from the tenant prior to the expiration of the initial term of the tenancy), or (2) In the case of property sales, require full repayment of the remaining payments by Customer within thirty (30) days of the transaction closing.** The attached disclosure and consent form shall be used to disclose to and obtain written consent to assume the How\$martSM obligation from the successor customer or owner.

Other Terms and Conditions:

1. Obligations herein will remain in full force and effect until the final How\$martSM payment has been made.
2. In the event Customer fails to fulfill any of these responsibilities without just cause, Customer shall reimburse Midwest for all costs reasonably related to the failure to fulfill these responsibilities. Such costs may include costs for measures, installation, and How\$martSM program administration.
3. No waiver, alteration or modification of any of the provisions of these responsibilities will be binding unless in writing and signed by Midwest and the Customer.
4. For the duration of the How\$martSM obligations, Landlord (if any) and Customer agree to allow Midwest to inspect the How\$martSM measures at a time mutually agreeable and upon reasonable notice. Landlord (if any) and Customer have the right to be present for any requested inspection. Any such inspection shall not be deemed as endorsement by Midwest of work performed.
5. How\$martSM does not constitute a loan or create any obligations under Kansas law pertaining to consumer credit or mortgage financing. **Early repayment of How\$martSM obligations shall not result in any prepayment discounts or refunds.**
6. In the event of any dispute arising over the How\$martSM program between Customers, Landlords and/or Contractors, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution.
7. Midwest's How\$martSM program is subject to Kansas Corporation Commission (KCC) jurisdiction and the approved How\$martSM Rider.
8. The provisions of the How\$martSM program shall benefit and bind the successors and assigns of Customer and Midwest, provided disclosure/consent as required herein is provided/obtained. If any portion shall be held invalid or ineffective in whole or in part, such determination shall not be deemed to invalidate any of the remaining portions of the program.