**Long-Term Wheeling Through Priority**

**Draft Tariff Language**

**Appendix KK**

**Appendix KK is a new Appendix. All tariff language proposed in this appendix is new. All redlines are shown in black text for ease of initial review.**

**APPENDIX KK**

**FORM OF LONG-TERM WHEELING THROUGH SERVICE AGREEMENT**

**THIS AGREEMENT (“LTWTSA”)** is made and entered into this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_, between by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of the State/Commonwealth of \_\_\_\_\_\_\_\_\_ (“Scheduling Coordinator”), and California Independent System Operator Corporation, a California nonprofit public benefit corporation organized and existing under the laws of the State of California (“CAISO”). Scheduling Coordinator and CAISO each may be referred to as a “Party” or collectively as the “Parties.”

**RECITALS**

**WHEREAS,** the CAISO exercises Operational Control over the CAISO Controlled Grid; and

**WHEREAS,** the Scheduling Coordinator has requested a long-term Wheeling Through Priority;

**WHEREAS,** the CAISO can accommodate the request for a long-term Wheeling Through Priority; and

**WHEREAS,** the Scheduling Coordinator and the CAISO have agreed to enter into this Agreement for the purpose of specifying the Scheduling Coordinator’s cost responsibility and terms and conditions of service for its long-term Wheeling Through Priority;

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

* 1. **Master Definitions Supplement.** All terms and expressions used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement to the CAISO Tariff unless specifically defined in this Agreement.
	2. **Rules of Interpretation.** The following rules of interpretation and conventions shall apply to this Agreement: The following rules of interpretation and conventions shall apply to this Agreement:
1. if there is any inconsistency between this Agreement and the CAISO Tariff, this Agreement will prevail to the extent of the inconsistency;
2. the singular shall include the plural and vice versa;
3. the masculine shall include the feminine and neutral and vice versa;
4. “includes” or “including” shall mean “including without limitation”;
5. references to a Section, Article or Schedule shall mean a Section, Article or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
6. a reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made;
7. unless the context otherwise requires, references to any law shall be deemed references to such law as it may be amended, replaced or restated from time to time;
8. unless the context otherwise requires, any reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal personality;
9. unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
10. any reference to a day, week, month or year is to a calendar day, week, month or year; and

(k) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

1. **Term and Termination**
	1. **Effective Date.** This Agreement shall be effective as of the later of the date it is executed by the Parties or the date accepted for filing and made effective by FERC, if such FERC filing is required, and it shall remain in full force and effect until terminated pursuant to Section 2.3 of this Agreement. This Agreement will not be effective until the corresponding LTWTUCA has been executed.
	2. **Term.** The long-term Wheeling Through Priority listed under Schedule 1 of this Agreement will have a term as specified in Schedule 1. The Term for the long-term Wheeling Through Priority will commence on the later of: (1) the in-service date of all transmission facilities necessary to enable the CAISO to provide the Scheduling Coordinator with the long-term Wheeling Through Priority; (2) the effective date of this Agreement, and (3) in accordance with the corresponding LTWTUCA if applicable; and shall terminate on the dates specified under Schedule 1. If the term of a long-term Wheeling Through Priority is equal to or greater than five (5) years, the term may be extended in accordance with Section 23.6 of the CAISO Tariff, but otherwise there shall be no extension to a term.
	3. **Termination Procedures.** A termination of this Agreement will result in termination of any applicable LTWTUCA’s associated with long-term Wheeling Through Priority listed in this Agreement consistent with the termination provisions of the respective LTWTUCA.
		1. **CAISO Termination.** Subject to Section 5.2, the CAISO reserves the right to immediately suspend or terminate this Agreement in the event of the following;
2. for all reasons specified in the CAISO Tariff; or

1. the Scheduling Coordinator commits any material default under this Agreement, and if the CAISO has given an immediate notice of suspension or thirty (30) days advance written notice of Termination, unless excused by reason of Uncontrollable Forces in accordance with Section 10 of this Agreement; or
2. the Scheduling Coordinator is no longer a registered Scheduling Coordinator with the CAISO and this Agreement has not been reassigned to another Scheduling Coordinator, or

(d) the corresponding LTWTUCA has been terminated.

* + 1. **Scheduling Coordinator Termination.** In the event that the Scheduling Coordinator no longer wishes to retain its long-term Wheeling Through Priority(s) to the CAISO, it may terminate this Agreement on giving the CAISO not less than ninety (90) days advance written notice.
		2. **Termination Costs.** In the event of a termination of the LTWTSA, the Scheduling Coordinator shall be responsible paying any termination costs determined in accordance with its corresponding LTWTUCA.
		3. **Survival.** This LTWTSA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder and under the corresponding LTWTUCA, including billings and payments pursuant to this LTWTSA.
1. **General**
	1. **CAISO Responsibility.** The Parties acknowledge that the CAISO is responsible for the efficient use and reliable operation of the CAISO Controlled Grid consistent with achievement of planning and Operating Reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the North American Electric Reliability Corporation and further acknowledges that the CAISO may not be able to satisfy fully these responsibilities if the Scheduling Coordinator fails to fully comply with all of its obligations under this Agreement and the CAISO Tariff.
	2. **Scheduling Coordinator Responsibility and Requirements.** The Scheduling Coordinator agrees:
		1. The CAISO Tariff governs all aspects of bidding and scheduling of long-term Wheeling Through Priority transactions on the CAISO Controlled Grid, including (without limitation), the financial and technical criteria for Scheduling Coordinators, bidding, Settlement, information reporting requirements and confidentiality restrictions;
		2. It will abide by, and will perform all of the obligations under the CAISO Tariff placed on Scheduling Coordinators in respect of all matters set forth therein including, without limitation, all matters relating to the bidding and scheduling of long-term Wheeling Through Priority transactions, ongoing obligations in respect of scheduling, Settlement, system security policy and procedures to be developed by the CAISO from time to time, billing and payments, confidentiality and dispute resolution;
		3. It shall enter into a LTWTUCA for if it is required to fund Wheel Through Upgrades in accordance with Appendix GG of the CAISO Tariff.
	3. **Agreement Subject to CAISO Tariff.** The CAISO Tariff is incorporated herein and made a part hereof. In the event of a conflict between the terms and conditions of this Agreement and any other terms and conditions set forth in the CAISO Tariff, the terms and conditions of the CAISO Tariff shall prevail.
	4. **Relationship of this Agreement with the LTWTUCA.** In the event of a conflict between the terms and conditions of this Agreement and terms and conditions pertaining to the Scheduling Coordinator specific rate in the LTWUCA, the terms and conditions of the LTWTSA shall govern. The Scheduling Coordinator also acknowledges that a Default under the LTWTUCA shall result in a Default under this Agreement and shall be addressed in accordance with the Default provisions of the LTWTUCA.
	5. **Scope of Service.** The execution of this Agreement grants a long-term Wheeling Through Priority in accordance with the CAISO Tariff.
	6. **Schedules.** The technical and other characteristics of the long-term Wheeling Through Priority are set forth in Schedule 1.
	7. **Notification of Changes.** Sixty (60) days prior to changing any technical information in Schedule 1, the Scheduling Coordinator shall notify the CAISO of the proposed changes. The change will become effective upon the effective date for the next scheduled update of the CAISO’s Master File, provided the Scheduling Coordinator submits the changed information by the applicable deadline and is approved by the deadline.
2. **Rates, Billing, and Payment**
	1. **Type of Long-term Wheeling Through Service**
		1. **Wheeling Through Upgrades identified under TPP.** If a Wheeling Through Priority is enabled solely through transmission facilities approved in the Transmission Planning Process and the Scheduling Coordinator is not required to fund any Wheeling Through Upgrades under Appendix GG, Scheduling Coordinator shall pay for the long-term Wheeling Through Priority in accordance with Section 11 of the CAISO Tariff and Section 8 of Appendix GG of the CAISO Tariff. The monthly charges for the long-term Wheeling Through Priority will be calculated based on the MW quantity of the long-term Wheeling Through Priority and the total hours of the priority each month, provided the minimum number of hours for the long-term Wheeling Through Priority each month will be calculated on a six (6) days by sixteen (16) hours basis for each full week and remaining days during the month unless the Scheduling Coordinator selects a long-term Wheeling Through Priority with more hours each month. The MW quantity and the specific days and hours of the Scheduling Coordinator’s long-term Wheeling Through Priority are set forth in Schedule 1. **Check** [ ]  **if Section 4.1.1 applies.**
		2. **Wheeling Through Upgrades assigned under Appendix GG.** If the Scheduling Coordinator is required to fund Wheeling Through Upgrades identified in accordance with Append GG of the CAISO Tariff, the Scheduling Coordinator shall pay the Scheduling Coordinator specific rate determined in accordance with Section 10 of Appendix GG of the CAISO Tariff as specified in Schedule 1. **Check** [ ]  **if Section 4.1.2 applies.**
		3. **Wheeling Through Upgrades not assigned under Appendix GG.** If a long-term Wheeling Through Priority is not subject to any Wheeling Through Upgrades identified under Appendix GG or transmission facilities identified through the Transmission Planning Process, the Scheduling Coordinator shall pay the effective Wheeling Access Charge in accordance with Section 11 of the CAISO Tariff and Section 8 of Appendix GG of the CAISO Tariff. The monthly charges for the long-term Wheeling Through Priority will be calculated based on the MW quantity of the long-term Wheeling Through Priority and the total hours of the priority each month, provided the minimum number of hours for the long-term Wheeling Through Priority each month will be calculated on a six (6) days by sixteen (16) hours basis for each full week and remaining days during the month unless the Scheduling Coordinator selects a long-term Wheeling Through Priority with more hours each month. The MW quantity and the specific days and hours of the Scheduling Coordinator’s long-term Wheeling Through Priority are set forth in Schedule 1. **Check** [ ]  **if Section 4.1.3 applies.**
	2. **Payment**
		1. **Payment to CAISO:** The Scheduling Coordinator shall discharge all payment obligations to the CAISO in accordance with this Agreement and the LTWUCA.
		2. **Payment to PTO**: The Scheduling Coordinator shall discharge all payment obligations to the PTO in accordance with this Agreement and the LTWTUCA
3. **Penalties and Sanctions**
	1. **General.** The Scheduling Coordinator shall be subject to all penalties applicable to Scheduling Coordinators under the CAISO tariff.
	2. **Corrective Measures.** If the Scheduling Coordinator fails to meet or maintain the requirements set forth in this Agreement and/or the CAISO Tariff, the CAISO shall be permitted to take any of the measures, contained or referenced in the CAISO Tariff, which the CAISO deems to be necessary to correct the situation.
4. **Costs.**
	1. **Costs.** The Scheduling Coordinator shall be responsible for all its costs incurred for the purpose of meeting its obligations under this Agreement.
	2. **Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the CAISO ADR Procedures set forth in Section 13 of the CAISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the CAISO Tariff to Market Participants shall be read as a reference to the Scheduling Coordinator and references to the CAISO Tariff shall be read as references to this Agreement.
	3. **Representations and Warranties.** Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law.
	4. **Liability.** The provisions of Section 14 of the CAISO Tariff will apply to liability arising under this Agreement, except that all references in Section 14 of the CAISO Tariff to Market Participants shall be read as references to the Scheduling Coordinator and references to the CAISO Tariff shall be read as references to this Agreement.
	5. **Uncontrollable Forces.** Section14.1 of the CAISO Tariff shall be incorporated by reference into this Agreement except that all references in Section 14.1 of the CAISO Tariff to Market Participants shall be read as a reference to the Scheduling Coordinator and references to the CAISO Tariff shall be read as references to this Agreement.
5. **Miscellaneous**
	1. **Assignments.** Subject to Section 2.3 of this Agreement, either Party may assign or transfer any or all of its rights and/or obligations under this Agreement with the other Party’s prior written consent in accordance with Section 22.2 of the CAISO Tariff. Such consent shall not be withheld unreasonably. w Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement. The Scheduling Coordinator may not assign this Agreement to an entity that is not party to the corresponding LTWTUCA for the long-term Wheeling Through Priority.
	2. **Notices.** Any notice, demand or request which may be given to or made upon either Party regarding this Agreement shall be made in accordance with Section 22.4 of the CAISO Tariff, provided that all references in Section 22.4 of the CAISO Tariff to Market Participants shall be read as a reference to the Scheduling Coordinator and references to the CAISO Tariff shall be read as references to this Agreement, and unless otherwise stated or agreed shall be made to the representative of the other Party indicated in Schedule 2. A Party must update the information in Schedule 2 of this Agreement as information changes. Such changes shall not constitute an amendment to this Agreement.
	3. **Waivers.** Any waivers at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.
	4. **Governing Law and Forum.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consent that any legal action or proceeding arising under or relating to this Agreement to which the CAISO ADR Procedures do not apply, shall be brought in any of the following forums, as appropriate: any court of the State of California, any federal court of the United States of America located in the State of California, or, where subject to its jurisdiction, before the Federal Energy Regulatory Commission.
	5. **Consistency with Federal Laws and Regulations.** This Agreement shall incorporate by reference Section 22.9 of the CAISO Tariff as if the references to the CAISO Tariff were referring to this Agreement.
	6. **Mergers.** This Agreement constitutes the complete and final agreement of the Parties with respect to the subject matter hereto and supersedes all prior agreements, whether written or oral, with respect to such subject matter.
	7. **Severability.** If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.
	8. **Amendments.** This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that require FERC approval shall not take effect until FERC has accepted such amendments for filing and made them effective. Nothing contained herein shall be construed as affecting in any way the right of the CAISO to unilaterally make application to FERC for a change in the rates, terms and conditions of this Agreement under Section 205 of the FPA and pursuant to FERC’s rules and regulations promulgated thereunder, and the Scheduling Coordinator shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the FPA and FERC’s rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the FPA and FERC’s rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
	9. **Counterparts.** This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.
	10. **Entire Agreement.** This Agreement, including all Schedules attached hereto, constitutes the entire Agreement among the Parties with reference to the specific terms hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between or among the Parties with respect to the specific terms of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, any Party’s compliance with its obligations under this Agreement. In addition, the corresponding SCA and LTWTUCA for the Scheduling Coordinator as required by this Agreement and the CAISO Tariff also apply.
	11. **No Partnership.** This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership among the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, another Party.
	12. **Joint and Several Obligations.** Except as otherwise provided in this LTWTSA, the obligations of the CAISO, and the Scheduling Coordinator are several, and are neither joint nor joint and several.

**IN WITNESS WHEREOF,** the Parties have executed this LTWTSA in multiple originals, each of which shall constitute and be an original effective agreement among the Parties.

For CAISO:

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For Scheduling Coordinator:

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**Schedule 1**

**Charges for and Technical and Other Unique Characteristics of Long-term Wheeling Through Priority**

This schedule shall include the following information at a minimum regarding the long-term Wheeling Through Priority: Quantity (MW); Start and end dates; Source and Sink Scheduling Points; Days of the Week and Hours of the Day; applicable charges; Other Technical and Operational Characteristics.

**Schedule 2**

**Notices**

[Section XX]

**Scheduling Coordinator**

Name of Primary

Representative:

Title:

Company:

Address:

City/State/Zip Code

Email Address:

Phone:

Fax No:

Name of Alternative

Representative:

Title:

Company:

Address:

City/State/Zip Code

Email Address:

Phone:

Fax No:

**CAISO**

Name of Primary

Representative: Regulatory Contracts

Title: N/A

Address: 250 Outcropping Way

City/State/Zip Code: Folsom, CA 95630

Email address: RegulatoryContracts@caiso.com

Phone: (916) 351-4400

Fax: (916) 608-5063

Name of Alternative

Representative: Christopher J. Sibley

Title: Manager, Regulatory Contracts

Address: 250 Outcropping Way

City/State/Zip Code: Folsom, CA 95630

Email address: csibley@caiso.com

Phone: (916) 608-7030

Fax: (916) 608-5063