**Long-Term Wheeling Through Priority**

**Draft Tariff Language**

**Appendix HH**

**Appendix HH is currently “Not Used.” All tariff language proposed in this appendix is new. All redlines are shown in black text for ease of review. Incremental changes since the last posting are shown in redline and highlighted.**

# Appendix HH

**LONG-TERM WHEELING THROUGH UPGRADE CONSTRUCTION AGREEMENT (LTWTUCA)**

**AMONG**

**[SCHEDULING COORDINATOR]**

**AND**

**[AFFECTED PARTICIPATING TO]**

**AND**

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

**Long-Term Wheeling Through Priority: [ ]**

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# Long-term wheelING through UPGRADE CONSTRCUTION AGREEMENT

**[SCHEDULING COORDINATOR]**

**[AFFECTED PARTICIPATING TO]**

 **CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

 **THIS LONG-TERM WHEELING THROUGH UPGRADE CONSTRUCTION AGREEMENT** ("LTWTUCA") is made and entered into this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_, by and among [Scheduling Coordinator], a limited liability corporation organized and existing under the laws of the State/Commonwealth of \_\_\_\_\_\_\_\_\_ ("Scheduling Coordinator"), [Affected Participating TO] , a corporation organized and existing under the laws of the State of California ("Affected Participating TO",“XX”), and California Independent System Operator Corporation, a California nonprofit public benefit corporation organized and existing under the laws of the State of California ("CAISO"). Applicant, Affected Participating TO, and CAISO each may be referred to as a "Party" or collectively as the "Parties."

**RECITALS**

 **WHEREAS**, CAISO exercises Operational Control over the CAISO Controlled Grid, which includes the Affected Participating TO’s Transmission System ; and

 **WHEREAS**, the Affected Participating TOs own, operate, and maintain the Affected Participating TOs Transmission System; and

 **WHEREAS**, the Scheduling Coordinator has requested long term priority for long term Wheeling Through Priority on the CAISO Controlled Grid between Scheduling Points [XX] and [YY];

 **WHEREAS**, the Scheduling Coordinator has chosen to pay the Wheeling Access Charge for the requested term of long-term Wheeling Through Priority pursuant to Sections 23.6 and 10 of Appendix GG of the CAISO Tariff; and

 **WHEREAS,** the Long-Term Wheeling Through Study report has shown that establishing a long-term Wheeling Through Priority will require the Affected Participating TO to construct upgrades to its system; and

 **WHEREAS**, Scheduling Coordinator, Affected Participating TO, and CAISO have agreed to enter into this LTWTUCA for the purpose of constructing the necessary upgrades on the Affected Participating TOs system caused by granting he Scheduling Coordinator’s request for a long-term Wheeling Through Priority;

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

 When used in this LTWTUCA, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used.

# Article 1. Definitions

**Adverse System Impact** shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

**Affected Participating TO** shall mean a Participating TO whose Transmission System is part of the CAISO Controlled Grid and whose Transmission System is affected by the long-term priority long term Wheeling Through Priority, in that upgrades to such system(s) are necessary to enable the long term Wheeling Through Priority to interconnect to the Interconnecting System.

**Affected System** shall mean an electric system that is part of the CAISO Controlled Grid that may be affected by a long term Wheeling Through Priority sourcing from an electric system that is not part of the CAISO Controlled Grid, including the Affected Participating TO’s electric system.

**Long-Term Wheeling Through Priority Assessment** shall mean the study performed by the Affected Participating TO, in coordination with the CAISO, to determine the impacts on the Affected Participating TO’s Transmission System and other portions of its electric system resulting from the long term Wheeling Through Priority.

**Affiliate** shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

**Applicable Laws** and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

**Applicable Reliability Council** shall mean the Western Electricity Coordinating Council or its successor.

**Applicable Reliability Standards** shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, the CAISO and the Balancing Authority Area of the Interconnecting System to which the long term Wheeling Through Priority is directly connected, including requirements adopted pursuant to Section 215 of the Federal Power Act.

**Balancing Authority** shall mean the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.

**Balancing Authority Area** shall mean the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for the **L**ong-Term Wheeling Through Priority Assessment.

**Breach** shall mean the failure of a Party to perform or observe any material term or condition of this LTWTUCA.

**Breaching Party** shall mean a Party that is in Breach of this LTWTUCA.

**Business Day** shall mean Monday through Friday, excluding federal holidays and the day after Thanksgiving Day.

**CAISO Controlled Grid** shall mean the system of transmission lines and associated facilities of the parties to the Transmission Control Agreement that have been placed under the CAISO’s Operational Control.

**CAISO Tariff** shall mean the CAISO’s tariff, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

**Calendar Day** shall mean any day including Saturday, Sunday or a federal holiday.

**Commercial Operation** shall mean a long-term Wheeling Through Priority has become effective, and Scheduling Coordinator is able to schedule Priority Wheeling Through transactions.

**Commercial Operation Date** of a long term Wheeling Through Priority is the effective date on which the Scheduling Coordinator can schedule long term Wheeling Through Priority Transactions under its long term Wheeling Through Priority, as agreed to by the Affected Participating TO, the CAISO, and the Scheduling Coordinator in accordance with this LTWTUCA and the CAISO Tariff. The Commercial Operation Date may not occur until all required Network Upgrades have been placed in-service and all required approvals received from the CAISO and the Affected Participating TO in accordance with the CAISO Tariff.

**Confidential Information** shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, subject to Article 18.1.2.

**Default** shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 13 of this LTWTUCA.

**Effective Date** shall mean the date on which this LTWTUCA becomes effective upon execution by all Parties subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC.

**Environmental Law** shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

**Federal Power Act** shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a et seq.

**FERC** shall mean the Federal Energy Regulatory Commission or its successor.

**Financial Security** shall mean any of the financial instruments listed in Section 11 of Appendix GG of the CAISO Tariff that are posted by the Scheduling Coordinator to secure its financial obligations under this LTWTUCA.

**Force Majeure** shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

**Wheeling Through Priority** shall have the meaning specified in the CAISO tariff.

**Wheeling Through Priority** **Capacity** shall mean the quantity of net capacity of the long term Wheeling Through Priority.

**Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

**Governmental Authority** shall mean any federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Scheduling Coordinator, CAISO, the Affected Participating TO, or any Affiliate thereof.

**Hazardous Substances** shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

**Interconnecting System** shall mean the transmission system that is not a part of the CAISO Controlled Grid, or the Affected Participating TO’s electric system, to which the long term Wheeling Through Priority sources or sinks.

**Interconnection Agreement (IA)** shall mean the interconnection Agreement entered into between the Scheduling Coordinator and the Interconnecting System Transmission Provider for purpose of interconnecting the facilities necessary accommodate the long term Wheeling Through Priority to or from the Interconnecting System.

**Interconnection Handbook** shall mean a handbook, developed by the Affected Participating TO and posted on the Affected Participating TO’s Interconnecting System’s web site or otherwise made available by the Affected Participating TO, describing technical and operational requirements for wholesale generators and loads connected to the Affected Participating TO's portion of the CAISO Controlled Grid, as such handbook may be modified or superseded from time to time. Affected Participating TO's standards contained in the Interconnection Handbook shall be deemed consistent with Good Utility Practice and Applicable Reliability Standards. In the event of a conflict between the terms of this LTWTUCA and the terms of the Affected Participating TO's Interconnection Handbook, the terms in this LTWTUCA shall apply. The Interconnection Handbook shall relate to the Affected Participating TO’s Transmission System or electrical system, such that the Interconnection Handbook of the shall govern with respect to all upgrades constructed on the Affected Participating TO’s Transmission System or electrical system.

**IRS** shall mean the Internal Revenue Service.

**Loss** shall mean any and all damages, losses, and claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties.

**NERC** shall mean the North American Electric Reliability Corporation or its successor organization.

 **Network Upgrades** shall mean shall mean the additions, modifications, and upgrades to the Affected Participating TO’s system required to accommodate the long-term Wheeling Through Priority safely and reliably.

**Operational Control** shall mean the rights of the CAISO under the Transmission Control Agreement and the CAISO Tariff to direct the parties to the Transmission Control Agreement how to operate their transmission lines and facilities and other electric plant affecting the reliability of those lines and facilities for the purpose of affording comparable non-discriminatory transmission access and meeting applicable reliability criteria.

 **Participating TO** shall mean a party to the Transmission Control Agreement (as defined in the CAISO Tariff) whose application under Section 2.2 of the Transmission Control Agreement has been accepted and who has placed its transmission assets and Entitlements under the CAISO’s Operational Control in accordance with the Transmission Control LTWTUCA.

**Party or Parties** shall mean the Affected Participating TO, CAISO, Scheduling Coordinator or the applicable combination of the above.

**Point of Delivery** shall have the meaning specified in the CAISO Tariff.

**Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a Party under this LTWTUCA, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Transmission Control Agreement** shall mean CAISO FERC Electric Tariff No. 7.

**Transmission System** shall mean the facilities owned and operated by a Participating TO and that have been placed under the CAISO’s Operational Control, which facilities form part of the CAISO Controlled Grid.

# Article 2. Effective Date, Term And Termination

2.1 Effective Date. This LTWTUCA shall become effective upon execution by all Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. The CAISO and the Affected Participating TO shall promptly file this LTWTUCA with FERC upon execution in accordance with Article 3.1, if required.The LTWTUCA will not be effective until the corresponding LTWTSA has been executed.

2.2 Term of LTWTUCA. Subject to the provisions of Article 2.3, this LTWTUCA shall remain in effect for a period of [ ] years If the term of a Long term Wheeling Through 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. The Term of the LTWTUCA shall be equal to the term of the long term Wheeling Through Priority listed under the corresponding LTWTSA.

## 2.3 Termination Procedures.

2.3.1 Written Notice. This LTWTUCA may be terminated by the Scheduling Coordinator after giving the CAISO and the Affected Participating TO ninety (90) Calendar Days advance written notice, or by the CAISO or the Affected Participating TO notifying FERC after the long term Wheeling Through Priority ceases operation.

2.3.2 Default. A Party may terminate this LTWTUCA in accordance with Article 13.

**2.3.3** **Termination of LTWTSA.** If the corresponding LTWTSA is terminated the CAISO or Affected Participating TO may terminate this LTWTUCA with immediate effect.

2.3.4 Notwithstanding Articles 2.3.1 and 2.3.2, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LTWTUCA (if applicable), which notice has been accepted for filing by FERC, and the Scheduling Coordinator has fulfilled its termination cost obligations under Article 2.4.

2.4 Termination Costs**.** For termination prior to the Commercial Operation Date, the Financial Security refund shall be in accordance with Appendix GG of the CAISO Tariff. For any termination following the Commercial Operation Date, immediately upon the other Parties’ receipt of a notice of the termination of this LTWTUCA pursuant to Article 2.3 above, the CAISO will cease charging the Scheduling Coordinator for the long term Wheeling Through Priority Upgrade costs for the period commencing after the end of the trade month of the effective date of the termination. The CAISO will liquidate the Scheduling Coordinator’s Financial Security following the effective date of termination to satisfy all of the Scheduling Coordinator’s obligations under this LTWTUCA and the corresponding LTWTSA. To the extent the amount of liquidated Financial Security plus the payments, if any, the Scheduling Coordinator has made to satisfy its obligations under this LTWTUCA and the LTWTSA exceeds the total charges due by the Scheduling Coordinator as calculated by the CAISO for the entire Term of the LTWTUCA, the CAISO shall remit to the Scheduling Coordinator the excess amount in accordance with Section 11 of the CAISO Tariff.

Any such additional amounts due from the Scheduling Coordinator beyond the amounts covered by its Financial Security will be due to the CAISO immediately upon termination of this LTWTUCA and invoiced in accordance with Section 11 of the CAISO Tariff.

2.4.1 Notwithstanding the foregoing, in the event of termination by a Party, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. LTWTUCA

2.5 Survival. This LTWTUCA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this LTWTUCA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this LTWTUCA was in effect; and to permit each Party to have access to the lands of the other Parties pursuant to this LTWTUCA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

# Article 3. Regulatory Filings And CAISO Tariff Compliance

3.1 Filing. The Affected Participating TO and the CAISO shall file this LTWTUCA (and any amendment hereto) with the appropriate Governmental Authority(ies), if required. The Scheduling Coordinator may request that any information so provided be subject to the confidentiality provisions of Article 22. If the Scheduling Coordinator has executed this LTWTUCA, or any amendment thereto, the Scheduling Coordinator shall reasonably cooperate with the Affected Participating TO and CAISO with respect to such filing and to provide any information reasonably requested by the Affected Participating TO or CAISO needed to comply with applicable regulatory requirements.

3.2 LTWTUCA Subject to Applicable Sections of the CAISO Tariff. The Scheduling Coordinator agrees to comply with all applicable provisions of the CAISO Tariff.

3.3 Relationship Between this LTWTUCA and the CAISO Tariff. The CAISO Tariff is incorporated herein and made a part hereof. With respect to the rights and obligations between the Participating TO and the Scheduling Coordinator, if and to the extent a matter is specifically addressed by a provision in this LTWTUCA (including an appendix, schedule, or other attachment to the LTWTUCA) the provisions of the LTWTUCA will govern. If and to the extent a provision of the LTWTUCA is inconsistent with the CAISO Tariff and dictates the rights and obligations of the CAISO and the Affected Participating TO or the CAISO and the Scheduling Coordinator, the CAISO Tariff will govern.

3.4 Relationship between this LTWTUCA and the Scheduling Coordinator’s LTWTSA. The Scheduling Coordinator acknowledges that a default under its corresponding LTWTSA shall be a reason for Default in accordance with Article 13.1

# Article 4. Scope Of Service AND PERFORMANCE STANDARDS

4.1 Performance Standards. Each Party shall perform all of its obligations under this LTWTUCA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this LTWTUCA for its compliance therewith. If such Party is the CAISO or Affected Participating TO, then that Party shall amend the LTWTUCA and submit the amendment to FERC for approval.

4.2 Long-term Wheeling Through Priority. The execution of the LTWTUCA and the corresponding LTWTSA confers a long term Wheeling Through Priority under Appendix GG and Section 23.6 the CAISO Tariff. For the term of the long term Wheeling Through Priority, the Scheduling Coordinator shall make payments in accordance with specific payment obligations in Appendix C of this LTWTUCA and the corresponding LTWTSA.

# Article 5. NETWORK Upgrades

# Engineering, Procurement, And Construction

Network Upgrades shall be studied, designed, and constructed pursuant to Good Utility Practice. Such studies, design and construction shall be based on the assumed accuracy and completeness of all technical information received by the Affected Participating TO and the CAISO from the Scheduling Coordinator associated with the long term Wheeling Through Priority.

5.1 Options. The Parties shall mutually agree on the Commercial Operation Date for the long-term Wheeling Through Priority, and such date shall be set forth in Appendix B, Milestones. At the same time, the Scheduling Coordinator shall indicate whether it elects the Option to Build set forth in Article 5.1.3 below. If the dates designated by the Scheduling Coordinator are not acceptable to the CAISO and Participating TO, they shall so notify the Scheduling Coordinator within thirty (30) calendar days. Upon receipt of notification that the Scheduling Coordinator’s designated dates are not acceptable to the CAISO and Participating TO, the Scheduling Coordinator shall notify the CAISO and Participating TO within thirty (30) calendar days whether it elects to exercise the Option to Build if it has not already elected to exercise the Option to Build.

5.1.1 Affected Participating TO Standards. The Affected Participating TO shall design, procure, and construct the Affected Participating TO's Network Upgrades, using Reasonable Efforts to complete the Affected Participating TO's Network Upgrades by the dates set forth in Appendix B, Milestones. The Affected Participating TO shall not be required to undertake any action inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, or Applicable Laws and Regulations. In the event the Affected Participating TO reasonably expects that it will not be able to complete the Affected Participating TO's Network Upgrades by the specified dates, the Affected Participating TO shall promptly provide written notice to the Scheduling Coordinator and the CAISO and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 Option to Build. The Scheduling Coordinator shall have the option to assume responsibility for the design, procurement and construction of the Affected Participating TO's Stand Alone Network Upgrades. The Affected Participating TO, CAISO, and Scheduling Coordinator must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A to this LTWTUCA. Except for Stand Alone Network Upgrades, the Scheduling Coordinator shall have no right to construct Network Upgrades under this option.

5.1.3 Merchant Option. In addition to any Option to Build set forth in Article 5.1.2 of this LTWTUCA, a Scheduling Coordinator having an Option (B) Wheeling Through Priority may elect to have a party other than the applicable Participating TO construct some or all of the LDNU and ADNU for which the Scheduling Coordinator has the obligation to fund. Such LDNU and ADNU will be constructed and incorporated into the CAISO Controlled Grid pursuant to the provisions for Merchant Transmission Facilities in CAISO Tariff Sections 24.4.6.1 and 36.11.

5.2 General Conditions Applicable to Option to Build. If the Scheduling Coordinator assumes responsibility for the design, procurement and construction of the Affected Participating TO's Stand Alone Network Upgrades, or assumes responsibility for any stand-alone task, such as telecommunications, environmental, or real-estate related work:

1. within six (6) months of the execution of this LTWTUCA, or at a later date agreed to by the Parties, the Scheduling Coordinator will submit to the CAISO and the Affected Participating TO a milestone schedule for the design, procurement, and construction of the Stand Alone Network Upgrades, or any stand-alone task assumed by the Scheduling Coordinator. The milestone schedule will be required to support the Scheduling Coordinator ’s Commercial Operation Date, and any Appendix B Milestones will be amended to include the milestone schedule for the Stand Alone Network Upgrades;
2. the Scheduling Coordinator shall engineer, procure equipment, and construct the Affected Participating TO's Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Participating TO;
3. The Scheduling Coordinator ’s engineering, procurement and construction of the Affected Participating TO's Stand Alone Network Upgrades shall comply with all requirements of law to which the Participating TO would be subject in the engineering, procurement or construction of the Affected Participating TO's Stand Alone Network Upgrades;
4. the Affected Participating TO shall review, and the Scheduling Coordinator shall obtain the Affected Participating TO’s approval of, the engineering design, equipment acceptance tests, and the construction of the Affected Participating TO's Stand Alone Network Upgrades, which approval shall not be unreasonably withheld, and the CAISO may, at its option, review the engineering design, equipment acceptance tests, and the construction of the Affected Participating TO's Stand Alone Network Upgrades;
5. prior to commencement of construction, the Scheduling Coordinator shall provide to the Affected Participating TO, with a copy to the CAISO for informational purposes, a schedule for construction of the Participating TO's Stand Alone Network Upgrades, and shall promptly respond to requests for information from the Participating TO;
6. at any time during construction, the Affected Participating TO shall have the right to gain unrestricted access to the Affected Participating TO's Stand Alone Network Upgrades and to conduct inspections of the same;
7. at any time during construction, should any phase of the engineering, equipment procurement, or construction of the Affected Participating TO's Stand Alone Network Upgrades not meet the standards and specifications provided by the Participating TO, the Scheduling Coordinator shall be obligated to remedy deficiencies in that portion of the Affected Participating TO's Stand Alone Network Upgrades;
8. the Scheduling Coordinator shall indemnify the CAISO and Affected Participating TO for claims arising from the Scheduling Coordinator 's construction of the Affected Participating TO's Stand Alone Network Upgrades under the terms and procedures applicable to Article 14 Indemnity;
9. The Scheduling Coordinator shall transfer Operational Control of Stand Alone Network Upgrades to the CAISO;
10. Unless the Parties otherwise agree, the Scheduling Coordinator shall transfer ownership of the Affected Participating TO's Affected Stand Alone Network Upgrades to the Participating TO. As soon as reasonably practicable, but within six months after completion of the construction of the Affected Participating TO’s Stand Alone Network Upgrades, the Scheduling Coordinator shall provide a cost report of the final cost of the construction of the Affected Participating TO’s Stand Alone Network Upgrades to the Participating TO, which cost report shall set forth such costs in sufficient detail to enable the Affected Participating TO to reflect the proper costs of such facilities in its transmission rate base and to identify the investment upon which rates will be calculated in Appendix C;
11. the Affected Participating TO shall accept for operation and maintenance the Affected Participating TO's Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.1.2; and
12. the Scheduling Coordinator’s engineering, procurement and construction of the Affected Participating TO's Stand Alone Network Upgrades shall comply with all requirements of the “Option to Build” conditions set forth in Appendix A. Scheduling Coordinator shall deliver to the Participating TO “as-built” drawings, information, and any other documents that are reasonably required by the Affected Participating TO to assure that the Stand-Alone Network Upgrades are built to the standards and specifications required by the Affected Participating TO.

(13) If the Scheduling Coordinator exercises the Option to Build pursuant to Article 5.2, the Scheduling Coordinator shall be responsible to the Affected Participating TO the agreed upon amount of $ for Affected Participating TO to execute the responsibilities enumerated to it under Article 5.1.2. The Participating TO will incorporate this amount in the calculation of rates provided in Appendix C in accordance with Article 4.2

5.3 Equipment Procurement. The Affected Participating TO shall commence design of the Affected Participating TO's Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

5.3.1 The Affected Participating TO has received written authorization to proceed with design and procurement from the Scheduling Coordinator by the date specified in Appendix B, Milestones; and

5.3.2 The Scheduling Coordinator has provided security to the Affected Participating TO in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.4 Construction Commencement. The Affected Participating TO shall commence construction of the Affected Participating TO's Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

5.4.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

5.4.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Affected Participating TO's Network Upgrades;

5.4.3 The Affected Participating TO has received written authorization to proceed with construction from the Scheduling Coordinator by the date specified in Appendix B, Milestones; and

5.4.4 The Scheduling Coordinator has provided security to the Affected Participating TO in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.5 Work Progress. The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Any Party may, at any time, request a progress report from another Party.

5.6 Information Exchange. As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the long term Wheeling Through Priority and Affected Participating TO’s Transmission System and shall work diligently and in good faith to make any necessary design changes.

5.7 Lands of Other Property Owners. If any part of the Affected Participating TO’s Network Upgrades are to be installed on property owned by persons other than the Scheduling Coordinator or Affected Participating TO, the Affected Participating TO shall at the expense of the Scheduling Coordinator use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Affected Participating TO’s Network Upgrades upon such property.

5.8 Permits. Affected Participating TO and Scheduling Coordinator shall cooperate with each other in good faith in obtaining all permits, licenses and authorization that are necessary to construct the facilities required under this LTWTUCA in compliance with Applicable Laws and Regulations.

5.9 Early Construction of Base Case Facilities. The Scheduling Coordinator may request the Affected Participating TO to construct, and the Affected Participating TO shall construct, using Reasonable Efforts to accommodate Scheduling Coordinator’s Commercial operation Date, all or any portion of any Network Upgrades on the Affected Participating TO’s Transmission System required for the long term Wheeling Through Priority and which are included in the Base Case of the Long-Term long term Wheeling Through Priority Assessment for the long term Wheeling Through Priority, and which also are required to be constructed for another Scheduling Coordinator, but where such construction is not scheduled to be completed in time to achieve Scheduling Coordinator’s Commercial Operation Date.

5.10 Taxes. Any tax liability for the Affected Participating TO arising from payments made by the Scheduling Coordinator under this LTWTUCA shall be determined by the Affected Participating TO in accordance by applicable FERC and IRS rules, and incorporated in its required calculations under Appendix C of this LTWTUCA. Each Party will cooperate with the other to maintain the other Party’s tax status. Nothing in this LTWTUCA is intended to adversely affect any Affected Participating TO’s tax exempt status with respect to the issuance of bonds including, but not limited to, Tax Exempt Debt.

## 5.11 Modification

5.11.1 The Scheduling Coordinator may not modify its long term Wheeling Through Priority except as allowed under the LTWTSA and Appendix GG of the CAISO Tariff. The CAISO or Affected Participating TO may modify facilities or services provided for in the LTWTUCA in accordance with Appendix GG of the CAISO Tariff.

5.11.2 Standards. Any additions, modifications, or replacements made to Affected Participating TO’s facilities shall be designed, constructed and operated in accordance with this LTWTUCA and Good Utility Practice.

5.11.3 Modification Costs. The Scheduling Coordinator shall not be directly assigned the costs of any additions, modifications, or replacements that the Affected Participating TO makes to the Affected Participating TO’s Transmission System to facilitate its use by a third party, or to provide transmission service to a third party under the CAISO Tariff.

5.12 Annual Reassessment Process. In accordance with Section 5.4 of the Appendix GG of the CAISO Tariff, the CAISO will perform an annual reassessment, as part of a Long term long term Wheeling Through Priority Assessment cycle, in which it will update certain base case data prior to beginning the Long term Wheeling Through Assessment Phase II studies. As set forth in Section 5.4 Appendix GG of the CAISO Tariff, the CAISO may determine through this assessment that Delivery Network Upgrades and Off-Peak Network Upgrades already identified and included in executed LTWTUCA should be modified in order to reflect the current circumstances of long-term Long term long term Wheeling Through Priority customers in the queue, including any withdrawals therefrom, and any additions and upgrades approved in the CAISO’s most recent TPP cycle. To the extent that this determination modifies the scope or characteristics of, or the cost responsibility for, any Delivery Network Upgrades and Off-Peak Network Upgrades set forth in Appendix A to this LTWTUCA, such modification(s) will be reflected through an amendment to this LTWTUCA.

# Article 6. Equipment

 6.1 Pre-Commercial Operation Date Testing and Modifications. Prior to the Commercial Operation Date, the Affected Participating TO shall test the Participating TO’s Network Upgrades to ensure their safe and reliable operation. Similar testing may be required after initial operation. The Scheduling Coordinator shall bear the cost of all such testing and modifications.

**6.2** No Annexation. Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

# Article 7. Individual obligations

7.1 General. Each Party shall comply with Applicable Reliability Standards and the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

7.2 CAISO and Affected Participating TO Obligations. The CAISO and Affected Participating TO shall cause the Affected Participating TO’s Transmission System to be operated and controlled in a safe and reliable manner and in accordance with this LTWTUCA.

7.3 Scheduling Coordinator Obligations. The Scheduling Coordinator shall follow all applicable provisions of the CAISO tariff and LTWTUCA. The Scheduling Coordinator shall not commence scheduling the long term Wheeling Through Priority until the CAISO in coordination with the Affected Participating TO, provides prior written approval in accordance with the CAISO Tariff.

7.4 Network Upgrades. The Affected Participating TO shall design, procure, construct, install, and own the Network Upgrades described in Appendix A. The Scheduling Coordinator shall be responsible for all costs related to Network Upgrades in accordance with Appendix GG of the CAISO Tariff and this LTWTUCA.

**7.5 Scheduling Coordinator CRR Rights**. The Scheduling Coordinator will be eligible to receive long term Wheeling Through Priority Upgrade CRRs pursuant to CAISO Tariff Section 36.12. If the long term Wheeling Through Priority fails to achieve Commercial Operation, the Scheduling Coordinator shall forfeit all rights to receive any Congestion Revenue Rights allocations under this LTWTUCA and the CAISO Tariff. No repayment rights shall be created if another generating facility or Scheduling Coordinator is later constructed and makes use of the Network Upgrades.

7.6 Provision of Financial Security. The Scheduling Coordinator is obligated to provide all necessary Financial Security required under Section 11 of Appendix GG of the CAISO Tariff in a manner acceptable under Section 11 of Appendix GG of the CAISO Tariff. The Scheduling Coordinator shall maintain the Financial Security for the Term of the LTWTUCA, subject to refund in accordance with the Article 2.3 of the LTWTUCA. Failure by the Scheduling Coordinator to timely satisfy the Appendix GG of the CAISO Tariff requirements for the provision of Financial Security shall be deemed a breach of this LTWTUCA and a condition of Default of this LTWTUCA.

7.6.1 Notwithstanding any other provision of this LTWTUCA for notice of Default and opportunity to cure such Default, the CAISO or the Affected Participating TO shall provide the Scheduling Coordinator with written notice of any Default due to timely failure to post Financial Security, and the Scheduling Coordinator shall have five (5) Business Days from the date of such notice to cure such Default by posting the required Financial Security. If the Scheduling Coordinator fails to cure the Default, then this LTWTUCA shall be deemed terminated.

**7.6.2** The Affected Participating TO shall reduce the posted Financial Security on an annual basis by the equivalent value of Wheeling Upgrade costs reimbursed by the Scheduling Coordinator. The Affected Participating TO shall determine this equivalent value of capital reimbursement in accordance with applicable FERC rules.

**7.7 Scheduling Coordinator Payment Obligations.** Scheduling Coordinator will pay for Network Upgrades and long-term long term Wheeling Through Priority in accordance with Appendix C of this LTWTUCA and the corresponding LTWTSA.

**7.8**  **Special Provisions for Affected Systems.** The Scheduling Coordinator shall enter into an agreement with the owner of the Affected System, as applicable, in accordance with the Appendix GG of the CAISO Tariff. Such agreement shall specify the terms governing payments the Scheduling Coordinator must make to the owner of the Affected System as well as any repayment by the owner of the Affected System.

# Article 8. Costs

8.1 General. The Affected Participating TO shall submit to the Scheduling Coordinator, on a monthly basis, cost reports of amounts expended pursuant to this LTWTUCA for the preceding month. Each cost report shall state the month to which the cost report applies and fully describe the services and equipment provided. These cost reports from the Affected Participating TO may not create a payment obligation in addition to those covered under Section 4.2 and Appendix C. Notwithstanding the foregoing, any invoices between the CAISO and another Party shall be submitted and paid in accordance with the applicable sections of the CAISO Tariff.

8.2 Final Cost Report. As soon as reasonably practicable, but within twelve months after completion of the construction of the Affected Participating TO’s Network Upgrades, the Affected Participating TO shall provide a cost report of the final cost of the construction of the Affected Participating TO’s Network Upgrades, and shall set forth such costs in sufficient detail to enable the Scheduling Coordinator to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. This final cost report from the Affected Participating TO may not create a payment obligation in addition to those covered under Article 4.2 and Appendix C.

8.3 Cost Reports Transmittal. Invoices shall be transmitted to the Scheduling Coordinator at the address specified in Appendix F. Payment of invoices by any Party will not constitute a waiver of any rights or claims any Party may have under this LTWTUCA.

8.4 Disputes. In the event of a cost report dispute between the Scheduling Coordinator and the Affected Participating TO, the Affected Participating TO and the CAISO shall continue to provide service under this LTWTUCA. Any cost report related dispute between the Parties shall be resolved in accordance with the provisions of Article 27.

**8.5 Affected Participating TO Cost Recovery**

 The costs of the Network Upgrades necessary to enable the long-term Wheeling Through Priority will be reflected in Appendix C to this LTWTUCA and recovered from the Scheduling Coordinator through charges under the corresponding LTWTSA. The Affected Participating TO will calculate the charges consistent with Section 10 of the Appendix GG of the CAISO Tariff. The Affected Participating TO shall only recover the costs associated with Network Upgrades assigned to the Scheduling Coordinator in connection with its long term Wheeling Through Priority from the Scheduling Coordinator. The costs of the Network Upgrades may not be included the Affected Participating TO’s Transmission Revenue Requirement used to determine the Regional Access Charge. Any Network Upgrades that are eligible for recovery under the Local Access Charge may be recovered by the Affected Participation TO in accordance with the CAISO Tariff provisions applicable to Local Access Charges in addition to the payment of the monthly rates calculated using the Wheeling Access Charge in accordance with Appendix GG of the CAISO Tariff by the Scheduling Coordinator. The Affected Participating TO shall use estimated costs to determine the initial rates under Appendix C at the time of execution of this LTWTUCA. Such rates shall be updated once final actual costs of the Wheeling Upgrades are available, no later than twelve (12) months from the Commercial Operation Date or when FERC approves the final revenue requirement.

# Article 9. Emergencies

9.1 Obligations. Each Party shall comply with the Emergency Condition procedures of the NERC, the Applicable Reliability Council, Applicable Reliability Standards, Applicable Laws and Regulations, and the CAISO Tariff.

9.2 Limited Liability. No Party shall be liable to any other Party for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

# Article 10. Regulatory Requirements And Governing Law

10.1 Regulatory Requirements. Each Party’s obligations under this LTWTUCA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this LTWTUCA shall require the Scheduling Coordinator to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended, or the Public Utility Regulatory Policies Act of 1978, or the Energy Policy Act of 2005.

## 10.2 Governing Laws.

10.2.1 The validity, interpretation and performance of this LTWTUCA and each of its provisions shall be governed by the laws of the State of California, without regard to its conflicts of law principles.

10.2.2 This LTWTUCA is subject to all Applicable Laws and Regulations.

10.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

# Article 11. Notices

 11.1 General. Unless otherwise provided in this LTWTUCA, any notice, demand or request required or permitted to be given by a Party to another and any instrument required or permitted to be tendered or delivered by a Party in writing to another shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F, Addresses for Delivery of Notices and Billings.

A Party must update the information in Appendix F as information changes. A Party may change the notice information in this LTWTUCA by giving five (5) Business Days written notice prior to the effective date of the change. Such changes shall not constitute an amendment to this LTWTUCA.

11.2 Billings and Payments. Billings and payments shall be sent to the addresses set out in Appendix F unless the CAISO Tariff requires the otherwise.

11.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to another and not required by this LTWTUCA to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out in Appendix F.

# Article 12. Force Majeure

## 12.1 Force Majeure.

12.1.1 Economic hardship is not considered a Force Majeure event.

12.1.2 No Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

# Article 13. Default

## 13.1 Default.

13.1.1 General. No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this LTWTUCA or the result of an act or omission of the other Party. Upon a Breach, the affected non-Breaching Party(ies) shall give written notice of such Breach to the Breaching Party. Except as provided in Articles 11.3 and 13.1.2, the Breaching Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

13.1.2 Right to Terminate. If a Breach is not cured as provided in this Article, or if a Breach is not capable of being cured within the period provided for herein, the affected non-Breaching Party(ies) shall have the right to declare a Default and terminate this LTWTUCA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not such Party(ies) terminates this LTWTUCA, to recover from the Breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this LTWTUCA.

# Article 14. Indemnity, Consequential Damages And Insurance

14.1 Indemnity. Each Party shall at all times indemnify, defend, and hold the other Parties harmless from, any and all Losses arising out of or resulting from another Party's action or inactions of its obligations under this LTWTUCA on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

14.1.1 Indemnified Party. If an Indemnified Party is entitled to indemnification under this Article 14 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 14.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

14.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 14, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

14.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 14.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

14.2 Consequential Damages. In no event shall any Party be liable under any provision of this LTWTUCA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another LTWTUCA will not be considered to be special, indirect, incidental, or consequential damages hereunder.

14.3 Insurance. As indicated below, the designated Party shall, at its own expense, maintain in force throughout the periods noted in this LTWTUCA, and until released by the other Parties, the following minimum insurance coverages, with insurers rated no less than A- (with a minimum size rating of VII) by Bests’ Insurance Guide and Key Ratings and authorized to do business in the state where the Point of Delivery is located, except in the case of any insurance required to be carried by the CAISO, the State of California. The Scheduling Coordinator shall separately maintain from the insurance requirements of this Article 14.3, any insurance as required in accordance with the CAISO Tariff.

14.3.1 Employer's Liability and Workers' Compensation Insurance. The Affected Participating TO shall maintain such coverage from the commencement of any Construction Activities providing statutory benefits for workers compensation coverage and coverage amounts of no less than One Million Dollars ($1,000,000) for employer’s liability in accordance with the laws and regulations of the state in which the Point of Delivery is located. The Affected Participating TO shall provide the Scheduling Coordinator with evidence of such insurance within thirty (30) days of any request by the Scheduling Coordinator. The Scheduling Coordinator shall provide evidence of such insurance thirty (30) days prior to entry by any employee or contractor or other person acting on the Scheduling Coordinator behalf onto any construction site to perform any work related to the long term Wheeling Through Priority.

14.3.2 Commercial General Liability Insurance. The Affected Participating TO shall maintain commercial general liability insurance commencing within thirty (30) days of the effective date of this LTWTUCA, including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars ($1,000,000) per occurrence/One Million Dollars ($1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

14.3.3 Business Automobile Liability Insurance. Prior to the entry of any such vehicles on any construction site in connection with work done by or on behalf of the Scheduling Coordinator, the Scheduling Coordinator shall provide evidence of coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, including death, and property damage. Upon the request of the Affected Participating TO, the Scheduling Coordinator shall name the Affected Participating TO as an additional insured on any such policies.

14.3.4 Excess Public Liability Insurance. Commencing at the time of entry of any person on its behalf upon any construction site for the Network Upgrades, the Affected Participating TO and the Scheduling Coordinator shall maintain excess public liability insurance over and above the Employer's Liability Commercial General Liability and Business Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence/Twenty Million Dollars ($20,000,000) aggregate. Such insurance carried by the Affected Participating TO shall name the Scheduling Coordinator as an additional insured, and such insurance carried by the Scheduling Coordinator shall name the Affected Participating TO as an additional insured.

14.3.5 The Commercial General Liability Insurance, Business Automobile Insurance and Excess Public Liability Insurance policies shall name the other Parties identified in the sections above, their parents, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this LTWTUCA against the Other Party Group and provide thirty (30) Calendar Days advance written notice to the Other Party Group of cancellation in coverage or condition. If any Party can reasonably demonstrate that coverage policies containing provisions for insurer waiver of subrogation rights, or advance written notice are not commercially available, then the Parties shall meet and confer and mutually determine to (i) establish replacement or equivalent terms in lieu of subrogation or notice or (ii) waive the requirements that coverage(s) include such subrogation provision or require advance written notice from such insurers.

14.3.6 The Commercial General Liability Insurance, Business Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer’s liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

14.3.7 The Commercial General Liability Insurance, Business Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this LTWTUCA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

14.3.8 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this LTWTUCA.

14.3.9 Within ten (10) Calendar Days following execution of this LTWTUCA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) Calendar Days thereafter, the Affected Participating TO and the Scheduling Coordinator shall provide certification of all insurance required in this LTWTUCA, executed by each insurer or by an authorized representative of each insurer.

14.3.10 Notwithstanding the foregoing, each Party may self-insure

a) to meet the insurance requirements of Article 14.3.1, to the extent that it maintains a self-insurance program that is a qualified self-insurer within the state in which the Point of Delivery is located, under the laws and regulations of such state; and

b) to meet the minimum insurance requirements of Articles 14.3.2 through 14.3.8 to the extent it maintains a self-insurance program; provided that, such Party’s senior unsecured debt or issuer rating is BBB-, or better, as rated by Standard & Poor’s and that its self-insurance program meets the minimum insurance requirements of Articles 14.3.2 through 14.3.8. For any period of time that a Party’s senior unsecured debt rating and issuer rating are both unrated by Standard & Poor’s or are both rated at less than BBB- by Standard & Poor’s, such Party shall comply with the insurance requirements applicable to it under Articles 14.3.2 through 14.3.9.

c) in the event that a Party is permitted to self-insure pursuant to this Article 14.3.10, it shall notify the other Parties that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 14.3.9.

14.3.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this LTWTUCA.

# Article 15. Assignment

15.1 Assignment. The Scheduling Coordinator subject to this Article 15.1 may not assign this LTWTUCA to any entity that is not a registered Scheduling Coordinator with the CAISO. The Scheduling Coordinator may not assign this LTWTUCA under this Article 15.1 without concurrently assigning the corresponding LTWTSA. This LTWTUCA may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this LTWTUCA without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this LTWTUCA; and provided further that the Scheduling Coordinator shall have the right to assign this LTWTUCA, without the consent of the CAISO or Affected Participating TO, for collateral security purposes to aid in providing financing for the long term Wheeling Through Priority, provided that the Scheduling Coordinator will promptly notify the CAISO and Affected Participating TO of any such assignment. Any financing arrangement entered into by the Scheduling Coordinator pursuant to this Article will provide that prior to or upon the exercise of the secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the CAISO and Affected Participating TO of the date and particulars of any such exercise of assignment right(s), including providing the CAISO and Affected Participating TO with proof that it meets the requirements of Articles 7.6 and 14.3, and will fulfill its rights and obligations under this LTWTUCA solely through a scheduling coordinator. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this LTWTUCA shall not relieve a Party of its obligations, nor shall a Party’s obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

# Article 16. Severability

16.1 Severability. If any provision in this LTWTUCA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, LTWTUCA or covenant of this LTWTUCA.

# Article 17. Comparability

17.1 Comparability. The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

# Article 18. Confidentiality

18.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party’s technology, research and development, business affairs, and pricing, and any information supplied by any of the Parties to the other Parties prior to the execution of this LTWTUCA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Parties receiving the information that the information is confidential.

If requested by any Party, the other Parties shall provide in writing, the basis for asserting that the information referred to in this Article 22 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

18.1.1 Term. During the term of this LTWTUCA, and for a period of three (3) years after the expiration or termination of this LTWTUCA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

18.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non‑confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this LTWTUCA; or (6) is required, in accordance with Article 18.1.7 of this LTWTUCA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this LTWTUCA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Parties that it no longer is confidential.

18.1.3 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, Affiliates (limited by the Standards of Conduct requirements set forth in Part 358 of FERC’s Regulations, 18 C.F.R. 358), subcontractors, or to parties who may be or considering providing financing to or equity participation with the Scheduling Coordinator, or to potential purchasers or assignees of the Scheduling Coordinator, on a need‑to‑know basis in connection with this LTWTUCA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 18.

18.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Parties. The disclosure by each Party to the other Parties of Confidential Information shall not be deemed a waiver by a Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

18.1.5 No Warranties. The mere fact that a Party has provided Confidential Information does not constitute a warranty or representation as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Parties nor to enter into any further LTWTUCAs or proceed with any other relationship or joint venture.

18.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under this LTWTUCA or its regulatory requirements.

18.1.7 Order of Disclosure. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Parties with prompt notice of such request(s) or requirement(s) so that the other Parties may seek an appropriate protective order or waive compliance with the terms of this LTWTUCA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

18.1.8 Termination of LTWTUCA. Upon termination of this LTWTUCA for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

18.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party’s Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 18, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 18.

18.1.10 Disclosure to FERC, its Staff, or a State. Notwithstanding anything in this Article 18 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this LTWTUCA, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this LTWTUCA prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the LTWTUCA when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

18.1.11Subject to the exception in Article 18.1.10, Confidential Information shall not be disclosed by the other Parties to any person not employed or retained by the other Parties, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Parties, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LTWTUCA or as a transmission service provider or a Balancing Authority including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Parties in writing of the information it claims is confidential. Prior to any disclosures of another Party’s Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality LTWTUCA, protective order or other reasonable measures.

# Article 19. Environmental Releases

19.1 Each Party shall notify the other Parties, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the long term Wheeling Through Priority which may reasonably be expected to affect the other Parties. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Parties copies of any publicly available reports filed with any Governmental Authorities addressing such events.

# Article 20. Information Requirements

20.1 Information Acquisition. The Affected Participating TO and the Scheduling Coordinator shall submit specific information regarding the electrical characteristics of their respective facilities or Long term long term Wheeling Through Priority(s) to each other as described below and in accordance with Applicable Reliability Standards.

20.2 Information Submission by Affected Participating TO. On a monthly basis the Affected Participating TO shall provide the Scheduling Coordinator and the CAISO a status report on the construction and installation of the Affected Participating TO’s Network Upgrades including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered..

20.3 Updated Information Submission by Scheduling Coordinator. The updated information submission by the Scheduling Coordinator shall occur no later than one hundred eighty (180) Calendar Days prior to the Commercial Operation Date. The Scheduling Coordinator shall submit a completed and updated copy of the data requirements initially submitted in accordance with Appendix GG of the CAISO Tariff. It shall also include any additional information provided to the Affected Participating TO and the CAISO for the Long term long term Wheeling Through Priority Studies. Information in this submission shall be the most current data. If the Scheduling Coordinator 's data is materially different from what was originally provided to the Affected Participating TO and the CAISO for the Long term long term Wheeling Through Priority Studies, then the Affected Participating TO and the CAISO will conduct appropriate studies pursuant to the Appendix GG of the CAISO Tariff to determine the impact on the Affected Participating TO’s Transmission System and affected portions of the CAISO Controlled Grid based on the actual data submitted pursuant to this Article 20.3. The Scheduling Coordinator shall not begin Commercial Operation until such studies are completed and all other requirements of this LTWTUCA are satisfied.

20.4 Information Supplementation. Prior to the Commercial Operation date, the Scheduling Coordinator shall supplement its information submissions described above in this Article 20 with any and all information that differs from the initial submissions.

# Article 21. Information Access And Audit Rights

21.1 Information Access. Each Party (the “disclosing Party”) shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this LTWTUCA; and (ii) carry out its obligations and responsibilities under this LTWTUCA. The Parties shall not use such information for purposes other than those set forth in this Article 21.1 and to enforce their rights under this LTWTUCA. Nothing in this Article 21 shall obligate the CAISO to make available to a Party any third party information in its possession or control if making such third party information available would violate a CAISO Tariff restriction on the use or disclosure of such third party information.

21.2 Reporting of Non-Force Majeure Events. Each Party (the “notifying Party”) shall notify the other Parties when the notifying Party becomes aware of its inability to comply with the provisions of this LTWTUCA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this LTWTUCA.

21.3 Audit Rights. Subject to the requirements of confidentiality under Article 18 of this LTWTUCA, the Parties’ audit rights shall include audits of a Party’s costs pertaining to such Party's performance or satisfaction of obligations owed to the other Party under this LTWTUCA.

21.3.1 The Scheduling Coordinator and the Affected Participating TO shall each have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either such Party's performance or either such Party’s satisfaction of obligations owed to the other Party under this LTWTUCA. Subject to Article 25.3.2, any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each such Party’s performance and satisfaction of obligations under this LTWTUCA. Each such Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

21.3.2 Notwithstanding anything to the contrary in Article 25.3, each Party’s rights to audit the CAISO’s accounts and records shall be as set forth in Section 22.1 of the CAISO Tariff.

## 21.4 Audit Rights Periods.

21.4.1 Audit Rights Period for Construction-Related Accounts and Records. Accounts and records related to the design, engineering, procurement, and construction of Affected Participating TO’s Network Upgrades shall be subject to audit for a period of twenty-four months following the Affected Participating TO’s issuance of a final cost report in accordance with Article 12.2.

21.4.2 Audit Rights Period for All Other Accounts and Records. Accounts and records related to a Party’s performance or satisfaction of all obligations under this LTWTUCA other than those described in Article 21.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party’s receipt of an cost report giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought; provided that each Party’s rights to audit the CAISO’s accounts and records shall be as set forth in Section 22.1 of the CAISO Tariff.

21.5 Audit Results. If an audit by the Scheduling Coordinator or the Affected Participating TO determines that an overpayment or an underpayment has occurred with respect to the other Party, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which supports such determination. The Party that is owed payment shall render an invoice to the other Party and such invoice shall be paid pursuant to Article 4.2 and Appendix C hereof, with any necessary adjustments of rates being reflected in Appendix C.

21.5.1 Notwithstanding anything to the contrary in Article 21.5, the Scheduling Coordinator’s and Affected Participating TO’s rights to audit the CAISO’s accounts and records shall be as set forth in Section 22.1 of the CAISO Tariff, and the CAISO’s process for remedying an overpayment or underpayment shall be as set forth in the CAISO Tariff.

# Article 22. Subcontractors

22.1 General. Nothing in this LTWTUCA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this LTWTUCA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this LTWTUCA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor. The Scheduling Coordinator may not utilize a subcontractor for performance of any obligations that would require a party to be registered as a Scheduling Coordinator with the CAISO.

22.2 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this LTWTUCA. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the CAISO or Affected Participating TO be liable for the actions or inactions of the Scheduling Coordinator or its subcontractors with respect to obligations of the Scheduling Coordinator under this LTWTUCA. Any applicable obligation imposed by this LTWTUCA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

22.3 No Limitation by Insurance. The obligations under this Article 22 will not be limited in any way by any limitation of subcontractor’s insurance.

# Article 23. Disputes

 All disputes arising out of or in connection with this LTWTUCA whereby relief is sought by or from the CAISO shall be settled in accordance with the provisions of Article 13 of the CAISO Tariff, except that references to the CAISO Tariff in such Article 13 of the CAISO Tariff shall be read as references to this LTWTUCA. Disputes arising out of or in connection with this LTWTUCA not subject to provisions of Article 13 of the CAISO Tariff shall be resolved as follows:

23.1 Submission. In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this LTWTUCA or its performance, such Party (the “disputing Party”) shall provide the other Party with written notice of the dispute or claim (“Notice of Dispute”). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party’s receipt of the Notice of Dispute, such claim or dispute may, upon mutual LTWTUCA of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LTWTUCA.

23.2 External Arbitration Procedures. Any arbitration initiated under this LTWTUCA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 23, the terms of this Article 23 shall prevail.

23.3 Arbitration Decisions. Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this LTWTUCA and shall have no power to modify or change any provision of this LTWTUCA in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, or Network Upgrades.

23.4 Costs. Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

# Article 24. Representations, Warranties And Covenants

24.1 General. Each Party makes the following representations, warranties and covenants:

24.1.1 Good Standing. Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the long term Wheeling Through Priority, and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this LTWTUCA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this LTWTUCA.

24.1.2 Authority. Such Party has the right, power and authority to enter into this LTWTUCA, to become a Party hereto and to perform its obligations hereunder. This LTWTUCA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors’ rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

24.1.3 No Conflict. The execution, delivery and performance of this LTWTUCA does not violate or conflict with the organizational or formation documents, or bylaws or operating LTWTUCA, of such Party, or any judgment, license, permit, order, material LTWTUCA or instrument applicable to or binding upon such Party or any of its assets.

25.1.4 Consent and Approval. Such Party has sought or obtained, or, in accordance with this LTWTUCA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this LTWTUCA, and it will provide to any Governmental Authority notice of any actions under this LTWTUCA that are required by Applicable Laws and Regulations.

# Article 25. Miscellaneous

25.1 Binding Effect. This LTWTUCA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

25.2 Conflicts. In the event of a conflict between the body of this LTWTUCA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this LTWTUCA shall prevail and be deemed the final intent of the Parties.

25.3 Rules of Interpretation. This LTWTUCA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person’s successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this LTWTUCA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any LTWTUCA (including this LTWTUCA), document, instrument or tariff means such LTWTUCA, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this LTWTUCA or such Appendix to this LTWTUCA, or such Section to the CAISO Tariff or such Appendix to the CAISO Tariff, as the case may be; (6) “hereunder”, “hereof”, “herein”, “hereto” and words of similar import shall be deemed references to this LTWTUCA as a whole and not to any particular Article or other provision hereof or thereof; (7) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”.

25.4 Entire LTWTUCA. This LTWTUCA, including all Appendices and Schedules attached hereto, constitutes the entire LTWTUCA among the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or LTWTUCAs, oral or written, between or among the Parties with respect to the subject matter of this LTWTUCA. There are no other LTWTUCAs, 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 LTWTUCA. Notwithstanding the above, this LTWTUCA is dependent on the corresponding LTWTSA, as explained under Article 3.4, regarding the ability of the Scheduling Coordinator to perform its obligations under this LTWTUCA.

25.5 No Third Party Beneficiaries. This LTWTUCA is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

25.6 Waiver. The failure of a Party to this LTWTUCA to insist, on any occasion, upon strict performance of any provision of this LTWTUCA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this LTWTUCA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this LTWTUCA. Termination or Default of this LTWTUCA for any reason by the Scheduling Coordinator shall not constitute a waiver of the Scheduling Coordinator’s legal rights to request a long term Wheeling Through Priority from the Affected Participating TO and CAISO. Any waiver of this LTWTUCA shall, if requested, be provided in writing.

25.7 Headings. The descriptive headings of the various Articles of this LTWTUCA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this LTWTUCA.

25.8 Multiple Counterparts. This LTWTUCA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

25.9 Amendment. The Parties may by mutual agreement amend this LTWTUCA by a written instrument duly executed by all of the Parties. Such amendment shall become effective and a part of this LTWTUCA upon satisfaction of all Applicable Laws and Regulations.

25.10 Modification by the Parties. The Parties may by agreement LTWTUCA amend the Appendices to this LTWTUCA by a written instrument duly executed by all of the Parties. Such amendment shall become effective and a part of this LTWTUCA upon satisfaction of all Applicable Laws and Regulations.

25.11 Reservation of Rights. The CAISO and Affected Participating TO shall each have the right to make a unilateral filing with FERC to modify this LTWTUCA pursuant to section 205 or any other applicable provision of the Federal Power Act and FERC’s rules and regulations thereunder with respect to the following Articles and Appendices of this LTWTUCA and with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation covered by these Articles and Appendices:

Recitals, 1, 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.3, 3.4, 4.1, 4.2, 5.4, 5.5, 5.6. 5.7, 5.10. 5.11, 7.2. 7.3. 7.5. 7.6, 7.7, 8.1, 8.5, 9, 10, 11, 12, 13, 14. 15, 16, 17, 18, 19, 20.3. 20.4, 21.1, 21,2, 21.3 (except 21.3.2). 21.3.1, 21.4.1. 21.4.2, 21.5, (except 21.5.1.) 22, 23 preamble, 24, 25, Appendix D, and any other Article not reserved exclusively to the Affected Participating TO or the CAISO below.

The Affected Participating TO shall have the exclusive right to make a unilateral filing with FERC to modify this LTWTUCA pursuant to section 205 or any other applicable provision of the Federal Power Act and FERC’s rules and regulations thereunder with respect to the following Articles and Appendices of this LTWTUCA and with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation covered by these Articles and Appendices:

5.1, 5.2, 5.3, 5.8. 5.9, 6.1, 6.2, 7.1, 7.4, 8.2, 8.3, 8.4, 20.1, 20.2, 23 (except preamble), and Appendices A, B, and C.

The CAISO shall have the exclusive right to make a unilateral filing with FERC to modify this LTWTUCA pursuant to section 205 or any other applicable provision of the Federal Power Act and FERC’s rules and regulations thereunder with respect to the following Articles of this LTWTUCA and with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation covered by these Articles:

3.2, 21.3.2, 21.5.1, and 23 preamble.

 The Scheduling Coordinator, the CAISO, and the Affected Participating TO shall have the right to make a unilateral filing with FERC to modify this LTWTUCA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC’s rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LTWTUCA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC’s rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

25.12 No Partnership. This LTWTUCA 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 LTWTUCA 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.

25.13 Joint and Several Obligations. Except as otherwise provided in this LTWTUCA, the obligations of the CAISO, the Affected Participating TO, and the Scheduling Coordinator are several, and are neither joint nor joint and several.

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

**[Insert name of Scheduling Coordinator]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Insert name of Affected Participating TO]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**California Independent System Operator Corporation**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDICES TO LTWTUCA**

Appendix A Project Description and Network Upgrades

Appendix B Milestones

Appendix C Scheduling Coordinator Specific Rate

Appendix D Addresses for Delivery of Notices and Billings

# Appendix A

# Project Description and Network Upgrades

# Appendix BMilestones

# Appendix C

# Scheduling Coordinator Specific Rate

The Scheduling Coordinator specific rate shall be determined in accordance with Section 10 of Appendix GG of the CAISO Tariff. If the Scheduling Coordinator is responsible for paying a rate greater than the Wheeling Access Charge, it shall be responsible for monthly payments calculated using the long-term Wheeling Through Priority Monthly Rate identified below, otherwise it shall be responsible for monthly payments calculated using the Wheeling Access Charge. All payments shall be in accordance with Section 11 and Appendix GG of the CAISO Tariff.

**Scheduling Coordinator responsible for a monthly rate calculated using the Wheeling Access Charge:** Yes/No

**Scheduling Coordinator responsible for a monthly rate calculated using the long term Wheeling Through Priority Monthly Rate: Yes/No**

**Long-term Wheeling Through Priority Monthly Rate:** $/Mwh

**The Affected Participating TO shall identify here if the Scheduling Coordinator is subject to the Local Access Charge in accordance with Article 12.3 of the LTWTUCA.**

**Local Access Charge:** Yes/No

# Appendix DAddresses for delivery of notices and billings