

Interconnection Facilities Study Agreement

This agreement is made and entered into this _____ day of _____, _____, by and between _____, a _____ (corporation/limited liability company organized and existing under the laws of the State of _____, or an individual) ("Applicant") and _____, a _____ existing under the laws of the State of _____ ("Public Utility"). Applicant and Public Utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, Applicant is proposing to develop a Small Generating Facility or adding generating capacity to an existing Small Generating Facility consistent with the Application completed by the Applicant on _____;

Whereas, The Applicant desires to interconnect the Small Generating Facility with the Public Utility's Electric Distribution System ("EDS");

Whereas, The Public Utility has completed an Interconnection System Impact Study and provided the results of the study to the Applicant; and

Whereas, The Applicant has requested the Public Utility to perform an Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Small Generating Facility to the Public Utility's EDS.

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1. When used in this Agreement with initial capitalization, the terms specified shall have the meanings given in the SD Public Utilities Commission's rules, ARSD chapter 20:10:36.
2. Interconnection Customer and Public Utility shall proceed with an Interconnection Facilities Study consistent with the SD Public Utilities Commission's rules.
3. The Applicant will provide the data requested in Section 2 of this form. The scope of the Interconnection Facilities Study shall be subject to this data.
4. The Public Utility may require a 50% study deposit. (May not exceed \$10,000 for small generator facilities proposing to interconnect 500 kW or less).
5. ~~In cases where no upgrades are required,~~ The Interconnection Facilities Study shall be completed and the results transmitted to the Applicant within a timeline as agreed to between the parties under the process prescribed in the Commission's rules, ARSD chapter 20:10:36.

6. Cost allocation for studies shall be done according to the SD Public Utilities Commission's rules, [ARSD chapter 20:10:36](#).

In witness whereof, the Parties have caused this agreement to be duly executed by their duly authorized officers or agents on the day and year first above written:

[Insert name of the Public Utility]

Signed _____

Name (Printed): _____ Title: _____

[Insert name of the Applicant]

Signed _____

Name (Printed): _____ Title: _____

Section 2 to the Interconnection Facilities Study Agreement

Data To Be Provided by Applicant With the Interconnection Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities.

For staged projects, please indicate future generation, distribution circuits, etc. On the one-line diagram, indicate the generation capacity attached at each metering location (maximum load on CT/PT).

On the one-line diagram, indicate the location of auxiliary power (minimum load on CT/PT), Amps.

One set of metering is required for each generation connection to the new ring bus or existing Public Utility station.

Number of generation connections: _____

Will an alternate source of auxiliary power be available during CT/PT maintenance?

Yes _____ No _____

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation?

Yes _____ No _____ (Please indicate on the one-line diagram.)

What type of control system or PLC will be located at the Generating Facility?

What protocol does the control system or PLC use?

Please provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, distribution line, and property lines.

Physical dimensions of the proposed interconnection station:

Bus length from generation to interconnection station:

Line length from interconnection station to the Public Utility's EDS:

Tower number observed in the field (painted on tower leg):

Number of third party easements required for distribution lines:

To be completed in coordination with Public Utility

Is the Small Generating Facility located in Public Utility's service area?

Facility Location: _____

Yes _____ No _____

If No, please provide name of local provider:

Please provide the following proposed schedule dates:

Begin Construction Date: _____

Generator Step-Up Transformers Receive Back Feed Power Date: _____

Generation Testing Date: _____

Commercial Operation Date: _____

Interconnection Feasibility Study Form Agreement

This agreement is made and entered into this _____ day of _____, _____, by and between _____, a _____ (corporation/limited liability company organized and existing under the laws of the State of _____, or an individual) ("Applicant") and _____, a _____ existing under the laws of the State of _____ ("Public Utility"). Applicant and Public Utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, The Applicant is proposing to develop a Small Generating Facility or adding generating capacity to an existing Small Generating Facility consistent with the Application completed by Interconnection Customer on _____;

Whereas, Applicant desires to interconnect the Small Generating Facility with the Public Utility's Electric Distribution System ("EDS"); and

Whereas, Applicant has requested the Public Utility to perform an Interconnection Feasibility Study to assess the feasibility of interconnecting the proposed Small Generating Facility to the Public Utility's EDS;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1. When used in this Agreement with initial capitalization, the terms specified shall have the meanings given in the SD Public Utilities Commission's rules, ARSD chapter 20:10:36.
2. Interconnection Customer elects and Public Utility shall cause to be performed an Interconnection Feasibility Study consistent with the SD Public Utilities Commission's rules.
3. The Applicant will provide the data requested in Section 2 of this form. The scope of the Interconnection Feasibility Study shall be subject to the assumptions set in the rules and detailed in this agreement form.
4. The Interconnection Feasibility Study shall be based on the technical information provided by the Applicant in its Application, as may be modified as the result of the Scoping Meeting. The Public Utility reserves the right to request additional technical information from Interconnection Customer as reasonably becomes necessary consistent with Good Utility Practice during the course of the Interconnection Feasibility Study. If, in the course of the Study, the Applicant finds it necessary to modify the Application, the time to complete the Interconnection Feasibility Study may be extended by mutual agreement of the Parties.
5. In performing the study, the Public Utility will rely, to the extent reasonably practicable, on existing studies of recent vintage. The Applicant will not be charged for such existing studies.
6. The Interconnection Feasibility Study shall be completed and the results transmitted to

**Appendix A to ELPC Comments
Form FM3**

Interconnection Customer within a timeline agreed to by the parties [under the process prescribed in the Commission's rules, ARSD chapter 20:10:36.](#)

In witness whereof, the Parties have caused this agreement to be duly executed by their duly authorized officers or agents on the day and year first above written:

[Insert name of Public Utility]

Signed _____
Name (Printed): _____ Title: _____

[Insert name of Applicant]

Signed _____
Name (Printed): _____ Title: _____

Section 2: Interconnection Feasibility Study Agreement
Assumptions Used in Conducting the Interconnection Feasibility Study

The Interconnection Feasibility Study will be based upon the information set forth in the Application and agreed upon in the Scoping Meeting held on

_____.

1. Designation of Point of Interconnection and configuration to be studied.

2. Designation of alternative Points of Interconnection and configuration.

Note: 1 and 2 are to be completed by the Applicant. Any other assumptions (listed below) are to be provided by the Applicant or the Public Utility.

Interconnection Equipment Specifications, Initial Settings, and Operating

Requirements *

Address of Facility | _____

Comment [BK1]: It appears that most of the information requested here has already been provided as part of the customer's application. Why is it needed again? Suggest deleting this section and allowing utility and applicant the flexibility to work out necessary information requirements for the Feasibility Study.

Interconnection Customer: _____

Facility Operator (if different than above): _____

Facility Location/ Name: _____

Telephone No.: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Revision Date: _____

Energy Production Equipment/Inverter Information

Synchronous Induction Inverter Other _____

Electric Nameplate Rating: _____ KW _____ kVA

Rated Voltage: _____ Volts

Rated Current: _____ Amps
Phase: Single Three-Phase
System Type Tested (Total System): Yes No (attach product literature)

For Synchronous Machines

Manufacturer: _____
Model No.: _____ Version No.: _____
Submit copies of the Saturation Curve and the Vee Curve Salient Non-Salient
Field Amperes: _____ at rated generator voltage and current and _____% PF over-excited
Type of Exciter: _____
Output Power of Exciter: _____
Type of Voltage Regulator: _____
Locked Rotor Current: _____ Amps
Synchronous Speed: _____ RPM
Winding Connection: _____
Min. Operating Freq./Time: _____
Generator Connection: Delta Wye Wye Grounded
Direct-axis Synchronous Reactance: (X_d) _____ ohms
Direct-axis Transient Reactance: (X'_d) _____ ohms
Direct-axis Sub-transient Reactance: (X''_d) _____ ohms

For Induction Machines

Manufacturer: _____
Model No.: _____ Version No.: _____
Locked Rotor Current: _____ Amps
Rotor Resistance: (R_r) _____ ohms Exciting Current: _____ Amps
Rotor Reactance: (X_r) _____ ohms Reactive Power Required: _____
Magnetizing Reactance: (X_m) _____ ohms _____ VARs (No Load)
Stator Resistance: (R_s) _____ ohms _____ VARs (Full Load)
Stator Reactance: (X_s) _____ ohms
Short Circuit Reactance: (X'_d) _____ ohms
Electric Nameplate Capacity rating: (kVA) _____

For Inverter Based Facilities

Manufacturer: _____ Model: _____
Type: Forced Commutated Line Commutated
Electric Nameplate Capacity Rated Output: _____ Amps _____ Volts _____ KW
Efficiency: _____% Power Factor: _____%
Is Inverter Lab Tested? Yes (attach product literature) No

DC Source / Prime Mover:

Solar Wind Hydro Other _____
Electric Nameplate Capacity Rating: _____ KW Rating: _____ kVA
Rated Voltage: _____ Volts
Open Circuit Voltage (If applicable): _____ Volts
Rated Current: _____ Amps
Short Circuit Current (If applicable): _____ Amps

Other Facility Information

One Line Diagram attached: Yes No
Plot Plan attached: Yes No
Isolation Device Type/ Location: _____
Grounding Configuration: _____
Initial Commissioning Date: _____

Switchgear/Circuit Interruption Devices

Switchgear type and control: (used to bring generator on line)
Circuit Breakers: Closed-transition Open-transition Auto Transfer Switch
Nameplate: _____

Metering

Location: _____
Metering Issues: _____
Monitoring Provisions: Yes No
Monitoring Values: _____
Monitoring Issues: _____

Initial Set Points at Point of Interconnection

Voltage: _____ kVAr: _____
Power factor: _____
Other: _____
Other: _____

Trip Re-start Protocol

Reclosing Practice: _____
Hold out time: _____
Ramp Rate: _____

Notification required: Yes No

Operations and Maintenance Schedule

Operating Hours: _____ Availability (%): _____

Seasonal Effect: _____

Routine and Annual Maintenance Schedule: _____

*** Initial operating set points and "as built" equipment data is to be recorded on or about the time of the Witness Test. Parties may not deviate from initial settings and agreed upon operating parameters except as permitted by the rules without written authorization of the Public Utility. The Interconnection Customer will furnish updated information to the Public Utility any time a special operating requirement initial set point or the Interconnection Equipment is materially changed.**

**Small Generator Facility
Tier 1 Interconnection Request Application Form**

(See ARSD chapter 20:10:36 for the requirements for a Tier 1 Interconnection.)

Applicant Contact Information:

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Evening): _____

Facsimile Number: _____

E-Mail Address: _____

System Installer:

Check if Owner Installed

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Evening): _____

Facsimile Number: _____

E-Mail Address: _____

Small Generator Facility Information:

Location (if different from above):

Public Utility: _____

Account Number (existing Public Utility customer): _____

Proposed Operation Mode: Qualified Facility Other

If a Qualified Facility, has Applicant completed FERC's "Notice of Self Certification"? Yes

No

Prime Mover Type: _____

Comment [BK2]: This is confusing and not clear why this is necessary on the application form. Recommend clarifying or deleting this line.

Comment [BK3]: The "prime mover" is identified below. Recommend deleting this line.

**Appendix A to ELPC Comments
Form FM5**

Inverter Manufacturer: _____ Model: _____

Inverter Electric Nameplate Capacity: ____ (KW) ____ (kVA)

Inverter Electrical Connection: ____ (AC Volts) Phase: Single Three

System Design Capacity: _____ (KW) _____ (kVA)

Prime Mover: Photovoltaic Reciprocating Engine Fuel Cell

Turbine Other _____

Energy Source: Solar Wind Hydro Diesel Natural Gas

Fuel Oil Other _____

Is the inverter lab certified? Yes No

(If yes, attach manufacturer's cut sheet showing listing and label information from the appropriate listing authority, e.g. UL 1741 listing. If no, facility does not qualify for Tier 1 consideration. Refer to the Public Utilities Commission's rules found in ARSD chapter 20:10:36 for details.)

Estimated Commissioning Date: _____

Estimated Commissioning Cost: _____

Applicant Signature:

I hereby attest that the information submitted on this application is accurate to the best of my knowledge and have included the application fee of \$50 with my Tier 1 Interconnection Request:

Applicant Signature: _____

Title: _____ Date: _____

Application fee (\$50) included:

Tier 1 Interconnection Request Acknowledgement

Receipt of the application and application fee is hereby acknowledged.

Approval for a Tier 1 Small Generator Facility interconnection is contingent upon the Applicant's Small Generator Facility passing the Tier 1 screens and completion of the review process set forth in ARSD chapter 20:10:36 and is not granted by the Public Utility's signature on this Application form.

Public Utility Representative Signature: _____ Date: _____

Printed Name: _____ Title: _____

Indicate whether Public Utility plans to perform Witness Test:

Yes No

Note: The Public Utility shall retain a copy of this completed and signed form and return the original and any attachments to the Applicant.

**Interconnection Agreement for Small Generator Facility
Tier 1, Tier 2, Tier 3, or Tier 4 Interconnection
(Small Generator Facilities with Electric Nameplate Capacities
of 10 MW or smaller)**

This agreement is made and entered into this _____ day of _____, _____
by and between _____,
a _____ (corporation/limited liability company organized and
existing under the laws of the State of _____, or an individual) ("Applicant")
and _____, a _____
existing under the laws of the State of _____, (Public Utility).
Applicant and Public Utility each may be referred to as a "Party," or collectively as the
"Parties."

Recitals:

Whereas, the Applicant is proposing to develop a Small Generator Facility, or to add
generating capacity to an existing Small Generator Facility, consistent with the Application
completed on _____;

Whereas, the Applicant desires to interconnect the Small Generator Facility with the
Public Utility's Electric Distribution System ("EDS"); and

Whereas, the Agreement shall be used for all approved Tier 1, Tier 2, Tier 3, and Tier 4
Applications according to the procedures set forth in South Dakota Public Utilities
Commission's ("Commission") rules, ARSD chapter 20:10:36. Terms with initial
capitalization, when used in this Agreement, shall have the meanings given in such rules
and, to the extent this Agreement conflicts with the rules, the rules shall take precedence.

Now, therefore, in consideration of and subject to the mutual covenants contained herein,
the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 Scope

The Agreement establishes standard terms and conditions approved by the
Commission under which the Small Generator Facility with a Name Plate
Capacity of 10 MW or smaller will interconnect to, and operate in Parallel with,
the Public Utility's EDS. Additions, deletions, or changes to the standard terms
and conditions of an Interconnection Agreement will not be permitted unless they
are mutually agreed to by the Parties or approved by the Commission if required
by the rules.

1.2 Power Purchase

The Agreement does not constitute an agreement to purchase or deliver the

Applicant's power nor does it constitute an electric service agreement.

1.3 Other Agreements

Nothing in the Interconnection Agreement is intended to affect any other agreement between the Public Utility and the Applicant or another Interconnection Customer. However, in the event that the provisions of the Agreement are in conflict with the provisions of other Public Utility tariffs, the Public Utility tariff shall control.

1.4 Responsibilities of the Parties

The Parties shall perform all obligations of the Agreement in accordance with all applicable laws and rules.

The Applicant will construct, own, operate, and maintain its Small Generator Facility in accordance with the Agreement, IEEE Standard 1547 (2003 ed.), the most currently adopted National Electric Code, state and federal law, and all other applicable standards required by the Commission. Each Party shall be responsible for the safe installation, maintenance, repair, and condition of their respective lines and appurtenances on their respective sides of the Point of Interconnection. Each Party shall provide Interconnection Facilities that adequately protect the other Parties' facilities, personnel, and other persons from damage and injury.

The allocation of responsibility for the design, installation, operation, maintenance, and ownership of Interconnection Facilities is prescribed in the Commission's rules, ARSD chapter 20:10:36.

1.5 Parallel Operation and Maintenance Obligations

Once the Small Generator Facility has been authorized to commence Parallel Operation by execution of the Interconnection Agreement, the Applicant will abide by all written provisions for operation and maintenance as required by the Public Utility.

1.6 Power Quality

The Applicant will design its Small Generator Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection that meets the requirements set forth in IEEE 1547. Any special operating requirements will be detailed in an attached form. Under no circumstances shall these additional requirements for voltage or reactive power support exceed the normal operating capabilities of the Small Generator Facility.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Testing and Inspection

Applicant will test and inspect its Small Generator Facility and Interconnection Facilities prior to interconnection in accordance with IEEE 1547 Standards as provided for in the rules. The Interconnection will not be final until the Witness Test and Certificate of Completion provisions in the rules have been satisfied. Operation of the Small Generator Facility requires an Interconnection Agreement; electricity sales require a Power Purchase Agreement.

To the extent that an Applicant decides to conduct interim testing of the Small Generator Facility prior to the Witness Test, it may request that the Public Utility observe these tests and that these tests be deleted from the final Witness Test. If the Public Utility sends qualified personnel to the Small Generator Facility to observe such interim testing, it will be doing so at its own expense.

2.2 Right of Access:

The Public Utility will have access to the Applicant's premises for any reasonable purpose in connection with the Interconnection Application and any Interconnection Agreement that is entered into pursuant to the rules or if necessary to meet the legal obligation to provide service to its customers. Access will be requested at reasonable hours and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

The Agreement shall become effective upon execution by the Parties.

3.2 Term of Agreement

The Agreement will be effective on the Effective Date and will remain in effect for a period of twenty (20) years or a period mutually agreed to by Parties, unless terminated earlier by default of either Party or voluntary termination by the Interconnection Customer or by action of the Commission.

3.3 Termination

The Applicant may terminate this Agreement at any time by giving the Public Utility twenty (20) business days written notice. Either Party may terminate this Agreement after default. The Commission may order termination of this Agreement. Upon termination of this Agreement, the Small Generator Facility will be disconnected from the Public Utility's EDS at the Applicant's expense. The termination of this Agreement will not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination. The provisions of this Article shall survive termination or expiration of this Agreement.

3.4 Restoration of Interconnection When Disconnected

The Parties shall cooperate with each other to restore the Small Generator Facility, Interconnection Facilities, and Public Utility's EDS to their normal operating state as soon as reasonably practicable following any disconnection pursuant to the rules.

Article 4. Cost Responsibility and Billing

The Applicant is responsible for the application fee and for such facilities, equipment, modifications, and upgrades [identified under the process prescribed in the Commission's rules, ARSD chapter 20:10:36.](#)

4.1 Minor EDS Modifications

4.2 The Applicant will bear the costs of making Minor Modifications as may be necessary to gain approval of an Application [under the process prescribed in the Commission's rules, ARSD chapter 20:10:36.](#)

4.2 Interconnection Facilities

When necessary [under the process prescribed in the Commission's rules, ARSD chapter 20:10:36.](#) the Public Utility will identify the Interconnection Facilities necessary to safely interconnect the Small Generator Facility with the Public Utility. The Public Utility will itemize the Interconnection Facilities for the Applicant, including the cost of the facilities and the time required to build and install those facilities. The Applicant is responsible for the cost of the Interconnection Facilities.

4.3 Interconnection Equipment

The Applicant is responsible for all reasonable expenses, including overheads, associated with owning, operating, maintaining, repairing, and replacing its Interconnection Equipment.

4.4 System Upgrades

The Public Utility will design, procure, construct, install, and own any System Upgrades [under the process prescribed in the Commission's rules, ARSD chapter 20:10:36.](#) The actual cost of the System Upgrades, including overheads, will be directly assigned to the Applicant. An Interconnection Customer may be entitled to financial compensation from other utility Interconnection Customers who, in the future, benefit from the System Upgrades paid for by the Interconnection Customer. Such compensation will be governed by separate rules promulgated by the Commission or by terms of a tariff filed and approved by the Commission. Such compensation will only be available to the extent provided for in the separate rules or tariff.

4.5 Adverse System Impact

The Public Utility is responsible for identifying Adverse System Impacts on any Affected Systems and for determining what mitigation activities or upgrades may be required to accommodate a Small Generator Facility. The actual cost of any

actions taken to address the Adverse System Impacts, including overheads, shall be directly assigned to the Applicant. The Applicant may be entitled to financial compensation from other utility Interconnection Customers or other Interconnection Customers who, in the future, utilize the upgrades paid for by the Applicant, to the extent allowed by the Commission.

4.6 Billings

The Public Utility may require a deposit of not more than 50% of the cost estimate, not to exceed \$1000 for small generator facilities proposing to interconnect 500 kilowatts or less, to be paid up front by the Applicant for studies necessary to complete an Application and to interconnect to the EDS under the process prescribed in the Commission's rules, ARSD chapter 20:10:36. The Public Utility may require a deposit of no more than 50% of the estimated costs, not to exceed \$10,000 for small generators proposing to interconnect 500 kilowatts or less, for Interconnection Facilities necessary to complete an Application and to interconnect to the EDS under the process prescribed in the Commission's rules, ARSD chapter 20:10:36. Progress billing, final billing, and payment schedules must be agreed to by Parties prior to commencing work.

Article 5. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

5.1 Assignment

The Interconnection Agreement may be assigned by either Party upon fifteen (15) business days prior written notice. Except as provided in Articles 5.1.1 and 5.1.2, said assignment shall only be valid upon the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld.

- 5.1.1 Either Party may assign the Agreement without the consent of the other Party to any affiliate (which shall include a merger of the Party with another entity), 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 Agreement.
- 5.1.2 The Applicant shall have the right to assign the Agreement, without the consent of the Public Utility, for collateral security purposes to aid in providing financing for the Small Generator Facility. For Small Generator systems that are integrated into a building facility, the sale of the building or property will result in an automatic transfer of this agreement to the new owner who shall be responsible for complying with the terms and conditions of this Agreement.
- 5.1.3 Any attempted assignment that violates this Article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same obligations as the Applicant.

5.2 Limitation of Liability and Consequential Damages

A Party is liable for any loss, cost claim, injury, or expense including reasonable attorney's fees related to or arising from any act or omission in its performance of the provisions of an Interconnection Agreement entered into pursuant to the rules. Neither Party will seek redress from the other Party in an amount greater than the amount of direct damage actually incurred.

5.3 Indemnity

5.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of the Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 5.2.

5.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from any and all damages, losses, 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, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

5.3.3 If an indemnified person is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such a claim, such indemnified person 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.

5.3.4 If an indemnifying party is obligated to indemnify and hold any indemnified person harmless under this Article, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

5.3.5 Promptly after receipt by an indemnified person 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 this Article may apply, the indemnified person 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.

5.4 Consequential Damages

Neither Party shall be liable to the other Party, under any provision of the Agreement, 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 the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

5.5 Force Majeure

5.5.1 As used in this Agreement, a Force Majeure Event shall mean “any act of God, labor disturbance, act of the public enemy, war, acts of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment through no direct, indirect, or contributory act of a Party, 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 an act of negligence or intentional wrongdoing.

5.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (“Affected Party”) shall promptly notify the other Party of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. If the initial notification was verbal, it should be promptly followed up with a written notification. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be reasonably mitigated. The Affected Party will use reasonable efforts to resume its performance as soon as possible. The Parties shall immediately report to the Commission should a Force Majeure Event prevent performance of an action required by rule that the rule does not permit the Parties to mutually waive.

5.6 Default

5.6.1 No default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement. Upon a default, the non-defaulting Party shall give written notice of such default to the defaulting Party. Except as provided in Article 5.6.2, the defaulting Party shall have sixty (60) calendar days from receipt of the default notice within which to cure such default .

5.6.2 If a default is not cured as provided for in this Article, or if a default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate the Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates the

Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. Alternately, the non-defaulting Party shall have the right to seek dispute resolution with the Commission in lieu of default. The provisions of this Article will survive termination of the Agreement.

Article 6. Insurance

A Party is liable for any loss, cost claim, injury, or expense including reasonable attorney's fees related to or arising from any act or omission in its performance of the provisions of the rules or the Interconnection Agreement entered into pursuant to the rules. Insurance is required according to Commission rules, [ARSD chapter 20:10:36](#).

Article 7. Dispute Resolution

Parties will adhere to the dispute resolution and complaint process in Commission rules, [ARSD chapter 20:10:36](#).

Article 8. Miscellaneous

8.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation, and enforcement of the Agreement and each of its provisions shall be governed by the laws of the State of South Dakota, without regard to its conflicts of law principles. The Agreement is subject to all applicable laws. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

8.2 Amendment

The Parties may mutually agree to amend the Agreement by a written instrument duly executed by both Parties in accordance with provisions of the rules and applicable Commission Orders and provisions of the laws of the State of South Dakota.

8.3 No Third-Party Beneficiaries

The Agreement 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.

8.4 Waiver

8.4.1 The failure of a Party to the Agreement to insist, on any occasion, upon strict performance of any provision of the Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

8.4.2 The Parties may agree to mutually waive a section of this Agreement so long as prior Commission approval of the waiver is not required by the rules.

8.4.3 Any waiver at any time by either Party of its rights with respect to the Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of the Agreement. Any waiver of the Agreement shall, if requested, be provided in writing.

8.5 Entire Agreement

The Interconnection Agreement, including any supplementary form attachments that may be necessary, constitutes the entire Agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of the Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under the Agreement.

8.6 Multiple Counterparts

The Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

8.7 No Partnership

The Agreement will not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

8.8 Severability

If any provision or portion of the Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority: (1) such portion or provision shall be deemed separate and independent; (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling; and (3) the remainder of the Agreement shall remain in full force and effect.

8.9 Subcontractors

Nothing in the Agreement shall prevent a Party from utilizing the services of any subcontractor, or designating a third party agent as one responsible for a specific obligation or act required in the Agreement (collectively subcontractors), as it

deems appropriate to perform its obligations under the Agreement; provided, however, that each Party will require its subcontractors to comply with all applicable terms and conditions of the Agreement in providing such services and each Party will remain primarily liable to the other Party for the performance of such subcontractor.

8.9.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under the Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made. Any applicable obligation imposed by the Agreement upon the hiring Party shall be equally binding upon, and will be construed as having application to, any subcontractor of such Party.

8.9.2 The obligations under this Article will not be limited in any way by any limitation of subcontractor's insurance.

8.10 Reservation of Rights

Either Party will have the right to make a unilateral filing with the Commission to modify the Interconnection Agreement. This reservation of rights provision includes, but is not limited to, modifications with respect to any rates, terms, and conditions, charges, classification of service, tariff, or any applicable State or Federal law or regulation. Each Party shall have the right to protest any such filing and to participate fully in any proceeding before the Commission in which such modifications may be considered.

Article 9. Notices

Unless otherwise provided in the Agreement, any written notice, demand, or request required or authorized in connection with the Agreement shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Applicant:

Applicant: _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____ E-mail: _____

If to the Public Utility:

Public Utility: _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____ E-mail: _____

9.1 Billing and Payment

Billings and payments shall be sent to the addresses set out below: (complete if different than article 9.2 above)

If to the Applicant

Applicant: _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____

If to the Public Utility

Public Utility: _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____

9.2 Designated Operating Representative

The Parties will designate operating representatives to conduct the communications which may be necessary or convenient for the administration of the operations provisions of the Agreement. This person or persons will also serve as the point of contact with respect to operations and maintenance of the Party's facilities (complete if different than article 9.2 above)

Applicant's Operating Representative: _____

Attention: _____

Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____ E-Mail _____

Public Utility's Operating Representative: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ E-Mail: _____

9.3 Changes to the Notice Information

Either Party may change this notice information by giving five business days written notice prior to the effective date of the change.

Article 10. Signatures

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed by their respective duly authorized representatives.

For the Applicant:

Name: _____
Title: _____
Date: _____

For the Public Utility:

Name: _____
Title: _____
Date: _____