

**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 Attachments to Interconnection Agreement**

An Operations and Maintenance Schedule shall be attached to the Interconnection Agreement and the Applicant shall adhere to that schedule. Either Party may require that any of the following attachments be included as part of the Interconnection Agreement: (a) description of contingent facilities; (b) description of the project; (c) a billing schedule; (d) a list of non-binding milestones for each party; (e) scope of work; (f) operational guidelines; and (g) list of major permits needed by the Applicant.

### **1.5 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.

### **1.6 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.

### **1.7 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, at no cost, 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**

The Applicant will bear the costs of making Minor Modifications as may be necessary to gain approval of an Application.

### **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**

With the exception of third party claims, 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 20:10:36:26, 20:10:36:27, and 20:10:36:28.

**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 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: \_\_\_\_\_

**ATTACHMENT 1**

**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.

SAMPLE