

**DRAFT**

**SERVICES AGREEMENT**  
**BETWEEN**  
**NORTHERN CALIFORNIA POWER AGENCY**  
**AND**  
**MERCED IRRIGATION DISTRICT**

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This SERVICES AGREEMENT (“Agreement”) is made by and between the Northern California Power Agency, a joint powers agency of the State of California (“NCPA”), and Merced Irrigation District, a public agency functioning under the Irrigation District Laws of the California Water Code (“Customer”). NCPA and Customer are together sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

This Agreement is made as of \_\_\_\_\_, 20\_\_ (the “Effective Date”) in Roseville, California.

**Section 1. RECITALS**

This Agreement is entered into based on the following facts, among others:

1.1 NCPA has heretofore been duly established as a joint powers agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for resale.

1.2 Customer is a public agency functioning under the Irrigation District Laws of the California Water Code, and owns and operates certain generating facilities for the benefit of its customers.

1.3 NCPA is a certified Scheduling Coordinator in accordance with the CAISO Tariff.

1.4 NCPA has established facilities, staff and the capability for the provision of Services to Customer.

1.5 Customer desires NCPA to provide Services to Customer.

1.6 NCPA is willing to provide Customer with Services pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, NCPA and Customer agree as follows:

**Section 2. DEFINITIONS**

2.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 2 of this Agreement shall have the meaning indicated in Appendix A Master Definition Supplement of the CAISO Tariff:

2.1.1 “Agreement” means this Services Agreement, including all Appendices, attached hereto.

2.1.2 “All Resources Bill” means the single, combined monthly bill from NCPA to Customer with respect to all services provided under this Agreement.

2.1.3 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time.

2.1.4 “Calendar Day” means all days, including Saturdays, Sundays or Federal Reserve Bank holidays.

2.1.5 “California Independent System Operator Corporation” or “CAISO” means the non-profit public benefit corporation responsible for the provision of fair and open transmission access, and maintaining reliable and efficient operation of that portion of the electric grid contained within its defined balancing authority area, pursuant to the California Public Utilities Code, or its successor entity.

2.1.6 “CAISO Tariff” means the CAISO FERC Electric Tariff.

2.1.7 “Commission” means the NCPA Commission established by the Joint Powers Agreement.

2.1.8 “Customer” has the meaning set forth in the preamble hereto.

2.1.9 “Effective Date” has the meaning set forth in the preamble hereto.

2.1.10 “Electric System” means all properties and assets, real and personal, tangible and intangible, of the Customer now or hereafter existing, used or pertaining to the generation for resale, transmission, transformation, distribution or sale of electric capacity

and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Customer is not the sole owner of an asset or property or to the extent that an asset or property is used in part for generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, only the Customer's ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System.

2.1.11 "Event of Default" has the meaning set forth in Section 10.1 of this Agreement.

2.1.12 "FERC" means the Federal Energy Regulatory Commission, or its regulatory successor.

2.1.13 "General Manager" means the General Manager of NCPA.

2.1.14 "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry within the United States of America during the relevant time period, 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 the lowest reasonable cost consistent with NERC or WECC approved business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the electric utility industry within the United States of America.

2.1.15 "Joint Powers Agreement" means the Amended and Restated Northern California Power Agency Joint Exercise of Powers Agreement dated as of January 31, 2008.

2.1.16 "NCPA" has the meaning set forth in the preamble hereto.

2.1.17 "NERC" means the North American Electric Reliability Corporation, or its successor.

2.1.18 “Operating Entity” means an entity that determines the use of and coordinates scheduling of their load, resources, imports and exports, trades, ancillary services and/or other CAISO products, in accordance with established scheduling requirements, including those requirements determined by NCPA.

2.1.19 “Party” or “Parties” has the meaning set forth in the recitals hereto; provided that “Third Parties” are entities that are not party to this Agreement.

2.1.20 “Reliability Standards” means requirements approved by FERC under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system.

2.1.21 “Scheduling Agent” means an entity authorized to act as agent on behalf of a Scheduling Coordinator, and shall perform certain Scheduling Coordinator duties and requirements on behalf of a Scheduling Coordinator.

2.1.22 “Scheduling Coordinator” means an entity certified by the CAISO for the purposes of undertaking the functions of a Scheduling Coordinator specified in the CAISO Tariff, including, but not limited to, submitting and settling bids, self-schedules, and trades in the CAISO markets.

2.1.23 “Security Account” means an account established at NCPA pursuant to this Agreement. The Security Account is established to: (1) make timely payments to the CAISO under the CAISO Tariff, and protect NCPA from potential Customer default by providing funds and time to cure, (2) provide working capital for NCPA’s provision of Services and to bridge timing differences between the receipt of payments from Customer and the date payments are due to the CAISO, (3) satisfy CAISO security deposit requirements, if any, and (4) provide security against Customer default.

2.1.24 “Significant Operational Change” shall have the meaning as set forth in Section 15.20 of this Agreement.

2.1.25 “Significant Regulatory Change” shall have the meaning as set forth in Section 15.20 of this Agreement.

2.1.26 “Third Party” means an entity that is not a Party to this Agreement.

2.1.27 “Uncontrollable Forces” means storm, flood, lightning, earthquake, tsunami, fire, explosion, failure of facilities not due to lack of proper care or maintenance, civil disturbance, labor dispute, sabotage, war, national emergency, restraint by court or public authority, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or other causes beyond the control of the affected Party which such Party could not reasonably have been expected to avoid by exercise of Good Utility Practice, due diligence and foresight.

2.1.28 “WECC” means the Western Electricity Coordinating Council, or its successor(s).

2.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: The terms “herein,” “hereto,” “herewith” and “hereof” are references to this Agreement taken as a whole and not to any particular provision; the term “include,” “includes” or “including” shall mean “including, for example and without limitation;” and references to a “Section,” “subsection,” “clause,” “Appendix”, “Schedule”, or “Exhibit” shall mean a Section, subsection, clause, Appendix, Schedule or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument, tariff or other document, or law, regulation or ordinance shall be a reference to that agreement, instrument, tariff or other document, or law, regulation or ordinance as such now exists and as may be amended from time to time, or its successor. A reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. A reference to a “day” shall mean a Calendar Day unless otherwise specified. The singular shall include the plural and the masculine shall include the feminine, and vice versa.

### **Section 3. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to set forth the terms and conditions under which NCPA will supply Customer with Services.

**Section 4. SERVICES TO BE PROVIDED AND STANDARDS OF PERFORMANCE**

4.1 NCPA Duties. The duties of NCPA under this Agreement are to provide services to Customer as fully described in Appendix A hereto (“Services”).

4.2 Customer Duties. The duties of the Customer under this Agreement are to:

4.2.1 Act as its own Scheduling Coordinator, and to assign certain scheduling and settlement duties and responsibilities to NCPA, acting as Customer’s Scheduling Agent, as fully described in Appendix A hereto.

4.2.2 Timely provide certain information to NCPA that is required for NCPA to perform Services, as fully described in Appendix A hereto.

4.2.3 Make timely payments to NCPA for all CAISO charges and credits for services invoiced by NCPA to Customer in accordance with Section 8 of this Agreement.

4.2.4 Provide staff and other assistance as may be required from time to time to the extent necessary for NCPA to fulfill its duties as described in Section 4.1 of this Agreement.

4.2.5 Comply with all requirements of the CAISO Tariff, as applicable, in respect to the operation and maintenance of its Electric System and other facilities covered under this Agreement.

4.2.6 Provide security or other deposits required by the CAISO, if any, to NCPA in accordance with Section 11 of this Agreement.

4.2.7 Initially fund and maintain sufficient deposits in its Security Account in accordance with Section 12 of this Agreement.

4.2.8 Make timely payment of all costs associated with NCPA’s provision of Services, as set forth in this Agreement.

4.2.9 Except as provided in Section 6 of this Agreement, defend and indemnify NCPA in regard to Services provided to Customer by NCPA.



4.3 Standard of Performance. NCPA will perform Services using the level of skill and attention reasonably required to complete the services in a competent and timely manner.

4.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform Services pursuant to this Agreement.

4.5 Time. NCPA shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 4.3, and to satisfy NCPA's obligations hereunder.

## **Section 5. TERM AND TERMINATION**

5.1 Term. The initial term of this Agreement shall begin on the Effective Date and shall continue uninterrupted through June 30, 2022 (the "Initial Term"). At the end of the initial term of this Agreement, or any subsequent term of this Agreement, the term of this Agreement shall automatically extend for an additional two (2) year period unless a Party provides written Notice of Termination pursuant to Section 5.2, of its election not to automatically extend the term of the agreement.

5.2 Termination. This Agreement may be terminated by either Party at the end of the Initial Term, or at the end of any subsequent two (2) year extension, by providing written notice to the other Party at least ninety (90) days prior to the end of the current term of the Agreement ("Notice of Termination").

5.3 No Effect on Prior Liabilities. Termination of this Agreement will not terminate any Customer ongoing or un-discharged liabilities, credits or obligations of Customer, including any contingent liabilities, credits or obligations, resulting from this Agreement until they are satisfied in full, or for which Customer has provided a mechanism acceptable to NCPA, for the satisfaction in full thereof.

## **Section 6. INDEMNITY AND INSURANCE**

### **6.1 Limitation of NCPA's Liability.**

6.1.1 Except as provided in Section 6.1, neither NCPA nor Customer (the "Responsible Party") shall at any time be liable for any injury or damage occurring to the

other (the “Harmed Party”) or any third person or property from any cause whatsoever arising out of this Agreement.

6.1.2 The provisions of this Section 6.1.1 shall not apply where the injury or damage occurring to a Harmed Party is caused by the negligence of the Responsible Party or any of the Responsible Party’s employee’s, agents or contractors, and provided that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the insurance policies described in Section 6.3, which are maintained by the Responsible Party.

6.2 Notice. The Parties shall give each other prompt notice of the making of any claim or the commencement of any action, suit or proceeding covered by the provisions of this Section 6.

6.3 Insurance. During the term of this Agreement, both Parties agree to maintain, or cause to be maintained, in full force and effect, and at their respective sole cost and expense, the following types and limits of liability insurance (“Insurance”):

6.3.1 One-million dollars per occurrence for Workers’ Compensation and Employer’s Liability;

6.3.2 One-million dollars in limits per occurrence in Automobile Liability;  
and

6.3.3 Two-million per occurrence, and Five-million in Annual Aggregate for Commercial General Liability Insurance.

Evidence of each Party’s Insurance shall be maintained, and provided to the other Party upon request. All insurance policies, with the exception of Workers’ Compensation, shall name the other Party as additionally insured. Each Party agrees to waive the right of subrogation where it is legal to do so.

Each Party shall designate the required insurance liability limits for any subcontractors performing work in connection with, or in performance of any aspect of this Agreement, and in accordance to their risk management requirements.

**Section 7. COMPENSATION**

7.1 Compensation for Services. Customer shall pay NCPA the amounts set forth in Appendix B for NCPA's provisions of Services to Customer in accordance with the terms and conditions of this Agreement. Such amount shall be billed to Customer in accordance with Section 8 of this Agreement.

7.2 CAISO Charges and Credits. All charges and credits invoiced by the CAISO to NCPA associated with services provided under this Agreement will be charged or credited to Customer, and shall be paid to NCPA by Customer in addition to the compensation stated in Section 7.1. Such CAISO charges and credits shall be billed to Customer in accordance with Section 8 of this Agreement.

**Section 8. BILLING AND PAYMENT**

8.1 Invoices. NCPA will issue a monthly invoice to Customer for estimated and actual CAISO charges and credits, costs associated with NCPA's provision of Services, and all other costs for services provided in accordance with this Agreement. Such invoice may be either the All Resources Bill or separate special invoice, as determined by NCPA. Such invoices will be made pursuant to the requirements and procedures provided for in this Agreement. At NCPA's discretion, invoices may be issued to Customer using electronic media or physical distribution.

8.2 Payment of Invoices. All non-emergency invoices delivered by NCPA to Customer (including the All Resources Bill) are due and payable thirty (30) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the next following Business Day. NCPA may apply Customer's Security Account to the payment of all or any portion of an invoice to Customer, provided that application of such funds from the Security Account shall not relieve Customer from any late payment charges pursuant to Section 8.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by Customer, NCPA shall deposit the relevant portion of the payment into the Security Account and credit

such deposit to Customer. Emergency invoices delivered by NCPA shall be due and payable on the date indicated on such invoice, or as indicated in Section 12.4.

8.3 Late Payments. Any amount due and not paid by Customer in accordance with Sections 8.2, Section 11 and Section 12 shall be considered late and bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

8.4 Billing Disputes. Customer may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days of the date of such invoice; nonetheless Customer shall pay the full amount billed when due. If Customer does not timely question or dispute the accuracy of any invoice in writing the invoice shall be deemed to be correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, NCPA shall issue a corrected invoice and refund any amounts that may be due to Customer. If NCPA and Customer fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after Customer has disputed it, the General Manager shall promptly submit the dispute to the Commission for resolution. If the Commission and Customer fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days of its submission to the Commission, the dispute may then be resolved under the dispute resolution procedures set forth in Section 13 of this Agreement. Provided, however, that prior to resorting to alternative dispute resolution procedures, the full amount of the disputed invoice must have been paid.

8.5 Billing/Settlement Data. NCPA shall make billing and settlement data available to Customer in the All Resources Bill, or other invoice, or upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Customer using electronic media (e.g. electronic data portal). Procedures and formats for the provision of such electronic data submission may be as established by the NCPA Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require Customer to execute a non-disclosure agreement prior to providing access to the NCPA electronic data portal.

8.6 Examination of Books and Records. Customer shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files or other documents or material, in electronic or any other form, that NCPA prepares or obtains pursuant to this Agreement and that relate to the Services provided hereunder, shall be stored and maintained by NCPA in accordance with NCPA's records retention policies and procedures, as such may be modified from time to time.

## **Section 9. COOPERATION AND FURTHER ASSURANCES**

Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

## **Section 10. DEFAULTS**

10.1 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Party (the "Defaulting Party"):

(i) the failure of Customer to make any payment (other than an emergency addition to the Security Account pursuant to Section 12.4) in full to NCPA when due, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure;

(ii) the failure of Customer to make any payment of an emergency addition to the Security Account when due pursuant to Section 12.4;

(iii) the failure of a Party to perform any covenant or obligation of this Agreement where such failure is not cured within thirty (30) Calendar Days following receipt of

a notice from the other Party demanding cure. Provided, that this subsection shall not apply to any failure to make payments specified by subsection 10.1 (i) or (ii) ); or

(iv) if any representation or warranty of a Party material to the services provided hereunder shall prove to have been incorrect in any material respect when made and the Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days of the date of receipt of notice from a Party demanding cure.

10.2 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces. Provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager, or in the case of Customer, to the representative selected by Customer, using telephone communication within two (2) Business Days of the onset of the Uncontrollable Force, and subsequently provide written notice to the Party's representative within ten (10) Business Days of the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch. Provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

10.3 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 10.1 above, as may be applicable.

10.4 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 10.1, without limiting other

rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action a non-defaulting Party may have against the defaulting Party, a non-defaulting Party may take any or all of the following actions:

(i) NCPA may suspend the provision of services under this Agreement to Customer;

(ii) NCPA may demand that Customer provide further assurances to guarantee the correction of the default;

(iii) The non-defaulting Party may terminate this Agreement as to the defaulting Party, on ten (10) Calendar Days prior written notice to the Defaulting Party;

(iv) NCPA may utilize the funds available in Customer's Security Account to cure and default under Section 10.1(i) and thereafter demand replenishment of the Security Account.

10.5 Special Covenants Regarding Security Account. In the event that Customer's Security Account is insufficient to cover all invoices for costs incurred under this Agreement delivered to Customer, then, without limiting NCPA's other rights or remedies available under this Agreement, at law or in equity, Customer shall cooperate in good faith with NCPA and shall cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary to replenish its Security Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default with all due haste.

10.6 Effect of Termination or Suspension.

10.6.1 Generally. The termination or suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

10.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA in accordance with Section 10.4 (i), Customer shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, or other reasonable and necessary costs associated with such suspension and any portion of the costs associated with NCPA's provision of Services that were not recovered from Customer as a result of such suspension.

10.6.3 Termination. If this Agreement is terminated by a Party in accordance with Section 10.4 (iii), the Defaulting Party shall pay any and all costs incurred by the other Party as a result of such termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination, and as to Customer, any portion of costs associated with NCPA's provision of Services that were not, or will not be, recovered from Customer as a result of such termination.

#### **Section 11. CAISO SECURITY DEPOSIT AND CREDIT REQUIREMENTS**

Any credit requirements, including, but not limited to, security, collateral, unsecured credit, or other deposits required by the CAISO, shall be provided by Customer prior to NCPA providing Services under this Agreement, and shall be maintained as may be required thereafter pursuant to the CAISO Tariff. Failure to maintain sufficient credit, security, collateral, unsecured credit, or other deposits may impact NCPA's ability to perform certain Services under this agreement. NCPA shall maintain a detailed accounting of Customers credit, security, collateral, unsecured credit or other deposits. Any changes in credit, security, unsecured credit or other deposits required by the CAISO Tariff may be provided by NCPA from Customer's Security Account, and NCPA shall invoice Customer within two (2) Business Days for such required amounts, and will use the funds collected from Customer to fund the Security Account.

#### **Section 12. SECURITY ACCOUNT**



Any Customer deposits into the Security Account pursuant to this Agreement shall be separate from and in addition to any security accounts maintained pursuant to any other agreements between NCPA and the Customer, NCPA and any Third Person, or any other such security account required of Customer.

12.1 Initial Amounts. Prior to NCPA providing Services, Customer shall deposit into a Security Account held by NCPA an amount equal to the highest three (3) months of estimated CAISO invoices for the succeeding twelve (12) months; provided, however, that such deposit may be satisfied in whole or in part either in cash or through a clean, irrevocable letter of credit satisfactory to the General Manager. NCPA shall maintain a detailed accounting of Customer's deposit in the Security Account.

12.2 Subsequent Deposits. Periodically, and at least quarterly, NCPA shall review and revise its estimate of all costs Customer shall be obligated to pay under this Agreement. Following such review, NCPA shall determine whether Customer has a sufficient balance in the Security Account. To the extent that Customer's balance in the Security Account is greater than one hundred and ten percent (110%) of the amount required by Section 12.1, NCPA shall credit such amount as soon as practicable to Customer's next All Resources Bill. To the extent that Customer's balance in the Security Account is less than ninety percent (90%) of the amount required by Section 12.1, NCPA shall add such amount as soon as practicable to Customer's next All Resources Bill, or as necessary, to a special invoice to Customer. Credits or additions shall not be made if Customer satisfies these Security Account requirements in whole through the use of a letter of credit, provided that the amount of the letter of credit shall be adjusted by Customer as necessary in a like manner to assure an amount equal to the highest three (3) months of CAISO invoices is available to NCPA.

12.3 Use of Security Account Funds.

12.3.1 NCPA may use any and all funds deposited into the Security Account (or utilize a letter of credit provided in lieu thereof) to pay any costs it incurs hereunder, irrespective of whether NCPA has issued an All Resources Bill or invoice for such costs to Customer or whether Customer has made timely payments of All Resources Bills or invoices.

Should Customer satisfy its Security Account requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy obligations hereunder.

12.3.2 If funds deposited into the Security Account, or provided through a letter of credit, are used by NCPA to pay any costs it incurs hereunder, NCPA, pursuant to Section 8.5, will maintain a detailed accounting of Customer's shares of funds withdrawn from the Security Account or letter of credit.

12.4 Emergency Additions. In the event that the funds are withdrawn pursuant to Section 12.3 of this Agreement, or if the Security Account is insufficient to allow payment of a CAISO invoice, NCPA shall notify Customer and then prepare and send a special or emergency assessment to Customer. Customer shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment or consent to and direct NCPA to draw on any existing letter of credit Customer has established for such purposes.

12.5 Accounting and Interest. NCPA shall maintain a detailed accounting of Customer's deposits into and withdrawals from the Security Account. Monies on deposit in the Security Account shall be invested by NCPA along with the other funds of NCPA in accordance with policies set by the Commission from time to time in its sole discretion. Interest, if any, earned on the Security Account shall be credited to Customer's Security Account. Any losses in the Security Account caused by early termination of investments or otherwise shall be charged to Customer's Security Account. NCPA makes no representation that the Security Account will earn any particular amount of interest or any interest, and Customer acknowledges that the amounts in the Security Account may lose value. NCPA shall not be liable for any investment losses to Customer's funds held in the Security Account.

12.6 Return of Funds. On the termination of this Agreement Customer's Security Account funds shall be paid to Customer ninety (90) days after the effective date of such termination. NCPA shall, in its sole discretion, as determined by the General Manager, estimate the then outstanding liabilities of Customer, including any estimated contingent liabilities, and shall retain all such funds until all such liabilities have been fully paid or otherwise satisfied in

full. After such determination by the General Manager, the balance of Customer's Security Account will be refunded to Customer within sixty (60) days.

**Section 13. SETTLEMENT OF DISPUTES**

13.1 Settlement of Disputes. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Customer and NCPA agree to resolve the dispute in accordance with the following:

13.1.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute.

13.1.2 The representative shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

13.1.3 If the issue remains unresolved after sixty (60) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

13.1.4 This informal resolution process is not intended to nor shall be construed to change the time periods for failing a claim or action specified by Government Code § 900, *et seq.*

**Section 14. STATUS OF NCPA**

At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of Customer. Customer shall have the right to control NCPA only insofar as the results of NCPA's Services rendered pursuant to this Agreement; however, otherwise Customer shall not have the right to control the means by which NCPA accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other agency, state, local or federal policy, rule, regulation, law, or ordinance to the contrary, NCPA and any of its employees, agents, and subcontractors providing Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Customer, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an

employee of Customer and entitlement to any contribution to be paid by Customer for employer contributions and/or employee contributions for PERS benefits.

**Section 15. MISCELLANEOUS**

15.1 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. Confidential or trade secret information shall be marked or expressly identified as such.

If a Party (“Receiving Party”) receives a request from a Third Party for access to, or inspection, disclosure or copying of, any of the other Party’s (the “Supplying Party”) confidential data or information (“Disclosure Request”), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request, and the Supplying Party requests the Receiving Party to deny or object to the Disclosure Request with respect to identified confidential information. In such case, the Receiving Party shall deny the Disclosure Request and the Supplying Party shall defend the denial of the Disclosure Request at its sole cost, and it shall indemnify the Receiving Party for all costs associated with denying or objecting to the Disclosure Request. Such indemnification by the Supplying Party of the Receiving Party shall include all of the Receiving Party’s costs reasonably incurred with respect to denial of or objection to the Disclosure Request, including but not limited to costs, penalties, and the Receiving Party’s attorney’s fees; or

(ii) the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

15.2 Indemnification and Hold Harmless. Subject to the provisions of Sections 6 and 15.4, each Party agrees to indemnify, defend and hold harmless the other Party, including their respective governing boards, officials, officers, agents, and employees, from and against any

and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Party, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

15.3 Survival of Obligations. The defense and indemnity obligations of Section 15.2 shall survive the termination of this Agreement.

15.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL A PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

15.5 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the other Party. Any such waiver by the other Party in any particular instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

15.6 Amendments. Unless otherwise provided for in this Agreement, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

15.6.1 Amendments of Appendices. The Appendices that are attached to and made part of this Agreement include detailed principles, descriptions and procedures for NCPA's provision of Services to Customer. Upon mutual written consent of the Designated Representative of each Party, the Appendices of this Agreement may be amended from time to time, without the requirement of an approval as required pursuant to Section 15.6; provided, however, Appendix A and Appendix B may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

15.7 Assignment of Agreement.

15.7.1 Binding Upon Successors. This Agreement, including the Appendices attached hereto, shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement.

15.7.2 No Assignment. This Agreement, nor any interest herein, shall be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, where such consent shall not be unreasonably withheld.

15.8 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

15.9 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

15.10 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

15.11 Notices. Any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered to the person specified below (the “Designated Representative”):

NCPA:  
David Dockham  
Assistant General Manager, Power Management  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

Merced Irrigation District:  
Don Ouchley  
Deputy General Manager, Energy Resources  
Merced Irrigation District  
744 W. 20<sup>th</sup> Avenue  
Merced, CA 95340

All notices shall be deemed delivered when personally delivered, two (2) Business Days after deposit in the United States mail first class postage prepaid, or on the first Business Day following delivery through electronic communication. A Party may change its Designated Representative by providing notice to the other Party, and such change shall not constitute an amendment to this Agreement.

15.12 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms.

15.13 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument

and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

15.14 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

15.15 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, each Party shall bear its own fees and costs, including attorneys' fees, associated with the action.

15.16 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 15.2 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

15.17 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

15.18 Integration; Incorporation. This Agreement, including all the appendices attached hereto, represents the entire and integrated agreement between Customer and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations,



representations, or agreements, either written or oral. All appendixes attached hereto are incorporated by reference herein.

15.19 Reliability Requirements. Unless otherwise specifically provided for herein, the Parties acknowledge that Customer and NCPA are both individually responsible for compliance with the WECC and NERC Reliability Standards and criteria applicable to the functions for which each Party are respectively registered with NERC. The references to WECC and NERC Reliability Standards, if any, throughout this Agreement do not make any alteration or enlargement of the requirements or standards applicable to each Party beyond their individual registrations with NERC; provided, however, NCPA shall perform certain functions on behalf of, or in coordination with, Customer pursuant to Appendix F.

15.20 Significant Regulatory Change or Operational Change.

15.20.1 A “Significant Regulatory Change” shall be deemed to occur if FERC, the CPUC, the CAISO or any other court, public authority, governmental, or other lawfully established civilian authorities having jurisdiction, issues an order or decision or adopts or modifies a tariff or filed contract, or enacts a law that materially interferes with the ability of any Party to perform any of its obligations under this Agreement.

15.20.2 A “Significant Operational Change” shall be deemed to occur due to (i) material amendments and/or revisions to any tariffs, contracts or other applicable documents referenced in this Agreement that directly affect a Party’s obligations under this Agreement, (ii) an action taken by the Balancing Authority that may have a material detrimental impact on the way a Party operates or must operate its Electric System, or that directly affects a Party’s obligations under this Agreement, or (iii) a significant change in Customer’s supply and resource portfolio that may result in material increase in the scale and scope of services contemplated at the Effective Date of this Agreement (e.g., Customer’s load increased more than ten (10) percent).

15.20.3 Notification of Significant Regulatory Change or Operational Change. At any time during the term of this Agreement, if any Party anticipates the occurrence of a Significant Regulatory Change or Significant Operational Change that may reasonably be

expected to materially interfere with the ability of any Party to perform any of its obligations under this Agreement, or such Significant Regulatory Change or Significant Operational Change occurs, such Party shall provide written notice to the other Party as soon as practicable. The notice shall contain a description of the Significant Regulatory Change or Significant Operational Change, including expected time schedules, and of the effect of the significant change to the Parties. If the Party giving notice believes that it will be necessary to amend this Agreement to address the anticipated change or change when it has occurred, then the notice to the other Party may include a proposal that the Parties meet to negotiate an appropriate amendment to this Agreement. The Parties shall promptly enter into good faith negotiations and attempt to achieve a mutually agreeable modification to this Agreement to address any such Significant Regulatory Change or Significant Operational Change.

15.20.4 Amendment of Agreement. If the Parties agree that an amendment to this Agreement is necessary to address a Significant Regulatory Change or Significant Operational Change, the Parties will proceed to negotiate such amendment in good faith. If the Parties have not reached agreement within 120 calendar days of the date of the first meeting, either Party may terminate this Agreement pursuant to Section 5.2.

IN WITNESS WHEREOF, NCPA and Customer have, by the signature of its duly authorized representative shown below, executed and delivered a counterpart of this Agreement.

**Northern California Power Agency**

**Merced Irrigation District**

\_\_\_\_\_  
RANDY S. HOWARD, General Manager

\_\_\_\_\_  
JOHN SWEIGARD, General Manager

Attest:

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

\_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
General Counsel

\_\_\_\_\_  
General Counsel

**APPENDIX A**

**SCOPE OF SERVICES**

All services provided by NCPA to Customer pursuant to this Agreement are described in this Appendix A (collectively referred to herein as “Services”).

**Section 1. Scheduling Coordination Services**

1.1 Description of Service. NCPA shall provide Scheduling Coordination Services to Customer, acting as Customer’s Scheduling Agent, in accordance with this Agreement, the CAISO Tariff, and other rules and requirements, as applicable. Scheduling Coordination Services include the following duties, and are furthermore described in Appendix C of this Agreement:

1.1.1 NCPA, in coordination with Customer, will facilitate Customer’s Scheduling Coordinator registration with the CAISO. NCPA will assist Customer with managing the various steps that are required to complete all of the Scheduling Coordinator certification requirements set forth in the CAISO Tariff and Business Practice Manuals.

1.1.2 NCPA will assist Customer with the process of transferring Customer’s resources from the Scheduling Coordinator portfolio in which they currently reside, to Customer’s newly registered and formed Scheduling Coordinator portfolio.

1.1.3 Development and submission of schedules and Bids for Customer’s resources, trades, ancillary services and/or other CAISO products in the CAISO energy and ancillary services markets, or other markets, as applicable. All schedules and Bids will be made and submitted to the CAISO in accordance with Appendix C and the CAISO Tariff, or other balancing authority areas in accordance with the applicable rules and requirements. Customer’s owned and operated generation facilities for which NCPA supplies Scheduling Coordination Services on behalf of are listed in Appendix E.

1.1.4 NCPA shall perform outage coordination and management for Customer’s generating resource planned and unplanned outages in accordance with applicable rules and requirements, including, but not limited to, the CAISO Tariff and associated operational procedures.

1.1.5 Obtain and maintain settlement quality meter data in accordance with the CAISO Tariff, the MSA CAISO ME or MSA SC, as applicable, to be used for multiple purposes, including, but not limited to settlement validation.

1.1.6 Submit regulatory data to appropriate Balancing Authorities by defined deadlines, including Resource Adequacy supply plans and compliance filings.

1.1.7 Develop, submit and management of E-Tags for Customer interchange transactions.

1.1.8 Review, validate, and reconcile CAISO settlement charges and credits for services, file timely disputes and pursuant dispute resolution.

## **Section 2. Control Center Services**

2.1 Description of Service. NCPA shall provide control center services (“Control Center Services”) for Customer’s owned and operated generation facilities for which NCPA supplies Scheduling Coordination Services. Such duties shall include the following, and are furthermore described in Appendix D of this Agreement:

2.1.1 Monitoring and dispatching of Customer generation facilities.

2.1.2 Management of unplanned outages and system emergencies.

2.1.3 Purchasing and selling energy and capacity in real time in accordance with direction provided by Customer.

2.1.4 Monitor real time telemetry, data flow and manage system data.

2.1.5 Call-out field and emergency service personnel in response to certain operational conditions.

2.1.6 Operational coordination, communication, monitoring and equipment clearance and switching with Customer’s generation facility personnel and Third Parties. Activities associated with Reliability Standards compliance are performed in accordance with Section 4 of this Appendix A.

2.1.7 Monitor alarms and operate Customer generation facilities in accordance with Operating Procedures and applicable requirements, including regulatory and/or environmental requirements.

2.1.8 Comply with the Customer Emergency Action Plan (“EAP”), and initiating the EAP as required.

### **Section 3. Portfolio Management and Optimization Services**

3.1 Description of Services. NCPA shall provide portfolio management and optimization services (“Portfolio Management and Optimization Services”) to Customer pursuant to this Agreement. Portfolio Management and Optimization Services including the following duties:

3.1.1 Acting as an Operating Entity on behalf of Customer.

3.1.2 Providing pre-scheduling, real-time scheduling and optimization (including development of Bidding strategies) services for Customer’s resources.

3.1.3 Performing short term resource planning and optimization on behalf of Customer.

3.1.4 Entering into balance-of-month transactions and transactions for a term less than balance-of-month for purchasing and selling energy, capacity, transmission capacity, and other related services and products on behalf of Customer.

3.1.5 Monitor and analyze contract requirements, and make recommendations to Customer regarding strategies for maximizing the benefits of such contracts.

3.1.6 Coordination of daily and intra-daily operational communications with Customer’s operational counterparts.

3.1.7 Performing transactional and bilateral checkouts and settlements for physical and financial energy, and energy related product transactions, and initiating and processing related disputes.

**Section 4. Reliability Standards Compliance Services.**

4.1 Description of Service. NCPA shall act on behalf of, or in coordination with Customer, regarding compliance activities and requirements associated with certain Reliability Standards (“Reliability Standards Compliance Services”) for Customer’s owned and operated generation facilities for which NCPA supplies Scheduling Coordination Services. Such duties shall include the following, and are furthermore described in Appendix F of this Agreement:

4.1.1 NCPA shall maintain its functional registration with NERC and WECC, to enable NCPA to act on behalf of, or in coordination with Customer, for performing compliance activities to manage and comply with certain WECC and NERC Reliability Standards and criteria. The functions and requirements for which NCPA shall act on behalf of, or in coordination with Customer, are described and listed in Appendix F.

4.1.2 Any violation reporting, including any self-reported violations, shall be made by Customer.

**Section 5. Information Requirements**

5.1 Information Requirements. To enable NCPA to perform the duties associated with Services provided to Customer in accordance with this Agreement, Customer shall timely provide the following information, instructions, and communications to NCPA:

5.1.1 Meter Data. Customer shall provide NCPA access to settlement quality meter data from resources scheduled and Bid by NCPA for Customer under this Agreement, and to maintain such meters and metering equipment in accordance with the standards and requirements as set forth in the CAISO Tariff.

5.1.2 Operational Data. Customer shall provide NCPA access to certain real-time operational systems and information (as mutually determined by NCPA and Customer) including, but is not limited to: (i) Supervisory Control and Data Acquisition (“SCADA”) systems, (ii) Programmable Logic Controllers (“PLC”), (iii) Real-time telemetry and recording devices, and (iv) information required to enable NCPA to provide Reliability Standards Compliance Services.

5.1.3 Scheduling and Operating Procedures. Customer shall prepare written scheduling procedures (“Scheduling Procedures”) and operating procedures (“Operating Procedures”) related to Customer generation resources that convey Customer’s guidelines for how NCPA is to perform certain Scheduling Coordination Services and Control Center Services under this Agreement. Such Scheduling Procedures and Operating Procedures shall be conveyed to NCPA sufficiently in advance of their application so as to reasonably enable NCPA to perform such activities.

**Section 6. Supplemental Services in Accordance with Task Order Process**

6.1 Description of Service. NCPA may, at its sole discretion, provide certain technical support services, or other advisory services, to Customer upon mutual written agreement between the Parties (“Supplemental Services”). All requests for Supplemental Services shall be submitted by Customer to NCPA in accordance with the task order process described in Appendix G (“Task Order Process”).

6.2 Compensation for Supplemental Services. Costs for NCPA’s provision of Supplemental Services shall be charged to Customer on a time and materials basis. Pursuant to Section 7.1 of this Agreement, in consideration of NCPA’s provision of Supplemental Services, Customer shall pay NCPA the sum of: (i) an amount equal to the number of hours required to complete each respective task, multiplied by the applicable hourly rate listed in the Supplemental Services Wage Schedule contained in Appendix B, and (ii) out of pocket expenses and the cost of materials. The scope of each Supplemental Service shall be specified in each respective task order (“Task Order Request”) developed by the Parties pursuant to the Task Order Process.

**Section 7. Service Transition.**

The Parties acknowledge that prior to the date on which specific Services shall be supplied by NCPA for a specific Customer generating resource, the Parties may be required perform certain work and other activities to establish and enable the systems and processes that are required to perform Services as of the date on which Services for a specific Customer generating resource is to commence. Such activities may include establishing common



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business practices, developing business requirements, establishing connectivity of systems and equipment, coordinated training of staff, and other activities that may be required to enable NCPA to provide, and Customer to receive, Services. During this transition period (the "Transition Period"), the Parties agree to cooperate in good faith to establish and enable the systems and processes that are required to perform Services. All activities to be performed by NCPA during the Transition Period are included as part of the comprehensive Services provided to Customer, pursuant to this Agreement, even though such work and activities may be performed by NCPA prior to the date on which specific Services shall be supplied by NCPA for a specific Customer generating resource.

**APPENDIX B**

**COMPENSATION SCHEDULE**

Pursuant to Section 7.1 of this Agreement, Customer shall pay NCPA the amounts listed in this Appendix B (the "Compensation Schedule") in consideration for Services provided under this Agreement.

**Section 1. Compensation Schedule**

1.1 In consideration for NCPA's provision of all Services, except Supplemental Services, Customer shall pay NCPA an amount equal to Three Hundred Ninety Thousand Dollars (\$390,000.00) for Services rendered during the first complete one (1) year period in which NCPA is supplying Services to Customer; more specifically, the first complete one (1) year period shall begin on the July 1, 2017, and shall continue through June 30, 2018. For each subsequent one (1) year period of the term of this Agreement, Customer shall pay NCPA an amount equal to: (i) the sum of the annual amount charged to Customer during the prior year escalated at a rate of 2.5% per year. Such annual amount shall be billed to Customer in twelve (12) equal monthly installments (unless reduced by amounts as determined in Section 1.3 herein), in accordance with Section 8 of this Agreement.

1.2 For the period of time from the Effective Date through June 30, 2017, in consideration for NCPA's provision of all Services, except Supplemental Services, Customer shall pay NCPA an amount equal to the following:

1.2.1 For the period of time from the Effective Date through the date on which the Merced Falls Powerhouse transfers from the control of Pacific Gas and Electric Company to Customer, there will be no charge for Services rendered by NCPA.

1.2.2 For the period of time from the date on which the Merced Falls Powerhouse transfers from the control of Pacific Gas and Electric Company to Customer through June 30, 2017, Customer shall pay NCPA an amount equal to Two Thousand Nine Hundred Seventy Six dollars (\$2,967.00) per month; provided, however, if the date on which the Merced Falls Powerhouse transfers from the control of Pacific Gas and Electric Company

to Customer falls on a date other than the first (1<sup>st</sup>) day of a monthly period, the monthly payment made from Customer to NCPA shall be prorated based on the number of days during such month that the Merced Falls Powerhouse was under the control of Customer.

1.3 Should any of Customer's resources for which NCPA provides Services under this Agreement suffer an Extended Outage, the amount of compensation Customer shall pay NCPA for Services, as provided for herein, shall be reduced by the amounts as described in Section 1.3.1 for each applicable resource, for each month during which the Extended Outage continues beyond the initial three (3) month period, and shall be applied beginning with the first month following the initial three (3) month period of the Extended Outage through the date on which the Extended Outage is resolved or confirmed. Extended Outage means an outage of a resource for a period of at least three (3) consecutive months during which the resource was unavailable and did not generate any energy.

1.3.1 The following amounts represent the amount the monthly compensation paid by Customer to NCPA shall be reduced, per month, that shall be applied in the event that a resource becomes unavailable to Customer as a result of an Extended Outage:

- a) New Exchequer – \$25,571.00
- b) McSwain – \$3,953.00
- c) Merced Falls – \$2,976.00

1.4 In addition to the amounts of compensation set forth in Section 1.1 of this Appendix B, Customer shall also pay NCPA an amount equal to the actual cost for any direct costs NCPA incurs during the Transition Period, if any, for developing, establishing and installing the telecommunications, or other operational data communications connections, that are required for NCPA to provide Services under this Agreement. The compensation contemplated in this Section 1.2 of Appendix B is intended to be limited in scope, and is intended to apply only to any required installation of physical equipment (e.g., communications lines) that may be required to enable NCPA to collect data from, or to transmit data to, Customer's generation

facilities. For clarity, the compensation contemplated in this Section 1.2 is not intended for recovery of general costs that NCPA may incur during the Transition Period (e.g., staff time and material), which are considered to be included in the scope of Services, and whereby such costs are compensated pursuant to Section 1.1 of this Appendix B. Prior to incurring any actual costs for such connections, such expenditures shall be discussed and mutually agreed to by the Parties.

**Section 2. Supplemental Services**

2.1 Pursuant to Section 6 of Appendix A, NCPA may provide Supplemental Services to Customer. All costs charged to Customer for Supplemental Services are separate from and in addition to the compensation paid for all other Services, as set forth in Section 1 of this Appendix B. The following is the hourly rate schedule applicable to Supplemental Services (“Supplemental Services Wage Schedule”):

**SUPPLEMENTAL SERVICES WAGE SCHEDULE**

<b>Job Classification</b>	<b>CY 2016 Hourly Rate (\$/Hr.)</b>
Accountant/Analyst I-III	\$ 150.00
Administrative Assistant I-III	\$ 90.00
Assistant General Manager	\$ 300.00
Computer Tech Analyst I-IV	\$ 170.00
Sr. Computer Tech Analyst	\$ 180.00
Risk Manager	\$ 180.00
Compliance Manager	\$ 230.00
Engineer/Energy Resource Analyst I-IV	\$ 180.00
Mgr. Information Svcs. and Power Settlements	\$ 240.00
Power Settlements Analyst	\$ 160.00
Power Settlements Manager	\$ 210.00
Scheduler/Planner	\$ 180.00
Supervisor I-III	\$ 230.00

This wage schedule may be amended from time to time by NCPA as its costs of labor increase, and may add, subtract or amend job classification titles (and their respective hourly

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rates) as its job classification schedule is amended. NCPA shall provide written notice to Customer of any such amendment prior to charging any increased rate.

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**APPENDIX C**

**SCHEDULING PROCEDURES**

The Scheduling Procedures are separately attached to this Agreement as Appendix C.

**RESERVED FOR ATTACHMENT OF SCHEDULING PROCEDURES**

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**APPENDIX D**

**OPERATING PROCEDURES**

The Operating Procedures are separately attached to this Agreement as Appendix D.

**RESERVED FOR ATTACHMENT OF OPERATING PROCEDURES**

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**APPENDIX E**

**CUSTOMER RESOURCES**

The following is a list of Customer's resource for which NCPA provides Services pursuant to this Agreement.

1. New Exchequer Hydroelectric
  - a. CAISO Resource ID: EXCHEC\_7\_UNIT 1
2. McSwain Hydroelectric
  - a. CAISO Resource ID: MCSWAN\_6\_UNITS
3. Merced Falls Hydroelectric
  - a. CAISO Resource ID: MERCFL\_6\_UNIT



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**APPENDIX F**

**RELIABILITY STANDARDS COMPLIANCE SERVICES MATRIX**

Pursuant to Section 4 of Appendix A, NCPA shall provide Reliability Standard Compliance Services to Customer for the Reliability Standards and criteria listed in the Reliability Standards Compliance Services Matrix included in this Appendix F. NCPA and Customer shall meet and confer at least once every six (6) month to review the coordinated functional registration of tasks assigned to each Party, as reflected in the Reliability Standards Compliance Services Matrix, to determine if the Reliability Standards Compliance Services Matrix needs to be updated or revised based on any changes to the respective Reliability Standards contained therein.

**RESERVED FOR RELIABILITY STANDARDS COMPLIANCE SERVICES MATRIX**

## APPENDIX G

### TASK ORDER PROCESS

Pursuant to Section 6 of Appendix A, NCPA may, at its sole discretion, provide certain Supplemental Services to Customer. All requests for Supplemental Services shall be submitted by Customer to NCPA in accordance with the Task Order Process described in this Appendix G.

#### **Section 1. Task Order Process**

1.1 Submission of a Task Order. Customer may submit a Task Order Request for Supplemental Services to NCPA in accordance with the terms and conditions of this Agreement. All Supplemental Services requests shall be submitted to NCPA in writing using the task order request form attached to this Appendix G (“Task Order Request Form”). In the Task Order Request Form, Customer shall provide a description of the desired Supplemental Services, a time frame on which Customer is seeking such Supplemental Services to be completed, and all other relevant details that may assist NCPA’s review and consideration of the Task Order Request.

1.2 Review of Task Order Request. Once NCPA receives a Task Order Request from Customer, NCPA will review the Customer’s request to determine if NCPA can perform the desired work. Once NCPA has completed its review of the Task Order Request, NCPA will provide a written response to Customer to confirm that NCPA is either: (i) able and willing to perform the Supplemental Services as requested, or (ii) not able or not willing to perform the Supplemental Services as requested. If NCPA is able and willing to perform the Supplemental Services as requested, NCPA will provide a written proposal for NCPA’s provision of the requested Supplemental Services to Customer, including a detailed project scope and estimated cost for performing the desired work (“Supplemental Services Task Order”).

1.3 Task Order Confirmation. Upon receipt of the Supplemental Services Task Order, if any, Customer may agree to accept or not accept NCPA’s proposal to supply Supplemental Services. If Customer agrees to accept NCPA’s proposal to supply Supplemental Services, upon mutual written consent of the Designated Representatives of each Party, the Parties shall

confirm the terms and conditions of the Supplemental Services by executing the Supplemental Services Task Order. NCPA shall invoice Customer for the full estimated cost of the Supplemental Services, as set forth in the Supplemental Services Task Order, prior to NCPA's provision of the Supplemental Services to Customer. Such amounts shall be billed to Customer in accordance with Section 8 of this Agreement.

1.4 Billing Adjustments. Upon completion of the Supplemental Services, NCPA shall provide a final written accounting for all actual costs associated with NCPA's provision of the Supplemental Services to Customer, and shall either: (i) refund any positive difference between estimated costs and actual costs, or (ii) invoice Customer for the amount of actual costs that are greater than the amount of estimated costs collected from Customer ("Adjustment Amount"). Any Adjustment Amount shall be billed to Customer in accordance with Section 8 of this Agreement.

1.5 Disputes. Any disputes associated with NCPA's provision of Supplemental Services to Customer shall be resolved under the dispute resolution procedures set forth in Section 13 of this Agreement.

# Northern California Power Agency

## Task Order Request Form

Attention: Contract Administration  
651 Commerce Drive  
Roseville, CA 95678  
Phone: 916-781-4229  
Email: tony.zimmer@ncpa.com

Dated As: \_\_\_\_\_

Date of Completion: \_\_\_\_\_

---

### Customer Information:

Customer Name: \_\_\_\_\_  
Designated Representative: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Task Details

**Additional Notes:**

\_\_\_\_\_

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\_\_\_\_\_  
[Customer Designated Representative]