**Non-Enrolled Developer Agreement**

This Non-Enrolled Developer Agreement (“**Agreement**”) is by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Developer**”) and each of the Enrolled Parties of NorthernGrid, each of which hereafter shall be referred to individually as “Party” and collectively as “**Parties.**”

# RECITALS

1. NorthernGrid is an unincorporated association of its members formed for the purpose of coordinating regional transmission planning for the NorthernGrid members;
2. Developer is (i) a Non-Incumbent Transmission Developer, (ii) a Merchant Transmission Developer, or (iii) an Interregional Transmission Project (ITP) Proponent;
3. Developer intends to propose a transmission project for evaluation in the NorthernGrid regional plan in accordance with the provisions entitled “Proposing a Project” in “NorthernGrid’s Enrolled Region Transmission Planning Process” in the Enrolled Parties Attachment K (as defined below);
4. This Agreement is for the Planning Cycle that begins January 1, \_\_\_\_, and ends December 31, \_\_\_\_; and
5. The Parties desire to define their rights and obligations related to participation in the NorthernGrid planning process.

NOW THEREFORE, in consideration of the mutual benefits and other good and valuable consideration, the Parties hereby agree as follows:

1. *Term*. This Agreement shall be effective on the later of (i) the first day of the Planning Cycle stated in the recitals above or (ii) the Execution Date indicated below, and shall continue in effect until the end of the Planning Cycle stated in the recitals above (“**Term**”).
2. *Definitions*.
   1. “**Commission**” or “**FERC**” means the Federal Energy Regulatory Commission or any successor entity.
   2. “**Enrolled Parties Attachment K**” means the Attachment K to the Open Access Transmission Tariffs of the Enrolled Parties that have an Attachment K approved by FERC.
   3. “**Finance Administrator**” means the entity that is selected to serve in the role of the Finance Administrator pursuant to the NorthernGrid Funding Agreement as may be amended from time to time.
   4. “**Funding Agreement**” or “NorthernGrid Funding Agreement” means the current version of the agreement among the parties funding the activities of NorthernGrid as may be amended from time to time.
   5. “**Member**” is an entity that has executed the NorthernGrid Funding Agreement.
   6. “**Planning Cycle**” means each two-year process beginning on January 1 of even-numbered years and ending on December 31 of odd-numbered years, undertaken by NorthernGrid, to create the Regional Transmission Plan.
   7. “**Project Coordinator**” means the entity to be engaged to perform and/or facilitate transmission planning activities.

Except as may otherwise be expressly provided herein, capitalized terms in this Agreement shall have the meanings provided in the Enrolled Parties Attachment K.

1. *Study Fee*.
   1. Upon execution of this Agreement, a Non-Incumbent Developer or Merchant Transmission Developer shall pay $10,000 to the Finance Administrator for the study fee for participating in the NorthernGrid planning processes. In no event will this study fee be refunded.
   2. An ITP Proponent is not required to pay the study fee.
2. *Expectations*. Developer agrees to:
   1. Comply with all applicable confidentiality requirements;
   2. Be bound by the decisions of the Planning Committee and the Cost Allocation Taskforce; and
   3. Actively participate in the transmission planning processes set forth in the Enrolled Parties Attachment K.

To the extent anything in this Agreement is inconsistent with the Enrolled Parties Attachment K, the Enrolled Parties Attachment K shall control.

1. *Miscellaneous*.
   1. *Amendments*. This Agreement shall not be modified, amended, or changed in any respect except by a written document signed by all Parties; *provided*, however, that such modification, amendment, or change shall be subject to acceptance by the Commission, if required, before it becomes effective.
   2. *Applicable Law*. No Party will be considered the drafter of this Agreement for purposes of interpreting this Agreement. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Oregon; *provided* that this Agreement shall, with respect to a Party that is a U.S. government entity, be interpreted, construed, and enforced in accordance with the laws of the United States.
   3. *Assignment.* No Party may transfer or assign this Agreement, in whole or in part, without the other Parties’ prior written consent, except that any Party may assign this Agreement to any: (i) affiliate, (ii) successor in interest, or (iii) corporation or other business entity acquiring all or substantially all assets of the assignment Party.
   4. *Binding Effect*. This Agreement is binding upon and inures to the benefit of the successors and assigns of the Parties.
   5. *Dispute Resolution*. The Parties agree to resolve disputes according to the process set forth in the Enrolled Parties Attachment K.
   6. *Execution in Counterparts*. The Parties may sign this Agreement in counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same document. Delivery of an executed signature page of this Agreement by facsimile transmission or email shall be effective as delivery of a manually executed counterpart hereof.
   7. *Force Majeure*. No Party shall be liable or responsible to any other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments hereunder), when and to the extent such failure or delay is caused by or results from the following force majeure events ("**Force Majeure Events**"): (i) acts of God; (ii) flood, fire, earthquake, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (iv) government order or law; (v) actions or blockades in effect on or after the date of this Agreement; (vi) action by any governmental authority; (vii) national or regional emergency; (viii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (ix) shortage of adequate power or transportation facilities; and (x) other similar events beyond the control of the Party impacted by the Force Majeure Event (the "**Impacted Party**"). The Impacted Party shall give notice within five (5) business days of the Force Majeure Event to the other Parties, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized, to the extent practicable. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.
   8. *Headings*. The headings used in this Agreement are for convenience only and shall not be construed as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.
   9. *Integration*. This Agreement, including any exhibits hereto, constitutes the complete agreement of the Parties and supersedes all prior or contemporaneous representations, statements, negotiations, understandings, or inducements with respect to the subject matter of this Agreement.
   10. *Jury Trial*. **To the fullest extent permitted by law, each Party waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under, or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.**
   11. *Limitation of Liability*. In no event shall any Party be liable under this Agreement to any other Party or to any third party for any consequential, incidental, indirect, exemplary, special, or punitive, including any damages for business interruption, loss of use, revenue or profit, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not the breaching party was advised of the possibility of such damages. The sole remedy for any breach of this Agreement is to enforce prospective compliance with this Agreement’s terms and conditions.
   12. *No Joint Action*. This Agreement shall not be interpreted or construed to create an association, *joint* venture, or partnership, or to impose any partnership obligations or liability.
   13. *Notice*. Any notice to Developer regarding this Agreement shall be made to:

Name:

Company:

Address:

City, State ZIP:

Email:

* 1. *Ownership of Products*. All information, data, reports, results, or other products generated pursuant to the planning efforts undertaken by NorthernGrid will be available to all Parties for their undivided use; provided, however, that Parties retain the right to engage in separate agreements addressing specific ownership rights of information, data, reports, results, or other products funded through mechanisms outside the scope of NorthernGrid.
  2. *Severability*. If any portion of this Agreement is held to be void or unenforceable, the balance thereof shall continue to be effective.
  3. *Third-Party Beneficiaries*. All signatories of the NorthernGrid Funding Agreement for the current Planning Cycle are third-party beneficiaries of this Agreement.
  4. *Waiver*. A waiver by a Party of any default or breach by another Party of any covenants, terms, or conditions of this Agreement shall not limit the Party’s right to enforce such covenants, terms or conditions or to pursue its rights in the event of any subsequent default or breach.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Execution Date**”).

**DEVELOPER**

By:

Name:

Title:

*Developer is (check one):*

\_\_\_ Non-Incumbent Transmission Developer

\_\_\_ Merchant Transmission Developer

\_\_\_ Interregional Transmission Project (ITP) Proponent

**AVISTA CORPORATION**

By:

Name:

Title:

**IDAHO POWER COMPANY**

By:

Name:

Title:

**MATL LLP**

By:

Name:

Title:

**NORTHWESTERN CORPORATION**

By:

Name:

Title:

**NV Energy**

By:

Name:

Title:

**PACIFICORP**

By:

Name:

Title:

**PORTLAND GENERAL ELECTRIC COMPANY**

By:

Name:

Title:

**PUGET SOUND ENERGY, INC.**

By:

Name:

Title: