

## **EXHIBIT "A": TERMS AND CONDITIONS**

### **ARTICLE 1. DEFINITIONS**

Capitalized terms shall have the meanings as set forth below, except as otherwise specified in the Agreement:

- 1.1 **"Commercial Operation"** shall mean the date on which "Generator" declares that the construction of the Plant has been substantially completed, Trial Operation of the Plant has been completed, and the Plant is ready for dispatch.
- 1.2 **"Control Area"** shall have the meaning ascribed thereto in PUCT Rule 25.5 or its successor.
- 1.3 **"ERCOT"** shall mean the Electric Reliability Council of Texas, Inc., or its successor in function.
- 1.4 **"ERCOT Requirements"** shall mean the ERCOT Nodal Protocols, ERCOT Nodal Operating Guide, ERCOT Planning Guide, other ERCOT Binding Documents, and any other documents adopted by ERCOT relating to the interconnection and operation of generators and transmission systems in ERCOT, all of which are amended from time to time, and any successors thereto. Any requirement in the foregoing documents imposed upon generation entities or generation facilities shall become the responsibility of "Generator", and any requirements imposed on transmission providers or transmission facilities shall become the responsibility of CPS Energy.
- 1.5 **"Facilities Study"** shall have the meaning as described in PUCT Rule 25.198(d) or its successor, and demonstrated through the facility study portion of the Full Interconnection Study report.
- 1.6 **"Facilities Study Agreement"** shall mean the mutually agreed upon full interconnection study scope.
- 1.7 **"Full Interconnection Study"** shall mean the studies performed, pursuant to the Facilities Study Agreement, consisting of a steady-state study, a transient-stability study and a Facilities Study.
- 1.8 **"GIF"** shall mean the Generator's interconnection facilities as described in Exhibit "C".
- 1.9 **"Good Utility Practice"** shall have the meaning described in PUCT Rule 25.5 or its successor.

- 1.10 “Governmental Authority(ies)” shall mean any federal, state, local or municipal body having jurisdiction over a Party.
- 1.11 “In-Service Date” shall be the date, as reflected in Exhibit “B,” that the TIF will be ready to connect to the GIF, provided that the In-Service Date may be modified pursuant to this Agreement.
- 1.12 “ISO” shall mean the ERCOT Independent System Operator.
- 1.13 “NERC” shall mean the North American Electric Reliability Corporation or its successor in function.
- 1.14 “NERC Requirements” shall mean those applicable requirements in NERC reliability standards relating to the interconnection and operation of generators and transmission systems.
- 1.15 “Plant” shall mean the electric generation facility owned and operated by “Generator”, as specified in Exhibit “C.”
- 1.16 “Point of Interconnection” shall mean the location(s) where the GIF connects to the TIF as negotiated and defined by the Parties and as shown on Exhibit “C” of this Agreement.
- 1.17 “PUCT” shall mean the Public Utility Commission of Texas or its successor in function.
- 1.18 “PUCT Rules” shall mean the Substantive Rules of the PUCT.
- 1.19 “Reasonable Efforts” shall mean the use of Good Utility Practice and the exercise of due diligence (pursuant to PUCT Rule 25.191(d) and 25.198(e)).
- 1.20 “System Protection Equipment” shall mean those facilities located within the TIF and the GIF as described in Section 5.6 and Exhibit “C”.
- 1.21 “System Security Screening Study” shall have the meaning as described in PUCT Rule 25.198(c) or its successor.
- 1.22 “TIF” shall mean the TSP’s interconnection facilities as described in Exhibit “C” to this Agreement.
- 1.23 “Trial Operation” shall mean the process by which “Generator” is engaged in on-site test operations and commissioning of the Plant prior to Commercial Operation.
- 1.24 “TSP” shall mean the Transmission Service Provider (CPS Energy).
- 1.25 “TSP System” shall mean the electric transmission facilities, including the TIF, and all associated equipment and facilities owned and/or operated by CPS Energy.

## ARTICLE 2. TERMINATION

- 2.1 Termination Procedures. This Agreement may be terminated as follows:
- A. "Generator" may terminate this Agreement after giving CPS Energy thirty (30) days advance written notice; or
  - B. CPS Energy may terminate this Agreement after thirty (30) days advance written notice to "Generator", if "Generator's" Plant has not achieved Commercial Operation within one (1) year after the scheduled Commercial Operation date reflected in Exhibit "B"; or
  - C. CPS Energy may terminate this Agreement in accordance with Section 4.6; or
  - D. either Party may terminate this Agreement in accordance with Section 10.6.
- 2.2 Termination Costs. If a Party elects to terminate the Agreement pursuant to Section 2.1 above, "Generator" shall pay all costs incurred (or irrevocably committed to be incurred) by CPS Energy, including any cancellation costs relating to orders or contracts, in association with interconnection of the GIF and construction of the TIF, as of the date of the other Party's receipt of such notice of termination, except if this Agreement is terminated by either Party in accordance with Section 10.6 by reasons of the other Party's default. In the event of termination by either Party, both Parties shall use commercially Reasonable Efforts to mitigate the damages and charges that they may incur as a consequence of termination. The provisions of Sections 2.2 and 2.3 shall survive termination of the Agreement.
- 2.3 Disconnection. Upon termination of this Agreement, the Parties will disconnect the GIF from the TIF.

### **ARTICLE 3. REGULATORY FILINGS**

- 3.1 CPS Energy shall file this executed Agreement with the appropriate Governmental Authority, if required. Any portions of this Agreement asserted by "Generator" to contain competitively sensitive commercial or financial information shall be filed by CPS Energy and identified as "confidential" under seal stating, for CPS Energy's showing of good cause, that "Generator" asserts such information is confidential information and has requested such filing under seal. If requested by CPS Energy, "Generator" shall provide to CPS Energy, in writing, "Generator's" basis for asserting that the information referred to in this Article 3 is competitively sensitive information, and CPS Energy may disclose such writing to the appropriate Governmental Authority.



#### **ARTICLE 4. ENGINEERING, PROCUREMENT, AND CONSTRUCTION**

- 4.1 CPS Energy shall design, procure, and construct the TIF, using Reasonable Efforts to complete the TIF by the In-Service Date reflected in Exhibit "B". Subject to the pre-existing superior real property rights and interests of third persons and subject to the requirements of Section 6.2, "Generator" shall acquire all necessary ROW property and switchyard property necessary for the interconnection of the GIF and for construction of the TIF and will furnish to CPS Energy any rights of use, licenses, rights of way, and easements to the extent necessary to enable CPS Energy to obtain appropriate land rights (including ingress and egress) to install, construct, own, operate, repair, maintain, and demolish any of the TIF, and to otherwise perform its obligations under this Agreement. CPS Energy is responsible for costs associated with owning the necessary property. CPS Energy is hereby given the contractual right to enter upon the lands owned or controlled by "Generator" or any of its affiliates on a temporary basis as necessary to enable CPS Energy to perform its obligations under this Agreement. CPS Energy will utilize its own resources and will contract for additional resources, as reasonably necessary, in its Reasonable Efforts to meet the In-Service Date. Such resources shall include, as CPS Energy believes is reasonable, use of other contractors, other equipment suppliers, other material suppliers, additional contract personnel, additional payments to contractors for expedited work, and premiums paid to equipment and material suppliers for expedited delivery. CPS Energy shall not be required to undertake any initiative which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, applicable laws and regulations, and ERCOT and NERC Requirements. In the event CPS Energy reasonably expects that it will not be able to complete the TIF by the In-Service Date, CPS Energy will promptly provide written notice to "Generator" and will undertake Reasonable Efforts to meet the earliest date thereafter.

- 4.2 *Design and Equipment Procurement.* CPS Energy shall commence design of the TIF and procure necessary equipment as soon as practicable after all of the following conditions are satisfied:
- A. CPS Energy has completed the Facilities Study pursuant to the Facilities Study Agreement, which condition the Parties agree has already been satisfied as of the Effective Date due to the completion of the Facilities Study; and
  - B. CPS Energy has received written authorization to proceed with design and procurement from “Generator” by the date specified in Exhibit “B”; and
  - C. “Generator” has provided financial security to CPS Energy in accordance with Section 8.3.
- 4.3 *Construction Commencement.* CPS Energy shall commence construction of the TIF as soon as practicable after all the following additional conditions are satisfied:
- A. Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;
  - B. Any necessary real property rights have been obtained;
  - C. CPS Energy has received written authorization to proceed with construction from “Generator” by the date specified in Exhibit “B”; and
  - D. “Generator” has provided financial security to CPS Energy in accordance with Section 8.3.
- 4.4 *Work Progress.* The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. If, at any time, “Generator” becomes aware that the completion of the TIF will not be required until after the specified In-Service Date, “Generator” will promptly provide written notice to CPS Energy of a new, later In-Service Date.
- 4.5 *Conditions Precedent Delay.* To the extent this Agreement incorporates a specified In-Service Date and “Generator” fails to satisfy any of its conditions precedent under Sections 4.1, 4.2 and 4.3 such that CPS Energy may not meet the In-Service Date, the Parties will negotiate in good faith to establish a new schedule for completion of the TIF.

4.6 Suspension. “Generator” shall have the right, upon written notice to CPS Energy, to suspend at any time all work and activities by CPS Energy under this Agreement, with the condition that the TSP System shall be left in a safe and reliable condition in accordance with Good Utility Practice and CPS Energy’s safety and reliability criteria. In such event, CPS Energy shall suspend work and activities as requested, and “Generator” shall be responsible for all reasonable and necessary costs which CPS Energy incurs as a direct result of suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the TSP System during such suspension. CPS Energy will provide “Generator” with documentation outlining any such costs after receiving notice of suspension and all necessary work has been performed. CPS Energy shall use commercially Reasonable Efforts to minimize such costs. If “Generator”, subsequent to any such suspension notice, requests CPS Energy to resume work and activities under this Agreement, CPS Energy shall thereafter resume such work and activities under this Agreement. In the event “Generator” suspends work and/or activities by CPS Energy pursuant to this Section 4.6, and has not requested CPS Energy to recommence the work or has not itself recommenced work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, CPS Energy shall have the right to terminate this Agreement. The three-year period shall begin on the date of the suspension is requested.

## ARTICLE 5. FACILITIES AND EQUIPMENT

- 5.1 Information Exchange. The Parties shall exchange information and mutually agree upon the design and compatibility of the Parties' interconnection facilities. The Parties shall work diligently and in good faith to make any necessary design changes to ensure compatibility of the GIF to the TSP System.
- 5.2 GIF Construction. "Generator" agrees to cause the GIF to be designed and constructed in accordance with Good Utility Practice, ERCOT and NERC Requirements and the National Electrical Safety Code in effect at the time of construction. Within one-hundred and twenty (120) days after Commercial Operation, unless the Parties agree on another mutually acceptable deadline, "Generator" shall deliver to CPS Energy the following "as-built" drawings, information and documents for the GIF: a one-line diagram, a site plan showing the Plant and the GIF, plan and elevation drawings showing the layout of the GIF, generator unit control models, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with "Generator's" main-power transformers, the facilities connecting the Plant to the main power transformers and the GIF.
- 5.3 TIF Construction. CPS Energy agrees to cause the TIF to be designed and constructed in accordance with Good Utility Practice, ERCOT and NERC Requirements and the National Electrical Safety Code in effect at the time of construction.
- 5.4 Equipment Changes. For facilities not described in Exhibit "C," if either Party makes equipment changes to the Plant, the GIF, or the TIF which may affect the operation or performance of the other Party's interconnection facilities, the Parties agree to notify the other Party, in writing, of such changes. Such changes shall be made in accordance with ERCOT and NERC Requirements and coordinated between the Parties.
- 5.5 Metering, Telemetry and Communications Requirements.
- A. Metering and telemetry of data will be accomplished in accordance with ERCOT and NERC Requirements.
  - B. The Point of Interconnection metering and telemetry equipment shall be owned by CPS Energy.
  - C. CPS Energy will provide reasonable notice to "Generator" of any planned maintenance, inspection, testing, or calibration of the metering equipment, unless



otherwise agreed to in writing. "Generator", or its designated representative, shall have the right to be present for these activities and to receive copies of any documents related to the procedures and results.

- D. Scheduling for changes to the meters, telemetry equipment, voltage transformers, current transformers, and associated panels, hardware, conduit and cable, which will affect the data being received by the other Party must be mutually agreed to by the Parties.
- E. Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention of and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible in accordance with ERCOT and NERC Requirements.

5.6 System Protection and Other Controls Requirements.

- A. Each Party will install System Protection Equipment in accordance with ERCOT and NERC Requirements. "Generator" will be responsible to install all ERCOT Generation Resource Owner Requirements. "Generator" will provide fault disconnecting equipment to provide primary protection of the "Generator" owned generator step-up transformer.
- B. Each Party will test, operate and maintain System Protection Equipment in accordance with ERCOT and NERC Requirements. Each Party will provide reasonable notice to the other Party of any testing of its System Protection Equipment, allowing such other Party the opportunity to have representatives present during testing of its System Protection Equipment.
- C. Prior to the In-Service Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Equipment. At intervals described in ERCOT or NERC Requirements, if so defined therein, each Party shall perform both calibration and functional trip tests of its System Protection Equipment and any other testing as required of each respective Party by ERCOT or NERC. These tests do not require the tripping of any in-service generation unit.

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



## ARTICLE 6. OPERATION AND MAINTENANCE

- 6.1 Operation and Maintenance of Interconnection Facilities. The Parties agree to operate and maintain their systems in accordance with Good Utility Practice, National Electrical Safety Code, the ERCOT and NERC Requirements, PUCT Rules and all applicable laws and regulations. Subject to any necessary ERCOT approval, each Party shall provide necessary equipment outages to allow the other Party to perform periodic maintenance, repair or replacement of its facilities. Such outages shall be scheduled at mutually agreeable times, unless conditions exist which a Party believes, in accordance with Good Utility Practice, may endanger persons or property. No changes will be made in the normal operation of the Point of Interconnection without the mutual agreement of the Parties except as otherwise provided herein. All testing of the Plant that affects the operation of the Point of Interconnection shall be coordinated between CPS Energy and “Generator” and will be conducted in accordance with ERCOT and NERC Requirements.
- 6.2 Land Rights and Easements. Terms and conditions addressing the rights of CPS Energy and “Generator” regarding any facilities located on the other Party’s property shall be addressed in a separate, duly executed and recorded easement agreement between the Parties (or such other instruments as the Parties may agree). Prior to Commercial Operation, the Parties will mutually agree upon procedures to govern access to each other’s property as necessary for the Parties to fulfill their obligations under this Agreement.
- 6.3 Service Interruption. The Parties recognize that the interruption of service provisions of the PUCT Rules give CPS Energy the right to disconnect the TSP System from the Plant under the conditions specified therein. “Generator” will promptly disconnect the Plant from the TSP System when required by and in accordance with the PUCT Rules and ERCOT and NERC Requirements. In the event of disconnection of the Plant (excluding protection system interruptions) in accordance with this Section 6.3, CPS Energy will, when reasonably practicable, promptly provide “Generator” with written notice thereof including an explanation of the actions taken and reasons therefor.
- 6.4 Switching and Clearance. Any switching or clearances needed on the TIF or the GIF will be done in accordance with ERCOT and NERC Requirements.

- 6.5 *Start-Up and Synchronization.* Consistent with ERCOT and NERC Requirements and the Parties' mutually acceptable procedure, "Generator" will be responsible for the proper synchronization of the Plant to the TSP System.
- 6.6 *Black-Start Operations.* If the Plant is capable of black-start operations, "Generator" will coordinate individual Plant start-up procedures consistent with ERCOT and NERC Requirements. Notwithstanding this section, "Generator" is not required to have black-start capability by virtue of this Agreement.
- 6.7 *Power System Stabilizers.* "Generator" shall procure, install, maintain and operate power system stabilizers if required to meet ERCOT and NERC Requirements.

## ARTICLE 7. DATA REQUIREMENTS

- 7.1 Data Supplementation. Subsequent to Commercial Operation, “Generator” shall provide CPS Energy any data changes, to include generator unit control models, due to equipment replacement, repair, or adjustment. CPS Energy shall provide “Generator” any data changes due to equipment replacement, repair, or adjustment in the directly connected switchyard or any adjacent CPS Energy-owned substation that may affect the GIF equipment ratings, protection or operating requirements. The Parties shall provide such data no later than 30 days after the date of the actual change in equipment characteristics.
- 7.2 Initial Data Submission by CPS Energy. CPS Energy shall provide relevant data to “Generator” by no later than 120 days prior to Trial Operation, including transmission system data necessary to allow the Generator to select equipment and meet any system protection and stability requirements.

## ARTICLE 8. PERFORMANCE OBLIGATION

- 8.1 *"Generator's" Cost Responsibility.* "Generator" will acquire, construct, operate, test, maintain and own the Plant and the GIF at its sole expense.
- 8.2 *CPS Energy's Cost Responsibility.* CPS Energy will acquire, own, construct, design, procure, install, repair, operate, test, and maintain the TIF at its expense, subject to the provisions of Section 4.1.
- 8.3 *Financial Security Arrangements.* CPS Energy requires that "Generator" provide a parent guarantee, a letter of credit, or other acceptable form of financial security investment grade or better that is deemed acceptable by CPS Energy in an amount equal to the costs of planning, licensing, procuring equipment and materials, and constructing the TIF, prior to the notice to proceed with design and procurement date specified in Exhibit "B". The parent guarantee, letter or credit, or other acceptable financial security (as applicable) provided by "Generator" is intended to cover termination costs that may be owed by "Generator" pursuant to Section 2.2. Within a reasonable time after the Plant achieves Commercial Operation, CPS Energy shall return or release the security to "Generator".

## ARTICLE 9. INSURANCE

9.1 Upon "Generator" providing notice to proceed with design and procurement by the date specified in Exhibit "B", each Party shall, at its own expense, maintain in force throughout the period of this Agreement and until released by the other Party the following minimum insurance coverage, with insurers authorized to do business in Texas:

- A. Employer's Liability and Worker's Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the State of Texas. The minimum limits for the Employer's Liability insurance shall be One Million Dollars (\$1,000,000) each accident bodily injury by accident, One Million Dollars (\$1,000,000) each employee bodily injury by disease, and One Million Dollars (\$1,000,000) policy limit bodily injury by disease.
- B. Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification), products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.
- C. Comprehensive Automobile Liability Insurance for coverage of owned, non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.
- D. Excess Public Liability Insurance over and above the Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars (\$20,000,000) per occurrence/Twenty Million Dollars (\$20,000,000) aggregate.

- E. The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance, and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and affiliated companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) days advance written notice to the Other Party Group prior to the anniversary date of cancellation or any material change in coverage or condition.
- F. The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.
- G. The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made basis, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.
- H. The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Parties under this Agreement.
- I. Within twenty (20) days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, each Party shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.



- J. Notwithstanding the foregoing, each Party may self-insure to the extent it maintains a self-insurance program; provided that such Party's senior secured debt is rated at investment grade, or better, by Standard & Poor's. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Sections 9.1.A through 9.1.I. In the event that a Party is permitted to self-insure pursuant to this Section 9.1.J, it shall not be required to comply with the insurance requirements applicable to it under Sections 9.1.A through 9.1.I.
- K. The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

## ARTICLE 10. MISCELLANEOUS

### 10.1 Governing Law and Applicable Tariffs.

- A. This Agreement for all purposes shall be construed in accordance with and governed by the laws of the State of Texas, excluding conflicts of law principles that would refer to the laws of another jurisdiction. The Parties submit to the jurisdiction of the federal and state courts in the State of Texas.
- B. This Agreement is subject to all valid, applicable rules, regulations and orders of, and tariffs approved by, duly constituted Governmental Authorities.
- C. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

### 10.2 No Other Services. This Agreement is applicable only to the interconnection of the Plant to TSP System at the Point of Interconnection and does not obligate either Party to provide, or entitle either Party to receive, any service not expressly provided for herein. Each Party is responsible for making the arrangements necessary for it to receive any other service that it may desire from the other Party or any third party. This Agreement does not address the sale or purchase of any electric energy, transmission service or ancillary services by either Party, either before or after Commercial Operation.

### 10.3 Entire Agreement. This Agreement, including all Exhibits, Attachments and Schedules attached hereto, 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 this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement. Notwithstanding the other provisions of this Section, the Full Interconnection Study report is unaffected by this Agreement.

10.4 Notices. Except as otherwise provided in Exhibit “D,” any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, overnight mail, electronic mail or fax to the address or number identified on Exhibit “D” attached to this Agreement. Either Party may change the notice information on Exhibit “D” by giving five business days written notice prior to the effective date of the change.

10.5 Force Majeure.

A. The term “Force Majeure” as used herein shall mean causes or events beyond the reasonable control of, and without the fault or negligence of, the Party claiming a Force Majeure event, including, without limitation, acts of God or the public enemy; sudden actions of the elements such as floods, earthquakes, hurricanes, tornadoes or volcanoes; sabotage; vandalism beyond that which could reasonably be prevented by the Party claiming the Force Majeure event; terrorism; war; blockade; insurrection; riots; fire; explosion; extreme or severe weather conditions; national, regional or local strikes, lockouts and other labor disputes other than those involving only employees of “Generator” or of its contractors with respect to the Plant; or Governmental Delays. Force Majeure shall not be based on (i) lack of financial resources of a Party; (ii) material cost increases in commodities or labor; (iii) changes in currency exchange rates or other economic difficulties unless such economic difficulties were themselves caused solely by a Force Majeure event; (iv) the unavailability of equipment which would have been avoided by compliance with Good Utility Practice by the Party claiming the Force Majeure event; (v) changes in market conditions that affect the price of energy, capacity or credits; (vi) the loss of either Party’s markets; (vii) “Generator’s” inability to use the Plant economically; or (viii) increased cost of performance by CPS Energy. For purposes of this section 10.5A, “Governmental Delay” means, despite commercially Reasonable Efforts of a Party and absent such Party’s negligence or fault, delays in the issuance of any permits for the Plant due solely to action or inaction of a Governmental Authority.



- B. Neither Party shall be considered to be in Default (as hereinafter defined) with respect to any obligation hereunder (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Section shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

10.6 Default

- A. The term "Default" shall mean the failure of either Party to perform any obligation in the time or manner provided in this Agreement. No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Section 10.6.B, the defaulting Party shall have thirty (30) days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within 30 days, the defaulting Party shall commence such cure within 30 days after notice and continuously and diligently complete such cure within 90 days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.
- B. If a Default is not cured as provided in this Section, 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 this 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 this 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. The provisions of this Section will survive termination of this Agreement.

- 10.7 **Intrastate Operation.** The operation of the Plant by “Generator” shall not cause there to be a synchronous or an asynchronous interconnection between ERCOT and any other transmission facilities operated outside of ERCOT unless ordered by the Federal Energy Regulatory Commission under Section 210 of the Federal Power Act. The Parties recognize and agree that any such interconnection will constitute an adverse condition giving CPS Energy the right to immediately disconnect the TIF from the GIF, until such interconnection has been disconnected. “Generator” will not be prohibited by this Section from interconnecting the Plant with facilities operated by the Comision Federal de Electricidad of Mexico, unless such interconnection would cause ERCOT utilities that are not “public utilities” under the Federal Power Act to become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.
- 10.8 **No Third Party Beneficiaries.** This 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.
- 10.9 **No Waiver.** The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of obligations, rights, or duties imposed upon the Parties. Termination or Default of this Agreement for any reason by “Generator” shall not constitute a waiver of “Generator’s” legal rights to obtain an interconnection from CPS Energy under a new interconnection agreement.
- 10.10 **Headings.** The descriptive headings of the various articles and sections of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

- 10.11 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.
- 10.12 Amendment. This Agreement may be amended only upon mutual agreement of the Parties, which amendment will not be effective until reduced to writing and executed by the Parties.
- 10.13 No Partnership. This Agreement shall 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 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.
- 10.14 Further Assurances. The Parties agree to (i) furnish upon request to each other such further information, (ii) execute and deliver to each other such other documents, and (iii) do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.
- 10.15 Indemnification and Liability. The indemnification and liability provisions of PUCT Rule 25.202(b)(2) or its successor shall govern this Agreement.
- 10.16 Consequential Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER ANY PROVISION OF THIS 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.



- 10.17 Assignment. This Agreement may be assigned by either Party only with the written consent of the other; provided that either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party who has an equal or greater credit rating as the assigning Party or who provides security as required by 8.3, and who has the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that “Generator” shall have the right to assign this Agreement, with the consent of CPS Energy, for collateral security purposes to aid in providing financing for the Plant, provided that “Generator” will require any secured party, trustee or mortgagee to notify CPS Energy of any such assignment. Any financing arrangement entered into by “Generator” pursuant to this Section 10.17 will provide that prior to or upon the exercise of the secured Party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify CPS Energy of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Section 10.17 is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party’s obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.
- 10.18 Severability. If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.
- 10.19 Comparability. The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.
- 10.20 Invoicing and Payment. Unless the Parties otherwise agree (in a manner permitted by applicable PUCT Rules), invoicing and payment rights and obligations under this Agreement shall be governed by PUCT Rules or applicable Governmental Authority. Invoices shall be rendered to the paying Party at the address specified on Exhibit “D”, and payments shall be made as agreed upon by the Parties.

10.21 Confidentiality.

- A. Subject to the exception in Section 10.21.B, any information that a Party claims is competitively sensitive, commercial or financial information under this Agreement (“Confidential Information”) shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to the ISO. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party’s Confidential Information under this subsection, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subsection, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.
- B. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).

## **EXHIBIT "B": TIME SCHEDULE**

Date by which "Generator" must provide notice to proceed with design and procurement and provide security, as specified in Section 4.2 so that CPS Energy may maintain schedule to meet the In-Service Date: **January 31, 2019.**

Date by which "Generator" must provide notice to commence construction and provide security, as specified in Section 4.3, so that CPS Energy may maintain schedule to meet the In-Service Date: **May 27, 2019.**

In-Service Date: July 27, 2020

Trial Operation date: October 26, 2020

Commercial Operation date: October 29, 2020

Due to the nature of the subject of this Agreement, the Parties may mutually agree to change the dates and times of this Exhibit B, through an amendment to this Agreement. CPS Energy shall make Reasonable Efforts to obtain the ERCOT approvals necessary for TSP System outages required to interconnect the Plant to the TSP System pursuant to this Agreement ("ERCOT Outage Approvals"). In the event CPS Energy is unable to obtain the ERCOT Outage Approvals necessary to meet the Time Schedule dates set forth in this Exhibit B, said dates shall be extended for the number of days it takes CPS Energy to obtain the ERCOT Outage Approvals, provided that CPS Energy shall continue to diligently pursue the ERCOT Outage Approvals.



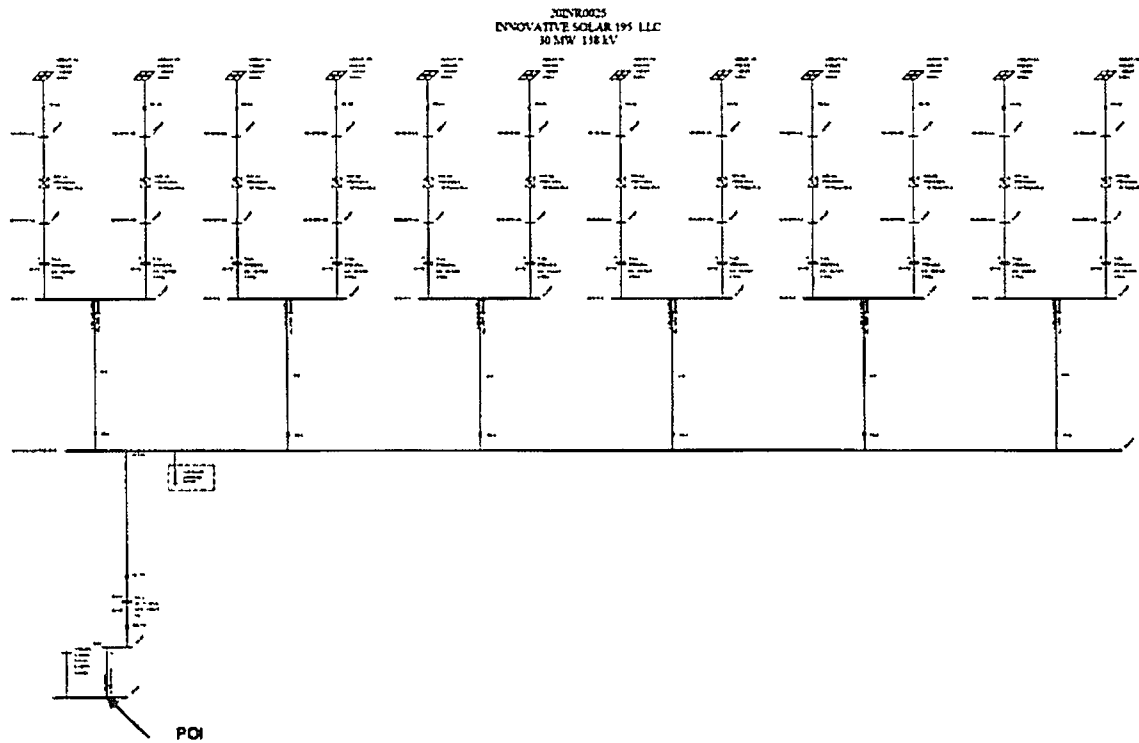
## EXHIBIT "C": INTERCONNECTION DETAILS

1. **Name:** Innovative Solar 195, LLC ("Plant")
1. **Point of Interconnection Location:** The Point of Interconnection is located approximately 8.1 miles east of CPS Energy's Hondo 138 kV substation on the Hondo to Pearson 138 kV transmission circuit owned CPS Energy. The "Point of Interconnection" shown on Exhibit C1 shall be defined as the point at which the CPS Energy switchyard facilities are connected to the Generator facilities. This point is generally stated as the first 4-hole terminal pad along the connection from the GIF to the TIF that is owned by CPS Energy, such as a dead-end assembly, switch, instrument transformer, etc.
2. **Delivery Voltage:** 138 kV (nominal)
3. **Number and Size of Generating Units ("The Plant"):** The Plant is a photovoltaic facility with one Point of Interconnection to the grid. The Plant nominal rating will be approximately 30 MW of AC power at the Point of Interconnection. The Plant will consist of twelve 2.7 MVA inverter arrays.
4. **Type of Generating Unit:** Photovoltaic
5. **Telemetry Equipment Inputs:** "Generator" shall provide and maintain telemetry originating at the Plant to CPS Energy.
6. **System Protection and Coordination at the Point of Interconnection:** At CPS Energy's cost, CPS Energy will own, install, operate and maintain and provide settings for the protection scheme that protects the interconnection between "Generator's" 138 kV generator bus and the CPS Energy 138 kV switchyard. "Generator" will review CPS Energy's protection settings to verify proper coordination between "Generator" and CPS Energy. If "Generator" finds that any settings do not coordinate with CPS Energy settings, "Generator" and CPS Energy agree to make changes so that settings coordinate. Once the Parties are satisfied that the settings coordinate, the Parties will provide each other a written statement stating that the protection system settings coordinate between the Parties. Once the plant is in operation, the Parties agree to notify each other in advance of any protection equipment, design, or setting changes that may impact the protection system coordination between the Parties. The Parties may request to review existing protection schemes and settings to verify continued coordination. Each Party should respond to the data request within 30 days.
7. **Generator Interconnection Facilities to be furnished by "Generator":** At "Generator's" cost, "Generator" will operate and maintain a complete generation facility

including, but not limited to, twelve inverter arrays, one generator step-up transformer (GSU), protective devices, and other transformers and associated foundations, the terminating structure(s), all relays necessary for the protection, synchronization and coordination of the generators, generator auxiliary equipment and all facilities up to the Point of Interconnection, including 138 kV disconnect switches and/or breakers and ground grid connections.

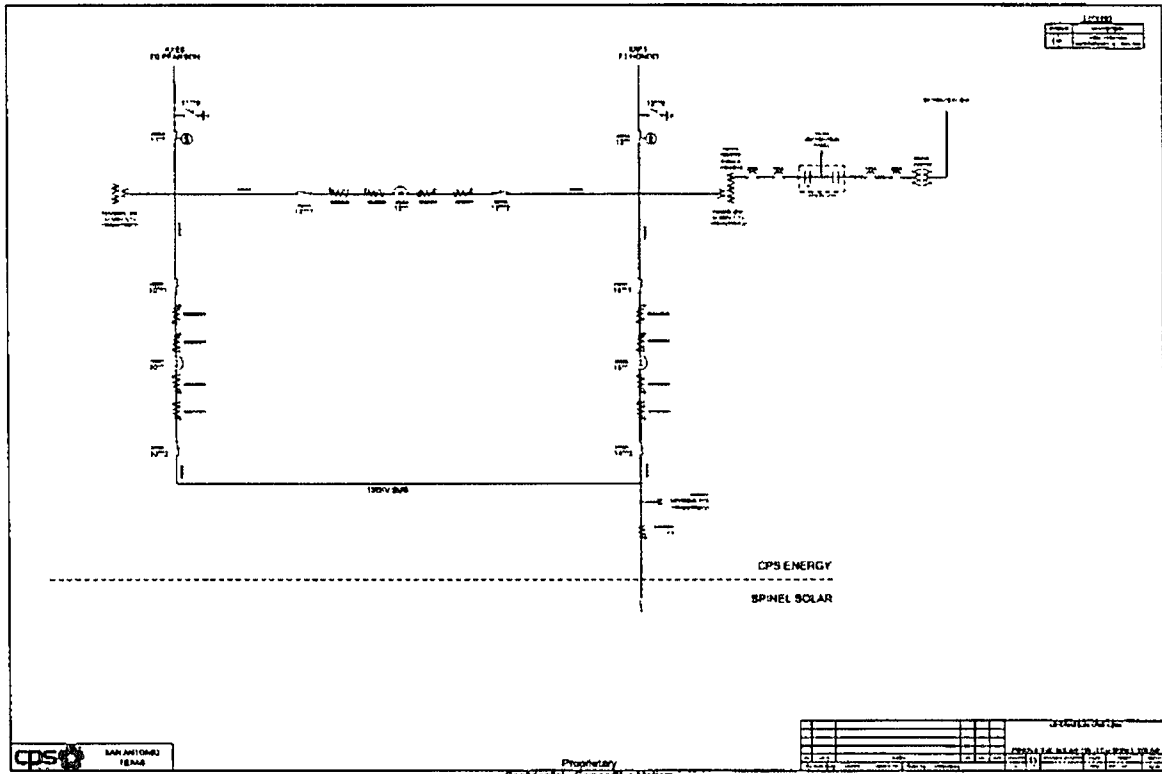
8. **Transmission Service Provider Interconnection Facilities to be furnished by CPS Energy:** At CPS Energy's cost, CPS Energy shall own, construct, design, procure, install, repair, operate, test, and maintain the new 138 kV switchyard including, but not limited to, bus-work, supports, structures, ground grid covering the switchyard, security fencing surrounding the switchyard, circuit breakers, disconnect switches, Supervisory Control And Data Acquisition (SCADA) and ERCOT Polled Settlement (EPS) metering, telemetry and communication facilities, relays and other equipment necessary for protection and coordination, controls, and wiring all as necessary to provide an interconnection between "Generator's" generation facilities and the TSP System. At CPS Energy's cost, CPS Energy will own, construct, design, procure, install, repair, operate, test, and maintain the connection from CPS Energy's equipment to the Point of Interconnection, to include all hardware assemblies associated with the connection from the GIF to the TIF that is owned by CPS Energy, such as a dead-end assembly, switch, instrument transformer, etc.

## EXHIBIT "C1": POINT OF INTERCONNECTION DETAILS





**EXHIBIT "C2": ONE-LINE DIAGARM**



## **EXHIBIT "D": SECURITY ARRANGEMENT DETAILS**

In accordance with the dates in Exhibit "B" Generator shall cause to be established pursuant to Section 8.3 of Exhibit "A", and shall at all times through the earlier of (i) five (5) Business Days after the date upon which TSP receives written notification from Generator that Commercial Operation has been achieved or (ii) ninety (90) days after the termination of the Agreement in accordance with its terms (the earlier of which shall be the "Final Expiration Date"), cause to be maintained in full force and effect a Letter of Credit (as defined below) or other security reasonably acceptable to TSP ("Security Instrument") for the benefit of TSP in the amounts and for the periods set forth below.

In accordance with Section 8.3 of Exhibit "A", any repayment or return of such cash deposit shall include interest at a rate applicable to Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the of Governors of the Federal Reserve System, minus ½%.

Business Day means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Texas are permitted or required to be closed.

Generator may replace a cash deposit with a Letter of Credit after review and acceptance of a Letter of Credit from a bank acceptable to TSP. TSP shall return the cash deposit to Generator in exchange for the Letter of Credit once the Letter of Credit is fully acceptable to TSP.

Notwithstanding the Expiration Dates there shall be no obligation by Generator to establish or maintain the Security Instrument after the Final Expiration Date and any Security Instrument outstanding as of the Final Expiration Date shall be immediately surrendered by TSP.

The maximum stated amounts, Effective Dates, and Expiration Dates of the Security Instrument(s) shall be as follows:

<b>Maximum Stated Amount</b>	<b>Effective Date</b>	<b>Expiration Date</b>
Initial amount of \$2,202,213 for Design and Procurement	January 31, 2019	October 26, 2020
Additional Amount of \$3,329,000 for Construction to bring Total to \$5,531,213	May 27, 2019	Five (5) Business Days after notification of Commercial Operation

Failure to deliver or maintain the Security Instruments in the amounts and for the periods set forth above shall be deemed a Default under Section 10.6 of the Agreement, notwithstanding any cure period otherwise provided for in Section 10.6.

"Letter of Credit" shall mean an irrevocable, transferable letter of credit, issued by a Generator-selected and TSP-approved (which approval shall not be unreasonably withheld), major U.S. commercial bank or a major foreign commercial bank with a U.S. branch office with a credit rating of at least "A-" by Standard & Poor's or "A3" by Moody's Investor Service ("Bank"). A Bank approved by TSP for the initial Letter of Credit shall be deemed approved for a subsequent Letter of Credit absent any adverse change in credit rating between the initial Effective Date and

the Effective Date for such subsequent Letter of Credit. An adverse change in credit rating shall be deemed to have occurred if the issuer of the then current Letter of Credit has a credit rating of less than "A-" by Standard & Poor's or "A3" by Moody's Investor Service. If the issuer of the current Letter of Credit suffers such adverse change in credit rating, it shall no longer be a TSP-approved Bank for purposes of issuing commercially acceptable security for this Agreement until its rating has been increased to at least "A-" by Standard & Poor's or "A3" by Moody's Investor Service.

If at any time during the term of this Agreement, the TSP-approved bank which has issued the then current Letter of Credit(s) suffers a credit rating reduction to less than "A-" by Standard & Poor's or "A3" by Moody's Investor Service, Generator shall replace that Letter of Credit(s) with another Letter of Credit(s) of the same amount and with the same beneficiary from another TSP-approved bank of Generator's choice within fifteen Business Days of the date of such reduction in rating. Failure to deliver a replacement Letter of Credit(s) within fifteen Business Days of the date of a reduction in rating shall be deemed a Default under Section 10.6 of the Agreement, notwithstanding any cure period otherwise provided for in Section 10.6.



## EXHIBIT "E": NOTICE INFORMATION

(a) All notices of an <u>operational nature</u> shall be in writing and/or may be sent between the Parties via electronic means including facsimile as follows:	
<p>If to  Company Name: Innovative Solar 195, LLC  Attn: John Green  Address: 1095 Hendersonville Road  City, State, Zip: Asheville, NC 28803  24 Hour Telephone: 828-424-7884  Operational/Confirmation Fax: 828-424-7884  E-mail:  johnngreen@innovativesolarsystemsllc.com</p>	<p>If to  Company Name: CPS Energy  Attn: System Operations Shift Supervisor  Address: 145 Navarro, P.O. Box 17771  City, State, Zip: San Antonio, TX 78296  24 Hour Telephone (210) 353-4362, ext.0  Operational/Confirmation Fax (210) 353-3949  E-mail <a href="mailto:pltreviso@cps-ems.com">pltreviso@cps-ems.com</a></p>
(b) Notices of an <u>administrative nature</u> :	
<p>If to  Company Name: Innovative Solar 195, LLC  Attn: John Green  Address: 1095 Hendersonville Road  City, State, Zip: Asheville, NC 28803  Telephone: 828-424-7884  E-mail:  johnngreen@innovativesolarsystemsllc.com</p>	<p>If to  Company Name: CPS Energy  Attn: Darrell A. Clifton  Address: 145 Navarro, P.O. Box 17771  City, State, Zip: San Antonio, TX 78296  Telephone (210) 353-4386  E-mail <a href="mailto:DAClifton@CPSEnergy.com">DAClifton@CPSEnergy.com</a></p>
(c) Notice for statement and billing purposes:	
<p>If to  Company Name: Innovative Solar 195, LLC  Attn: John Green  Address: 1095 Hendersonville Road  City, State, Zip: Asheville, NC 28803  Telephone: 828-424-7884  E-mail:  johnngreen@innovativesolarsystemsllc.com</p>	<p>If to  Company Name: CPS Energy  Attn: Maricela Benavides  Address: 145 Navarro, P.O. Box 17771  City, State, Zip: San Antonio, TX 78296  Telephone: (210) 353-2622  E-mail: <a href="mailto:MCBenavides@CPSEnergy.com">MCBenavides@CPSEnergy.com</a></p>
(d) Notices of an <u>ERCOT/NERC compliance nature</u> :	
<p>If to  Company Name: Innovative Solar 195, LLC  Attn: John Green  Address: 1095 Hendersonville Road  City, State, Zip: Asheville, NC 28803  Telephone: 828-424-7884  E-mail:  johnngreen@innovativesolarsystemsllc.com</p>	<p>If to  Company Name: CPS Energy  Attn: Kenneth Bowen  Address: 145 Navarro, P.O. Box 17771  City, State, Zip: San Antonio, TX 78296  Telephone: (210) 353-4142  E-mail: <a href="mailto:KBowen@CPSEnergy.com">KBowen@CPSEnergy.com</a></p>