

Draft

Revisions of February 22, 2001

**DESERT STAR, INC.**

SCHEDULING COORDINATOR AGREEMENT  
**[Non-Federal Agency Version]**

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## SCHEDULING COORDINATOR AGREEMENT

The Parties to this Scheduling Coordinator Agreement ("Agreement" or "SCA") first dated as of \_\_\_\_\_, \_\_\_\_\_, are Desert STAR, Inc., an Arizona nonprofit corporation ("DSTAR") and \_\_\_\_\_, an entity functioning as a scheduling coordinator (the "Scheduling Coordinator" or "SC"). DSTAR and the Scheduling Coordinator are hereinafter referred to collectively as the "Parties".

Whereas:

The Scheduling Coordinator has applied for certification by DSTAR under the certification procedure referred to in Appendix J of the DSTAR Tariff and DSTAR is relying on the accuracy and good faith of all statements in the SC's application; and

The Scheduling Coordinator wishes to schedule Energy and Ancillary Services on the DSTAR Grid under the terms and conditions set forth in the DSTAR Tariff; and

The DSTAR Tariff provides that any Energy and Ancillary Services to be supplied through the DSTAR Grid may be scheduled only through a Scheduling Coordinator; and

The Parties are entering into this Agreement in order to establish the terms and conditions on which DSTAR and the Scheduling Coordinator will discharge their respective duties and responsibilities under the DSTAR Tariff.

NOW THEREFORE in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

### 1. DEFINITIONS, RULES OF INTERPRETATION AND LIMITS ON OBLIGATIONS

- 1.1. Capitalized terms used in this Agreement and not otherwise defined herein shall have the same meaning set forth in Attachment 1 to the DSTAR Tariff.
- 1.2. The following rules of interpretation and conventions shall apply to this Agreement:
  - (1) if there is any inconsistency between this Agreement and the DSTAR Tariff, the DSTAR Tariff will prevail to the extent of the inconsistency, except as expressly provided otherwise in this Agreement;
  - (2) the singular shall include the plural and vice versa;
  - (3) "includes" or "including" shall mean "including without limitation";

- (4) references to a Section or Schedule shall mean a Section or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
- (5) any reference to a DSTAR Grid Agreement shall be to the most current effective version thereof;
- (6) unless the context otherwise requires, any reference to a “person” includes any partnership; firm; company; corporation; joint venture; trust; association; organization; co-operative; Federal, state, or municipal agency; or other entity, in each case;
- (7) any reference to a day is to a calendar day; and
- (8) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

### **1.3. Limits on Parties’ Obligations Under Agreement and Applicable Tariff Provisions.**

In carrying out the requirements of this Agreement and applicable provisions of the DSTAR Tariff, the SC shall not be required to take any action:

- 1.3.1. That is not within the physical capabilities of the facilities over which the SC has scheduling authority . **[NOTE: Discuss at meeting; relation to FM.]**
- 1.3.2. That it reasonably deems to pose a risk of injury to persons or damage to facilities or other property.

**1.3.3. That would violate any provision of the Applicable Reliability Criteria, any FERC licenses with which it is obligated to comply, the terms of any applicable permits issued by a governmental authority, any applicable governmental laws or regulations, or contracts entered into in the regular course of business and in good faith by the operator of facilities over which the SC has scheduling authority**

The SC shall advise DSTAR in writing with as much notice as time reasonably permits of anything required to be carried out under this Agreement that is or becomes subject to this Section 1.3. The SC shall advise DSTAR of any proposed corrective action that the SC or DSTAR can implement to allow compliance with this Agreement and the DSTAR Tariff while avoiding the impediment cited by the SC hereunder upon reasonable cost in relation to the benefits obtained. The SC shall proceed promptly to implement such corrective action, if requested by DSTAR, to the extent such action is within the control of the SC. DSTAR shall promptly implement any such corrective action within DSTAR’s control, if it concurs that such action can be accomplished for a reasonable cost in relation to the

benefits obtained.

**[NOTE: The entirety of Sec. 1.3 derives from the SCA-Federal entities version. The SCA-Fed is essentially a “convergence” of the SCA and the Generator Agreement provisions in a single agreement. But Counsel for DSTAR felt that the grounds for non-compliance afforded a Fed entity SC ought to be offered to non-Fed SC’s for reasons of parity. However, it is arguable that its relevance is limited in the context of a “regular” SC -- whose contractual rights and obligations are primarily “administrative” rather than operational. Furthermore, the subject matter is, at least to some extent, covered in App. C 3.6 (Dispatch Instructions: Compliance) and Force Majeure under the Tariff. We would welcome further comments on whether Sec. 1.3 serves a purpose in this Agreement.]**

#### **1.4. Limits on Obligations of Entities Issuing Tax-Exempt Debt.**

Nothing in this Agreement shall require any SC which has issued Tax-Exempt Debt, on whose behalf Tax- Exempt Debt has been or will be issued or which will issue Tax-Exempt Debt to refund prior Tax-Exempt Debt or violate restrictions applicable to facilities financed with Tax-Exempt Debt including contractual restrictions and covenants regarding use of such facilities. The SC shall immediately notify DSTAR in writing of anything in this Agreement that is subject to this Section 1.4. The SC shall advise DSTAR of any proposed corrective action that the SC or DSTAR can implement to allow compliance upon reasonable cost.. The SC shall promptly implement such corrective action, if requested by DSTAR, to the extent such action is within the control of the SC. DSTAR shall promptly implement any such corrective action within DSTAR’s control, if it concurs that such action can be accomplished for a reasonable cost in relation to the benefits obtained. **[NOTE: Same comment for 1.3 is appropriate here.]**

#### **1.5. Condition Precedent for Co-operative SC’s**

This Agreement shall become effective as to any cooperative SC that has loans financed by the Rural Utilities Service (RUS) only upon approval by the RUS thereof. Should the RUS not approve this Agreement or any action set forth herein for which such approval is required, or should the RUS require material changes or modifications thereto that are unacceptable to either DSTAR or the cooperative SC (in each case, an “Unacceptable Event”), this Agreement (or such actions set forth herein) shall be

deemed to be void *ab initio* with respect to such cooperative SC. In the event of any Unacceptable Event, the Parties shall negotiate in good faith to modify, within 90 days of receipt of the written notice of an Unacceptable Event, and obtain approval of this Agreement and any amendment to which the Unacceptable Event pertains. [**Co-ops: please comment on relevance to SCA.**]

## 2. COVENANT OF THE SCHEDULING COORDINATOR

The Scheduling Coordinator acknowledges and agrees:

1. That DSTAR is responsible for the reliable operation of the DSTAR Grid consistent with the Applicable Reliability Criteria and that DSTAR may not be able fully to satisfy this responsibility if the Scheduling Coordinator fails to fully comply with its obligations under this Agreement and the DSTAR Tariff;
2. That it will abide by, and will perform all of the obligations under, the DSTAR Tariff placed on Scheduling Coordinators therein.
3. That failure of a Generator for which it schedules Energy or on whose behalf it submits to DSTAR bids for Ancillary Services to have entered into a Generator Agreement in accordance with Section 9 of the DSTAR Tariff shall result in rejection of the relevant portion of the submitted Schedule or bid;
4. That it shall be liable for any penalties duly assessed pursuant to the DSTAR Tariff for failure to comply with any applicable obligation, including any failure of Generators or Dispatchable Demands represented by the SC to comply with their respective obligations;
5. That it shall, in conformity with Appendix J of the DSTAR Tariff, provide notice to DSTAR within five (5) days of any change in the facts or conditions on which it based its representations in applying for and obtaining certification as a Scheduling Coordinator. Without limiting the generality of the foregoing, it shall notify DSTAR within five (5) days of any adverse change in its bond or credit rating; any acceleration of loan payments due to a lending institution at the instigation of the lending institution; any denial or revocation of status as a Scheduling Coordinator in any other regional transmission organization; any default on any financial obligation it may have; or any petition it may make, or is made on its behalf, for relief in a court of bankruptcy.

6. That it shall have the responsibility to DSTAR, as principal, for all Scheduling Coordinator payment obligations under the DSTAR Tariff; and
7. That its status as a Scheduling Coordinator is at all times subject to the DSTAR Tariff; and

### **3. DSTAR RESPONSIBILITY**

DSTAR shall comply the DSTAR Tariff, including Applicable Reliability Criteria.

### **4. EFFECTIVE DATE AND TERMINATION**

#### **4.1. Effective Date**

This Agreement shall become effective on the last to occur of (a) its execution by both Parties (b) the DSTAR Operations Date or (c) the date the Scheduling Coordinator is certified by DSTAR as a Scheduling Coordinator, and shall remain in full force and effect until terminated pursuant to Section 4.2 below.

#### **4.2. Termination**

##### **4.2.1. By DSTAR.**

- (a) DTAR may terminate this Agreement by giving notice of termination in the event that the SC commits any default under this Agreement or the DSTAR Tariff which is not remedied within thirty (30) days after DSTAR has given to the SC notice of the default, unless excused by reason of Force Majeure in accordance with Section 17 of the DSTAR Tariff. Any notice of termination given pursuant to this Section must also be filed by DSTAR in a timely manner at the Commission. Pending acceptance by the Commission of such termination, DSTAR may suspend the rights and privileges of the SC pursuant to the provisions of Appendix J of the DSTAR Tariff. DSTAR may also pursue any other remedies permitted under this Agreement, the DSTAR Tariff or under applicable law, including the right under Appendix J to suspend rights and privileges without necessarily initiating termination.
- (b) For the purposes of this Section, “default” shall be deemed to include, in addition to its ordinary meaning, (i) any material adverse change in the financial condition of the SC or any other event or fact that would in DSTAR’s judgment, reasonably exercised, have resulted in denial of certification of the SC upon application for that

status (whether or not the SC notifies DSTAR of such information pursuant to Section 2(4); and (ii) failure to execute any amendment to this Agreement requested by DSTAR within ten (10) days of notice of final and non-appealable action by FERC accepting or approving such amendment.

#### **4.2.2. By Scheduling Coordinator.**

In the event that the SC wishes to terminate this Agreement, it shall give DSTAR forty-five (45) days notice.

#### **4.2.3. Notice of Termination on DSTAR Website.**

DSTAR shall promptly post on the DSTAR Website any notice of termination or suspension of services it may provide to an SC, and any notice of termination provided to DSTAR by an SC.

#### **4.2.4. Expedited ADR in the Event of DSTAR Termination of SC.**

The provisions of Section 15 of the DSTAR Tariff (Alternate Dispute Resolution) may be invoked by a Scheduling Coordinator receiving the 30-day notice of termination, including, if desired, a request for expedited ADR.

### **5. SETTLEMENT ACCOUNT**

The Scheduling Coordinator shall maintain at all times an account with a bank capable of Fed-Wire Transfer to which credits or debits shall be made in accordance with the billing and Settlement provisions of Appendix G of the DSTAR Tariff. Such account shall be the account referred to in Schedule 1 hereof or as such account may be changed from time to time by the Scheduling Coordinator by giving DSTAR at least seven (7) days notice before the new account becomes operational.

### **6. ELECTRONIC CONTRACTING**

All submitted applications, schedules, bids, confirmations, changes to information on file with DSTAR and other communications conducted via electronic transfer (e.g. direct computer link, file transfer protocol [?] file transfer, bulletin board, e-mail, facsimile or any other means established by DSTAR) shall have or create the same legal rights, obligations and other implications as set forth in the terms and conditions of the DSTAR Tariff as if executed in written format.

## **7. CONFIDENTIALITY**

### **7.1. DSTAR.**

DSTAR shall maintain the confidentiality of all of the documents, data, and information provided to it by the Scheduling Coordinator pursuant to the terms of the DSTAR Tariff.

## **8. DISPUTE RESOLUTION**

### **8.1. Dispute Resolution.**

The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement in conformity with the ADR procedures in the DSTAR Tariff.

## **9. REPRESENTATIONS AND WARRANTIES**

### **9.1. Representation and Warranties.**

Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent required by law and by the regulations or organizational documents of the Party.

## **10. MISCELLANEOUS**

### **10.1. Notices.**

Within ten (10) days from execution of this Agreement, each Party shall supply the other with the information contained in Schedule 1 to this Agreement. Any notice, demand, or request in accordance with this Agreement, unless otherwise provided in this Agreement, shall be in writing and shall be deemed properly served, given or made: (1) upon delivery if delivered in person, (2) upon receipt by certified United States Mail, return receipt requested, (3) upon receipt of confirmation by return electronic mail or electronic facsimile if sent by electronic mail or facsimile, or (4) upon delivery if delivered by prepaid commercial or U.S. mail courier service. Any Party may at any time, by notice to the other Parties, change the designation or address of the person

specified to receive notice on its behalf in accordance with Schedule 3 of this Agreement. Any notice of a routine character in connection with service under this Agreement or in connection with the operation of facilities shall be given in such a manner as the Parties may determine from time to time, unless otherwise provided in this Agreement.

#### **10.2. Waivers.**

Any waiver at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right shall not constitute or be deemed a waiver of such right.

#### **10.3. No Third Party Beneficiaries.**

The Parties do not intend to create rights in, or to grant remedies to, any third person as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established hereunder.

#### **10.4. Relationship of the Parties.**

The covenants, obligations, rights, and liabilities of the Parties under this Agreement are intended to be several and not joint or collective, and nothing contained herein shall ever be construed to create an association, joint venture, trust, or partnership, or to impose a trust or partnership covenant, obligation, or liability on, or with regard to, any of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. No Party or group of Parties shall be under the control of or shall be deemed to control any other Party or Parties. No Party shall be the agent of or have the right or power to bind any other Party without its written consent, except as expressly provided for in this Agreement.

#### **10.5. Severability.**

If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or

otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.

#### **10.6. Preservation of Obligations.**

Upon termination of this Agreement, all unsatisfied obligations of each Party shall be preserved until satisfied.

#### **10.7. Governing Law and Forum.**

This Agreement shall be interpreted, governed by and construed under the laws of the State of Arizona, without regard to the principles of conflict of laws thereof, as if executed and to be performed wholly within the State of Arizona, and under the laws of the United States, as applicable.

#### **10.8. Construction of Agreement.**

Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against any Party, but shall be construed in a manner that most accurately reflects the purpose of this Agreement and the nature of the rights and obligations of the Parties with respect to the matter being construed.

#### **10.9. Amendment.**

This Agreement may be amended from time to time by the mutual agreement of the Parties, subject to approval by the Commission, in writing or upon issuance of an order by the Commission, and further subject to the provisions of Section 4.2 if the Scheduling Coordinator refuses to execute an amendment requested by DSTAR and accepted or approved by the Commission in a final, non-appealable action.

**10.10. Counterparts.**

This Agreement may be executed in one or more counterparts, which may be executed at different times. Each counterpart shall constitute an original but all such counterparts together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their respective authorized officials.

Desert STAR, Inc.:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[Scheduling Coordinator]:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1**

**NOTICES**

**Scheduling Coordinator**

Name of the Primary

Representative: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax No: \_\_\_\_\_

Name of Alternate

Representative: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax No: \_\_\_\_\_

Settlement Account No: \_\_\_\_\_

Title: \_\_\_\_\_

Sort Code: \_\_\_\_\_

Bank: \_\_\_\_\_

**DESERT STAR, INC.**

Name of the Primary

Representative: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax No: \_\_\_\_\_

Name of Alternate

Representative: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax No: \_\_\_\_\_



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