

~~MODEL~~^{*}

POWER PURCHASE AGREEMENT

BETWEEN

~~[FITCHBURG GAS AND ELECTRIC LIGHT COMPANY, D/B/A UNITIL]
[MASSACHUSETTS ELECTRIC COMPANY AND
NANTUCKET ELECTRIC COMPANY, D/B/A NATIONAL GRID]
[NSTAR ELECTRIC COMPANY]
[WESTERN MASSACHUSETTS ELECTRIC COMPANY]~~

AND

~~_____~~

~~{Seller}~~

~~NOBLE PASSADUMKEAG WINDPARK, LLC~~

As of ~~_____~~; December 27, 2010

^{*}~~This model Power Purchase Agreement is intended to provide a general description of the terms that the Massachusetts electric distribution companies are willing to agree to. Each electric distribution company may have other requirements, and the final Agreement will be subject to negotiations with the individual electric distribution companies. Accordingly, certain provisions in the final Agreement may differ from this Model Agreement. In addition, this model Power Purchase Agreement generally focuses on generating projects that have not yet achieved commercial operation. Generating projects that are currently in commercial operation should propose appropriate revisions to reflect that status.~~

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “**Agreement**”) is entered into as of [_____] December 27, 2010 (the “**Effective Date**”), by and between [~~Fitchburg Gas and Electric Light Company, d/b/a Unitil, a Massachusetts corporation~~] [~~Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, a Massachusetts corporation~~] [~~NSTAR Electric Company, a Massachusetts corporation~~] [Western Massachusetts Electric Company, a Massachusetts corporation] (“**Buyer**”), and [_____] a [_____] Noble Passadumkeag Windpark, LLC, a Delaware Limited Liability Company (“**Seller**”). Buyer and Seller are individually referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**”.

WHEREAS, Seller is developing the [_____] 37.5 MW wind turbine electric generation facility to be located in [_____] Summit Township, Maine, which is more fully described in Exhibit A hereto (the “**Facility**”), which shall qualify as a RPS Class I Renewable Generation Unit and which is expected to be in commercial operation by [_____] December 30, 2012; and

WHEREAS, Buyer is required under Section 83 of the Massachusetts Green Communities Act of 2008 to enter into certain long-term contracts for the purchase of energy and/or renewable energy certificates from renewable generators meeting the requirements of that statute; and

WHEREAS, Buyer and Seller desire to enter into this Agreement whereby Buyer shall purchase from Seller certain ~~Energy and RECs~~ Products (each as defined herein) generated by or associated with the Facility;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Any capitalized terms used in this Agreement and not defined herein shall have the same meaning as ascribed to such terms under the ISO-NE Practices and ISO-NE Rules.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such first Person.

“**Agreement**” shall have the meaning set forth in the first paragraph of this Agreement.

“**Business Day**” means a day on which Federal Reserve member banks in New York, New York are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time. Notwithstanding the foregoing, with respect to

notices only, a Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

“Buyer’s Percentage Entitlement” shall mean Buyer’s rights to ~~one~~ one hundred percent (~~(—)%) of the Products, up to and including 100 %~~) of the Energy and Capacity generated by or associated with the Facility, and RECs associated with Energy up to the Contract ~~Maximum~~ Fixed Price Amount.

“Buyer’s Taxes” shall have the meaning set forth in Section 5.4(a) hereof.

“Capacity” shall mean the capacity from the Facility as determined by the Facility’s Capacity Supply Obligation for each relevant Commitment Period during the Term (or successor or replacement rating used to measure capacity) as defined in the ISO-NE Rules that is obligated to perform and receive payments in the Forward Capacity Market (or its successor market) as set forth in the ISO-NE Rules, including without limitation as both a “New” and an “Existing” Capacity Resource as those terms are used in the ISO-NE Rules.

“Capacity Supply Obligation” shall have the meaning set forth in the ISO-NE Rules.

“Certificates” shall mean an electronic certificate created pursuant to the Operating Rules of the GIS or any successor thereto to represent the “generation attributes” (as defined in 225 CMR 14.02) of each MWh of Energy generated within the ISO-NE control area and the generation attributes of certain Energy imported into the ISO-NE control area.

“Commercial Operation Date” shall mean the date on which the conditions set forth in Section 3.4(b) have been satisfied, as set out in a written notice from Seller to Buyer.

“Commitment Period” shall have the meaning set forth in the ISO-NE Rules.

“Contract ~~Maximum~~ Fixed Price Amount” shall mean ~~(—)~~ Buyer’s Percentage Entitlement of Products up to 37,500 kWh per hour of Energy and a corresponding portion of all other Products.

“Contract Year” shall mean the twelve (12) consecutive calendar months starting on the first day of the calendar month following the Commercial Operation Date and each subsequent twelve (12) consecutive calendar month period; provided that the first Contract Year shall include the days in the prior month in which the Commercial Operation Date occurred.

“Contract Value” shall have the meaning set forth in Section 9.3(b) hereof.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Cover Damages” shall mean, with respect to any Delivery Shortfall, an amount equal to (a) the positive net amount, if any, by which the Replacement Price exceeds the applicable Price that would have been paid pursuant to Section 5.1 hereof, multiplied by the quantity of that Delivery Shortfall, plus (b) any applicable penalties and other costs assessed by ISO-NE or any other Person against Buyer as a result of Seller’s failure to deliver such Products in accordance with the terms of this Agreement. Buyer shall provide a statement for the applicable period explaining in reasonable detail the calculation of any Cover Damages.

“Credit Support” shall mean collateral in the form of (a) cash, (b) a letter of credit issued by a Qualified Bank in a form reasonably acceptable to the recipient Party or (c) with respect to Credit Support provided by Seller, any other form acceptable to Buyer in its sole discretion.

“CPR” shall have the meaning set forth in Section 11.2 hereof.

“Critical Milestones” shall have the meaning set forth in Section 3.1 hereof.

“Day Ahead Energy Market” shall have the meaning set forth in the ISO-NE Rules.

“Default” shall mean any event or condition which, with the giving of notice or passage of time or both, could become an Event of Default.

“Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has occurred.

“Delay Damages” shall mean the damages assessed pursuant to Section 3.2(a) hereof.

“Deliver” or **“Delivered”** or **“Delivery”** shall mean with respect to (i) Energy, to supply Energy into Buyer’s ISO-NE account, or other ISO-NE account as directed by Buyer, at the Delivery Point in accordance with the terms of this Agreement and the ISO-NE Rules ~~or the rules of the Interconnecting Utility for those small projects recognized as a “load reducer”~~, and (ii) RECs, to supply RECs in accordance with Section 4.7 and (e).iii) Capacity, to qualify, clear and secure a Capacity Supply Obligation in accordance with Section 4.8.

“Delivery Point” shall mean the specific Node on the ISO-NE Pool Transmission Facilities, as determined by ISO-NE, where Seller shall transmit its Energy to Buyer, as set forth in Exhibit A hereto, ~~except for small Massachusetts projects with a capacity value such that they are recognized by ISO-NE Rules as a “load reducer.” The Delivery Point for these small Massachusetts projects shall be the point of interconnection to Buyer’s distribution system;~~ provided however, if the Interconnection Point is not located on a line or at a point which is an ISO-NE Pool Transmission Facility, the Delivery Point shall be the ISO-NE Pool Transmission Facility Node that is electrically closest to the Interconnection Point.

“Delivery Shortfall” shall have the meaning set forth in Section 4.3 hereof.

“Development Period Security” shall have the meaning set forth in Section 6.1(a) hereof.

“DOER” shall mean the Massachusetts Department of Energy Resources and shall include its successors.

“Eastern Prevailing Time” shall mean either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

“Effective Date” shall have the meaning set forth in the first paragraph hereof.

“Energy” shall mean electric "energy," as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in kWh (unless otherwise noted) in Eastern Prevailing Time, less such Facility's station service use, generator lead losses and transformer losses, which quantity for purposes of this Agreement will never be less than zero.

“Environmental Attributes” shall mean any and all generation attributes under the DOER's RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to Buyer's Percentage Entitlement to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility, ~~up to and including the Contract Maximum Amount,~~ during the Services Term including Buyer's Percentage Entitlement to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the GIS in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include: (i) any production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; ~~or~~ (iii) any cash payments or grants made in lieu of such tax credits; (iv) any state or federal tax credit or cash grant introduced after the date of this Agreement intended to supplement, replace or enhance the tax credits or cash grants described in the foregoing clauses (i), (ii) or (iii); (v) any depreciation deductions permitted under the Internal Revenue Code with respect to the Facility (including any bonus or accelerated depreciation); or (vi) any state, federal or private financing, grants, guarantees or other credit support relating to the development, construction ~~or~~, ownership, operation or maintenance of the Facility ~~or the output thereof.~~

“Event of Default” shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 and Section 9.2 hereof.

“**EWG**” shall mean an exempt wholesale generator under 15 U.S.C. § 79z-5a, as amended from time to time.

“**Facility**” shall have the meaning set forth in the Recitals.

“**FERC**” shall mean the United States Federal Energy Regulatory Commission, and shall include its successors.

“**Force Majeure**” shall have the meaning set forth in Section 10.1(a) hereof.

“**Forward Capacity Auction**” or “**FCA**” shall have the meaning set forth in the ISO-NE Rules.

“**Forward Capacity Market**” or “**FCM**” shall have the meaning set forth in the ISO-NE Rules; *provided, however, that it shall also include any successor Capacity market.*

“**Generation Unit**” shall mean a facility that converts a fuel or an energy resource into electrical energy.

“**GIS**” shall mean the New England Power Pool Generation Information System or any successor thereto, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity generated or consumed within New England.

“**Good Utility Practice**” shall mean compliance with all applicable laws, codes and regulations, all ISO-NE Rules and ISO-NE Practices, and any practices, methods and acts engaged in or approved by a significant portion of the electric industry in New England during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the industry in New England.

“**Governmental Entity**” shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility.

†“**Initial Notice**” shall have the meaning set forth in Section 11.1 hereof.†

“**Interconnecting Utility**” shall mean that the utility (which may or may not be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the transmission or distribution system of that utility.

“**Interconnection Agreement**” shall mean an agreement between Seller and the Interconnecting Utility regarding the interconnection of the Facility to the transmission or

distribution system of the Interconnecting Utility, as the same may be amended from time to time.

“Interconnection Point” shall have the meaning set forth in the Interconnection Agreement.

“ISO” or **“ISO-NE”** shall mean ~~the~~ ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

“ISO-NE Practices” shall mean the ISO-NE practices and procedures for delivery and transmission of energy and capacity and capacity testing in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Agreement, and any applicable successor practices and procedures.

“ISO-NE Rules” shall mean all rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such rules may be amended from time to time, including but not limited to, the ISO-NE Tariff, the Market Rules (as defined in the ISO-NE Tariff), the ISO-NE Operating Procedures (as defined in the ISO-NE Tariff), the ISO-NE Planning Procedures (as defined in the ISO-NE Tariff), the Transmission Operating Agreement (as defined in the ISO-NE Tariff), the Participants Agreement, the manuals, procedures and business process documents published by ISO-NE via its web site and/or by its e-mail distribution to appropriate NEPOOL participants and/or NEPOOL committees, as amended, superseded or restated from time to time.

“ISO-NE Tariff” shall mean ISO-NE’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended from time to time.

“ISO Settlement Market System” shall have the meaning as set forth in the ISO-NE Tariff.

“kW” shall mean a kilowatt.

“kWh” shall mean a kilowatt-hour.

“Late Payment Rate” shall have the meaning set forth in Section 5.3 hereof.

“Law” shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications.

“Lender” shall mean any party providing financing for the development and construction of the Facility, or any refinancing of that financing, and receiving a security interest in the Facility, and shall include any assignee or transferee of such a party and any trustee, collateral agent or similar entity acting on behalf of such a party.

“MDPU” shall mean the Massachusetts Department of Public Utilities and shall include its successors.

“**Meters**” shall have the meaning set forth in Section 4.6(a) hereof.

“**Moody’s**” shall mean Moody’s Investors Service, Inc., and any successor thereto.

“**MW**” shall mean a megawatt.

“**MWh**” shall mean a megawatt-hour (one MWh shall equal 1,000 kWh).

“**NEPOOL**” shall mean the New England Power Pool and any successor organization.

“**NEPOOL Agreement**” shall mean the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005, as amended and/or restated from time to time.

“**NERC**” shall mean the North American Electric Reliability Council and shall include any successor thereto.

“**Network Upgrades**” shall mean upgrades to the Pool Transmission Facilities and the Transmission/Distribution Provider’s transmission and distribution systems necessary for Delivery of the Energy to the Delivery Point, [including those that are necessary for the Facility to be recognized as a Capacity Resource pursuant to the ISO-NE Rules](#), as determined and identified in the interconnection study approved in connection with construction of the Facility.

“**Node**” shall have the meaning set forth in ~~Market Rule 1~~[the ISO-NE Rules](#).

“**Non-Defaulting Party**” shall mean the Party with respect to which a Default or Event of Default has not occurred.

“**Operational Limitations**” of the Facility are the parameters set forth in Exhibit A describing the physical limitations of the Facility, including the time required for start-up, the limitation on the number of scheduled start-ups per Contract Year and the minimum operating limit(s) for the Facility.

“**Operating Period Security**” shall have the meaning set forth in Section 6.1(b) hereof.

“**Party**” and “**Parties**” shall have the meaning set forth in the first paragraph of this Agreement.

“**Permits**” shall mean any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Entity required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

“Person” shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, limited partnership, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

“Pool Transmission Facilities” has the meaning given that term in the ISO-NE Rules.

“Price” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof.

“Products” shall mean Energy, Capacity and RECs; ~~provided, however, that Energy and RECs generated by the Facility during the Test Period or in excess of the Contract Maximum Amount shall not be deemed Products.~~

“Projected Annual Energy Output” shall mean Buyer's Percentage Entitlement of Products up to the Contract Fixed Price Amount of the historic average of actual generation of the Facility since the Commercial Operation Date or, solely in the first Contract Year, ~~[projected generation initially to be provided with the bid]~~ 115,085 MWh, in each case in MWh per Contract Year.

“QF” shall mean a cogeneration or small power production facility which meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207, as amended from time to time.

“Qualified Bank” shall mean a major U.S. commercial bank or the U.S. branch office of a major foreign bank, in either case, having (x) assets on its most recent audited balance sheet of at least \$10,000,000 and (y) a rating for its senior long-term unsecured debt obligations of at least (A) “A” by S&P and “A2” by Moody’s, if such entity is rated by both S&P and Moody’s or (B) “A” by S&P or “A2” by Moody’s, if such entity is rated by either S&P or Moody’s but not both.

“Real-Time Energy Market” shall have the meaning as set forth in the ISO-NE Rules.

“Regulatory Approval” shall mean the MDPUs’ approval of this Agreement, including the recovery by Buyer of its costs incurred under this Agreement and remuneration equal to four percent (4%) of Buyer’s annual payments under this Agreement through the full term of this Agreement, which approval is acceptable in form and substance to Buyer in its sole discretion, including (1) provisions such that the constitutional issues involved in TransCanada Power Marketing Ltd. V. Ian A. Bowles et. als., U.S. District Court Mass. Civil Action No. 4:10-cv-40070-FDS (the "TransCanada proceeding") will not have an adverse effect on Buyer's cost recovery or its 4% remuneration, and (2) provisions that Section 83 of the Massachusetts Green Communities Act of 2008 and the regulations promulgated thereunder (including an regulatory or judicial challenges to the validity of the Massachusetts Green Communities Act of 2008 and regulations promulgated thereunder) will not have an adverse effect on Buyer's cost recovery or its 4%

remuneration, and does not include any conditions or modifications that Buyer deems, in its sole discretion, to be unacceptable, and is final and not subject to appeal or rehearing.[‡]

“Rejected Purchase” shall have the meaning set forth in Section 4.4 hereof.

“Renewable Energy Certificates” or **“RECs”** shall mean all of the Certificates and any and all other Environmental Attributes associated with the Products or otherwise produced by the Facility which conform with the eligibility criteria set forth in the applicable Massachusetts regulations and are eligible to satisfy the RPS, and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such RPS Class I Renewable Generation Unit.

“Replacement Energy” shall mean Energy purchased by Buyer as replacement for any Delivery Shortfall.

“Replacement Price” shall mean the price at which Buyer, acting in a commercially reasonable manner, purchases Replacement Energy and Replacement RECs plus (i) transaction and other administrative costs reasonably incurred by Buyer in purchasing such Replacement Energy and Replacement RECs and (ii) additional transmission charges, if any, reasonably incurred by Buyer to transmit Replacement Energy to the Delivery Point; provided, however, that (a) in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets, contracts or market positions to minimize Seller’s liability, (b) Buyer shall have no obligation to purchase Replacement Energy and/or Replacement RECs, and (c) if Buyer does not purchase Replacement Energy and/or Replacement RECs, the market value of Energy and/or RECs at the time of the Delivery Shortfall (as reasonably determined by Buyer) will replace the price at which Buyer purchases Replacement Energy and/or Replacement RECs in the calculation of the Replacement Price.

“Replacement RECs” shall mean any generation or environmental attributes, including any Certificates or other certificates or credits related thereto reflecting generation by a RPS Class I Renewable Generation Unit that are purchased by Buyer as replacement for any Delivery Shortfall; provided, however, that if the Facility ceases to qualify as a RPS Class I Renewable Generation Unit solely as a result of a change in Law and Seller is unable, using commercially reasonable efforts, to continue the Facility’s qualification as a RPS Class I Renewable Generation Unit after that change in Law, “Replacement RECs” shall mean Environmental Attributes including any Certificates or other certificates or credits related thereto reflecting generation by a generating facility having all of the same relevant Environmental Attributes as the Facility and satisfying the other renewable portfolio standards and renewable energy standards for which the Facility is

~~[‡] Without limiting the generality of the note on the cover page, each distribution company reserves the right to include in any power purchase agreement provisions that address the Parties’ rights with respect to a constitutional challenge to Section 83 of the Green Communities Act and/or applicable regulations issued by the MDPU under Section 83 of the Green Communities Act.~~

qualified at such time pursuant to Section 4.7(c), that are purchased by Buyer as a replacement for any Delivery Shortfall.

“Resale Damages” shall mean, with respect to any Rejected Purchase, an amount equal to (a) the positive net amount, if any, by which the applicable Price that would have been paid pursuant to Section 5.1 hereof for such Rejected Purchase, had it been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase, plus (b) any applicable penalties assessed by ISO-NE or any other Person against Seller as a result of Buyer’s failure to accept such Products. Seller shall provide a written statement explaining in reasonable detail the calculation of any Resale Damages.

“Resale Price” shall mean the price at which Seller, acting in a commercially reasonable manner, sells or is paid for a Rejected Purchase, plus transaction and other administrative costs reasonably incurred by Seller in re-selling such Rejected Purchase; provided, however, that in no event shall Seller be required to utilize or change its utilization of the Facility or its other assets, contracts or market positions in order to minimize Buyer’s liability for such Rejected Purchase.

“RPS” shall mean the requirements established pursuant to Mass. Gen. Laws ch. 25A, § 11F that require all retail electricity suppliers in Massachusetts to provide a minimum percentage of electricity from RPS Class I Renewable Generation Units, and such successor laws and regulations as may be in effect from time to time.

“RPS Class I Renewable Generation Unit” shall mean a Generation Unit that has received a Statement of Qualification from the DOER, including a Generation Unit termed a New Renewable Generation Unit in a Statement of Qualification issued by the DOER pursuant to 225 CMR 14.00.

“Rules” shall have the meaning set forth in Section 11.3 hereof.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to the FERC’s Order No. 2000 and FERC’s corresponding regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

“S&P” shall mean Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor thereto.

“Schedule or Scheduling” shall mean the actions of Seller and/or its designated representatives pursuant to Section 4.2, of notifying, requesting and confirming to ISO-NE the quantity of Energy to be ~~delivered~~Delivered on any given day or days (or in any given hour or hours) during the Services Term at the Delivery Point.

“Services Term” shall have the meaning set forth in Section 2.2(b) hereof.

“Seller’s Taxes” shall have the meaning set forth in Section 5.4(a) hereof.

“Statement of Qualification” shall mean a written document from the DOER that qualifies a Generation Unit as an RPS Class I Qualified Generation Unit, or that qualifies a portion of the annual electrical energy output of a Generation Unit as RPS Class I Renewable Generation (as defined in 225 CMR 14.01).

“Supply Forecast” shall have the meaning set forth in Section 9.3(b) hereof.

“Term” shall have the meaning set forth in Section 2.2(a) hereof.

“Termination Payment” shall have the meaning set forth in Section 9.3(b) hereof.

“Test Period” shall ~~have the meaning set forth in Section 3.4(a) hereof~~ mean the period during the Term that is prior to the Commercial Operation Date.

“Transmission/Distribution Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; (b) Buyer; ~~and~~/or (c) such other third parties from whom transmission or distribution services are necessary for Seller to fulfill its performance obligations to Buyer hereunder, as the context requires.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. Subject to Section 8.1, this Agreement is effective as of the Effective Date.

2.2 Term.

(a) The **“Term”** of this Agreement is the period beginning on the Effective Date and ending upon the final settlement of all obligations hereunder after the expiration of the Services Term or the earlier termination of this Agreement in accordance with its terms.

(b) The **“Services Term”** is the period during which Buyer is obligated to purchase Products Delivered to Buyer by Seller (not including Energy and RECs Delivered during the Test Period under Section 4.8) commencing on the Commercial Operation Date and continuing for a period of ~~10 to fifteen~~ (15) years from the Commercial Operation Date, unless this Agreement is earlier terminated in accordance with the provisions hereof.

(c) At the expiration of the Services Term, the Parties shall no longer be bound by the terms and provisions hereof (including, without limitation, any payment obligation hereunder), except: (i) to the extent necessary to provide invoices and make payments or refunds with respect to Products ~~delivered~~ Delivered prior to such expiration or termination; (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, ~~and (iii); (iii) the rights and obligations associated with the reinstatement of Agreement pursuant to Section 9.3(b)(ix); and (iv)~~ the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

3. FACILITY DEVELOPMENT AND OPERATION

3.1 Critical Milestones.

(a) Subject to the provisions of Section 3.1(c), commencing on the Effective Date, Seller shall develop the Facility in order to achieve the following milestones (“**Critical Milestones**”) on or before the date set forth in this Section 3.1(a):

- (i) receipt of all Permits necessary to construct the Facility, as set forth in Exhibit B, in final form, by ~~_____~~ May 31, 2012;
- (ii) acquisition of all required real property rights necessary for construction and operation of the Facility, interconnection of the Facility to the Interconnecting Utility, and performance of Seller’s obligations under this Agreement as set forth on Exhibit B, by ~~_____~~ February 28, 2012;
- (iii) demonstration of the financial capability (whether through third party financing to Seller or Seller’s own financial assets) to proceed with the development and construction of the Facility, including, as applicable, Seller’s financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades by ~~_____~~ ~~[on or before 12/31/12]~~ May 31, 2012;
- (iv) issuance of a full notice to proceed by Seller to its general construction contractor and commencement of construction of the Facility by ~~_____~~ ~~[on or before 12/31/12]~~ June 30, 2012; and
- (v) achievement of the Commercial Operation Date by ~~_____~~ ~~[on or before 12/31/15]~~ December 31, 2012.

(b) Seller shall provide Buyer with written notice of the achievement of each Critical Milestone within seven days after that achievement, which notice shall include information demonstrating with reasonable specificity that such Critical Milestone has been achieved. Seller acknowledges that Buyer requires such written notice solely for monitoring purposes, and that nothing set forth in this Agreement shall create or impose upon Buyer any responsibility or liability for the development, construction, operation or maintenance of the Facility.

(c) In addition to any extension of a date for a Critical Milestone as a result of a Force Majeure under Section 10.1, Seller may elect to extend all of the dates for the Critical Milestones not yet achieved (i) by one year without posting additional Development Period Security and (ii) by up to two additional six month periods by posting additional Development Period Security of \$~~_____~~ ~~[\$5 per kWh of Contract Maximum Amount]~~ 187,500 for each such six-month period. In no event may Seller exercise the right to extend the Critical Milestone dates under this Section 3.1(c) by more than two years, and in no event shall any extension of the

Critical Milestone dates as a result of one or more Force Majeure events exceed a cumulative total of an additional twelve (12) months. Any such election shall be made in a written notice delivered to Buyer on or prior to the first date for a Critical Milestone that has not yet been achieved (as such date may have previously been extended).

(d) The Parties agree that time is of the essence with respect to the Critical Milestones and is part of the consideration to Buyer in entering into this Agreement.

3.2 Delay Damages.

(a) If the Commercial Operation Date is not achieved by the date set forth ~~therefor~~therefore in Section 3.1(a) (as extended pursuant to Section 3.1(c)), Seller shall pay to Buyer damages for each month from and after such date until the Commercial Operation Date at the rate of \$~~[]~~ per month ~~[\$1.50 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 50% or more; \$1.00 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor more than 20% but less than 50%; and \$0.50 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 20% or less]~~37,500 per month up to a maximum of twelve (12) months of delay, pro rated for partial months (“**Delay Damages**”). Delay Damages shall be due under this Section 3.2(a) without regard to whether Buyer exercises its right to terminate this Agreement pursuant to Section 9.3; provided, however, that if Buyer exercises its right to terminate this Agreement under Section 9.3, Delay Damages shall be due and owing to the extent that such Delay Damages were due and owing at the date of such termination.

(b) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller’s delay in achieving the Commercial Operation Date would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Article shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller’s failure to achieve the Commercial Operation Date. Any such termination damages shall be determined in accordance with Article 9.

(c) By the tenth (10th) day following the end of the calendar month in which Delay Damages first become due and continuing by the tenth (10th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable), Buyer shall deliver to Seller an invoice showing Buyer’s computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. If Seller fails to pay any such undisputed amounts when due, Buyer may draw upon the Development Period Security for payment of such Delay Damages, and Buyer may exercise any other remedies expressly available herein (as such remedies may be limited herein) for Seller’s default hereunder.

3.3 Construction.

(a) Progress Reports. At the end of each calendar quarter after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer with a progress report regarding Critical Milestones not yet achieved, including projected time to completion of the Facility, in accordance with the form attached hereto as Exhibit C, and shall provide supporting documents and detail regarding the same upon Buyer's request. Seller shall permit Buyer and its advisors and consultants to review and discuss with Seller and its advisors and consultants such progress reports during business hours and upon reasonable notice to Seller.

(b) Site Access. Buyer and its representatives shall have the right but not the obligation, during business hours ~~and~~, upon reasonable notice to Seller, ~~to inspect and in a manner so as to not in any way interfere with or otherwise delay the construction of the Facility, to visit~~ the Facility site and ~~monitor~~ view the construction of the Facility.

3.4 Commercial Operation.

(a) Seller's obligation to Deliver the Products and Buyer's obligation to pay Seller for such Products commences on the Commercial Operation Date; ~~provided that Energy and RECs generated by the Facility prior to the Commercial Operation Date (the "Test Period") shall not be deemed Products.~~

(b) The Commercial Operation Date shall occur on the date on which the Facility is substantially completed as described in Exhibit A and capable of regular commercial operation in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility, all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to the Seller have been satisfied, and all performance testing for the Facility has been successfully completed, provided Seller has also satisfied the following conditions precedent as of such date:

- (i) completion of all transmission, distribution and interconnection facilities and any Network Upgrades, including final acceptance and authorization to interconnect the Facility from ISO-NE or the Interconnecting Utility in accordance with the fully executed Interconnection Agreement;
- (ii) Seller has obtained and demonstrated possession of all Permits required for the lawful construction and operation of the Facility, for the interconnection of the Facility to the Interconnecting Utility (including any Network Upgrades) and for Seller to perform its obligations under this Agreement, including but not limited to Permits related to environmental matters, all as set forth on Exhibit B;
- (iii) Seller has obtained a Statement of Qualification from the DOER pursuant to 225 CMR 14.05 qualifying the Facility as a RPS Class I Renewable Generation Unit;

- (iv) Seller has acquired all real property rights needed to construct and operate the Facility, to interconnect the Facility to the Interconnecting Utility, to construct the Network Upgrades (to the extent that it is Seller's responsibility to do so) and to perform Seller's obligations under this Agreement;
- (v) Seller has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;
- (vi) Seller has successfully completed all pre-operational testing and commissioning in accordance with manufacturer guidelines;
- (vii) Seller has satisfied, or Buyer has waived, all Critical Milestones that precede the Commercial Operation Date in Section 3.1;
- (viii) no Default or Event of Default by Seller shall have occurred and remain uncured;
- (ix) the Facility is under the care, custody and control of Seller;
- (x) Seller has taken commercially reasonable actions to cause the Facility to be qualified and cleared as a New or Existing Capacity Resource under the ISO-NE Rules.

3.5 Operation of the Facility.

(a) Compliance With Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; (ii) the Operational Limitations; and (iii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission/Distribution Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under this Agreement (including obligations related to the generation, Scheduling, interconnection, distribution, **and** transmission, and sale of Energy, the sale of Capacity, and the transfer of RECs), whether such requirements were imposed prior to or after the Effective Date. Seller shall be solely responsible for registering as the "Generator Owner" and "Generator Operator" of the Facility with NERC and any applicable regional reliability entities.

(b) Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under this Agreement, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall, at all times during the Term, construct, maintain and operate the Facility in accordance with Good Utility Practice and in accordance with Exhibit A to this Agreement. Seller shall bear all costs related thereto. Seller may contract with other Persons to provide discrete construction, operation and maintenance functions, so long as Seller maintains overall control over the construction, operation and maintenance of the Facility throughout the Term.

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

(e) Forecasts. Commencing at least thirty (30) days prior to the anticipated Commercial Operation Date and continuing throughout the Term, Seller shall update and deliver to Buyer on a monthly basis and in a form reasonably acceptable to Buyer, twelve (12) month rolling forecasts of Energy production by the Facility, which forecasts shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, maintenance schedules, Seller's generation projections and other relevant data and considerations. Any notable changes from prior forecasts or historical energy delivery shall be noted and an explanation provided. The provisions of this section are in addition to Seller's requirements under ISO-NE Rules and ISO-NE Practices, including ISO-NE Operating Procedure No. 5.

(f) RPS Class I Renewable Generation Unit. Seller shall be solely responsible for qualifying the Facility with the DOER as a RPS Class I Renewable Generation Unit in accordance with 225 CMR 14.05 and maintaining such Statement of Qualification throughout the Services Term; provided, however, that if the Facility ceases to qualify as a RPS Class I Renewable Generation Unit solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to maintain such Statement of Qualification after that change in Law.

(g) Compliance Reporting. Within fifteen days (15) days following the end of each calendar quarter, Seller shall provide Buyer information pertaining to power plant emissions, fuel types, labor information and any other information to the extent required by Buyer to comply with the uniform disclosure requirements contained in 220 CMR 11.00 and any other such disclosure regulations which may be imposed upon Buyer during the Term, which information requirements will be provided to Seller by Buyer at least fifteen (15) days before the beginning of the calendar quarter for which the information is required. To the extent Buyer is subject to any other certification or compliance reporting requirement with respect to the Products produced by Seller and ~~delivered~~Delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) requested by Buyer to permit Buyer to comply with any such reporting requirement.

(h) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated, at the time of issuance of any policy, not lower than "A-" by the A.M. Best Company the insurance coverage specified on Exhibit D. Within thirty (30) days prior to the start of each Contract Year, or such later date as reasonably practicable if the start of any Contract Year occurs within 30 days of an annual insurance policy renewal date,

Seller shall provide Buyer with a certified “true and correct” copy of such insurance policies, provisions and endorsements and a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend “certificate is not evidence of coverage” or any statement with similar effect, (iii) shall ~~evidence a firm obligation of the request~~ insurer to endeavor to provide Buyer ~~within~~ thirty (30) days prior written notice of coverage modifications, and (iv) shall be endorsed by a Person who has authority to bind the insurer. Seller shall have a firm obligation to provide notice to Buyer within five (5) Business Days of receiving any written notice from insurer of any material coverage modifications. If any coverage is written on a “claims-made” basis, the certification accompanying the policy shall conspicuously state that the policy is “claims made.”

(i) Contacts. Each Party shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Agreement.

(j) Compliance with Law. Without limiting the generality of any other provision of this Agreement, Seller shall be responsible for complying with all applicable requirements of Law relating to the Facility, including all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by FERC and any other Governmental Entity, whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller’s violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law.

(k) FERCQF or EWG Status. Seller shall acquire its status as a QF or EWG prior to the Commercial Operation Date and shall maintain the Facility’s status as a QF or EWG at all times after the Commercial Operation Date ~~and shall obtain and maintain any requisite authority to sell the output of the Facility at market-based rates.~~

(l) Emissions. Seller shall be responsible for all costs associated with the Facility’s emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility’s emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility’s emissions shall not constitute a Force Majeure.

3.6 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, including the costs of the Network Upgrades, consistent with all standards and requirements set forth by the FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

(b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

4. DELIVERY OF PRODUCTS

4.1 Obligation to Sell and Purchase Products.

(a) Beginning on the Commercial Operation Date ~~and subject to Section 4.1(b)~~, Seller shall sell and Deliver, and Buyer shall purchase and receive, Buyer's Percentage Entitlement of the Products in accordance with the terms and conditions of this Agreement. The aforementioned obligations for Seller to sell and Deliver Buyer's Percentage Entitlement of the Products and for Buyer to purchase and receive the same is/are unit contingent and shall be subject to the operation of the Facility.

~~(b) — Buyer shall not be obligated to purchase any Products to the extent that such Products exceed the Contract Maximum Amount in any hour.~~

~~(b)~~ ~~(e)~~ Seller shall Deliver Buyer's Percentage Entitlement of the Products produced by the Facility, ~~up to and including the Contract Maximum Amount (except as otherwise provided herein for Capacity)~~, exclusively to Buyer, and Seller shall not sell, divert, grant, transfer or assign such Products or any certificate or other attribute associated with such Products to any Person other than Buyer during the Term unless otherwise specifically provided herein. Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer except as otherwise specifically provided herein. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion ~~except as provided in Section 5.1(b) with respect to RECs, and as provided in Section 9.3(a) with respect to all Products.~~

4.2 Scheduling and Delivery.

(a) During the Services Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Agreement, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer the Energy to Buyer in the Day Ahead Energy Market or Real Time Energy Market, as applicable, in such a manner that Buyer may resell such Energy in the Day Ahead Energy Market or Real Time Energy Market, as applicable.

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder, subject to Section 19.5 of this Agreement; provided, however, that each Party shall be responsible for administrative actions that may be required of either or both Parties in their respective capacities as Buyer or Seller, in accordance with the ISO-NE Rules and ISO-NE Practices; and further provided that any costs or penalties that one Party may incur for failure by the other Party to comply with such administrative requirements shall be reimbursed by the non-performing Party; and further provided that failure to perform such administrative actions shall not be deemed an Event of Default. Penalties or similar charges

assessed by a Transmission/Distribution Provider and caused by noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller, or Seller's agent, shall at all times during the Services Term be designated as the "Lead Market Participant" (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities, including all charges, penalties and financial assurance obligations, imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility.

4.3 Failure of Seller to Deliver Products. In the event that Seller fails to satisfy any of its obligations to Deliver any of the Products hereunder in accordance with Section 4.1, and such failure is not excused under the express terms of this Agreement (a "**Delivery Shortfall**"), Seller shall pay Buyer an amount for such Delivery Shortfall equal to the Cover Damages. Such payment shall be due no later than the date for Buyer's payment for the applicable month as set forth in Section 5.2 hereof; provided, however, that if Seller demonstrates to Buyer's reasonable satisfaction that such Delivery Shortfall was solely the result of an administrative error by Seller, such payment shall not be due until the later of the date for Buyer's payment for the applicable month as set forth in Section 5.2 hereof or the date that is fifteen (15) days after such Delivery Shortfall occurred. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to a Delivery Shortfall would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

4.4 Failure by Buyer to Accept Delivery of Products. If Buyer fails to accept all or part of any of the Products to be purchased by Buyer hereunder and such failure to accept is not excused under the terms of this Agreement (a "**Rejected Purchase**"), then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such Rejected Purchase equal to the Resale Damages. Each Party agrees and acknowledges that (i) the damages that Seller would incur due to a Rejected Purchase would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Resale Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

4.5 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering its Energy to the Delivery Point consistent with all standards and requirements set forth by the FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission and distribution interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to and at the Delivery Point, ~~except for small Massachusetts projects with a capacity value such that they are recognized by the ISO-NE Rules as a "load reducer". These small~~

~~Massachusetts projects are not delivering power to the Pool Transmission Facilities and shall pay energy delivery costs only to their Delivery Point.~~

(c) Buyer shall be responsible for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy ~~delivered~~Delivered under this Agreement from and after the Delivery Point.

4.6 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the "**Meters**"), shall be installed, operated, maintained and tested at Seller's expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller's expense once each Contract Year. The Meters shall be used for the registration, recording and transmission of information regarding the Energy output of the Facility. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer's expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than two percent (2%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test any of the Meters at the Facility at reasonable times and upon reasonable notice from Buyer to Seller and to the Interconnecting Utility, and subject to the Terms and Conditions of the Interconnection Agreement. Buyer shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by Seller. Seller shall provide Buyer with timely notice of any such testing or calibration.

(d) Audit of Meters. Buyer shall have access to the Meters and the right to audit all information and test data related to such Meters.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to

accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than two percent (2%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The Meters shall be capable of sending meter telemetry data, and Seller shall provide Buyer with simultaneous access to such data at no additional cost to Buyer. This provision is in addition to Seller's requirements under ISO-NE Rules and Practices, including ISO-NE Operating Procedure No. ~~18~~18.

4.7 RECs.

(a) Seller shall transfer to Buyer all of the ~~right~~rights, title and interest in and to Buyer's Percentage Entitlement of the Facility's Environmental Attributes, including the RECs, generated by the Facility during the Term in accordance with the terms of this Section 4.7.

(b) All Energy provided by Seller to Buyer from the Facility under this Agreement shall meet the requirements for eligibility pursuant to the RPS; provided, however, that if the Facility ceases to qualify as a RPS Class I Renewable Generation Unit solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to ensure that all Energy provided by Seller to Buyer from the Facility under this Agreement meets the requirements for eligibility pursuant to the RPS after that change in Law: and further provided that, to the extent Seller has made such commercially reasonable efforts, Seller's failure to Deliver RECs due to such inability shall not be deemed an Event of Default and REC payments per Exhibit E shall continue during the period of such failure.

(c) At Buyer's request and at Seller's sole cost, Seller shall seek qualification under the renewable portfolio standard or similar law of New York and/or one or more New England states (in addition to Massachusetts) and/or any federal renewable energy standard. Seller shall use commercially reasonable efforts, consistent with Good Utility Practice, to maintain such qualification at all times during the Services Term, or until Buyer indicates such qualification is no longer necessary. Seller shall also submit any information required by any state or federal agency (including without limitation the MDPU) with regard to administration of its rules regarding Environmental Attributes or its renewable energy standard or renewable portfolio standard to Buyer or as directed by Buyer.

(d) Seller shall comply with all GIS Operating Rules relating to the creation and transfer of all RECs to be purchased by Buyer under this Agreement and all other GIS Operating Rules to the extent required for Buyer to ~~achieve the~~obtain full ~~value~~rights and title of the RECs. In addition, at Buyer's request, Seller shall register with and comply with the rules and requirements of any other tracking system or program that tracks, monetizes or otherwise creates or enhances value for Environmental Attributes, which compliance shall be at Seller's sole cost if such registration and compliance is requested in connection with Section 4.7(c) above and shall be at Buyer's sole cost in other instances.

(e) Prior to the delivery of any Energy hereunder (including any Energy Delivered during the Test Period), either (i) Seller shall cause Buyer to be registered in the GIS as the initial owner of all Certificates to be Delivered hereunder to Buyer or (ii) Seller and Buyer shall effect an irrevocable forward transfer of the Certificates to be Delivered hereunder to Buyer in the GIS; provided, however, that no payment shall be due to Seller for any REC's until the Certificates are actually deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing.

4.8 Capacity.

(a) Seller's Delivery of Capacity and Buyer's purchase of Capacity under this Agreement shall be solely through financial settlement pursuant to Exhibit E. Buyer shall neither take title to any Capacity nor be responsible for any actions or conditions in the Forward Capacity Market with respect to such Capacity. Subject to all other terms of this Agreement, the actions of Seller in the Forward Capacity Market, as set forth in this Section 4.8, are for the economic benefit of Buyer, as set forth in Exhibit E.

(b) During the Term, Seller shall take commercially reasonable actions necessary to secure Capacity Supply Obligations for the Facility, including but not limited to qualifying the Facility for participation in the Forward Capacity Auctions (or reconfiguration auctions) as a New Capacity Resource or an Existing Capacity Resource (as applicable) with the maximum Qualified Capacity value for the Facility, and shall participate and clear with a Capacity Supply Obligation in every Commitment Period in the Forward Capacity Market covered by the Services Term.

(c) Seller shall take commercially reasonable actions (i) to bid in the Facility's Qualified Capacity in the Forward Capacity Auction, (ii) to clear and secure a Capacity Supply Obligation and (iii) to avoid being de-listed from the Forward Capacity Market, unless otherwise approved by Buyer in its sole discretion. Such approval shall be sought by Seller by requesting approval in writing from Buyer at least one hundred and twenty (120) days in advance of the qualification deadline for the Forward Capacity Auction in which Seller wishes to submit a static or permanent de-list bid, or at least one hundred and twenty (120) days in advance of the start of the Forward Capacity Auction in which Seller wishes to submit a dynamic de-list bid.

(d) Subject to the ISO-NE Rules relating to confidentiality of information provided by ISO-NE, Seller shall submit copies of all bidding documentation Seller provides to ISO-NE to Buyer to demonstrate compliance with the bidding requirements under this Section 4.8.

(e) During the Term, Seller shall be responsible for all performance requirements mandated by the ISO-NE Rules and ISO-NE Practices, including performance requirements (and payment of penalties, if any) associated with the Forward Capacity Market.

(f) Failure of Facility to Obtain Capacity Supply Obligation. Except as provided in Section 4.8(g), if the Facility fails to obtain, due to its action or inaction, a Capacity Supply Obligation for any period, Capacity payments per Exhibit E shall continue during the period of such failure. The Facility's ISO-NE Capacity Supply Obligation for such period shall

be estimated based on available information. Such failure shall not be deemed an Event of Default under this Agreement.

(g) Failure of Facility to Participate in the ISO-NE Forward Capacity Market Due to Ineligibility. In the event that (i) the Facility is ineligible to participate in the ISO-NE Forward Capacity Market due to the location of the Facility or to due to a change in ISO-NE Rules or ISO-NE Practices, or (ii) notwithstanding Seller's good faith efforts to participate in the applicable Forward Capacity Auction and/or reconfiguration auction, the Facility fails to clear with a Capacity Supply Obligation, then in either case Capacity payments per Exhibit E shall be suspended. Such ineligibility or failure by Seller shall not be deemed an Event of Default under this Agreement.

4.9 ~~4.8~~ Deliveries During Test Period. During the Test Period, Seller shall sell and Deliver, and Buyer shall purchase and receive Buyer's Percentage Entitlement of any Energy and RECs produced by the Facility. ~~Notwithstanding the provisions of Section 5.1, payment for Buyer's Percentage Entitlement of all Energy and RECs produced during the Test Period shall be equal to the product of (x) Buyer's Percentage Entitlement of the MWh of Energy delivered to the Delivery Point and (y) the Real Time Locational Marginal Price at such Delivery Point (as determined by ISO-NE) for each hour of the month when Energy and RECs are produced by the Facility, subject to the Pricing in Article 5.~~ In no event shall the Test Period extend beyond six months, except due to Force Majeure.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Pricing for Products.

~~5.1(a) Price for Buyer's Percentage Entitlement of Products. All up to the Contract Fixed Price Amount. Buyer's Percentage Entitlement of~~ Products up to the Contract Fixed Price Amount Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the ~~Price payments~~ specified in Exhibit E, and in accordance with this Section 5.1(a). Other than the (i) payment for ~~the~~ Products under this Section 5.1, 5.1 and as provided in Exhibit E, (ii) payments related to Meter testing under Section 4.6(b), (iii) payments related to Meter malfunctions under Section 4.6(e), (iv) payment ~~for Energy and RECs during the Test Period in accordance with Section 4.8,~~ (v) payment of any Resale Damages under Section 4.4, ~~(vi)~~ (v) payment of interest on late payments under Section 5.3, ~~(vii)~~ (vi) payments for reimbursement of Buyer's Taxes under Section 5.4(a), ~~(viii)~~ (vii) return of any Credit Support under Section 6.3, and ~~(ix)~~ (viii) payment of any Termination Payment due from Buyer under Section 9.3, Buyer shall not be required to make any other payments to Seller under this Agreement, and Seller shall be solely responsible for all costs incurred by it in connection with the performance of its obligations under this Agreement.

(b) Price for Energy Delivered in excess of Contract Fixed Price Amount. Energy Delivered in excess of the Contract Fixed Price Amount shall be purchased by Buyer at a Price equal to the product of (x) the MWhs of Energy in excess of the Contract Fixed Price Amount Delivered to the Delivery Point and (y) ninety percent (90%) of the Real Time Locational Marginal Price at such Delivery Point (as determined by ISO-NE) for each hour of the month during which such Energy in excess of the Contract Fixed Price Amount is Delivered to Buyer.

All rights and title to RECs associated with Energy Delivered in excess of the Contract Fixed Price Amount shall remain with Seller. In the event that Buyer receives RECs associated with Energy Delivered in excess of the Contract Fixed Price Amount, Buyer shall not hold or claim to hold equitable title to such RECs and shall promptly return such RECs to Seller's GIS account.

(c) Price for Buyer's Percentage Entitlement of all Products Delivered during the Test Period. Buyer's Percentage Entitlement of Products Delivered to Buyer during the Test Period shall be purchased by Buyer at a Price equal to the product of (x) Buyer's Percentage Entitlement of the MWh of Energy Delivered to the Delivery Point and (y) ninety percent (90%) of the Real Time Locational Marginal Price at such Delivery Point (as determined by ISO-NE) for each hour of the month when Energy is produced by the Facility. Payment for Buyer's Percentage Entitlement of all RECs produced by the Facility during the Test Period and deposited in Buyer's GIS account shall be equal to the product of (x) Buyer's Percentage Entitlement of the RECs generated during such period and deposited in Buyer's GIS account and (y) a price of [REDACTED] REC.

5.2 Payment and Netting.

(a) Billing Period. The calendar month shall be the standard period for all payments under this Agreement. On or before the fifteenth (15th) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on the Energy Delivered in the preceding month, the Facility's Capacity Supply Obligation associated with the preceding month, and any RECs deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may request.

(b) Timeliness of Payment. All undisputed charges shall be due and payable in accordance with each Party's invoice instructions on or before the later of (x) fifteen (15) days from receipt of the applicable invoice or (y) the last day of the calendar month in which the applicable invoice was received (or in either event the next Business Day if such day is not a Business Day). Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required

payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Agreement, including any related damages calculated pursuant to this Agreement, interest, and payments or credits, may be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the prime rate specified in the "Money Rates" section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties) plus 1% per cent, and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the "Late Payment Rate").

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products ("Seller's Taxes"). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer or imposed on or associated with the purchase of such Products (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) ("Buyer's Taxes"). In the event Seller shall be required by law or regulation to remit or pay any Buyer's Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller's Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller's Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the Facility's eligibility to receive any federal or state tax credits or

qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and Price for and Seller's obligation to deliver the Products, shall be effective regardless of whether the production and/or sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits or grants or any particular accounting, reporting or tax treatment during the Term.

6. SECURITY FOR PERFORMANCE

6.1 Seller's Support.

(a) Seller shall be required to post Credit Support in the amount of ~~[\$ _____] [\$30 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 50% or more; \$20 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor more than 20% but less than 50%; and \$10 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 20% or less]~~ \$750,000 to secure Seller's obligations in the period between the Effective Date and the Commercial Operation Date ("**Development Period Security**"). Fifty percent (50%) of the Development Period Security shall be provided to Buyer ~~on~~ within thirty (30) days after the Effective Date; and the remaining fifty percent (50%) of the Development Period Security shall be provided to Buyer within fifteen (15) Business Days after receipt of the Regulatory Approval. If at any time prior to the Commercial Operation Date, the amount of Development Period Security is reduced as a result of Buyer's draw upon such Development Period Security to less than the amount of Development Period Security required to be provided by Seller through the period ending fifteen (15) days after receipt of the Regulatory Approval, Seller shall replenish such Development Period Security to the amount of Development Period Security required to be provided by Seller through the period ending fifteen (15) days after receipt of the Regulatory Approval within five (5) days of that draw. Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days after the later of (x) Buyer's receipt of an undisputed notice from Seller that the Commercial Operation Date has occurred or (y) Buyer's receipt of the full amount of the Operating Period Security.

(b) Beginning not later than ten (10) days following the Commercial Operation Date, Seller shall provide Buyer with Credit Support to secure Seller's obligations under this Agreement after the Commercial Operation Date through and including the date that all of Seller's obligations under this Agreement are satisfied ("**Operating Period Security**"). The Operating Period Security shall be in an amount equal to ~~[\$ _____] [\$30 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 50% or more; \$20 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor more than 20% but less than 50%; and \$10 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 20% or less]~~ \$750,000. If at any time on or after the Commercial Operation Date, the amount of Operating Period Security is reduced as a result of Buyer's draw upon such Operating Period Security, Seller shall replenish such Operating Period Security to the total amount required under this Section 6.1(b) within five (5) Business Days of that draw.

6.2 Cash Deposits. Any cash provided by Seller as Credit Support under this Agreement shall be held in an interest bearing deposit account selected by Buyer in its

reasonable discretion. All interest accrued on that cash deposit shall be retained in that account; provided, however, that to the extent the amount held in that account exceeds the required level of Development Period Security (before and on the Commercial Operation Date) or the Operating Period Security (after the Commercial Operation Date), such excess shall be paid to Seller promptly after Seller requests such a payment in writing delivered to Buyer. Seller agrees to comply with the commercially reasonable requirements of Buyer in connection with the receipt and retention of any cash provided as Credit Support under this Agreement.

6.3 Return of Credit Support. Any unused Credit Support provided under this Agreement shall be returned to the Party providing that Credit Support only after any such Credit Support has been used to satisfy any outstanding obligations of that Party in existence at the time of the expiration or termination of this Agreement. Provided such obligations have been satisfied, such Credit Support shall be returned to the Party providing it within thirty (30) days after the earlier of (a) the expiration of the Term of this Agreement or (b) termination of this Agreement under Section 8.3, Section 9.3(b), Section 10.1(c), or Section ~~10.1(e)~~ 14.3.

7. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

7.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of Massachusetts. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

(b) Due Authorization; No Conflicts. The execution and delivery by Buyer of this Agreement, and the performance by Buyer of its obligations hereunder, have been duly authorized by all necessary actions on the part of Buyer and do not and, under existing facts and Law, shall not: (i) contravene its certificate of incorporation or any other governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) assuming receipt of the Regulatory Approvals, violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(c) Binding Agreement. This Agreement has been duly executed and delivered on behalf of Buyer and, assuming the due execution hereof and performance hereunder by Seller and receipt of the Regulatory Approval, constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(d) No Proceedings. Except to the extent relating to the Regulatory Approval, there are no actions, suits or other proceedings, at law or in equity, by or before any

Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Buyer or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction contemplated hereby, or which Buyer reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Buyer's ability to perform its obligations under this Agreement.

(e) Consents and Approvals. Except to the extent associated with the Regulatory Approval, the execution, delivery and performance by Buyer of its obligations under this Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken or that shall be duly obtained, made or taken on or prior to the date required, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable as required under applicable Law.

(f) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Buyer.

(g) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Buyer, or, to Buyer's knowledge, threatened against it.

(h) No Default. No Default or Event of Default has occurred and is continuing and no Default or Event of Default shall occur as a result of the performance by Buyer of its obligations under this Agreement.

(i) Government Actions. [Buyer shall at all times comply with all valid and applicable federal, state and local laws, rules, regulations and orders in connection with the performance of their respective obligations under this Agreement.](#)

7.2 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is a [REDACTED] [Limited Liability Company](#), validly existing and in good standing under the laws of [REDACTED] [the State of Delaware](#). Subject to the receipt of the Permits listed in Exhibit B [and Regulatory Approval](#), Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it is currently engaged; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and (iii) holds, as of the Effective Date, or shall hold by the Commercial Operation Date, all rights and entitlements necessary to construct, own and operate the Facility and to deliver the Products to the Buyer in accordance with this Agreement.

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and Law, shall not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) assuming receipt of the Permits listed on Exhibit B and Regulatory Approval, violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(d) Binding Agreement. This Agreement has been duly executed and delivered on behalf of Seller and, assuming the due execution hereof and performance hereunder by Seller and receipt of the Permits listed on Exhibit B and Regulatory Approval, constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(e) No Proceedings. Except to the extent associated with the Permits listed on Exhibit B and Regulatory Approval, there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Seller or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction contemplated hereby, or which Seller reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Seller's ability to perform its obligations under this Agreement.

(f) Consents and Approvals. Subject to the receipt of the Permits listed on Exhibit B and Regulatory Approval on or prior to the date such Permits are required under applicable Law, the execution, delivery and performance by Seller of its obligations under this Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable. To Seller's knowledge, Seller shall be able to receive the Permits listed in Exhibit B in due course and as required under applicable Law to the extent that those Permits have not previously been received.

(g) New RPS Class I Renewable Generation Unit. The Facility shall be an RPS Class I Renewable Generation Unit, qualified by the DOER as eligible to participate in the RPS program, under Section 11F of Chapter 25A (subject to Section 4.7(b) in the event of a change in Law affecting such qualification as a RPS Class I Renewable Generation Unit) and shall have a commercial operation date, as verified by the DOER, on or after January 1, 2008.

(h) Title to Products. Seller has and shall have good and marketable title to all Products sold and ~~delivered~~Delivered to Buyer under this Agreement, free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person (other than sales of Capacity in the Forward Capacity Market as contemplated by

[this Agreement](#)), and no Person other than Seller can claim an interest in any Product to be sold to Buyer under this Agreement.

(i) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Seller.

(j) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.

(k) No Default. No Default or Event of Default has occurred and is continuing and no Default or Event of Default shall occur as a result of the performance by Seller of its obligations under this Agreement.

(l) Government Actions. Seller shall at all times comply with all valid and applicable federal, state and local laws, rules, regulations and orders in connection with the performance of their respective obligations under this Agreement.

7.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

8. REGULATORY APPROVAL

8.1 Receipt of Regulatory Approval. The obligations of the Parties to perform this Agreement, other than the Parties' obligations under Section 6.1, Section 6.2, Section 8.2, Section 8.3 and Section 12, are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the Regulatory Approval or receipt of an order of the MDPU regarding this Agreement that is not acceptable in form and substance to Buyer in its sole discretion.

8.2 Filing for Regulatory Approval. Buyer shall use commercially reasonable efforts to (i) file an application for the Regulatory Approval with the MDPU by not later than ~~_____~~ January 31, 2011 and (ii) at Buyer's sole discretion, exercise commercially reasonable efforts to obtain the Regulatory Approval, including using commercially reasonable efforts to obtain a favorable resolution in any appeal of an order of the MDPU with respect to this Agreement. Seller shall use commercially reasonable efforts to cooperate with Buyer in obtaining the Regulatory Approval.

8.3 Failure to Obtain Regulatory Approval. If Buyer (i) ~~on any date~~ notifies Seller that it has received an order of the MDPU regarding this Agreement that is not acceptable in form and substance to Buyer in its sole discretion or (ii) has not notified Seller that it has

received the Regulatory Approval by ~~[] [300 days from Effective Date]~~, November 1, 2011, either Party may terminate this Agreement within thirty (30) days after such date by delivery of written notice to the other Party in accordance with Section 17. Upon such termination, neither Party shall have any further liability hereunder except for any obligations arising under Sections 6.3 and 12 which accrued prior to such termination.

9. BREACHES; REMEDIES

9.1 Events of Default by Either Party. It shall constitute an event of default (“**Event of Default**”) by either Party hereunder if:

(a) Representation or Warranty. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to this Agreement, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than ten (10) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Other Covenants. Other than a Delivery Shortfall (the sole remedy for which shall be the payment of Cover Damages under Section 4.3), a Rejected Purchase (the sole remedy for which shall be the payment of Resale Damages under 4.4), or an Event of Default described in Section 9.1(a), 9.1(b), 9.1(d), 9.1(e) or 9.2, such Party fails to perform, observe or otherwise to comply with any material obligation hereunder and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended for an additional reasonable period if the Defaulting Party is unable to cure within that thirty (30) day period and provided that corrective action has been taken by the Defaulting Party within such thirty (30) day period and so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected, but in any event within one hundred fifty (150) days; or

(d) Bankruptcy. Such Party (i) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against such Party under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to such Party, as now or hereinafter in effect, (ii) makes an assignment for the benefit of creditors, or admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of such Party, or (iii) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of such Party or of a major part of such Party’s property, which is not dismissed within sixty (60) days; or

(e) Permit Compliance. Such Party fails to obtain and maintain in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under this Agreement.

9.2 Events of Default by Seller. In addition to the Events of Default described in Section 9.1, it shall constitute an Event of Default by Seller hereunder if:

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

(b) Failure to Maintain Credit Support. The failure of Seller to provide, maintain and/or replenish the Development Period Security or the Operating Period Security as required pursuant to Article 6 of this Agreement, and such failure continues for more than five (5) Business Days after Buyer has provided written notice thereof to Seller; or

(c) Energy Output. During the Services Term, the Facility's Energy output is (A) below ~~fifty~~ percent (~~50%~~) of the Projected Annual Energy Output for a period of two (2) consecutive Contract Years for a reason other than a Force Majeure, or (B) below ~~fifty~~ percent (~~50%~~) of the Projected Annual Energy Output for a period of ~~two~~three (3) consecutive Contract Years for any reason, including due in whole or in part to a Force Majeure; or

(d) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE, and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations, excluding obligations to meet its Capacity Supply Obligations for any reason, under this Agreement or on Buyer or Buyer's ability to receive the benefits under this Agreement, provided that if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under this Agreement, Seller may cure such failure within thirty (30) days of its occurrence; or

(e) Failure to Meet Critical Milestones. The failure of Seller to satisfy any Critical Milestone by the date set forth ~~therefor~~therefore in Section 3.1(a), as the same may be extended in accordance with Section 3.1(c).

9.3 Remedies

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under this Agreement, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in this Agreement or, to the extent not inconsistent with the terms of this Agreement, at law, including, without limitation, the termination right set forth in Section 9.3(b). The suspension of performance or notice thereof as so allowed under this Section 9.3 shall in no

way constitute or imply a termination or notice thereof by the Non-Defaulting Party, or relieve the Defaulting Party of its obligations. If Seller is the Non-Defaulting Party, then Seller shall have the right, but not the obligation, to enter into agreements with any third party for the sale of Products during any period during which there is the suspension of Delivery obligations as provided in this Section 9.3(a). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under this Agreement.

(b) Termination and Termination Payment. Upon the occurrence and during the continuance of an Event of Default, a Non-Defaulting Party may terminate this Agreement at its sole discretion by providing written notice of such termination to the Defaulting Party. If the Non-Defaulting Party terminates this Agreement, it shall be entitled to calculate and receive as its sole remedy for such Event of Default a **“Termination Payment”** as follows:

(i) *Termination by Buyer Prior to Commercial Operation Date.*

If Buyer terminates this Agreement because of an Event of Default by Seller occurring prior to the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the sum of (x) all Delay Damages due and owing by Seller through the date of such termination plus (y) the undrawn amount of any Development Period Security provided to Buyer by Seller.

(ii) *Termination by Seller Prior to Commercial Operation Date.*

If Seller terminates this Agreement because of an Event of Default by Buyer prior to the Commercial Operation Date, Seller shall only receive a Termination Payment if the Commercial Operation Date either occurs by the date set forth ~~therefor~~therefore in Section 3.1(a) (as the same may be extended in accordance with Section 3.1(c)) or would have occurred by such date but for the Event of Default by Buyer giving rise to the termination of this Agreement. In such case, the Termination Payment due to Seller shall be calculated according to the methodology in Section 9.3(b)(iv), as if the Commercial Operation Date had occurred prior to the date of the termination by Seller.

(iii) *Termination by Buyer On or After Commercial Operation Date.*

If Buyer terminates this Agreement because of an Event of Default by Seller occurring on or after the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the amount, if positive, calculated according to the following formula:

$$\sum \frac{(RV - CV) + P}{N}$$

where:

“ \sum ” is the summation ~~over~~for each of the ~~remainder~~remaining N years of the Services Term.
N

“RV” is the replacement value of Buyer's Percentage Entitlement of the Products for each year of the remainder of the Services Term, calculated with reference to the applicable (i) Replacement Price and the Supply Forecast, and (ii) market value of Capacity and the Facility's estimated Capacity Supply Obligation, using a discount factor ~~of [] percent~~ equal to the Buyer's most recent approved weighted average cost of capital.

“CV” is the contract value of Buyer's Percentage Entitlement of the Products for each year of the remainder of the Services Term calculated with reference to the applicable (i) Price for Energy and RECs and the Supply Forecast , and (ii) Price for Capacity and the Facility's estimated Capacity Supply Obligation, using a discount factor ~~of [] percent~~ equal to the Buyer's most recent approved weighted average cost of capital (the “**Contract Value**”).

“P” is the amount of any applicable penalties and costs incurred by Buyer in replacing the Products not Delivered to Buyer as a result of the termination of this Agreement.

All such amounts shall be determined by Buyer in good faith and in a commercially reasonable manner, and Buyer shall provide Seller with a reasonably detailed calculation of the Termination Payment due under this Section 9.3(b)(iii).

(iv) *Termination by Seller On or After Commercial Operation*

Date. If Seller terminates this Agreement because of an Event of Default by Buyer occurring on or after the Commercial Operation Date, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula:

$$\sum_{N} (CV - MV) + P$$

where:

“ \sum ” is the summation ~~over~~ for each of the ~~remainder~~ remaining N years of the Services Term.

N

“CV” is the Contract Value.

“MV” is the market value of Buyer's Percentage Entitlement of the Products for each year of the remaining Services Term as determined with reference to the applicable (i) Resale Price and the Supply Forecast, and (ii) the market value of Capacity and Facility's estimated Capacity Supply Obligation, using a discount factor ~~of [] percent~~ equal to the Buyer's most recent approved weighted average cost of capital.

“P” is the amount of any applicable penalties and costs incurred by Seller in selling the Products not accepted and paid for by Buyer as a result of the termination of this Agreement.

All such amounts shall be determined by Seller in good faith and in a commercially reasonable manner, and Seller shall provide Buyer with a reasonably detailed calculation of the Termination Payment due under this Section 9.3(b)(iv).

(v) *Supply Forecast.* For purposes of determining the Termination Payment on or after the Commercial Operation Date pursuant to this Section 9.3, the quantity of Products to be ~~delivered~~Delivered shall be based upon the Projected Annual Energy Output (the “**Supply Forecast**”).

(vi) *Acceptability of Liquidated Damages.* Each Party agrees and acknowledges that (i) the damages that the Parties would incur due to an Event of Default would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Termination Payment as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

(vii) *Payment of Termination Payment.* The Defaulting Party shall make the Termination Payment within ten (10) Business Days after such notice is effective. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, the Defaulting Party shall first transfer Credit Support to the Non-Defaulting Party in an amount equal to the Termination Payment as calculated by the Non-Defaulting Party. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

(viii) *Use and Return of Credit Support.* In the event that the Defaulting Party fails to pay the Termination Payment in full within the time period set forth in Section 9.3(b)(vii), the Non-Defaulting Party may draw upon any Credit Support provided by the Defaulting Party to satisfy the unpaid portion of the Termination Payment. Upon the payment of the Termination Payment in full, any undrawn Credit Support shall be promptly returned to each Party providing that Credit Support.

(ix) *Reinstatement of Agreement.* In the event that Buyer terminates this Agreement prior to the Commercial Operation Date pursuant to Section 9.3(b)(i) and Seller thereafter achieves the Commercial Operation Date within one (1) year after such termination, Buyer may elect, within thirty (30) days of Seller providing notice to Buyer of the Facility reaching Commercial Operation Date, to reinstate this Agreement in accordance with its terms by providing Seller with at least six (6) months’ prior written notice of such reinstatement. Seller must provide such notification to Buyer within 30 days of the Facility reaching its Commercial Operation Date; provided, however, Buyer's ability to reinstate this Agreement shall not be dependent on Seller's notification. Upon such reinstatement, Buyer shall return to Seller any Termination Payment made by Seller, together with interest accruing at the Late Payment Rate, on or prior to the date selected for reinstatement of this Agreement.

(c) Set-off. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to withhold and set off any amounts owed by the Non-Defaulting Party to the Defaulting Party against any payments and any other amounts owed by the Defaulting Party to the Non-Defaulting Party, including any Termination Payment payable as a result of any early termination of this Agreement.

(d) Notice to Lenders. Buyer shall provide a copy of any notice given to Seller under this Section 9 to one, but not more than one, Lender of which Buyer shall have written notice, and Buyer shall afford such Lender the same opportunities to cure Defaults under this Agreement as are provided to Buyer hereunder.

(e) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10. FORCE MAJEURE

10.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under this Agreement. Under no circumstances shall Force Majeure include (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's

ability to sell the Products at a price greater than that set out in this Agreement, or (z) Buyer's ability to procure the Products at a price lower than that set out in this Agreement. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) Subject to Section 9.2(c), if either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Notwithstanding the foregoing, if the Force Majeure prevents full or partial performance under this Agreement for a period of twelve (12) months or more, the Party whose performance is not prevented by Force Majeure shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse.

(d) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission/Distribution Provider unless (i) such Party has contracted for firm transmission with a Transmission/Distribution Provider for the Energy to be ~~delivered~~Delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission/Distribution Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

11. DISPUTE RESOLUTION

~~[OPTION 1: In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior management of the Parties, then the Parties may seek to resolve such Dispute in the courts of the Commonwealth of Massachusetts. The Parties agree to the exclusive jurisdiction of the state and federal courts located in the Commonwealth of~~

~~Massachusetts for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement. EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY DISPUTE.]~~

~~**[OPTION 2:**~~

11.1 Negotiation Between Executives. In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a **“Dispute”**), the Parties shall attempt in good faith to resolve such Dispute promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party’s position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive (**“Initial Notice”**). Within five (5) Business Days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party’s position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) Business Days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

11.2 Mediation. If the Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party’s Initial Notice, or if the Parties failed to meet within fifteen (15) Business Days of the delivery of the Initial Notice, the Parties shall endeavor to settle the Dispute by mediation under the then current International Institute for Conflict Prevention & Resolution (**“CPR”**) Mediation Procedure; however, in the case of Disputes that are or may be subject to FERC's jurisdiction over wholesale power contracts, then either Party may elect to proceed with the mediation through the FERC's Dispute Resolution Service; provided, however, that if one Party fails to participate in the negotiations as provided in Section 11.1, the other Party can initiate mediation prior to the expiration of the thirty (30) Business Days. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals or FERC panel, as appropriate.

11.3 Arbitration. Any Dispute which has not been resolved by one of the non-binding procedures set forth in Sections 11.1 and 11.2 within fifty (50) Business Days of the delivery of the Initial Notice, shall be finally resolved by arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration (the **“Rules”**) by a sole arbitrator, for Disputes involving amounts in the aggregate under three million dollars (\$3,000,000), or three arbitrators, for Disputes involving amounts in the aggregate equal to or greater than three million dollars (\$3,000,000), of whom each Party shall designate one in accordance with the “screened” appointment procedure provided in Rule 5.4; however, in the case of Disputes that are or may be subject to FERC's jurisdiction over wholesale power contracts, then either Party may elect to

proceed with binding arbitration through the FERC's Dispute Resolution Service; provided, however, that if either Party does not participate in one of the non-binding procedures set forth in Sections 11.1 and 11.2, then the other Party may initiate binding arbitration under this Section 11.3 prior to the expiration of the fifty (50) Business Day period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Boston, Massachusetts. Notwithstanding anything to the contrary in the Rules, the arbitrators may only appoint a neutral expert with the prior written consent of all the Parties.

11.4 Allocation of Dispute Costs. The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of Disputes. To the fullest extent permitted by law, any mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

11.5 Waiver Of Jury Trial. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.}]

~~[Preferred option to be determined by Buyer in negotiations with Seller]~~

12. CONFIDENTIALITY

12.1 Nondisclosure. Buyer and Seller each agrees not to disclose to any Person and to keep confidential, and to cause and instruct its Affiliates, officers, directors, employees, partners and representatives not to disclose to any Person and to keep confidential, any non-public information relating to the terms and provisions of this Agreement, and any information relating to the Products to be supplied by Seller hereunder, and such other non-public information that is designated as "Confidential." Notwithstanding the foregoing, any such information may be disclosed:

(a) to the extent Buyer determines it is appropriate in connection with efforts to obtain or maintain the Regulatory Approval or to seek rate recovery for amounts expended by Buyer under this Agreement;

(b) as required by applicable laws, regulations, rules or orders or by any subpoena or similar legal process of any Governmental Entity so long as the receiving Party gives the non-disclosing Party written notice at least three (3) Business Days prior to such disclosure, if practicable;

(c) to the Affiliates of either Party and to the consultants, attorneys, auditors, financial advisors, lenders or potential lenders, investors or potential investors, and their advisors

of either Party or their Affiliates, but solely to the extent they have a need to know that information;

(d) in order to comply with any rule or regulation of ISO-NE, any stock exchange or similar Person or for financial disclosure purposes;

(e) to the extent the non-disclosing Party shall have consented in writing prior to any such disclosure; and

(f) to the extent that the information was previously made publicly available other than as a result of a breach of this Section 12.1;

provided, however, in each case, that the Party seeking such disclosure shall, to the extent practicable, use commercially reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this Section 12.1.

12.2 Public Statements. No public statement, press release or other voluntary publication regarding this Agreement or the transactions to be made hereunder shall be made or issued without the prior consent of the other Party.

13. INDEMNIFICATION

Except as set forth in Sections 3.5(j) ~~and~~, 3.6(b), and 4.2(b) and in Exhibit D, neither Party shall indemnify, defend or hold harmless the other Party or its partners, shareholders, directors, officers, employees or agents from and against any liabilities, damages, losses, penalties, claims, demands, suits or proceedings claimed by, due to or instituted by any third party as a result of either Party's execution, delivery or performance of this Agreement.

14. ASSIGNMENT AND CHANGE OF CONTROL

14.1 Prohibition on Assignments. Except as permitted under this Section 14, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment, pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations thereunder.

14.2 Permitted Assignment by Seller. Seller may pledge or assign the Facility, this Agreement or the revenues under this Agreement to any Lender as security for the project financing or tax equity financing of the Facility, subject to Buyer's execution of a consent to assignment that is in form and substance reasonably satisfactory to Seller and such Lender that incorporates terms and conditions customary for a transaction of this type (including the provisions included in Section 9.3(d)); provided, however, that Buyer shall not be obligated to enter into any consent which shall adversely affect Buyer's rights under this Agreement. Buyer

shall not unreasonably withhold, condition or delay providing its consent to an assignment to a Lender.

14.3 Change in Control over Seller. Buyer's consent shall be required for any ~~change in~~ "Change of Control" (as defined below) over Seller, which consent shall not be unreasonably withheld, conditioned or delayed and shall be provided within forty-five days if Buyer reasonably determines that such ~~change in~~ Change of Control does not have or will not have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement. If Buyer fails to provide consent for a Change of Control approval requested by Seller resulting from a bona-fide, good faith transaction entered into by Seller for a Change of Control within such forty-five day period, Seller may terminate this Agreement upon sixty (60) days notice to Buyer. For the purposes of this Section 14.3, "Change of Control" shall mean either (a) change in ownership of more than fifty percent (50%) of the equity interest of Seller in the Facility, either directly or indirectly, or (b) a change of control in fact of Seller.

14.4 Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement without consent of Seller (a) in connection with any merger or consolidation of the Buyer with or into another Person or any exchange of all of the common stock or other equity interests of Buyer or Buyer's parent for cash, securities or other property or any acquisition, reorganization, or other similar corporate transaction involving all or substantially all of the common stock or other equity interests in, or assets of, Buyer, or (b) to any substitute purchaser of the Products so long as in the case of either clause (a) or clause (b) of this Section 14.4, either (1) the proposed assignee's credit rating is at least either BBB- from S&P or Baa3 from Moody's or (2) the proposed assignee's credit rating is equal to or better than that of Buyer at the time of the proposed assignment, or (3) such assignment, or in the case of clause (a) above the transaction associated with such assignment, has been approved by the MDPU.

14.5 Prohibited Assignments. Any purported assignment of this Agreement not in compliance with the provisions of this Section 14 shall be null and void.

15. TITLE; RISK OF LOSS

Title to and risk of loss related to Buyer's Percentage Entitlement of the Energy shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to Buyer's Percentage Entitlement of the RECs shall transfer to Buyer when the same are credited to Buyer's GIS account(s) or the GIS account(s) designated by Buyer to Seller in writing. Seller shall retain risk of loss with respect to the Capacity, consistent with Section 4.8. Seller warrants that it shall deliver to Buyer the Products free and clear of all liens, claims, charges or encumbrances therein or thereto by any Person.

16. AUDIT

16.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under this Agreement, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any

statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products ~~delivered~~Delivered or provided hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

16.2 Consolidation of Financial Information. The Parties agree that generally accepted accounting principles and SEC rules require Buyer to evaluate whether Buyer must consolidate Seller's financial information on Buyer's financial statements. Buyer shall require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines at any time that such consolidation is required, Buyer shall require the following from Seller within fifteen (15) days after the end of every calendar quarter for the Term of this Agreement:

- (a) complete financial statements and notes to financial statements for such quarter;
- (b) financial schedules underlying such financial statements; and
- (c) access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer under this Section 16.2 shall be treated as confidential except that such information may be disclosed for financial statement purposes.

17. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) delivered by fax or electronic mail (notices sent by fax or electronic mail shall be deemed given upon confirmation of delivery); in each case addressed as follows or to such other addresses as may hereafter be designated by either Party to the other in writing:

If to Buyer: ~~_____~~ (for U.S. Mail deliveries)
Director – Wholesale Power Contracts
Northeast Utilities Service Company
P. O. Box 270
Hartford, CT 06141-0270

(for hand deliveries)
Director – Wholesale Power Contracts
Northeast Utilities Service Company
107 Selden Street

Berlin, CT 06037

With a copy to: [REDACTED] (for U.S. Mail deliveries)

General Counsel

Northeast Utilities Service Company

P. O. Box 270

Hartford, CT 06141-0270

(for hand deliveries)

General Counsel

Northeast Utilities Service Company

56 Prospect Street

Hartford, CT 06103

If to Seller: [REDACTED] Noble Passadumkeag Windpark, LLC

c/o Noble Environmental Power

8 Railroad Avenue, Suite 8

Essex, CT 06426

(860) 767-7198 (fax)

Attn: General Counsel

With a copy to: [REDACTED] Noble Passadumkeag Windpark, LLC

c/o Noble Environmental Power

8 Railroad Avenue, Suite 8

Essex, Ct 06426

(860) 767-7198 (fax)

Attn: Director, Energy Markets

18. WAIVER AND MODIFICATION

This Agreement may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver of or acquiescence in or to such provision. Buyer shall determine in its sole discretion whether any amendment or waiver of the provisions of this Agreement shall require MDPU approval or filing, and if Buyer determines that MDPU approval or filing is required for any amendment or waiver of the provisions of this Agreement, then such amendment or waiver shall not become effective unless and until such MDPU approval is obtained or such MDPU filing is made.

19. INTERPRETATION

19.1 Choice of Law. Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, the laws of the Commonwealth of Massachusetts (without regard to its principles of conflicts of law).

19.2 Headings. Article and Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of this Agreement. The words “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

19.3 Forward Contract; Commodities Exchange Act. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a “forward contract” within the meaning of the United States Bankruptcy Code. Each Party represents and warrants, solely as to itself, that it is (i) a “forward merchant” within the meaning of the United States Bankruptcy Code and (ii) an “eligible commercial entity” and an “eligible contract participant” within the meaning of the United States Commodities Exchange Act.

19.4 Standard of Review. The Parties acknowledge and agree that the standard of review for any avoidance, breach, rejection, termination or other cessation of performance or changes to any portion of this integrated, non-severable Agreement (as described in Section 22) over which FERC has jurisdiction, whether proposed by Seller, by Buyer, by a non-party of, by FERC acting *sua sponte* shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Serv. Co., 350 U.S. 332 (1956) and Federal Power Comm’n v. Sierra Pac. Power Co., 350 U.S. 348 (1956). Each Party agrees that if it seeks to amend any applicable power sales tariff during the Term, such amendment shall not in any way materially and adversely affect this Agreement without the prior written consent of the other Party. Each Party further agrees that it shall not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

19.5 Change in ISO-NE Rules and Practices. This Agreement is subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of this Agreement, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Parties agree to negotiate in good faith in an attempt to amend or clarify this Agreement to embody the Parties’ original intent regarding their respective rights and obligations under this Agreement, provided that neither Party shall have any obligation to agree to any particular amendment or clarification of this Agreement. The intent of the Parties is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to this Agreement, or (ii) the Price.

20. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of this Agreement may be executed, and each shall have the same force and effect as an original. Facsimile signatures hereon or on any notice or other

instrument delivered under this Agreement shall have the same force and effect as original signatures.

21. NO DUTY TO THIRD PARTIES

Except as provided in any consent to assignment of this Agreement, nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to this Agreement.

22. SEVERABILITY

If any term or provision of this Agreement or the interpretation or application of any term or provision to any prior circumstance is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, the remainder of this Agreement and the interpretation or application of all other terms or provisions to Persons or circumstances other than those which are unenforceable, illegal or invalid shall not be affected thereby, and each term and provision shall be valid and be enforced to the fullest extent permitted by law; provided, however, that Article 8, Regulatory Approval, and related provisions are integral to this Agreement and if any interpretation or application of Article 8 and/or any related provision(s) is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, then either Party may terminate this Agreement without any liability or obligation to the other.

23. INDEPENDENT CONTRACTOR

Nothing in this Agreement shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be the agent of the other Party for any purpose by reason of this Agreement, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.

24. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement and understanding between the Parties hereto and shall supersede all prior agreements and communications.

[Signature page follows]

IN WITNESS WHEREOF, each of Buyer and Seller has caused this Agreement to be duly executed on its behalf as of the date first above written.

[Buyer]

Western Massachusetts Electric Company
by its agent, Northeast Utilities Service Company

By: _____

Name: James R. Shuckerow, Jr.

Title: Director - Wholesale Power Contracts

[Seller]

Noble Passadumkeag Windpark, LLC

By: _____

Name:

Title:

EXHIBIT A

DESCRIPTION OF FACILITY

Facility: The Facility will be a wind generating facility to be located in Penobscot County, Maine. Wind turbines and/or electrical interconnection facilities will be located in the town of Grand Falls, an unincorporated township of Maine. Twenty-five GE 1.5 MW wind turbines will be installed along a ridgeline on Passadumkeag Mountain, provided that Seller may reduce, by up to five turbines, the number of turbines installed in the Facility if such turbine installation is restricted due to permitting or development limitations. In any case, the total nameplate capacity of the Facility shall be no greater than 37.5 MW.

Interconnection: A new 10-mile 34.5kV transmission line will collect power from the wind turbines and deliver it to a new substation. Power will be delivered from the substation to a new switchyard to be built beside the existing 115 KV electric transmission line owned by Bangor Hydro Electric Company.

Delivery Point: The Delivery Point for the Facility will be the Passadumkeag Substation in Greenbush, Maine. (ISO-NE Node # _____)

This Exhibit A will be supplemented with the Operational Limitations prior to Commercial Operation.

~~**Facility:** [Describe fully, including the location (street address and county or if there is none, longitude and latitude), the technology, fuel type, Operational Limitations, Delivery Point and criteria for substantial completion of the Facility as specified by Seller in its response to the RFP.]~~

EXHIBIT B

SELLER'S CRITICAL MILESTONES PERMITS AND REAL ESTATE RIGHTS

Part 1 – ~~Permits~~ a. ~~Construction Permits~~
~~[to be completed]~~ b. and Operating Permits
~~[to be completed]~~

1. State of Maine Land Use Regulation Commission (LURC) Wind Energy Development Permit (jurisdiction over construction and operation of the Facility)
2. U.S Army Corp of Engineers Section 404 permit (if necessary)
3. FAA Determination of No Hazard

Part 2 – Real Estate Rights

~~[to be completed]~~

1. Wind Energy Easement between Penobscot Forest LLC and Seller or its affiliate for use of the land encompassing the Facility footprint
2. Right of Way agreement (or equivalent real estate rights agreement) between Seller or its affiliate and Bangor Hydro Electric Company or its affiliate or successor for the access required for construction and operation of the transmission interconnection of Seller's Facility to the ISO-NE system as contemplated herein

EXHIBIT C

FORM OF PROGRESS REPORT

For the Quarter Ending: _____

Status of construction and significant construction milestones achieved during the quarter:

Status of permitting and significant Permits obtained during the quarter:

Status of Financing for Facility:

Events during quarter expected to ~~results~~result in delays in Commercial Operation Date:

Critical Milestones not yet achieved and projected date for achievement:

Current projection for Commercial Operation Date:

EXHIBIT D

INSURANCE

Seller shall maintain insurance coverages throughout the Term of this Agreement as customarily maintained by owners and operators of comparable renewable energy facilities, and as otherwise legally required.

Note: Each Distribution Company will provide its own insurance requirements for this Exhibit. **EXHIBIT E**

PRODUCTS AND PRICING

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

























































The Fixed Rates in Tables 1 and 2 shall apply for the Term of the Agreement.

Table 1. Energy and REC Fixed Pricing

<u>Contract Year</u>	<u>Energy Price (¢/kWh)</u>		<u>REC Price (\$/REC)</u>
	<u>On-peak</u>	<u>Off-peak</u>	
<u>1</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>2</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>3</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>4</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>5</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>6</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>7</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>8</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>9</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>10</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>11</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>12</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>13</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>14</u>	[REDACTED]	[REDACTED]	[REDACTED]
<u>15</u>	[REDACTED]	[REDACTED]	[REDACTED]

Table 2. Capacity Fixed Pricing

<u>Commitment Period (June – May)</u>	<u>Capacity Price (\$/kW-mo.)</u>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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