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VIA HAND DELIVERY and E-MAIL

November 21, 2011

Ms. Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Docket No.: 4288
Rhode Island Distributed Generation Standard Contract

Dear Luly:

Enclosed for filing please find ten (10) copies of the revised standard contract which the Rhode Island Distributed Generation Contract Working Group (the "Working Group") has prepared. Also enclosed, as requested by Ms. D'Alessandro, are ten (10) copies of the red-lined version showing changes from the October 12 version which was filed with the PUC.

Please acknowledge receipt of the enclosed by date and time stamping the enclosed copy and returning it with my messenger to my office. Thank you.

Sincerely,



Peter V. Lacouture

PVL:mmv
Enclosures

cc: Mr. Kenneth F. Payne



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POWER PURCHASE AGREEMENT
BETWEEN
THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID,
AS BUYER
AND
THE SELLER IDENTIFIED HEREIN

POWER PURCHASE AGREEMENT

COVER SHEET

This **POWER PURCHASE AGREEMENT** (this "**Agreement**") is entered into as of _____ (the "**Effective Date**") by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation ("**Buyer**"), and the Seller identified below ("**Seller**" and, together with Buyer, each a "**Party**" and collectively the "**Parties**"). This Agreement is comprised of this Cover Sheet, the Appendix to this Cover Sheet, the General Terms and Conditions attached hereto, and the Exhibits to those General Terms and Conditions. This Agreement is the standard form long-term contract for the purchase of energy, capacity and renewable energy certificates from a Distributed Generation Facility (defined in the General Terms and Conditions) meeting the requirements of R.I.G.L. ch. 39-26.2

Seller: _____

Type of Organization and Jurisdiction of Organization of Seller: _____

Address for Notices:

Street: _____
City: _____ Zip: _____
Attention: _____
Fax: _____
Email: _____

Facility Description:

Location:
Street: _____
City: _____ Zip: _____

Technology: _____

Fuel Type: _____

Operational Limitations: _____

Delivery Point: _____

Is the Facility a Net Metered Facility: ___yes ___no

Proposed Hourly Output: _____ MWh/kWh per hour of Energy and a corresponding amount of all other Products

Projected Annual Energy Output (first two Contract Years): _____ MWh

Projected Project Useful Life: ___ Years

Performance Guarantee Deposit \$ _____

Seller's Permits:

Construction Permits

Federal Permits	Regulatory Authority(ies)
State Permits	Regulatory Authority(ies)
Local/County Permits	Regulatory Authority(ies)

Operating Permits

Federal Permits	Regulatory Authority(ies)
State Permits	Regulatory Authority(ies)
Local/County Permits	Regulatory Authority(ies)

Bundled Price per MWH: \$ _____ per MWh

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:

THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID

By: _____
 Name:
 Title:

SELLER:

By: _____
 Name:
 Title:

Appendix A to Cover Sheet

Diagram of Interconnection and Delivery Points

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GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

In addition to terms defined in the Cover Sheet 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. There is an Index of Definitions at the end of this Agreement.

“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.

“Board” shall mean the Distributed Generation Standard Contract Board established pursuant to R.I.G.L. Section 39-26.2-9 and any successor thereto.

“Business Day” shall mean a day on which Federal Reserve member banks in New York, New York are open for business.

“Capacity” shall mean all capacity from the Facility as determined by ISO-NE’s Seasonal Claimed Capability rating (or successor or replacement rating used to measure capability) as defined in the ISO-NE Rules that is obligated to deliver and receive payments in the Forward Capacity Market (or its successor market) as set forth in the ISO-NE Rules; provided, however, that in the case of a Net Metered Facility, Capacity means only that portion of capacity from such Facility associated with the Excess Energy Output.

“Cash” shall mean U.S. dollars held by or on behalf of a Party as Posted Collateral hereunder.

“Certificates” shall mean an electronic certificate created pursuant to the Operating Rules of the GIS or any successor thereto to represent the generation attributes 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.

“Code” shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time or any successor law, and regulations issued pursuant thereto.

“Collateral Interest Rate” shall mean the rate published in *The Wall Street Journal* as the “Prime Rate” from time to time (or, if more than one such rate is published, the arithmetic mean of such rates), or, if such rate is no longer published, a successor rate agreed to by Buyer and Seller, in each case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties.

“Commercial Operation Date” shall mean the date on which the conditions set forth in Section 3.3(b) have been satisfied, as set out in a written notice from Seller to Buyer.

“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.

“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 and the Cover Sheet, 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.

“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.

“Deliver” or **“Delivery”** shall mean with respect to (i) Energy, to supply Energy into Buyer’s ISO-NE account at the Delivery Point in accordance with the terms of this Agreement and the rules of the Interconnecting Utility, (ii) RECs, to supply RECs in accordance with Section 4.7(e) and (iii) Capacity, delivery consistent with Section 4.8.

“Delivery Point” shall mean the Facility’s busbar on Seller’s side of the interconnection point with Buyer’s distribution system located within the Facility substation, the currently contemplated location of which is shown as the revenue meter location in Appendix A to the Cover Sheet hereto.

“Distributed Generation Facility” shall mean a Generation Unit that is a Newly Developed Renewable Energy Resource located in Buyer’s ISO-NE load zone, with a nameplate capacity no greater than five MW using eligible renewable energy resources as defined by R.I.G.L. § 39-26-5, including biogas created as a result of anaerobic digestion, but, specifically excluding all other listed eligible biomass fuels, and connected to the electric distribution system owned by Buyer.

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

“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 Renewable Energy Standard 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 the favorable generation or environmental attributes of the Facility or the Products produced by the Facility, up to and including the Proposed Hourly Output, during the Services Term.

“Excess Energy Output” shall mean, in the case of a Net Metered Facility, that portion of the Energy generated by the Facility in any calendar month of the Services Term that is in excess of one hundred percent (100%) of the aggregate Energy consumption by the net metering customer(s) (as defined in R.I.G.L. § 39-26.2-2) for that Net Metered Facility during that calendar month.

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

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

“Financial Closing Date” shall mean the date of signing of the initial agreements for any Financing of the Facility.

“Financing” shall mean indebtedness, whether secured or unsecured, loans, guarantees, notes, equity, convertible debt, sale-leaseback or other tax-equity transactions, bond issuances, recapitalizations and all similar financing or refinancing.

“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, regulations, ISO-NE Rules, 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.

“Interconnecting Utility” shall mean the utility 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 case may be, as the same may be amended from time to time.

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

“Internal Bilateral Transaction” means the purchase or sale of electric energy or regulation obligations between two market participants internal to NEPOOL.

“ISO” or **“ISO-NE”** shall mean 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.

“ISO-NE Rules” shall mean all rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, 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.

“kW” shall mean a kilowatt.

“kWh” shall mean a kilowatt-hour.

“Large Distributed Generation Project” shall mean a Distributed Generation Facility that has a nameplate capacity that exceeds the size of a Small Distributed Generation Project but is no greater than 5 MW.

“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, construction, and ownership of the Facility, or any refinancing of that Financing, 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.

“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.

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

“Net Metered Facility” shall mean a Distributed Generation Facility that participates in net metering (as defined in R.I.G.L. § 39-26.2-2) pursuant to R.I.G.L. Chapter 26.2.

“Network Upgrades” shall mean any upgrades to the Pool Transmission Facilities and the Transmission Provider’s transmission and distribution systems, including any System Modifications under the Interconnection Agreement, necessary for Delivery of the Energy to the Delivery Point, including those that are necessary for the Facility’s Capacity to be recognized as a Capacity Resource pursuant to the ISO-NE Rules.

“Newly Developed Renewable Energy Resource” shall have the meaning given to that term in R.I.G.L. § 39-26.1-2(6).

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

“Non-Peak Months” shall mean the months of September, October, April and May.

“Notification Time” shall mean 1:00 p.m. Eastern Prevailing Time on a Business Day.

“Operational Limitations” of the Facility are the parameters set forth in the Cover Sheet hereto describing the physical limitations of the Facility.

“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.

“Posted Collateral” shall mean all amounts delivered to or received by Buyer as the Performance Guarantee Deposit. All Posted Collateral shall be in the form of Cash.

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

“Products” shall mean Energy, Capacity, RECs and all other products or output associated with the Facility that have a positive value under the ISO-NE Rules or ISO-NE Practices; provided, however, that (i) if the Facility is a Net Metered Facility, only Energy, Capacity, RECs and such other products or output that are associated with the Excess Energy Output shall be deemed Products; provided, further that Energy, Capacity and RECs generated by the Facility in excess of the Proposed Hourly Output shall not be deemed Products, regardless of whether the Facility is a Net Metered Facility.

“Projected Annual Energy Output” shall mean the historic average of actual generation of the Facility or, for a Net Metered Facility, the Excess Energy Output of the Net Metered Facility since the Commercial Operation Date or, solely for the period up to and including the Contract Year immediately after the Contract Year in which the Commercial Operation Date occurred, the amount identified on the Cover Sheet hereto.

“PUC” shall mean the Rhode Island Public Utilities Commission and shall include its successors.

“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 Institution” shall mean a major U.S. commercial bank or trust company, the U.S. branch office of a foreign bank, or another financial institution, in any case, organized under the laws of the United States or a political subdivision thereof having assets of at least \$10 billion and a credit rating of at least (A) “A2” from Moody’s or “A” from S&P, 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.

“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 Rhode Island regulations and are eligible to satisfy the Renewable Energy Standard, and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such Newly Developed Renewable Energy Resource.

“Renewable Energy Standard” shall mean the requirements established pursuant to R.I.G.L. § 39-26-1 et seq. and the regulations promulgated thereunder that requires all retail electricity sellers in Rhode Island (except Block Island Power Company and Pascoag Utility District) to provide a minimum percentage of electricity from eligible renewable energy resources, and such successor laws and regulations as may be in effect from time to time.

“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 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 Newly Developed Renewable Energy Resource that are purchased by Buyer as 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 4.4 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.

“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 Financial Services, LLC, 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 on any given day or days (or in any given hour or hours) during the Services Term at the Delivery Point.

“Seasonal Claimed Capacity” shall mean the maximum dependable load carrying ability of the Facility in the summer or winter, excluding capacity required for use by the Facility, as determined by ISO-NE pursuant to the ISO-NE Rules.

“Small Distributed Generation Project” shall mean a Distributed Generation Facility that has a nameplate capacity no larger than the following: solar, 500 kW; wind, 1.5 MW; and Distributed Generation Facilities other than solar or wind, 1.0 MW or such lesser amount as may be established from time to time pursuant to applicable Law.

“Transfer” shall mean, with respect to any Posted Collateral, and in accordance with the instructions of the Party entitled thereto, payment or transfer by wire transfer into one or more bank accounts specified by the Party to whom such Cash is being delivered.

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

“Unit Contingent” means that Seller is obligated to deliver Products only to the extent that the Facility operates and generates Products.

2. EFFECTIVE DATE; CONDITIONS; TERM

2.1 **Term.** 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.

2.2 Services Term. The “**Services Term**” is the period during which Buyer is obligated to purchase Products Delivered to Buyer by Seller, commencing on the Commercial Operation Date and continuing for a period of fifteen (15) years from the Commercial Operation Date, unless this Agreement is earlier terminated in accordance with the provisions hereof.

3. **FACILITY DEVELOPMENT AND OPERATION**

3.1 Critical Milestones.

(a) 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 on the Cover Sheet hereto, in final form, by the date that is sixteen (16) months after the Effective Date;

(ii) acquisition of all required real property and other site control rights necessary for construction and operation of the Facility, for interconnection of the Facility to the Interconnecting Utility, for construction of the Network Upgrades (to the extent it is Seller’s responsibility to do so) and for performance of Seller’s obligations under this Agreement, by the date that is sixteen (16) months after the Effective Date;

(iii) issuance of a full notice to proceed by Seller to its general construction contractor and commencement of construction of the Facility by the date that is sixteen (16) months after the Effective Date;

(iv) achievement of an hourly Energy generation rate or, in the case of a Net Metered Facility, hourly Excess Energy Output, that is equivalent to the Proposed Hourly Output for at least four complete hours (which do not need to be four consecutive hours), which amount shall be adjusted to the extent required to reflect a lack of availability of a motive energy (such as wind speed or insolation), and other factors, as proposed by Seller’s engineer and accepted by Buyer in its reasonable discretion (the “**Output Demonstration**”) within eighteen (18) months after the Effective Date; and

(v) achievement of the Commercial Operation Date by the date that is twenty (20) months after the Effective Date.

(b) Seller shall provide Buyer with written notice of the achievement of each Critical Milestone within seven (7) days after that achievement, which notice shall include information demonstrating with reasonable specificity that such Critical Milestone has been achieved, which information will be acceptable to Buyer in its reasonable discretion.

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

(d) If the Facility does not achieve the Output Demonstration by the milestone date set out in Section 3.1(a)(iv), then (i) Buyer shall retain the full amount of the Performance Guarantee Deposit and (ii) this Agreement shall automatically terminate on such milestone date, and upon such termination neither Party will have any further liability to the other hereunder. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to a failure of the Facility to achieve the Output Demonstration 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 retention of the Performance Guarantee Deposit as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

(e) If the Facility does not achieve the Commercial Operation Date by the Commercial Operation Date milestone set out in Section 3.1(a)(v), either Party may terminate this Agreement within sixty (60) days after such date by written notice to the other Party (which termination shall be effective upon delivery of such notice), and upon such termination neither Party will have any further liability to the other hereunder.

3.2 Construction. 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 A, 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

3.3 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. Energy, Capacity and RECs generated prior to the Commercial Operation Date shall not be deemed Products and shall not be Delivered and sold to, or purchased by Buyer.

(b) The Commercial Operation Date shall occur on the date on which the Facility is 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 Seller have been satisfied, and all performance testing for the Facility has been successfully

completed, provided Seller has also satisfied, and continues to satisfy, the following conditions precedent as of such date:

- (i) completion of all transmission and interconnection facilities and any Network Upgrades, including final acceptance and authorization to interconnect the Facility from the Interconnecting Utility in accordance with the 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 the Cover Sheet hereto;
- (iii) Seller has (i) qualified the Facility as an “eligible renewable energy resource” pursuant to Section 5.0 of the Code of Rhode Island Rules 90-060-015 and (ii) otherwise satisfied the requirements for the Facility to be a Distributed Generation Facility;
- (iv) Seller has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements (including without limitation registration of the Facility as a “settlement only generator” in the ISO-NE Settlement Market System) 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;
- (v) Seller has provided to Buyer I.3.9 confirmation from ISO-NE regarding approval of generation entry, has submitted the Asset Registration Form (as defined in ISO-NE Practices) for the Facility to ISO-NE and has taken such other actions as are necessary to effect the transfer of the Energy to Buyer in the ISO-NE Settlement Market System;
- (vi) Seller has substantially completed the Facility and has successfully completed all pre-operational testing and commissioning for the Facility in accordance with manufacturer guidelines;
- (vii) Seller has satisfied and continues to satisfy 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) Seller has obtained any and all necessary authorizations from FERC to sell Energy from the Facility and shall be in compliance with such authorization; and
- (x) the Facility, as constructed to date, is under the sole control of Seller

(including without limitation with respect to the operation, maintenance and management of the Facility) and is either owned or leased by Seller, and Seller is a party to all material contracts relating to the construction, operation, management and maintenance of the Facility.

3.4 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 Provider, the Interconnecting Utility, NERC and/or any regional reliability entity, 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) Outages. Seller shall use commercially reasonable efforts, consistent with Good Utility Practice, to schedule all Generator Maintenance Outages during Non-Peak Months, and shall schedule all Generator Planned Outages (as defined in the ISO-NE Rules) during Non-Peak Months. Seller shall provide Buyer with a schedule setting forth all Generator Planned Outages for the next twelve (12) months no later than January 15th of each calendar year of the Services Term, and shall provide Buyer with notice of any Generator Maintenance Outage within twenty-four (24) hours after Seller schedules such Generator Maintenance Outage.
- (c) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.
- (d) ISO-NE Status. Seller shall, at all times during the Term, either: (i) be an ISO-NE “Market Participant” pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with an ISO-NE Market Participant that shall perform all of Seller’s ISO-NE-related obligations to the extent required under this Agreement.
- (e) Forecasts. Commencing at least thirty (30) days prior to the Commercial Operation Date and continuing throughout the Services Term, Seller shall update and deliver to Buyer on an annual basis and in a form reasonably acceptable to Buyer, twelve (12) month forecasts of Energy production by the Facility, which forecasts shall be prepared in good faith and in accordance with Good Utility Practice.
- (f) Eligible Renewable Energy Resource. Seller shall be solely responsible for certifying the Facility with the PUC as a renewable energy resource pursuant to Section 6.0 of the Code of Rhode Island Rules 90-060-015 (as amended from time to time) and maintaining such certification throughout the Services

Term; provided, however, that if the Facility ceases to qualify as a renewable energy resource solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to maintain such certification after that change in Law.

(g) Compliance Reporting. If Buyer is subject to any certification or compliance reporting requirement with respect to the Products delivered to Buyer hereunder, then 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) 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.

(i) 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. Seller shall indemnify Buyer against any and all claims arising out of or related to environmental matters relating to the Facility or the Facility site and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements.

(j) FERC Status. Seller 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, including Energy and Capacity, of the Facility or an exemption from the requirement that it have such authority.

3.5 Interconnection and Delivery Services.

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 any applicable Governmental Entity and the Interconnecting Utility; provided, however, that the PUC may reduce the portion of the Network Upgrade costs to be to paid by Seller, so long as the PUC expressly directs that any such Network Upgrade costs not paid by Seller shall be recovered by Buyer in its retail rates in the calendar year following the year in which such Network Upgrade costs are incurred.

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, the

Products produced by the Facility and capable of being Delivered, up to and including the Proposed Hourly Output, in accordance with the terms and conditions of this Agreement. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same is Unit Contingent and shall be subject to the operation of the Facility.

(b) Buyer shall not be obligated to purchase or accept any Products to the extent that such Products (i) exceed the Proposed Hourly Output in any hour or (ii) are Energy, or RECs associated with Energy, that is produced using any fuel or energy source other than one that qualifies the Facility as a Distributed Generation Facility.

(c) Seller shall Deliver the Products produced by the Facility, up to and including the Proposed Hourly Output, 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. Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery of Energy.

(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. Buyer shall have no obligation to pay for any Energy not transferred to Buyer in the Real Time Energy Market or for which Buyer is not credited in the ISO-NE Settlement Market System (including, without limitation, as a result of an outage on any electric transmission or distribution system). Delivery of the Energy is contemplated to occur within the ISO-NE Settlement Market System through Seller's registration of the Facility as a generation asset and assignment of the Energy to Buyer in such ISO-NE Settlement Market System. Buyer may, in its sole discretion, direct Seller to deliver Energy through any other appropriate ISO-NE market mechanism.

(b) Penalties or similar charges assessed by a Transmission 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 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, other than as set forth in Section 4.8.

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 Section 4.2, 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. 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 or pay for 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, the Interconnecting Utility and any other applicable Governmental Entity and any applicable tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission and/or 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.

(c) Buyer shall be responsible for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE, Interconnecting Utility or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy 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, the GIS Operating Rules 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 (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, 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 the 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 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. 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.

4.7 RECs.

(a) Seller shall transfer to Buyer all of the right, title and interest in and to the Facility's Environmental Attributes, including the RECs, associated with the Facility's Energy Delivered 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 Renewable Energy Standard; provided, however, that if the Facility ceases to qualify as a Newly Developed Renewable Energy Resource 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 Renewable Energy Standard after that change in Law.

(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 Rhode Island) 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 PUC) 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 metering of Energy, 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 full value of such 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) Buyer may, solely at its discretion, offer to provide data from the Meters to the GIS if the PUC authorizes Buyer to do so. Seller may, solely at its discretion, accept such offer, and if Seller selects such offer, Seller shall reimburse Buyer for all costs it incurs in providing such data to the GIS. Buyer shall have no liability or responsibility for any data provided to the GIS under this Section 4.7(e).

(f) Prior to the delivery of any Energy hereunder, 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. In the event any Certificates associated with the RECs to be delivered to Buyer under this Agreement are not actually deposited in Buyer's GIS account (or in a GIS account designated by Buyer to Seller in writing) on the date such Certificates are created in the GIS, Buyer shall notify Seller accordingly in writing and Seller shall, within ten (10) Business Days of receipt of such notice, credit Buyer with the value of the RECs associated with those Certificates, calculated in accordance with Section 2 of Exhibit B. Notwithstanding the foregoing or any other provision of this Agreement (including without limitation Exhibit B) to the contrary, Buyer shall withhold from any payment due to Seller under Section 5.2 after either (x) the date that is seven (7) months prior to the end of the Services Term or (y) the date on which Buyer has exercised a right to terminate this Agreement prior to the expiration of the Services Term an amount equal to the value of the RECs (calculated in accordance with Section 2 of Exhibit B) that would otherwise be included in that payment, and such withheld amount shall be paid to Seller within fifteen (15) days after the Certificates associated with those RECs have been deposited in Buyer's GIS account (or in a GIS account designated by Buyer to Seller in writing).

4.8 Capacity.

(a) If the Facility is a Large Distributed Generation Facility, Buyer will be the "Project Sponsor" for the Facility under the ISO-NE Rules, and Buyer may, but shall not be required to, qualify the Facility as an Existing Capacity Resource in the Forward Capacity Market after the Commercial Operation Date and participate in every Capacity Commitment Period in the Forward Capacity Market with respect to the Facility. In such case, the following shall apply:

(i) Buyer shall communicate to Seller the general information that Buyer will require to qualify the Facility as an Existing Capacity Resource in the ISO-NE Forward Capacity Market in advance of the beginning of the relevant qualification period.

(ii) For the initial submission by Buyer with respect to the Facility, Buyer will provide Seller with the data requirements for qualifying the

Facility as an Existing Capacity Resource in the Forward Capacity Market, and Seller shall provide such requested data within five (5) Business Days of that request. Seller will provide any data subsequently requested by Buyer within two (2) Business Day of that subsequent request by Buyer.

(iii) Without limiting the generality of the foregoing, Seller shall take commercially reasonable actions (including providing Buyer with reasonably requested data and information) necessary in order for Buyer (i) to qualify the Facility in the Forward Capacity Market, (ii) to clear the Facility in each Forward Capacity Auction after the Commercial Operation Date with the maximum Seasonal Claimed Capability available for the Facility, (iii) to secure a Capacity Supply Obligation for the Facility in each Forward Capacity Auction after the Commercial Operation Date and (iv) to avoid the Facility being de-listed from the Forward Capacity Market, consistent with this Section 4.8.

(b) If the Facility is a Small Distributed Generation Facility, Buyer may, in its sole discretion and after consultation with the Rhode Island Division of Public Utilities and Carriers and the Board, elect to require Seller to comply with the requirements of Section 4.8(a) with respect to the Facility.

(c) To the extent that any payment is made with respect to the Facility in the ISO-NE Forward Capacity Market, such payment shall be due solely to Buyer, and Seller shall have no rights or claims with respect to such payment.

(d) Any failure of Seller to perform its obligations under this Section 4.8 shall not be a Default or Event of Default; provided that the Bundled Price paid by Buyer for the Products shall at all times while such failure is continuing be reduced by the product of the Forward Capacity Market clearing price in dollars per kW-month times the following conversion factor:

$$\frac{(12 \text{ months/year}) \times (1000\text{kW/MW})}{8760} \\ \text{hours/year}$$

which reduction shall be reasonably calculated by Buyer. Such reduction shall be in effect beginning with the first capability period following Seller's failure to perform its obligations under the Section 4.8 and shall continue until the beginning of the capability period immediately following Seller's compliance with this Section 4.8.

4.9 Deliveries During Test Period. During the period from the first Delivery of Energy produced by the Facility to the Delivery Point until the Commercial Operation Date (the "**Test Period**"), Seller shall sell and Deliver, and Buyer shall purchase and receive, any Energy produced by the Facility and Delivered. Completion of all requirements in Section 3.3(b) necessary to accomplish

Delivery shall be complete. Notwithstanding the provisions of Section 5.1, payment for Energy produced and Delivered during the Test Period shall be equal to the product of (x) the MWh of Energy Delivered from the Facility 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 is produced by the Facility. The Test Period shall not exceed two months.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Price for Products.

(a) All Products Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Price specified on the Cover Sheet hereto and in accordance with this Section 5.1.

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, and based on the Energy Delivered 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 reasonably request. Should an alternative to rendering an invoice become available, such alternative meeting all of Buyer's business requirements, this alternative may be implemented at Buyers sole discretion.

(b) Timeliness of Payment. Unless otherwise agreed to by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or the tenth (10th) day after receipt of the invoice, or if such day is not a Business Day, then on the next 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.

(i) All invoices rendered under this Agreement shall be subject to adjustment after the end of each month in order to true-up charges based on changes resulting from any recent ISO-NE billing statements or revisions, if any, to previous ISO-NE billing statements. If ISO-NE resettles any invoice which relates to the Products sold under this Agreement and (a) any charges thereunder

are the responsibility of the other Party under this Agreement or (b) any credits issued thereunder would be due to the other Party under this Agreement, then the Party receiving the invoice from ISO-NE shall in the case of (a) above invoice the other Party or in the case of (b) above pay the amount due to the other Party. Any invoices issued or amounts due pursuant to this section shall be invoiced or paid as provided in Section 5.2.

(ii) 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 twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment along with all available supporting documentation. Upon resolution of the dispute, any required payment or refund shall be made with the next monthly invoice following such resolution.

(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.

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 Collateral Interest Rate plus one percent (1%), 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. 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**"), unless Buyer collects such taxes, fees and levies upon resale of the Products (as, for example, with a value added tax). 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 by Seller and are, therefore, the responsibility of Seller) ("**Buyer's Taxes**").

6. SECURITY FOR PERFORMANCE

6.1 Grant of Security Interest. Subject to the terms and conditions of this Agreement, Seller hereby pledges to Buyer as security for all outstanding obligations under this Agreement and any other documents, instruments or agreements executed in connection therewith (collectively, the "**Obligations**"), and grants to Buyer a first priority continuing security interest, lien on, and right of set-off against all Posted Collateral delivered to or received by Buyer hereunder. Upon the return by Buyer to Seller of any Posted

Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without further action by either Party.

6.2 Performance Guarantee Deposit. On the Effective Date, Seller shall post a Cash deposit in the amount of fifteen dollars (\$15.00) for a Small Distributed Generation Project 2 or twenty-five dollars (\$25.00) for a Large Distributed Generation Project multiplied by the Projected Annual Energy Output (measured in MWh) for the first Contract Year ("**Performance Guarantee Deposit**"); provided that in no event will the Performance Guarantee Deposit be less than five hundred dollars (\$500) or more than seventy-five thousand dollars (\$75,000). Buyer shall return a portion of the Performance Guarantee Deposit quarterly during the first Contract Year *pro rata* based on the actual Energy Delivered to Buyer during such quarter compared to the total Projected Annual Energy Output for the first Contract Year. Any Performance Guarantee Deposit remaining at the conclusion of the first Contract Year shall be forfeited to Buyer. Each Party agrees and acknowledges that (i) the damages that the Parties would incur due to a failure of the Facility to achieve the Projected Annual Energy Output in the first Contract Year 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 retention of all or a portion of the Performance Guarantee Deposit as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

6.3 Administration of Posted Collateral. Posted Collateral shall be provided in the form of Cash to Buyer hereunder and shall be subject to the following provisions.

(a) So long as no Event of Default has occurred and is continuing with respect to Buyer, Buyer will be entitled to either hold Cash or to appoint an agent which is a Qualified Institution (a "**Custodian**") to hold Cash for Buyer. In the event that an Event of Default has occurred and is continuing with respect to Buyer, then the provisions of Section 6.3(a) shall not apply with respect to Buyer and Cash shall be held in a Qualified Institution in accordance with the provisions of Section 6.3(c). Upon notice by Buyer to Seller of the appointment of a Custodian, Seller's Obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by Buyer for which the Custodian is acting. If Buyer or its Custodian fails to satisfy any conditions for holding Cash as set forth above, or if Buyer is not entitled to hold Cash at any time, then Buyer will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Section 6.3(c). Except as set forth in Section 6.3(c), Buyer will be liable for the acts or omissions of the Custodian to the same extent that Buyer would be held liable for its own acts or omissions.

(b) Notwithstanding the provisions of applicable Law, if no Event of Default has occurred and is continuing with respect to Buyer and no termination date has occurred or been designated as a result of an Event of Default with respect to Buyer for which there exists any unsatisfied payment obligations with respect to Buyer, then Buyer shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Posted Collateral hereunder, free from any claim or right of any nature whatsoever of Seller, including any equity or right of redemption by Seller.

(c) If neither Buyer nor the Custodian is eligible to hold Cash pursuant to Section 6.3(a) then Buyer shall be required to Transfer (or cause to be Transferred) not later than the close of business within five (5) Business Days following the beginning of such ineligibility all Cash in its possession or held on its behalf to a Qualified Institution to be held in a segregated, safekeeping or custody account (the “**Collateral Account**”) within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for Buyer. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Article 6 and for the security interest of Buyer and execute such account control agreements as are necessary or applicable to perfect the security interest of Seller therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of Seller. The Qualified Institution holding the Cash will invest and reinvest or procure the investment and reinvestment of the Cash in accordance with the written instructions of Buyer, subject to the approval of such instructions by Seller (which approval shall not be unreasonably withheld). Buyer shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with Seller’s approval.

(d) Buyer’s Rights and Remedies. If at any time an Event of Default with respect to Seller has occurred and is continuing, then, unless Seller has paid in full all of its Obligations that are then due, including those under Section 8.3(b) of this Agreement, Buyer may exercise one or more of the following rights and remedies, in addition to any rights and remedies under Section 8.3: (i) all rights and remedies available to a secured party under applicable Law with respect to Posted Collateral held by Buyer, (ii) the right to set-off any amounts payable by Seller with respect to any Obligations against any Posted Collateral or the cash equivalent of any Posted Collateral held by Buyer, or (iii) the right to liquidate any Posted Collateral held by Buyer and to apply the proceeds of such liquidation of the Posted Collateral to any amounts payable to Buyer with respect to the Obligations in such order as Buyer may elect. Seller shall remain liable for amounts due and owing to Buyer that remain unpaid after the application of Posted Collateral, pursuant to this Section 6.3.

(e) Seller’s Rights and Remedies. If at any time a termination date has occurred or been designated as the result of an Event of Default with respect to Buyer, in addition to any rights and remedies under Section 8.3, (i) Buyer will be obligated immediately to return all Posted Collateral provided by Seller, including any accrued interest to Seller, or (ii) to the extent that Posted Collateral provided by Seller, including any accrued interest is not returned pursuant to (i) above, Seller may set-off any amounts payable by Seller with respect to any Obligations against any Posted Collateral or to the extent that Seller does not set off such amounts, withhold payment of any remaining amounts payable by Seller with respect to any obligations of Buyer, up to the value of the remaining Posted Collateral.

6.4 Additional Rights Regarding Posted Collateral

(a) Further Assurances. Promptly following a request by Buyer, Seller shall use commercially reasonable efforts to execute, deliver, file, and/or record any financing statement, specific assignment, or other document and take any other action that may be necessary or desirable to create, perfect, or validate any security interest or lien, to enable Buyer to exercise or enforce its rights or remedies under this Agreement, or to effect or document a release of a security interest on Posted Collateral or accrued interest.

(b) Further Protection. Seller will promptly give notice to Buyer of, and defend against, any suit, action, proceeding, or lien that involves the Posted Collateral delivered to Buyer by Seller or that could adversely affect any security interest or lien granted pursuant to this Agreement.

7. **REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS**

7.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as of the Effective Date 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 Rhode Island. 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) 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 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. 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. 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) 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.

(g) 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.

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 duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Subject to the receipt of the Permits listed in on the Cover Sheet hereto, 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 (including without limitation the State of Rhode Island); and (iii) holds, or shall hold by the Commercial Operation Date, all rights and entitlements necessary to construct, own or lease (as applicable) and operate the Facility and to deliver the Products to 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 the Cover Sheet, 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 the Cover Sheet hereto, 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 the Cover Sheet hereto, 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 the Cover

Sheet hereto 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 on the Cover Sheet hereto in due course and as required under applicable Law to the extent that those Permits have not previously been received.

(g) Newly Developed Renewable Energy Resource. Subject to Section 4.7(b), the Facility shall be a Distributed Generation Facility, qualified by the PUC as a Newly Developed Renewable Energy Resource eligible to participate in the Renewable Energy Standard program under R.I.G.L. § 39-26-1 et seq.

(h) Title to Facility and Products. Seller has and shall throughout the Term have good and marketable title to the Facility and all Products sold and delivered to Buyer under this Agreement, and all Products sold and delivered to Buyer under this Agreement shall be free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person, and no Person other than Seller can claim an interest in any Product to be sold to Buyer under this Agreement.

(i) 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.

(j) 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.

(k) Useful Life. As of the Effective Date, the projected useful life of the Facility is at least twenty-one (21) years.

7.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section 7 are made as of the Effective Date and deemed made continually throughout the Term.

8. BREACHES; REMEDIES

8.1 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 thirty (30) 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 Section 4.4), a failure by Seller to perform its obligations under Section 4.8 (which is addressed in Section 4.8(d)), or an Event of Default described in Section 8.1(a), 8.1(b), 8.1(d), 8.1(e) or 8.2, such Party fails to perform, observe or otherwise to comply with any 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; 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 necessary for such Party to perform its obligations under this Agreement and such failure continues for more than sixty (60) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party.

8.2 Events of Default by Seller. In addition to the Events of Default described in Section 8.1, 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 other than by

condemnation or eminent domain, 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 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, to the extent required under this Agreement; or

(c) Failure to Meet Critical

Milestones. The failure of Seller to satisfy any Critical Milestone, other than with respect to the Output Demonstration under Section 3.1(a)(iv), and such failure continues for more than thirty (30) days after Buyer has given notice thereof to Seller.

8.3 Remedies.

(a) Suspension of Performance and

Remedies at Law. Upon the occurrence 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 8.3(b).

(b) Termination and Termination

Payment. Upon the occurrence 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. If Buyer terminates this Agreement because of an Event of Default by Seller that occurs 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 the remainder of the Services Term.
N

"RV" is the replacement value of the Products for the remainder of the Services Term, calculated with reference to

the applicable Replacement Price and the Supply Forecast, using a discount factor of eight percent (8.0%).

"CV" is the contract value of the Products for the remainder of the Services Term calculated with reference to the applicable Price and the Supply Forecast, using a discount factor of eight percent (8.0%) (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 8.3(b)(i). Any Termination Payment required from Seller under this Section 8.3(b)(i) shall be in addition to any Performance Guarantee Deposit forfeited to Buyer under Section 6.2.

(ii) *Termination by Seller*

Prior to Financial Closing Date. If Seller terminates this Agreement because of an Event of Default by Buyer prior to the Financial Closing Date, the Termination Payment due to Seller shall be equal to all of Seller's out-of-pocket expenses incurred in connection with the development and construction of the Facility prior to such termination.

(iii) *Termination by Seller*

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

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

where:

" \sum " is the summation over the remainder of the Services Term.
N

"CV" is the Contract Value.

"MV" is the market value of the Products for the remaining Services Term as determined with reference to the applicable Resale Price and the Supply Forecast, using a discount factor of eight percent (8.0%).

"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 8.3(b)(iii).

(iv) *Supply Forecast.* For purposes of determining the Termination Payment pursuant to Section 8.3(b)(i) and 8.3(b)(iii) above, the quantity of Products to be delivered shall be based upon the then-current Projected Annual Energy Output (the “**Supply Forecast**”).

(v) *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.

(vi) *Payment of Termination Payment.* The Defaulting Party shall make the Termination Payment within ten (10) Business Days after the notice thereof is effective.

(vii) *Reinstatement of Agreement.* In the event that Buyer terminates this Agreement prior to the Commercial Operation Date and Seller thereafter achieves the Commercial Operation Date within one (1) year after such termination, Buyer may elect to reinstate this Agreement in accordance with its terms by providing Seller with at least six (6) months’ prior written notice of such reinstatement. 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 and Cure Rights of Lender. Buyer shall provide a copy of any notice given to Seller under this Article 8 to one representative of the Financing providing loans to or for the benefit of Seller and one representative of the Financing providing equity to or for the benefit of Seller, of which Buyer shall have written notice. Buyer shall permit a Lender to Seller to cure an Event of Default by Seller under this Agreement within any cure periods provided to Seller for such Event of Default and subject to all rights and remedies of Buyer with respect to such Event of Default.

(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, EACH PARTY’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, EACH PARTY’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.

9. **FORCE MAJEURE**

9.1 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, 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) 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. The Party whose performance is affected shall also give prompt notice of the termination of the Force Majeure and shall resume performance of its obligations under this Agreement upon such termination. 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 Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Energy to be 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 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 9.1(a) has occurred.

10. DISPUTE RESOLUTION

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 State of Rhode Island. The Parties agree to the exclusive jurisdiction of the state and federal courts located in the State of Rhode Island 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.

11. ASSIGNMENT AND CHANGE OF CONTROL

11.1 Prohibition on Assignments. Except as permitted under this Article 11, 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. The Party requesting the other Party’s consent to an assignment of this Agreement will reimburse such other Party for all costs and expenses such other Party incurs in connection with that consent, without regard to whether such consent is provided. 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.

11.2 Assignor Remains Liable. Unless specifically agreed in writing, any assignment by a Party as contemplated by this Section 11 shall not be construed to relieve the assignor of any of its obligations under this Agreement, nor shall any such assignment be deemed to modify or otherwise affect any of the rights of the non-assigning Party hereunder.

11.3 Permitted Assignment by Seller. Seller may (i) assign this Agreement without consent of Buyer to an Affiliate of Seller or a purchaser of all or substantially all of the Seller’s assets used in connection with performing this Agreement, upon a showing of the proposed assignee’s technical and financial capability to fulfill the requirements of Seller under this Agreement, as determined by Buyer in its reasonable discretion, or (ii) transfer, pledge, encumber or assign the Facility, this Agreement or the accounts, revenues or proceeds under the Agreement as security for the project financing associated with the Facility.

11.4 Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement without consent of Seller (a) in connection with (i) any merger or consolidation of Buyer with or into another Person; (ii) 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 (iii) 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; provided that (A) the proposed assignee agrees in writing to assume all of Buyer's obligations under this Agreement and (B) the proposed assignee delivers to Seller a legal opinion as to due power and authority, due authorization, enforceability and regulatory approvals, or (b) to a Person whose credit rating as established by S&P or Moody's is equal or better than BBB- from S&P or Baa3 from Moody's after giving effect to the proposed assignment of this Agreement; provided that (i) the proposed assignee agrees in writing to assume all of Buyer's obligations under this Agreement and (ii) the proposed assignee delivers to Seller a legal opinion as to due power and authority, due authorization, enforceability and regulatory approvals.

11.5 Prohibited Assignments. Any purported assignment of this Agreement not in compliance with the provisions of this Article 11 shall be null and void.

12. TITLE; RISK OF LOSS

Title to and risk of loss related to the Energy shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to 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. Title to and risk of loss with respect to the Capacity shall transfer upon the transfer of title to and risk of loss related to Energy, subject to 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.

13. AUDIT

13.1 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 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.

13.2 Consolidation of Financial Information. Generally accepted accounting principles and U.S. Securities and Exchange Commission rules may 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 13.2 shall be treated as confidential except that such information may be disclosed for financial statement purposes.

14. 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: Corinne M. Abrams
National Grid
100 E. Old Country Road
Hicksville, NY 11801-4218
Fax: (516) 545-3130
Email:
Corinne.Abrams@us.ngrid.com

With a copy to: Brooke E. Skulley, Esq.
National Grid
40 Sylvan Road
Waltham, MA 02451-1120
Fax: (781) 907-5701
Email: Brooke.Skulley@us.ngrid.com

If to Seller: at the address provided on the Cover Sheet hereto

15. 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 approval of or filing with the PUC or another Governmental Entity, and if Buyer determines that such 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 approval is obtained or such filing is made.

16. INTERPRETATION

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

16.2 Headings. Article and section headings are for convenience only and shall not affect the interpretation of this Agreement. References to articles, sections, cover sheets, appendices and exhibits are, unless the context otherwise requires, references to articles, sections, cover sheets, appendices 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.

16.3 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.

16.4 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 Bundled Price.

17. 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.

18. 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.

19. 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.

20. 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.

21. ENTIRE AGREEMENT

This Agreement, including the Cover Sheet, the Appendix to the Cover Sheet, the Standard Terms and Conditions and the Exhibits to the Standard Terms and Conditions, shall constitute the entire agreement and understanding between the Parties hereto and shall supersede all prior agreements and communications.

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EXHIBIT A

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 result in delays in Commercial Operation Date:

Critical Milestones not yet achieved and projected date for achievement:

Current projection for Commercial Operation Date:

EXHIBIT B

PRODUCTS AND PRICING

1. Payment. Buyer shall, in accordance with the terms of the Agreement and this Exhibit B, with respect to any month after the Commercial Operation Date, pay to Seller, in immediately available funds, for each MWh of Products Delivered by Seller during such month, the Bundled Price per MWh set forth on the Cover Page hereto.

2. Allocation of MWh Price. The Bundled Price per MWh for each billing period shall be allocated between Energy and RECs as follows:

RECs = The RECs futures settlement price as published by the Chicago Climate Futures Exchange for the applicable billing period (the "CCFE Index Price"). In the event that the CCFE Index Price is no longer published, the Parties shall in good faith undertake commercially reasonable efforts to agree on a substitute index that reflects the market value of the RECs. Should such a substitute index not be available or if the Parties are unable to agree upon such a substitute index, the RECs will be valued at the "Alternative Compliance Payment Rate" for the Renewable Energy Standard published by the PUC for the applicable billing period.

Energy = The \$/MWh price of Energy for the applicable month shall be equal to the Bundled Price per MWh less the RECs allocation determined under this Section 2 for the applicable billing period.