

The Narragansett Electric Company
d/b/a National Grid

**Review of Power Purchase
Agreements Pursuant to
R.I. Gen. Laws § 39-26.1**

**Schedules of
Corinne M. DiDomenico**

Redacted
Book 2 of 2

November 1, 2017

RIPUC Docket No. _____

Submitted to:
Rhode Island Public Utilities Commission

Submitted by:
The logo for National Grid, featuring the word "national" in a dark blue sans-serif font and "grid" in a lighter blue sans-serif font, with a small blue diamond shape above the "i" in "grid".

**RPS CLASS I RENEWABLE GENERATION UNIT
POWER PURCHASE AGREEMENT
BETWEEN
THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID
AND
CHINOOK SOLAR, LLC
As of May 25, 2017**

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	1
2. EFFECTIVE DATE; TERM.....	13
2.1 Effective Date	13
2.2 Term.	13
3. FACILITY DEVELOPMENT AND OPERATION	14
3.1 Critical Milestones.	14
3.2 Delay Damages.	15
3.3 Construction and Changes in Capacity.	16
3.4 Commercial Operation.....	17
3.5 Operation of the Facility.	19
3.6 Interconnection and Delivery Services.	21
4. DELIVERY OF PRODUCTS.....	22
4.1 Obligation to Sell and Purchase Products.....	22
4.2 Scheduling and Delivery.....	22
4.3 Failure of Seller to Deliver Products	23
4.4 Failure by Buyer to Accept Delivery of Products.....	24
4.5 Delivery Point.	24
4.6 Metering.....	24
4.7 RECs.	25
4.8 Deliveries During Test Period	27
4.9 Title to Facility.....	27
5. PRICE AND PAYMENTS FOR PRODUCTS	27
5.1 Price for Products.....	27
5.2 Payment and Netting.....	28
5.3 Taxes, Fees and Levies.	29
6. SECURITY FOR PERFORMANCE.....	30
6.1 Grant of Security Interest.....	30
6.2 Seller's Support.....	30
6.3 Delivery of Credit Support.....	31
6.4 Reduction and Substitution of Posted Collateral.	31
6.5 [Reserved].	32

TABLE OF CONTENTS (CONT.)

	<u>Page</u>
6.6 Cash.....	32
6.7 Exercise of Rights Against Posted Collateral.	35
7. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS.....	36
7.1 Representations and Warranties of Buyer.....	36
7.2 Representations and Warranties of Seller.....	37
7.3 Continuing Nature of Representations and Warranties	39
7.4 Forward Capacity Market Participation.....	39
8. REGULATORY APPROVAL	40
8.1 Receipt of Regulatory Approval	40
8.2 Related Transmission Approvals	40
9. BREACHES; REMEDIES	40
9.1 Events of Default by Either Party	40
9.2 Events of Default by Seller	41
9.3 Remedies.....	42
10. FORCE MAJEURE	46
10.1 Force Majeure.	46
11. DISPUTE RESOLUTION.....	47
11.1 Dispute Resolution.....	47
11.2 Allocation of Dispute Costs.....	47
11.3 Consent to Jurisdiction.....	47
11.4 Waiver of Jury Trial and Inconvenient Forum Claim.....	48
12. CONFIDENTIALITY.....	48
12.1 Nondisclosure	48
12.2 Public Statements.....	49
13. INDEMNIFICATION.....	49
14. ASSIGNMENT AND CHANGE OF CONTROL	49
14.1 Prohibition on Assignments.....	49
14.2 Permitted Assignment by Seller.....	49
14.3 Change in Control over Seller.....	49
14.4 Permitted Assignment by Buyer	50
14.5 Prohibited Assignments	50
15. TITLE; RISK OF LOSS	50

TABLE OF CONTENTS (CONT.)

	<u>Page</u>
16. AUDIT	50
16.1 Audit	50
16.2 Access to Financial Information	51
17. NOTICES.....	51
18. WAIVER AND MODIFICATION.....	51
19. INTERPRETATION.....	52
19.1 Choice of Law.....	52
19.2 Headings	52
19.3 Forward Contract	52
19.4 Standard of Review.....	52
19.5 Change in ISO-NE Rules and Practices.....	53
19.6 Dodd Frank Act Representations	53
19.7 Change in Law or Buyer’s Accounting Treatment, Subsequent Judicial or Regulatory Action.....	54
20. COUNTERPARTS; FACSIMILE SIGNATURES	55
21. NO DUTY TO THIRD PARTIES	55
22. SEVERABILITY	55
23. INDEPENDENT CONTRACTOR.....	56
24. ENTIRE AGREEMENT.....	56

Exhibits

Exhibit A	Description of Facility
Exhibit B	Seller’s Critical Milestones – Permits and Real Estate Rights
Exhibit C	Form of Progress Report
Exhibit D	Products and Pricing
Exhibit E	Related Transmission Facilities

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (as amended from time to time in accordance with the terms hereof, this “**Agreement**”) is entered into as of May 25, 2017 (the “**Effective Date**”), by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation (“**Buyer**”), and Chinook Solar, LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller are individually referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**”.

WHEREAS, Seller is developing the Chinook Solar electric generation facility to be located in Fitzwilliam, New Hampshire, which is more fully described in Exhibit A hereto (the “**Facility**”), from which the Buyer’s Percentage Entitlement of the Products (as defined below) is to be delivered to Buyer pursuant to the terms of this Agreement; and

WHEREAS, the Facility is, and shall qualify as a RPS Class I Renewable Generation Unit in the state of Rhode Island and which is expected to be in commercial operation by November 1, 2019; and

WHEREAS, pursuant to R.I.G.L. § 39-26.1, Buyer is authorized to enter into certain long-term contracts for the purchase of energy or energy and renewable energy certificates from renewable generators meeting the requirements of R.I.G.L. § 39-26.-5; and

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

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

1. DEFINITIONS

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

“**Actual Facility Size**” shall mean the actual nameplate capacity of the Facility, as built, and as certified by an Independent Engineer, as provided in Section 3.4(b)(xiii).

“**Adjusted Price**” shall mean the purchase price(s) for Energy referenced in Section 5.1 if the RECs fail to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit and Buyer does not purchase the RECs pursuant to Section 4.1(b) hereof.

“**Adverse Determination**” shall have the meaning set forth in Section 19.7.

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

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

“Alternative Compliance Payment Rate” means the rate per MWh paid by electricity suppliers under applicable Law for failure to supply RECs in accordance with the RPS.

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

“Buyer’s Percentage Entitlement” shall mean Buyer’s rights to seven and one-half percent (7.5%) of the Products. Buyer’s Percentage Entitlement may be adjusted in accordance with Section 3.3(c).

“Buyer’s Taxes” shall have the meaning set forth in Section 5.3(a) hereof.

“Capacity Deficiency” means, at the Commercial Operation Date, the amount (expressed in MW), if any, by which the Actual Facility Size is less than the proposed nameplate capacity of the Facility as set forth in Exhibit A.

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

“Certificate” shall mean an electronic certificate created pursuant to the GIS Operating Rules or any successor thereto to represent certain Environmental 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.

“Collateral Account” shall have the meaning specified in Section 6.6(a)(iii)(B) hereof.

“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.

“Collateral Requirement” shall mean at any time the amount of Development Period Security or Operating Period Security required under this Agreement at such time.

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

“Contract Maximum Amount” shall mean 2.25 MWh per hour of Energy and a corresponding portion of all other Products, as may be adjusted in accordance with Section 3.3(b).

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

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

“Credit Support” shall have the meaning specified in Section 6.2(d) hereof.

“Credit Support Delivery Amount” shall have the meaning specified in Section 6.3 hereof.

“Credit Support Return Amount” shall have the meaning specified in Section 6.4 hereof.

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

“Custodian” shall have the meaning specified in Section 6.6(a)(i) hereof.

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

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

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

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

“Deliver” or **“Delivery”** shall mean with respect to (i) Energy, to supply Energy at the Delivery Point in accordance with the terms of this Agreement and the ISO-NE Rules, and (ii) RECs, to supply RECs in accordance with Section 4.7(e).

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

“Delivery Point” shall mean the specific location where Seller shall transmit its Energy to Buyer, as set forth in Exhibit A hereto.

“Development Period Security” shall have the meaning set forth in Section 6.2(a) hereof.

“Dispute” shall have the meaning set forth in Section 11.1 hereof.

“Disputing Party” shall have the meaning set forth in Section 6.7(a) hereof.

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

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

“Eligible Renewable Energy Resource” means resources as defined in R.I.G.L. § 39-26-5.

“Energy” shall mean electric “energy,” as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in MWh 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 RPS laws and regulations of the state of Rhode Island, and under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to Buyer’s Percentage Entitlement to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility, up to and including the Contract Maximum Amount, during the Services Term including Buyer’s Percentage Entitlement to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility’s generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the GIS in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include: (i) any production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; or (iii) any state,

federal or private grants, financing, guarantees or other credit support relating to the construction or ownership, operation or maintenance of the Facility or the output thereof.

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

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

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

“FCM” shall mean the Forward Capacity Market described in the ISO-NE Tariff, which includes a mechanism for procuring capacity in the New England Control Area, or any successor thereto.

“Federal Funds Rate” shall mean the annualized interest rate for the applicable month as set forth in the statistical release designated as H.15, or any successor publication, published by the Board of Governors of the Federal Reserve System.

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

“Financial Closing Date” shall mean the date of the closing of the initial agreements for any Financing of the Facility and of an initial disbursement of funds under such agreements.

“Financing” shall mean any indebtedness (whether secured or unsecured) or other financing arrangement, including without limitation loans, guarantees, notes, convertible debt, bond issuances, tax equity investments, sale/leaseback arrangements and partnership-flips, adequate for the development, construction, or operation of the Facility.

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

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

“GIS” shall mean the NEPOOL 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.

“GIS Operating Rules” are the NEPOOL Generation Information System Operating Rules effective as of the Effective Date, as amended, superseded, or restated from time to time.

“Good Utility Practice” shall mean compliance with all applicable laws, codes, rules and regulations, all ISO-NE Rules and ISO-NE Practices, and any practices, methods and

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

“Guaranteed Commercial Operation Date” shall have the meaning set forth in Section 3.1(a)(iv) hereof.

“I.3.9 Confirmation” refers to the ISO-NE Tariff Section I.3.9 pertaining to ISO-NE’s approval of proposed plans as specified therein.

“Independent Engineer” shall mean a licensed Professional Engineer with expertise in the development of renewable energy projects using the same renewable energy technology as the Facility, reasonably selected by and retained by Seller in order to determine the as-built nameplate capacity of the Facility as provided in Section 3.4(b)(xiii) hereof.

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

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility and ISO-NE, as applicable, regarding the interconnection of the Facility to the Transmission System of the Interconnecting Utility, as the same may be amended from time to time.

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

“Interest Amount” shall mean with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day (but excluding any interest previously earned on such Cash); multiplied by (b) the Collateral Interest Rate for that day; divided by (c) 360.

“Interest Period” shall mean the period from (and including) the last Business Day on which an Interest Amount was Transferred by Buyer (or if no Interest Amount has yet been Transferred by Buyer, the Business Day on which Cash was Transferred to Seller)

to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

“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 in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Agreement, and any applicable successor practices and procedures.

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

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

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

“Late Payment Rate” shall have the meaning set forth in Section 5.2 hereof.

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

“Lender” shall mean any and all Persons (A) lending money, extending credit or providing loan guarantees (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements of the Facility (including the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; (iv) for any capital improvement or replacement related to the Facility; or (v) for the purchase of the Facility and the related rights from Seller; or (B) participating (directly or indirectly) as an equity investor (including a tax equity investor) in the Facility; or (C) any lessor under a lease finance arrangement relating to the Facility.

“Letter of Credit” shall mean an irrevocable, non-transferable, standby letter of credit, issued by a Qualified Institution utilizing a form acceptable to the Party in whose favor

such letter of credit is issued. All costs relating to any Letter of Credit shall be for the account of the Party providing that Letter of Credit.

“Letter of Credit Default” shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events (a) the issuer of such Letter of Credit shall fail to be a Qualified Institution; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (c) the issuer of the Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or (d) the Letter of Credit shall expire or terminate or have a Value of \$0 at any time the Party on whose account that Letter of Credit is issued is required to provide Credit Support hereunder and that Party has not Transferred replacement Credit Support meeting the requirements of this Agreement; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of this Agreement.

“Locational Marginal Price” or “LMP” shall have the meaning set forth in the ISO-NE Rules.

“Market Price” shall mean the price received by Buyer by selling the Energy into either the ISO-NE-administered Day-Ahead or Real-Time Markets, as applicable.

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

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

“MW” shall mean a megawatt AC.

“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 Corporation and shall include any successor thereto.

“Network Upgrades” shall mean upgrades to the Pool Transmission Facilities and the Transmission Provider’s transmission and distribution systems, as determined and identified in the interconnection study approved in connection with construction of the Facility, necessary for Delivery of the Energy to the Delivery Point, including those that are necessary for the Seller’s satisfaction of the obligations under Section 77.4 of this Agreement.

“New England Control Area” shall have the meaning as set forth in the ISO-NE Tariff.

“Newly Developed Renewable Energy Resource” shall mean, pursuant to R.I.G.L. § 39-26.1-2(6), an electrical generation unit that uses exclusively an Eligible Renewable

Energy Resource, and either (x) has neither begun operation, nor have the developers of the unit implemented investment or lending agreements necessary to finance the construction of the unit or (y) is located within the state of Rhode Island and obtained project financing on or after January 1, 2009.

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

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

“Obligations” shall have the meaning specified in Section 6.1 hereof.

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

“Operating Period Security” shall have the meaning set forth in Section 6.2(b) hereof.

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

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

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

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

“Posted Collateral” shall mean all Credit Support and all proceeds thereof that have been Transferred to or received by a Party under this Agreement and not Transferred to the Party providing the Credit Support or released by the Party holding the Credit Support. Any Interest Amount or portion thereof not Transferred will constitute Posted Collateral in the form of Cash.

“Price” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on Exhibit D.

“Products” shall mean Energy and RECs; provided, however, that Energy and RECs generated by or associated with the Facility during the Test Period and RECs not purchased by Buyer under Section 4.1(b) shall not be deemed Products.

“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.

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

“Reference Market-Maker” shall mean a leading dealer in the relevant market that is selected in a commercially reasonable manner and is not an affiliate of either party.

“Regulatory Approval” shall mean the PUC’s approval of this Agreement without material modification or conditions pursuant to R.I.G.L. §§ 39-26.1-3 through 39-26.1-5 and the regulations promulgated thereunder, including the recovery by Buyer of its costs incurred under this Agreement and remuneration equal to two and three-quarters percent (2.75%) of Buyer’s actual annual payments under this Agreement pursuant to R.I.G.L. § 39-26.1-4, which approval shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion.

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

“Related Transmission” shall mean those transmission and distribution facilities to be used by Seller for delivery of the Energy under this Agreement, as described in Exhibit E hereto.

“Related Transmission Approvals” shall mean those FERC filings, agreements, tariffs and approvals associated with service on the Related Transmission.

“Reliability Curtailment” shall mean any curtailment of Delivery of Energy resulting from (i) an emergency condition as defined in the Interconnection Agreement or the ISO-NE Tariff, or (ii) any other order or directive of the Interconnecting Utility or the Transmission Provider pursuant to an Interconnection Agreement or tariff.

“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 satisfy the RPS for a RPS Class I Renewable Generation Unit, and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such RPS Class I Renewable Generation Unit.

“Replacement Energy” shall mean Energy purchased by Buyer as replacement for any Delivery Failure relating to the Energy to be provided hereunder.

“Replacement Price” shall mean the price at which Buyer, acting in a commercially reasonable manner, (A) purchases Replacement Energy and/or Replacement RECs plus (i) costs incurred by Buyer in purchasing such Replacement Energy and/or Replacement RECs, (ii) additional transmission charges, if any, incurred by Buyer to transmit Replacement Energy to the Delivery Point, and (iii) any other costs and losses incurred by Buyer as a result of the Delivery Failure; provided, however, that 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, or (B) elects in its sole discretion not to purchase Replacement Energy and/or Replacement RECs, the market value of Energy and/or RECs (provided that the market value of the RECs shall in no event exceed the Alternative Compliance Payment Rate) as of the date and the time of the Delivery Failure plus any other costs and losses incurred by Buyer as a result of the Delivery Failure will replace the price at which Buyer purchases Replacement Energy and/or Replacement RECs in the calculation of the Replacement Price relating to the Energy and/or RECs to be purchased and sold hereunder.

“Replacement RECs” shall mean any generation or environmental attributes, including any Certificates or other certificates or credits related thereto reflecting generation by a RPS Class I Renewable Generation Unit that are purchased by Buyer as replacement for any Delivery Failure.

“Request Date” shall have the meaning set forth in Section 6.7(a) hereof.

“Requesting Party” shall have the meaning set forth in Section 6.7(a) hereof.

“Resale Damages” shall mean, with respect to any Rejected Purchase, an amount equal to (a) the positive net amount, if any, by which the applicable Price that would have been paid pursuant to Section 5.1 hereof for such Rejected Purchase, had it been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase (in MWh and/or RECs, as applicable), 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 in accordance with the terms of this Agreement. Seller shall provide a written statement for the applicable period 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 that Seller would not have incurred but for the 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.

“Rounding Amount” shall have the meaning specified in Section 6.2(c) hereof.

“RPS” shall mean the requirements established pursuant to R.I.G.L. § 39-26-1 et seq. and the regulations promulgated thereunder that require all retail electricity suppliers in Rhode Island to provide a minimum percentage of electricity from RPS Class I Renewable Generation Units, and such successor laws and regulations as may be in effect from time to time.

“RPS Class I Renewable Generation Unit” shall mean a Newly Developed Renewable Energy Resource that produces RECs that qualify for the RPS.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to 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.

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

“Seller’s Taxes” shall have the meaning set forth in Section 5.3(a) hereof.

“Substitute Credit Support” shall have the meaning assigned in Section 6.6(e) hereof.

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

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

“Test Energy” shall have the meaning set forth in Section 4.8 hereof.

“Test Period” shall have the meaning set forth in Section 3.4(a) hereof.

“Transfer” shall mean, with respect to any Posted Collateral or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

- (a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the Party to whom such Cash is being delivered; and
- (b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the Party to whom such Letter of Credit is being delivered.

“Transmission Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; (b) Buyer; and/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.

“Transmission System” shall mean the transmission facilities operated by a Transmission Provider, now or hereafter in existence, which provide energy transmission service for the Energy to or from the Delivery Point.

“Unit Contingent” shall mean that the Products are to be supplied only from the Facility and only to the extent that the Facility is in operation.

“Valuation Agent” means the Requesting Party; provided, however, that in all cases, if an Event of Default has occurred and is continuing with respect to the Party designated as the Valuation Agent, then in such case, and for so long as the Event of Default continues, the other Party shall be the Valuation Agent.

“Valuation Date” shall mean each Business Day.

“Valuation Percentage” shall have the meaning specified in Section 6.2(d) hereof.

“Valuation Time” shall mean the close of business on the Business Day before the Valuation Date or date of calculation, as applicable.

“Value” shall mean, with respect to Posted Collateral or Credit Support, the Valuation Percentage multiplied by the amount then available under the Letter of Credit to be unconditionally drawn by Buyer.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. Subject in all respects to Section 8.1 and Section 8.2, this Agreement is effective as of the Effective Date.

2.2 Term.

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

(b) The **“Services Term”** is the period during which Buyer is obligated to purchase Products Delivered to Buyer by Seller (not including Energy and RECs Delivered during the Test Period under Section 4.8) commencing on the Commercial Operation Date and continuing for a period of twenty (20) years from the Commercial Operation Date, unless this Agreement is earlier terminated in accordance with the provisions hereof.

(c) At the expiration of the Term or earlier termination of this Agreement pursuant to the terms hereof, the Parties shall no longer be bound by the terms and provisions

hereof, except (i) to the extent necessary to make payments of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of a breach of, this Agreement, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, and (iii) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

3. FACILITY DEVELOPMENT AND OPERATION

3.1 Critical Milestones.

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

- (i) receipt of all Permits necessary to construct the Facility, as set forth in Exhibit B, in final form, by July 1, 2019;
- (ii) acquisition of all required real property rights necessary for construction and operation of the Facility and the interconnection of the Facility to the Interconnecting Utility in full and final form with all options and/or contingencies having been exercised demonstrating complete site control as set forth in Exhibit B, by July 1, 2019;
- (iii) closing of the Financing adequate for the development and construction of the Facility or other demonstration to Buyer’s reasonable satisfaction of the financial capability to construct the Facility, including, as applicable, Seller’s financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades by June 1, 2019; and
- (iv) achievement of the Commercial Operation Date by November 1, 2019 (“Guaranteed Commercial Operation 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 reasonably demonstrating with reasonable specificity that such Critical Milestone has been achieved. Seller acknowledges that Buyer will receive such notice solely to monitor progress toward the Commercial Operation Date, and Buyer shall have no responsibility or liability for the development, construction, operation or maintenance of the Facility.

(c) Seller may elect to extend all of the dates for the Critical Milestones not yet achieved by up to four six-month periods from the applicable dates set forth in Section 3.1(a) by posting additional Development Period Security in an amount equal to \$11,250 for each such

six-month period. Any such election shall be made in a written notice delivered to Buyer on or prior to the first date for a Critical Milestone that has not yet been achieved (as such date may have previously been extended).

(d) To the extent a Force Majeure event pursuant to Section 10.1 has occurred that prevents the Seller from achieving the Critical Milestone date for acquisition of real property rights and interconnection (Section 3.1(a)(ii)) or the Commercial Operation Date (Section 3.1(a)(iv)) by the applicable Milestone date, the Critical Milestone Date(s) impacted by such Force Majeure event shall be extended for the duration of the Force Majeure event, but under no circumstances shall extensions of those Critical Milestone dates due to Force Majeure events exceed twelve (12) months beyond the applicable Milestone date, and further provided, that the Seller shall not have the right to declare a Force Majeure event related to the Permits Critical Milestone (Section 3.1(a)(i)) or the Financing Critical Milestone (Section 3.1(a)(iii)).

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

(f) If Seller fails to make material progress toward the Commercial Operation Date, as reasonably determined by either Buyer or the PUC based on Seller's progress with respect to the milestones set forth in Section 3.1(a), within three (3) years after the Effective Date, Buyer may terminate this Agreement by written notice to Seller delivered within sixty (60) days after the third anniversary of the Effective Date (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 except for obligations arising under Article 12.

3.2 Delay Damages.

(a) If the Commercial Operation Date is not achieved by the Guaranteed Commercial Operation Date (as extended pursuant to Sections 3.1(c) and 10.1), Seller shall pay to Buyer damages for each day from and after such date in an amount equal to \$225, commencing on the Guaranteed Commercial Operation Date (as extended pursuant to Sections 3.1(c) and 10.1) and ending on the earlier of (i) the Commercial Operation Date, (ii) the date that Buyer exercises its right to terminate this Agreement under Section 9.3, or (iii) the date that is twelve (12) months after the Guaranteed Commercial Operation Date ("**Delay Damages**"). Delay Damages shall be due under this Section 3.2(a) without regard to whether Buyer exercises its right to terminate this Agreement pursuant to Section 9.3; provided, however, that if Buyer exercises its right to terminate this Agreement under Section 9.3, Delay Damages shall be due and owing to the extent that such Delay Damages were due and owing at the date of such termination.

(b) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Article shall

not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date. Any such termination damages shall be determined in accordance with Article 9.

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

3.3 Construction and Changes in Capacity.

(a) Construction of Facility. Seller shall construct the Facility as described in Exhibit A, in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility and all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to Buyer. Seller shall bear all costs related thereto. Seller may contract with other Persons to provide construction functions, so long as Seller maintains overall control over the construction of the Facility through the Term.

(b) Capacity Deficiency. To the extent that Seller has constructed the Facility in accordance with Good Utility Practice, and met all other requirements for the Commercial Operation Date under Section 3.4(b) of this Agreement, but a Capacity Deficiency exists on the Commercial Operation Date as permitted by Section 3.4(b), then on the Commercial Operation Date, the Contract Maximum Amount shall be automatically and permanently reduced commensurate with the Capacity Deficiency, which reduced Contract Maximum Amount shall be stated in a notice from Buyer to Seller, which notice shall be binding absent manifest error.

(c) Increase in Facility Size. To the extent that Seller has constructed the Facility in accordance with Good Utility Practice, and met all other requirements under Section 3.4(b) of this Agreement, if the Independent Engineer's certification provides that the Actual Facility Size exceeds the Proposed Facility Size as provided in Exhibit A, the Buyer's Percentage Entitlement will be recalculated and replaced by the percentage derived by dividing the Contract Maximum Amount by the Actual Facility Size.

(d) Progress Reports. Within ten (10) days of the end of each calendar quarter after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer with a progress report regarding Critical Milestones not yet achieved, including projected time to completion of the Facility, in accordance with the form attached hereto as Exhibit C, and shall provide supporting documents and detail regarding the same upon Buyer's request. Seller shall

permit Buyer and its advisors and consultants to review and discuss with Seller and its advisors and consultants such progress reports during business hours and upon reasonable notice to Seller.

(e) Site Access. Buyer and its representatives shall have the right but not the obligation, during business hours and upon reasonable notice to Seller, to view the construction of the Facility; *provided*, that (i) Buyer and its representatives shall observe all applicable Facility safety rules while such authorized individuals are at the Facility site, and (ii) Seller may remove any such authorized individuals from the Facility site if they have violated any of the Facility safety rules.

3.4 Commercial Operation.

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

(b) The Commercial Operation Date shall occur on the date on which the Facility as described in Exhibit A is completed (subject, if applicable, to a Capacity Deficiency so long as the Actual Facility Size on the Commercial Operation Date is (1) at least ninety percent (90%) of the proposed nameplate capacity of the Facility as set forth in Exhibit A, and (2) not more than ten (10) MW less than the proposed nameplate capacity of the Facility set forth in Exhibit A) and capable of regular commercial operation in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility, all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to the Buyer have been satisfied, and all performance testing for the Facility has been successfully completed, provided Seller has also satisfied the following conditions precedent as of such date:

- (i) completion of all transmission and interconnection facilities and any Network Upgrades, including final acceptance and authorization to interconnect the Facility from ISO-NE or the Interconnecting Utility in accordance with the fully executed Interconnection Agreement;
- (ii) all Related Transmission Facilities as set forth in Exhibit E are complete and in-service;
- (iii) Seller has obtained and demonstrated possession of all Permits required for the lawful construction and operation of the Facility, for the interconnection of the Facility to the Interconnecting Utility (including any Network Upgrades) and for Seller to perform its obligations under this Agreement, including but not limited to Permits related to environmental matters, all as set forth on Exhibit B;

- (iv) Seller has obtained qualification by the PUC qualifying the Facility as a RPS Class I Renewable Generation Unit;
- (v) All Related Transmission Approvals have been received;
- (vi) Seller has acquired all real property rights needed to construct and operate the Facility, to interconnect the Facility to the Interconnecting Utility, to construct the Network Upgrades (to the extent that it is Seller's responsibility to do so) and to perform Seller's obligations under this Agreement;
- (vii) Seller has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;
- (viii) 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 Settlement Market System;
- (ix) Seller has successfully completed all pre-operational testing and commissioning in accordance with manufacturer guidelines;
- (x) Seller has satisfied all Critical Milestones that precede the Commercial Operation Date in Section 3.1;
- (xi) no Default or Event of Default by Seller shall have occurred and remain uncured;
- (xii) the Facility is owned or leased by, and under the care, custody and control of, Seller.
- (xiii) Seller has delivered to Buyer:

(A) an Independent Engineer's certification stating (i) that the Facility has been completed in all material respects (excepting punchlist items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this Agreement, and (ii) the Actual Facility Size;

(B) certificates of insurance evidencing the coverages required under Section 3.5(i); and

(C) the Operating Period Security; and

- (xiv) Seller has demonstrated that it can reliably transmit real time data and measurements to ISO-NE.

3.5 Operation of the Facility.

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

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

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

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

(e) ISO-NE Status. Seller shall, at all times during the Services Term, either: (i) be an ISO-NE "Market Participant" pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with a Market Participant that shall perform all of Seller's ISO-NE-related obligations in connection with the Facility and this Agreement.

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

(g) RPS Class I Renewable Generation Unit. Subject to Section 4.7(b), Seller shall be solely responsible at Seller's cost for qualifying the Facility as a RPS Class I Renewable Generation Unit and maintaining such qualification throughout the Services Term. Seller shall take all actions necessary to register for and maintain participation in the GIS to register, monitor, track, and transfer RECs. Seller shall provide such additional information as Buyer may request relating to such qualification and participation.

(h) Compliance Reporting. Within **thirty (30)** days following the end of each calendar quarter, Seller shall provide Buyer information pertaining to emissions, fuel types, labor information and any other information to the extent required by Buyer to comply with the disclosure requirements contained under applicable Law and any other such disclosure regulations which may be imposed upon Buyer during the Term, which information requirements will be provided to Seller by Buyer at least fifteen (15) days before the beginning of the calendar quarter for which the information is required. To the extent Buyer is subject to any other certification or compliance reporting requirement with respect to the Products produced by Seller and delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, reasonably available to it and not reasonably available to Buyer) requested by Buyer to permit Buyer to comply with any such reporting requirement.

(i) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company (or any successor thereto) the insurance coverage and with the deductibles that are customary for a generating facility of the type and size of the Facility and as otherwise legally required. Upon the execution of this Agreement, and at each subsequent policy renewal date thereafter, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, if such evidence of insurance is not issued on a standard ACORD form, (iii) shall evidence a firm obligation of the insurer to provide Buyer with thirty (30) days prior written notice of cancellation or non-renewal of coverage (for coverage modifications that may adversely affect Buyer, Seller shall provide Buyer with thirty (30) days prior written notice), and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(j) 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.

(k) 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, including all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by FERC and any other Governmental Entity, whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of operational and environmental matters relating to the

Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with applicable requirements of Law.

(l) FERC Status. Seller shall be responsible for ensuring that it is in compliance with all FERC directives and requirements necessary for Seller to fulfill its obligations under this Agreement. As part of Seller's satisfaction of this responsibility, it shall maintain the Facility's status as a QF or EWG (to the extent Seller meets the criteria for such status) at all times after the Commercial Operation Date and shall obtain and maintain any requisite authority to sell the output of the Facility at market-based rates, including market-based rate authority to the extent applicable. If Seller certifies the Facility as a QF, for so long as this Agreement is in effect, Seller waives, and agrees not to assert, any rights Seller may have to require Buyer to purchase or transmit electric power or to pay a specified price for electric power by virtue of the status of the Facility as a QF.

(m) Maintenance. No later than (a) the Commercial Operation Date and (b) two months prior to the end of each calendar year thereafter during the Term, Seller shall submit to Buyer a schedule of planned maintenance for the following calendar year for the Facility. Throughout the Term, Seller shall coordinate all planned maintenance with ISO-NE, consistent with ISO-NE Rules, and shall promptly provide applicable information concerning scheduled outages, as determined by ISO-NE, to Buyer. To maximize the value of the Products, to the extent possible and consistent with ISO-NE Rules, Seller shall not schedule maintenance of the Facility during the months of January through February or June through September, and shall operate the Facility so as to maximize energy production during the hours of anticipated peak load and Energy prices in New England; provided, however, that planned maintenance may be scheduled during such period to the extent the failure to perform such planned maintenance is contrary to operation of the Facility in accordance with Good Utility Practice.

3.6 Interconnection and Delivery Services.

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

(b) Seller shall defend, indemnify and hold Buyer harmless against any and all liabilities, fees, costs and expenses, including but not limited to reasonable attorneys' fees arising due to Seller's performance or failure to perform under the Interconnection Agreement or any agreement for delivery service associated with Seller's performance of this Agreement.

4. DELIVERY OF PRODUCTS

4.1 Obligation to Sell and Purchase Products.

(a) Beginning on the Commercial Operation Date and subject to Section 4.1(b) and 4.2(a), Seller shall sell and Deliver, and Buyer shall purchase and receive all right, title and interest in and to, Buyer's Percentage Entitlement of the Products in accordance with the terms and conditions of this Agreement. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are Unit Contingent and shall be subject to the operation of the Facility. Seller agrees that Seller will not curtail or otherwise reduce deliveries of the Products in order to sell such Products to other purchasers. To maximize the value of the Products, to the extent possible and consistent with ISO-NE Rules and Good Utility Practice, Seller shall use commercially reasonable efforts to minimize outages during the time periods of anticipated peak load and peak Energy prices in New England.

(b) Buyer shall not be obligated to accept or pay for any REC or comparable certificate, credit, attribute or other similar product produced by or associated with the Facility which fails to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit, and, to the extent that Buyer does not purchase any such REC or comparable certificate, credit, attribute or other similar product associated with the Facility, Seller may, in its sole discretion, sell, transfer or otherwise dispose of that REC or comparable certificate, credit, attribute or other similar product. In the event that the Buyer notifies Seller that it will not purchase any REC or comparable certificate, credit, attribute or other similar product produced by the Facility which fails to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit, then Buyer may resume purchasing such RECs or comparable certificates, credits, attributes or other similar products produced by the Facility upon thirty (30) days' prior written notice to Seller, unless otherwise agreed by Buyer and Seller.

(c) Seller shall Deliver Buyer's Percentage Entitlement of the Products produced by or associated with the Facility, up to and including the Contract Maximum Amount, 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 except as permitted under this Section 4.1 or otherwise pursuant to this Agreement. Seller shall not enter into any agreement or arrangement under which such Buyer's Percentage Entitlement of the 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.

(a) During the Services Term and in accordance with Section 4.1, Seller shall Schedule and transfer Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Agreement and all ISO-NE Practices and ISO-NE Rules. Seller shall transfer the Energy to Buyer in the Day Ahead Energy Market or Real Time Energy Market, as reasonably agreed from time to time by Buyer and Seller and consistent with prevailing electric industry practices at the time and Buyer shall have

no obligation to pay for any Energy not transferred to Buyer in the Day Ahead Energy Market or 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 system). Notwithstanding any other provision of this Agreement, if during the Term of this Agreement the LMP at the Delivery Point is negative, or, in the reasonable opinion of Seller, is likely to become negative, then Seller may deliver to Buyer a written notice stating that such condition has occurred or is likely to occur and the period during which such condition has occurred or is likely to occur. Buyer and Seller hereby agree that in such event Seller shall be under no obligation to schedule or Deliver Products to the Delivery Point during such period. Seller shall provide Buyer with detailed information, including but not limited to, the start and stop times of such periods of curtailment under this Section 4.2(a) as well as the quantity curtailed, for all such periods of non-delivery during the preceding calendar month which information shall be provided prior to Seller's delivery of the invoice to Buyer.

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.5(e) 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 imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission up to and at the Delivery Point, and Buyer shall be responsible for all of the foregoing after the Delivery Point, provided that Buyer shall have no responsibility or liability for any Network Upgrade. To the extent a Party incurs costs, charges, penalties or losses which are the responsibility of the other Party, (including amounts not credited to Buyer as described in Section 4.2(a)), the other Party shall reimburse such Party for the same.

4.3 Failure of Seller to Deliver Products. In the event that Seller generates Products and fails to satisfy any of its obligations to Deliver such Products or any portion thereof in accordance with Section 4.1, Section 4.2 and Section 4.7, and such failure is not excused under the express terms of this Agreement (a "**Delivery Failure**"), Seller shall pay Buyer an amount for such Delivery Failure (measured in MWh and/or RECs) 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 Failure would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

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

4.5 Delivery Point.

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

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees, uplift, socialized charges, and all other charges in connection with the satisfaction of Seller’s obligations hereunder, including without limitation the Delivery of Energy to and at the Delivery Point. Seller shall indemnify and hold harmless Buyer for any such charges, fees, or expenses imposed upon Buyer by operation of ISO-NE rules or otherwise in connection with Seller’s performance of its obligations hereunder.

4.6 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “**Meters**”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense once each Contract Year. All Meters used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Meters are to be inspected and tested (or adjusted) in accordance with this Section 4.6. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than two percent (2%), (i)

the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility or the ISO-NE Tariff, whichever is applicable, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test (at its own expense) 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 in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

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

4.7 RECs.

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

(b) Regarding the RPS:

(i) Except as provided in subsection (ii) of this Section 4.7(b), all Energy provided by Seller to Buyer from the Facility under this Agreement shall meet the requirements for eligibility pursuant to the RPS, and Seller's failure to satisfy such requirements shall constitute an Event of Default pursuant to Section 9.1(c) of

this Agreement except as provided in Section 4.7(b)(ii), below;
and

- (ii) If solely as a result of change in Law, Energy provided by Seller to Buyer from the Facility under this Agreement no longer meets the requirements for eligibility pursuant to the RPS, such will not constitute an Event of Default under Article 9, provided Seller promptly uses commercially reasonable efforts to ensure that qualification will continue after the change in Law. If, notwithstanding such commercially reasonable efforts and solely as a result of change in Law, the Facility does not qualify as a RPS Class I Renewable Generation Unit, then (A) Seller shall continue to sell, and Buyer shall continue to purchase Energy under this Agreement at the Adjusted Price in accordance with Section 5.1 and (B) any purchases and sales of RECs shall be in accordance with Section 4.1(b).

(c) At Seller's sole cost, Seller shall also obtain and maintain throughout the Services Term qualification as a RPS Class I generation resource under the renewable portfolio standard or similar law of the New England states of Connecticut, Maine, Massachusetts, and New Hampshire, to the extent the renewable energy technology used in the Facility is eligible under such renewable portfolio standard or similar law. At Buyer's request and at Seller's sole cost, Seller shall also obtain qualification under the renewable portfolio standard or similar law of New York and/or any federal renewable energy standard, to the extent the renewable energy technology used in the Facility is eligible under such renewable portfolio standard, renewable energy standard or similar law, and Seller shall use commercially reasonable efforts, consistent with Good Utility Practice, to maintain such qualifications at all times during the Services Term unless otherwise agreed by Buyer. Seller shall also submit to Buyer or as directed by Buyer any information required by any state or federal agency with regard to administration of its rules regarding Environmental Attributes or its renewable energy standard or renewable portfolio standard or Seller's qualification under the foregoing.

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

(e) Prior to the delivery of any Energy hereunder (including any Energy Delivered during the Test Period), either (i) Seller shall cause Buyer to be registered in the GIS as the initial owner of all Certificates to be Delivered hereunder to Buyer or (ii) Seller and Buyer shall effect an irrevocable Forward Certificate Transfer (as defined in the GIS Operating Rules) of the Certificates to be Delivered hereunder to Buyer in the GIS for the Test Period and the

Services Term; provided, however, that no payment shall be due to Seller for any RECs until either (x) the Certificates are actually deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing, or (y) (i) Buyer and Seller enter such an irrevocable Forward Certificate Transfer of the Certificates to be Delivered to Buyer in the GIS, which Forward Certificate Transfer shall be denoted in the GIS as not being capable of rescission by Seller, and (ii) the Energy with which such RECs are associated has been Delivered to Buyer.

(f) The Parties intend for the transactions entered into hereunder to be physically settled, meaning that the RECs are intended to be Delivered in the GIS account of Buyer or its designee as set forth in this Section 4.7.

4.8 Deliveries During Test Period. During the Test Period, Seller shall sell and Deliver, and Buyer shall purchase and receive Buyer's Percentage Entitlement of any Energy ("Test Energy") and RECs produced by or associated with the Facility. Notwithstanding the provisions of Section 5.1, payment for Test Energy Delivered during the Test Period and RECs associated with such Test Energy shall be equal to one hundred percent (100%) of the product of (x) the Test Energy Delivered (in MWh) and (y) the lesser of (i) the Adjusted Price determined in accordance with Section 1(a) of Exhibit D for Year 1, or (ii) the Real Time LMP at such Delivery Point. In the event that the Real Time LMP for the Test Energy at the Delivery Point is less than \$0.00 per MWh in any hour, Seller shall credit to Buyer, on the appropriate monthly invoice, an amount equal to one hundred percent (100%) of the product of (i) such Test Energy delivered in such hour and (ii) the absolute value of the hourly Real Time LMP at the Delivery Point. In no event shall the Test Period extend beyond **six (6)** months, except due to Force Majeure.

4.9 Title to Facility. Seller or Lender shall be the legal and beneficial owner of the Facility at all times.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Price for Products. All Products Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Price specified in Exhibit D; provided, however, that if the RECs fail to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit and Buyer does not purchase the RECs pursuant to Section 4.1(b), then all Energy Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Adjusted Price specified in Exhibit D. Other than the (i) payment for the Products under this Section 5.1, (ii) payments related to Meter testing under Section 4.6(b), (iii) payments related to Meter malfunctions under Section 4.6(e), (iv) payment for Energy and RECs during the Test Period in accordance with Section 4.8, (v) payment of any Resale Damages under Section 4.4, (vi) payment of interest on late payments under Section 5.2, (vii) payments for reimbursement of Buyer's Taxes under Section 5.3(a), (viii) return of any Credit Support under Section 6.4, and (ix) payment of any Termination Payment due from Buyer under Section 9.3, Buyer shall not be required to make any other payments to Seller under this Agreement, and Seller shall be solely responsible for all costs and losses incurred by it in connection with the performance of its obligations under this Agreement. In the event that the LMP for the Energy at the Delivery Point is less than \$0.00 per

MWh in any hour, Seller shall credit to Buyer, on the appropriate monthly invoice, an amount equal to the product of (i) such Energy delivered in such hour and (ii) the absolute value of the hourly LMP at the Delivery Point.

5.2 Payment and Netting.

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

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

(c) Disputes and Adjustments of Invoices.

- (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 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 this Section 5.2.
- (ii) Within twelve (12) months of the issuance of an invoice the Seller may adjust any invoice for any arithmetic or computational error and shall provide documentation and information supporting such adjustment to Buyer. Within twelve (12)

months of the receipt of an invoice (or an adjusted invoice), the Buyer may dispute any charges on that invoice. In the event of such a dispute, the Buyer shall give notice to the Seller and shall state the basis for the dispute. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Any claim for additional payment is waived unless the Seller issues an adjusted invoice within twelve (12) months of issuance of the original invoice. Any dispute of charges is waived unless the Buyer provides notice of the dispute to the Seller within twelve (12) months of receipt of the invoice (or adjusted invoice) including such charges.

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

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

5.3 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products ("**Seller's Taxes**"). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer, or imposed on or associated with the purchase of such Products by Buyer (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) ("**Buyer's Taxes**"). In the event Seller shall be required by law or regulation to remit or pay any Buyer's Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller's Taxes, Seller shall reimburse Buyer for such payment, and Buyer may also elect to deduct any of the amount of any such Seller's

Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the Facility's eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes, or to receive any other favorable tax or accounting right or benefit, or any grant or subsidy from a Governmental Entity or other Person. Seller's obligations under this Agreement shall be effective regardless of whether the Facility is eligible for or receives, or the transactions contemplated under this Agreement are eligible for or receives, any federal or state tax credits, grants or other subsidies or any particular accounting, reporting or tax treatment.

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 (other than indemnification obligations surviving the expiration of the Term) 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 Seller's Support.

(a) Seller shall be required to post Credit Support having a Value of \$45,000 to secure Seller's Obligations until the Commercial Operation Date ("**Development Period Security**"). Fifty percent (50%) of the Development Period Security shall be provided to Buyer on the Effective Date, and the remaining fifty percent (50%) of the Development Period Security shall be provided to Buyer within fifteen (15) days after the receipt of the Regulatory Approval. Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days after the later of (x) Buyer's receipt of an undisputed notice from Seller that the Commercial Operation Date has occurred or (y) Buyer's receipt of the full amount of the Operating Period Security.

(b) Beginning not later than three (3) days following the Commercial Operation Date, Seller shall provide Buyer with Credit Support to secure Seller's Obligations after the Commercial Operation Date through and including the date that all of Seller's Obligations are satisfied ("**Operating Period Security**"). The Operating Period Security shall have a Value of \$45,000, as adjusted in accordance with Section 3.3(b).

(c) The Credit Support Delivery Amount, as defined below, will be rounded up, and the Return Amount, as defined below, will be rounded down, in each case to the nearest integral multiple of \$10,000 ("**Rounding Amount**").

(d) The following items will qualify as "**Credit Support**" hereunder in the amount noted under "Valuation Percentage":

"Valuation Percentage"	
(A) Cash	100%
(B) Letters of Credit	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be 0%.

(e) All calculations with respect to Credit Support shall be made by the Valuation Agent as of the Valuation Time on the Valuation Date.

6.3 Delivery of Credit Support.

On any Business Day during the Services Term on which (a) no Event of Default has occurred and is continuing with respect to Buyer, and (b) no termination date has occurred or has been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations with respect to Buyer, then Buyer may request, by written notice, that Seller Transfer to Buyer, or cause to be Transferred to Buyer, Credit Support for the benefit of Buyer, having a Value of at least the Collateral Requirement ("**Credit Support Delivery Amount**"). Such Credit Support shall be delivered to Buyer on the next Business Day if the request is received by the Notification Time; otherwise Credit Support is due by the close of business on the second Business Day after the request is received.

6.4 Reduction and Substitution of Posted Collateral.

On any Business Day during the Services Term on which (a) no Event of Default has occurred and is continuing with respect to Seller, (b) no termination date has occurred or has been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment Obligations, and (c) the Posted Collateral posted by Seller exceeds the required Operating Period Security (rounding downwards for any fractional amount to the next interval of the Rounding Amount), then Seller may, at its sole cost, request that Buyer return Operating Period Security in the amount of such difference ("**Credit Support Return**").

Amount”) and Buyer shall be obligated to do so. Such Posted Collateral shall be returned to Seller by the close of business on the second Business Day after Buyer’s receipt of such request. The Parties agree that if Seller has posted more than one type of Credit Support to Buyer, Seller can, in its sole discretion, select the type of Credit Support for Buyer to return; provided, however, that Buyer shall not be required to return the specified Credit Support if immediately after such return, Seller would be required to post additional Credit Support pursuant to the calculation of Operating Period Security.

6.5 [Reserved].

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

(a) Transfer and Holding of Cash.

- (i) 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 6.6(a)(ii) shall not apply with respect to Buyer and Cash shall be held in a Qualified Institution in accordance with the provisions of Section 6.6(a)(iii)(B). 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 6.6(a)(iii)(B). Except as set forth in Section 6.6(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.
- (ii) 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, comingle 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.

- (iii) Notwithstanding Section 6.6(a)(ii), if neither Buyer nor the Custodian is eligible to hold Cash pursuant to Section 6.6(a)(i) then:

(A) the provisions of Section 6.6(a)(ii) will not apply with respect to Buyer;
and

(B) 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.

- (iv) So long as no Event of Default with respect to Seller has occurred and is continuing, and no termination date has occurred or been designated for which any unsatisfied payment obligations of Seller exist as the result of an Event of Default with respect to Seller, in the event that Buyer or its Custodian is holding Cash, Buyer will Transfer (or cause to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which shall be retained by Buyer), the Interest Amount. Interest on Cash shall accrue at the Collateral Interest Rate. Interest accrued during the previous month shall be paid by Buyer to Seller on the 3rd Business Day of each calendar month and on any Business Day that posted Credit Support in the form of Cash is returned to Seller, but solely to the extent that, after making such payment, the amount of the Posted Collateral will be at least equal to the required Development Period Security or Operating Period Security, as applicable. On or after the occurrence of an Event of Default with respect to Seller or a termination date as a result of an Event of Default with respect to Seller, Buyer or its

Custodian shall retain any such Interest Amount as additional Posted Collateral hereunder until the Obligations of Seller under the Agreement have been satisfied in the case of a termination date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) 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 9.3(b) of this Agreement, Buyer may exercise one or more of the following rights and remedies: (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. For purposes of this Section 6.6, Buyer may draw on the undrawn portion of any Letter of Credit from time to time up to the amount of the Obligations that are due at the time of such drawing. Cash proceeds that are not applied to the Obligations shall be maintained in accordance with the terms of this Article 6. Seller shall remain liable for amounts due and owing to Buyer that remain unpaid after the application of Posted Collateral, pursuant to this Section 6.6.

(c) Letters of Credit. Credit Support provided in the form of a Letter of Credit shall be subject to the following provisions.

- (i) As one method of providing increased Credit Support, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
- (ii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to Buyer either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the third (3rd) Business Day after the occurrence thereof if only clause (a) under the definition of **Letter of Credit Default** applies.
- (iii) Notwithstanding Sections 6.3 and 6.4, (1) Buyer need not return a Letter of Credit unless the entire principal amount is required to be returned, (2) Buyer shall consent to a reduction of the principal amount of a Letter of Credit to the extent that a Credit Support Delivery Amount would not be created thereby (as of the time of the request or as of the last time the Credit Support Delivery Amount was determined), and (3) if there is more than one form of Posted Collateral when a Credit Support Return Amount is to be Transferred, the Secured Party may elect which to Transfer.

(d) Care of Posted Collateral. Buyer shall exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable Law, and in any event Buyer will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, Buyer will have no duty with respect to the Posted Collateral, including without limitation, any duty to enforce or preserve any rights thereto.

(e) Substitutions. Unless otherwise prohibited herein, upon notice to Buyer specifying the items of Posted Collateral to be exchanged, Seller may, on any Business Day, deliver to Buyer other Credit Support (“**Substitute Credit Support**”). On the Business Day following the day on which the Substitute Credit Support is delivered to Buyer, Buyer shall return to Seller the items of Credit Support specified in Seller’s notice; provided, however, that Buyer shall not be required to return the specified Posted Collateral if immediately after such return, Seller would be required to post additional Credit Support pursuant to the calculation of Development Period Security or Operating Period Security set forth in Sections 6.2(a) and 6.2(b), respectively.

6.7 Exercise of Rights Against Posted Collateral.

(a) Disputes regarding amount of Credit Support. If either Party disputes the amount of Credit Support to be provided or returned (such Party the “**Disputing Party**”), then the Disputing Party shall (a) deliver the undisputed amount of Credit Support to the other Party (such Party, the “**Requesting Party**”) and (b) notify the Requesting Party of the existence and nature of the dispute no later than 5:00 p.m. Eastern Prevailing Time on the Business Day that the request for Credit Support was made (the “**Request Date**”). On the Business Day following the Request Date, the Parties shall consult with each other in order to reconcile the two conflicting amounts. If the Parties are not able to resolve their dispute, the Credit Support shall be recalculated, on the Business Day following the Request Date, by each Party requesting quotations from two (2) Reference Market-Makers for a total of four (4) quotations. The highest and lowest of the four (4) quotations shall be discarded and the arithmetic average shall be taken of the remaining two (2), which shall be used in order to determine the amount of Credit Support required. On the same day the Credit Support amount is recalculated, the Disputing Party shall deliver any additional Credit Support required pursuant to the recalculation or the Requesting Party shall return any excess Credit Support that is no longer required pursuant to the recalculation.

(b) Further Assurances. Promptly following a request by a Party, the other Party 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 Posted Collateral or other security interest or lien, to enable the requesting party to exercise or enforce its rights or remedies under this Agreement, or with respect to Posted Collateral, or accrued interest.

(c) Further Protection. Seller will promptly give notice to Buyer of, and defend against, any suit, action, proceeding, or lien (other than a banker’s lien in favor of the Custodian appointed by Buyer so long as no amount owing from Seller to such Custodian is

overdue) 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 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. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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

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

(e) Consents and Approvals. Except to the extent associated with the Regulatory Approval, the execution, delivery and performance by Buyer of its obligations under this Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken or that shall be duly obtained, made or taken on or prior to the date required, and all such approvals, consents,

permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable as required under applicable Law.

(f) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Buyer and equal bargaining power of the Parties. No principle of law or equity regarding construing ambiguities in this Agreement against the drafting Party shall apply.

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

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

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

(a) Organization and Good Standing; Power and Authority. Seller is a limited liability company, duly formed, validly existing and in good standing under the laws of Delaware. Subject to the receipt of the Permits listed in Exhibit B and any Related Transmission Approvals, Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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

performance of any of its obligations under this Agreement by reason of market power or affiliate transaction issues under federal or state regulatory requirements.

(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 Buyer and receipt of the Permits listed on Exhibit B and any Related Transmission Approvals, constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

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

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

(g) RPS Class I Renewable Generation Unit. The Facility shall be a RPS Class I Renewable Generation Unit, qualified by the PUC as eligible to participate in the RPS program, under R.I.G.L. § 39-26-1 et seq. (subject to Section 4.7(b) in the event of a change in Law affecting such qualification as a RPS Class I Renewable Generation Unit) and shall have a Commercial Operation Date, as verified by the Buyer.

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

(i) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Seller and equal bargaining power of the Parties. No principle of law or equity regarding construing ambiguities in this Agreement against the drafting Party shall apply.

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

(k) No Misrepresentations. The reports and other submittals by Seller to Buyer under this Agreement are not false or misleading in any material respect.

(l) 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.

(m) Site Control. As of the Effective Date, Seller either (i) has acquired all real property rights to construct and operate the Facility subject only to the receipt of the Permits and approvals referenced in Exhibit B, and to perform Seller's obligations under this Agreement, or (ii) has an irrevocable option to acquire such real property rights and the only condition upon Seller's exercise of such option to acquire such real property rights is the payment of monies to acquire such real property rights; provided, however, that (a) with respect to the real property rights to interconnect the Facility to the Interconnecting Utility and to construct the Network Upgrades each as presently contemplated (to the extent it is Seller's responsibility to do so), Seller shall have acquired all such rights as of the date of the applicable Critical Milestone in Section 3.1(a) ; and (b) the Parties understand that as of the Effective Date the Seller has undertaken only a preliminary site design, and that the final design of the Facility, including the Facility's interconnection, may require the acquisition or disposition of additional property and/or property rights in a manner that does not alter the Contract Maximum Amount of the Facility.

7.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term, subject to the removal of the references to the Regulatory Approval and Permits as and when the Regulatory Approval and Permits are obtained. If at any time during the Term, a Party has knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be untrue or misleading, such Party shall provide the other Party with prompt written notice of the event or information, the representations and warranties affected, and the corrective action such Party shall take. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

7.4 Forward Capacity Market Participation. Seller must take (i) all necessary and appropriate actions to qualify and participate; and (ii) commercially reasonable actions to be selected and compensated in every auction applicable to the Services Term, in any capacity market, including the Forward Capacity Market and any successor capacity market. Subject to Good Utility Practice, Seller shall operate the Facility in a manner to maximize the Capacity Supply Obligation of the Facility. Seller shall use best efforts to make Network Upgrades such that the maximum output of the Facility shall be qualified to participate in the FCM. Seller shall provide documentation to the Buyer demonstrating the satisfaction of the foregoing obligations.

8. REGULATORY APPROVAL

8.1 Receipt of Regulatory Approval. The obligations of the Parties to perform this Agreement, other than the Parties' obligations under Section 6.2, Section 8.2, and Section 11, are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the Regulatory Approval or receipt of an order of the PUC regarding this Agreement. This Agreement may be terminated by either Buyer or Seller in the event that Regulatory Approval is not received within 270 days after filing, without liability as a result of such termination, subject to the return of Credit Support as provided in Section 6.4.

8.2 Related Transmission Approvals. The obligation of the Parties to perform this Agreement is further conditioned upon the receipt of any Related Transmission Approvals on or prior to the date such Related Transmission Approvals are required under Applicable Law.

9. BREACHES; REMEDIES

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

(a) Representation or Warranty. Any breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to this Agreement occurs where such breach is not fully cured and corrected within thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if the Defaulting Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the Defaulting Party until such Default has been corrected, but in any event shall be cured within sixty (60) days of the notice from the Non-Defaulting Party; or

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

(c) Other Covenants. Other than:

- (i) a Delivery Failure of ten (10) days or more, which is addressed in Section 9.2(h),
- (ii) failure of the Facility to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date,
- (iii) a failure to maintain the RPS eligibility requirements set forth in Section 4.7(b),
- (iv) a Rejected Purchase, or

- (v) an Event of Default described in Section 9.1(a), 9.1(b), 9.1(d), 9.1(e) or 9.2,

such Party fails to perform, observe or otherwise to comply with any obligation hereunder and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if the Defaulting Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected, but in any event shall be cured within sixty (60) days of the notice from the Non-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 or cause to be obtained and maintained in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under this Agreement where such failure is not fully cured and corrected within thirty (30) days after such Party has knowledge of such failure ; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if such Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by such Party until such Default has been corrected, but in any event shall be cured within seventy-five (75) days of such Party's knowledge of such Default.

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

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

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

(c) Energy Output. The failure of the Facility to produce Energy for **twelve (12)** consecutive months during the Services Term for any reason, other than due to a Force Majeure; or

(d) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under this Agreement or on Buyer or Buyer's ability to receive the benefits under this Agreement; provided that Seller shall have the opportunity to cure such failure within five (5) days of its occurrence; provided, however, if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under this Agreement, Seller shall have the opportunity to cure such failure within thirty (30) days of its occurrence; or

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

(f) Abandonment. On or after the Commercial Operation Date, the permanent relinquishment by Seller of all of its possession and control of the Facility, other than a transfer permitted under this Agreement; or

(g) Assignment. The assignment of this Agreement by Seller, or Seller's sale or transfer of its interest (or any part thereof) in the Facility, except as permitted in accordance with Article 14; or

(h) Recurring Delivery Failure. A Delivery Failure of ten (10) days or more; or

(i) Failure to Provide Status Reports. A failure to provide timely, accurate and complete status reports in accordance with this Agreement, and such failure continues for more than thirty (30) days after notice thereof is given by the Buyer; or

(j) Failure to Maintain RPS Eligibility. A failure to maintain RPS eligibility requirements set forth in Section 4.7(b).

9.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under this Agreement, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in this Agreement including, without limitation, the termination right set forth in Section 9.3(b), and, to the extent not inconsistent with the terms of this Agreement, such remedies available at law and in equity. In addition to the foregoing, except for breaches for

which an express remedy or measure of damages is provided herein, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under this Agreement.

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

- (i) *Termination by Buyer Prior to Commercial Operation Date.* If Buyer terminates this Agreement because of an Event of Default by Seller occurring prior to the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the sum of (x) all Delay Damages due and owing by Seller through the date of such termination plus (y) the full amount of any Development Period Security provided to Buyer by Seller.
- (ii) *Termination by Seller Prior to Commercial Operation Date.* If Seller terminates this Agreement because of an Event of Default by Buyer prior to the Commercial Operation Date, Seller shall only receive a Termination Payment if the Commercial Operation Date either occurs on or before the Guaranteed Commercial Operation Date or would have occurred by such date but for the Event of Default by Buyer giving rise to the termination of this Agreement. In such case, (x) 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 the lesser of: (i) Buyer's Percentage Entitlement to Seller's out-of-pocket expenses incurred in connection with the development and construction of the Facility prior to such termination and for which Seller has provided adequate documentation to enable Buyer to verify the expense claimed, or (ii) the Termination Payment due to Seller as calculated according to the methodology in Section 9.3(b)(iv), as if the Commercial Operation Date had occurred prior to the date of the termination by Seller; and (y) 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 calculated according to the methodology in Section 9.3(b)(iv), as if the Commercial Operation Date had occurred prior to the date of the termination by Seller.
- (iii) *Termination by Buyer On or After Commercial Operation Date.* If Buyer terminates this Agreement because of an Event of

Default by Seller occurring on or after the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the greater of: (i) the security provided in accordance with Article 6, or (ii) the amount, if positive, calculated according to the following formula: (x) the present value, discounted at a rate equal to the prime rate specified in the “Money & Investing” section of *The Wall Street Journal* determined as of the date of the notice of default, plus 300 basis points, for each month remaining in the Services Term, of (i) the amount, if, any, by which the forward market price of Energy and Renewable Energy Credits, as determined by the average of the quotes of at least two nationally recognized energy consulting firms or brokers chosen by Buyer, for Replacement Energy and Replacement RECs, exceeds the applicable Price that would have been paid pursuant to Exhibit D of this Agreement, multiplied by (ii) Buyer’s Percentage Entitlement of the projected Energy output of the Facility as determined by a recognized third party expert selected by Buyer, using a probability of exceedance basis of 50%; plus, (y) any costs and losses incurred by Buyer as a result of the Event of Default and termination of the Agreement.

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

- (iv) *Termination by Seller On or After Commercial Operation Date.* If Seller terminates this Agreement because of an Event of Default by Buyer occurring on or after the Commercial Operation Date, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula: (x) the present value, discounted at a rate equal to the prime rate specified in the “Money & Investing” section of *The Wall Street Journal* determined as of the date of the notice of default, plus 300 basis points, for each month remaining in the Services Term, of (i) the amount, if, any, by which the applicable Price that would have been paid pursuant to Exhibit D of this Agreement, exceeds the forward market price of Energy and Renewable Energy Credits as determined by the average of the quotes of at least two nationally recognized energy consulting firms or brokers chosen by Seller, for Replacement Energy and Replacement RECs, multiplied by (ii) Buyer’s Percentage Entitlement to the projected Energy output of the Facility as determined by a recognized third party expert selected by Seller using a probability of exceedance basis of

50%; plus, (y) any costs and losses incurred by Seller as a result of the Event of Default and termination of the Agreement.

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

(v) *Acceptability of Liquidated Damages.* Each Party agrees and acknowledges that (i) the damages and losses (including without limitation the loss of environmental, reliability and economic benefits contemplated under this Agreement) 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 such notice is effective, regardless whether the Termination Payment calculation is disputed. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

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

(d) Notice to Lenders. Seller shall provide Buyer with a notice identifying a single Lender (if any) to whom default notices are to be issued. Buyer shall provide a copy of the notice of any default of Seller under this Article 9 to that Lender, and Buyer shall afford such Lender the same opportunities to cure Events of Default under this Agreement as are provided to Seller hereunder with such additional days to cure such Events of Default as may reasonably be agreed by Buyer and Lender in any consent executed pursuant to Section 14.2.

(e) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF

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

10. FORCE MAJEURE

10.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under this Agreement. Under no circumstances shall Force Majeure include (v) any reduction or cessation in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such reduction or cessation is caused by one of the following: acts of God such as floods, hurricanes or tornados; sabotage; terrorism; or war. (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in this Agreement, or (z) Buyer's ability to procure the Products at a price lower than that set out in this Agreement. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval) or qualifications, any delay or failure in satisfying the Critical Milestone obligations specified in Section 3.1(a)(i) (Permits) or Section 3.1(a)(iii) (Financing), 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 or be the basis for a claim of Force Majeure. 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 Products 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 herein has occurred.

(b) Subject to Section 3.1(d), if either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Notwithstanding the foregoing, and subject to Seller’s ability to extend Critical Milestones pursuant to Section 3.1(c), 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. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.

11. DISPUTE RESOLUTION

11.1 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**”), in addition to any other remedies provided hereunder, the Parties shall attempt to resolve such Dispute through consultations between the Parties. If the Dispute has not been resolved within fifteen (15) Business Days after such consultations between the Parties, then either Party may seek to resolve such Dispute in the courts of Rhode Island.

11.2 Allocation of Dispute Costs. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees, associated with any Dispute.

11.3 Consent to Jurisdiction. Subject to Section 11.1, the Parties agree to the exclusive jurisdiction of the state and federal courts located in Rhode Island for any legal proceedings that may be brought by a Party arising out of or in connection with any Dispute.

11.4 Waiver of Jury Trial and Inconvenient Forum Claim. EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT. BOTH PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE AS SET FORTH IN THIS ARTICLE 12 AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN ANY INCONVENIENT FORUM.

12. CONFIDENTIALITY

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

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

(b) as required by applicable laws, regulations, filing requirements, rules or orders or by any subpoena or similar legal process of any Governmental Entity so long as the disclosing Party gives the non-disclosing Party written notice at least three (3) Business Days prior to such disclosure, if practicable, so that the non-disclosing Party may seek an appropriate protective order; provided, that, if a protective order or other remedy is not obtained, the non-disclosing Party agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the required disclosure, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information;

(c) to the Affiliates of either Party and to the consultants, attorneys, auditors, financial advisors, lenders or potential lenders and their advisors of either Party or their Affiliates, but solely to the extent they have a need to know that information;

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

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

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

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

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

13. INDEMNIFICATION

Seller shall indemnify, defend and hold Buyer and its partners, shareholders, directors, officers, employees and agents (including, but not limited to, Affiliates and contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever in connection with or arising from Seller's negligence, gross negligence, or willful misconduct, or Seller's failure to perform or satisfy any obligation or liability under this Agreement, or Seller's failure to satisfy any regulatory requirement or commitment associated with this Agreement.

14. ASSIGNMENT AND CHANGE OF CONTROL

14.1 Prohibition on Assignments. Except as permitted under this Article 14, this Agreement (and any portion thereof) 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 "out of pocket" 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 (and shall not impair any Credit Support given by Seller hereunder) unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations thereunder.

14.2 Permitted Assignment by Seller. Buyer's consent shall not be required for Seller to pledge or assign the Facility, this Agreement or the revenues under this Agreement to any Lenders as collateral security for obligations under the Financing documents entered into with such Lender; provided, however, if Seller requests Buyer's consent to such an assignment (i) Buyer shall provide that consent subject to Buyer's execution of a consent to assignment in a form reasonably acceptable to Buyer, Seller and the Lenders, and (ii) Seller will reimburse Buyer for all "out of pocket" costs and expenses Buyer incurs in connection with that consent, without regard to whether such consent is provided.

14.3 Change in Control over Seller. Buyer's consent shall be required for any change in Control over Seller, which consent shall not be unreasonably withheld, conditioned or

delayed and shall be provided if Buyer reasonably determines that such change in Control does not have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement; provided, however, following the Commercial Operation Date, (a) a change of Control of the ultimate parent entity of Seller (defined under Section 7A of the Clayton Act, 15 U.S.C. § 18a, aka the Hart-Scott-Rodino Antitrust Improvements Act of 1976) shall not require the consent of Buyer; and (b) transactions among Affiliates of Seller, any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller and its Affiliates, shall not constitute a change in Control for purposes of this Section 14.3; provided further that, in each case, Seller provides written notice of such change to Buyer within thirty (30) days after such change.

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

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

15. TITLE; RISK OF LOSS

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

16. AUDIT

16.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under this Agreement, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party additional information documenting the quantities of Products delivered or provided hereunder. If any such examination reveals any overcharge, the necessary

adjustments in such statement and the payments thereof shall be made promptly and shall include interest at the Late Payment Rate from the date the overpayment was made until credited or paid.

16.2 Access to Financial Information. Seller shall provide to Buyer, within fifteen (15) days of receipt of Buyer's written request, Seller's financial information and statements as well as reasonable access to financial personnel during normal business hours, so that Buyer may address any reasonable inquiries relating to Seller's financial resources.

17. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); or (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); or (4) by reputable overnight courier; 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: Attn: Renewable Contract Manager, Environmental Transactions
National Grid
100 East Old Country Road, Second Floor
Hicksville, NY 11801-4218
Email: RenewableContracts@nationalgrid.com
With a copy to: ElectricSupply@nationalgrid.com

With a copy to: Legal Department
Attn: Jennifer Brooks Hutchinson, Esq.
Senior Counsel
National Grid
280 Melrose Street
Providence, RI 02907
Email: Jennifer.Hutchinson@nationalgrid.com

If to Seller: Gregory Schneck
Vice President
700 Universe Boulevard
Juno Beach, FL 33408
Gregory.schneck@nexteraenergy.com

With a copy to: Mitch Ross
Vice President and General Counsel
700 Universe Boulevard
Juno Beach, FL 33408
mitch.ross@nexteraenergy.com

18. WAIVER AND MODIFICATION

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

19. INTERPRETATION

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

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

19.3 Forward Contract. 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.

19.4 Standard of Review. The Parties acknowledge and agree that the standard of review for any avoidance, breach, rejection, termination or other cessation of performance or changes to any portion of this integrated, non-severable Agreement (as described in Section 22) over which FERC has jurisdiction, whether proposed by Seller, by Buyer, by a non-party of, by FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Co.*, 350 U.S. 332 (1956) and *Federal Power Comm’n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956)), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010). Each Party agrees that if it seeks to amend any applicable power sales tariff during the Term, such amendment shall not in any way materially and adversely affect this Agreement without the prior written consent of the other Party. Each Party further agrees that it shall not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

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

19.6 Dodd Frank Act Representations. The Parties agree that this Agreement (including all transactions reflected herein) is not a "swap" within the meaning of the Commodity Exchange Act ("CEA") and the rules, interpretations and other guidance of the Commodity Futures Trading Commission ("CFTC rules"), and that the primary intent of this Agreement is physical settlement (i.e., actual transfer of ownership) of the nonfinancial commodity and not solely to transfer price risk. In reliance upon such agreement, each Party represents to the other that:

(a) With respect to the commodity to be purchased and sold hereunder, it is a commercial market participant, a commercial entity and a commercial party, as such terms are used in the CFTC rules, and it is a producer, processor, or commercial user of, or a merchant handling, the commodity and it is entering into this Agreement for purposes related to its business as such;

(b) It is not registered or required to be registered under the CFTC rules as a swap dealer or a major swap participant;

(c) It has entered into this Agreement in connection with the conduct of its regular business and it has the capacity or ability to regularly make or take delivery of the commodity to be purchased and sold hereunder;

(d) With respect to the commodity to be purchased and sold hereunder, it intends to make or take physical delivery of the commodity;

(e) At the time that the Parties enter into this Agreement, any embedded volumetric optionality in this Agreement is primarily intended by the holder of such option or optionality to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, the commodity to be purchased and sold hereunder;

(f) With respect to any embedded commodity option in this Agreement, such option is intended to be physically settled so that, if exercised, the option would result in the sale

of the commodity to be purchased or sold hereunder for immediate or deferred shipment or delivery;

(g) The commodity to be purchased and sold hereunder is a nonfinancial commodity, and is also an exempt commodity or an agricultural commodity, as such terms are defined and interpreted in the CFTC rules.

To the extent that reporting of any transactions related to this Agreement is required by the CFTC rules, the Parties agree that Seller shall be responsible for such reporting (the "Reporting Party"). The Reporting Party's reporting obligations shall continue until the reporting obligation has expired or has been terminated in accordance with CFTC rules. The Buyer, as the Party that is not undertaking the reporting obligations shall timely provide the Reporting Party all necessary information requested by the Reporting Party for it to comply with CFTC rules.

19.7 Change in Law or Buyer's Accounting Treatment, Subsequent Judicial or Regulatory Action.

(a) If, during the Term of this Agreement, there is a change in Law or accounting standards or rules or a change in the interpretation or applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with this Agreement or the amounts paid for Products purchased hereunder the Buyer shall prepare an amendment to this Agreement to avoid or mitigate such impacts. Buyer shall prepare such amendment in a manner that is designed to be limited to changes required to avoid or mitigate the adverse balance sheet or creditworthiness impact on Buyer. Buyer shall use commercially reasonable efforts to prepare such amendment in a manner that mitigates any material adverse effect(s) on Seller (as identified by Seller, acting reasonably) that could reasonably be expected to result from such amendment, but only to the extent that such mitigation can be accomplished in a manner that is consistent with the purpose of such amendment. Seller agrees to execute such amendment; provided that such amendment does not (unless Seller otherwise agrees) alter: (i) the purchase and sale obligations of the Parties pursuant to this Agreement, or (ii) the Price or the Adjusted Price, as applicable; provided, further, that Seller may terminate the Agreement if it is agreed by Buyer and Seller or determined in a final and non-appealable order of a court that the proposed amendment will impose costs (imposed solely by such proposed amendment) on Seller's purchase and sale obligations in an amount equal to or greater than ten percent (10%) of the Price.

(b) Upon a determination by a court or regulatory body having jurisdiction (i) over this Agreement or any of the Parties hereto, or (ii) over the establishment and enforcement of any of the statutes or regulations or orders or actions of regulatory agencies (including the PUC) supporting this Agreement or (iii) over the rights or obligations of the Parties hereunder that any of the statutes or regulations supporting this Agreement or the rights or obligations of the Parties hereunder, or orders of or actions of regulatory agencies (including the PUC) implementing such statutes or regulations, or this Agreement on its face or as applied, in the reasonable determination by a Party, violates any Law (including the State or Federal Constitution) (an "Adverse Determination"), each Party shall have the right to suspend performance under this Agreement without liability. Seller may deliver and sell Products to a

third party during any period of time for which Buyer suspends payments or purchases under this Section.

Upon an Adverse Determination becoming final and non-appealable, Buyer shall make a good faith determination regarding whether the Adverse Determination does or may adversely affect the enforceability of any provision of this Agreement and/or Buyer's continued ability to recover all of its costs incurred under and in connection with this Agreement for the entire term and to recover remuneration equal to two and three quarters percent (2.75%) of Buyer's annual payments under this Agreement for the term of this Agreement and whether such adverse effect(s) of the Adverse Determination can reasonably be mitigated by amending the Agreement in a manner that allows the Agreement to continue with modification. If, in Buyer's sole reasonable judgment, such adverse effect(s) of the Adverse Determination cannot be reasonably mitigated by amending the Agreement, either Party shall have the right to terminate the Agreement. If Buyer determines that such effect(s) can be so mitigated, it shall promptly prepare an amendment to this Agreement designed to be limited to changes required to avoid or mitigate such effect(s). Thereafter, Buyer and Seller shall negotiate the terms of such amendment in good faith; provided, however, that neither Buyer nor Seller will be required to agree to any particular amendment. If Seller and Buyer cannot reach agreement on such amendment within sixty (60) days after Buyer delivers to Seller the first draft thereof, then either Party may terminate this Agreement by written notice to the other Party delivered within thirty (30) days after such sixty (60) day period. Upon a termination pursuant to this section, (A) Seller shall: (a) prepare a final invoice to Buyer for Products Delivered to Buyer, which Buyer shall pay in the normal course pursuant to Section 5.2(b); (b) have no further obligations or liabilities to Buyer and (c) have the right to sell Energy, Environmental Attributes and capacity to third parties and (B) Seller and Buyer shall have no further obligations or liabilities to the other Party under this Agreement.

20. COUNTERPARTS; FACSIMILE SIGNATURES

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

21. NO DUTY TO THIRD PARTIES

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

22. SEVERABILITY

If any term or provision of this Agreement or the interpretation or application of any term or provision to any prior circumstance is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, the remainder of this Agreement and the interpretation or application of all other terms or provisions to Persons or circumstances other than those which

are unenforceable, illegal or invalid shall not be affected thereby, and each term and provision shall be valid and be enforced to the fullest extent permitted by law so long as all essential terms and conditions of this Agreement for both Parties remain valid, binding and enforceable and have not been declared to be unenforceable, illegal or invalid by a Governmental Entity of competent jurisdiction. The Parties acknowledge and agree that essential terms and conditions of this Agreement for each Party include, without limitation, all pricing and payment terms and conditions of this Agreement, and that the essential terms and conditions of this Agreement for Buyer also include, without limitation, the terms and conditions of Section 19.7 of this Agreement.

23. INDEPENDENT CONTRACTOR

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

24. ENTIRE AGREEMENT

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

[Signature page follows]

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

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

By: _____

Name: John V. Vaughn
Title: Authorized Signatory

CRC
CMA

CHINOOK SOLAR, LLC

By: _____

Name:
Title:

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.

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

By: _____
Name:
Title:

CHINOOK SOLAR, LLC

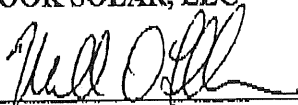
By:  _____
Name: Michael O'Sullivan
Title: Vice President

EXHIBIT A

DESCRIPTION OF FACILITY

Facility: The Facility is a net 30.0 MWac nameplate solar photovoltaic generation facility located on properties to the south of New Hampshire Route 119 East and to the east of New Hampshire Route 12 in the Town of Fitzwilliam, Cheshire County, New Hampshire.

Operational Limitations: Utility-scale solar generation will only operate during daytime periods when sufficient sunlight is available to generate electricity from the Facility, however once the weather conditions are favorable the Facility should begin producing without significant startup time required. The Facility is not limited on the number of scheduled startups per year, which could occur daily or more than once per day, depending on weather conditions.

Delivery Point: Settlement in the ISO-NE energy market system will occur when Energy is supplied into Buyer's ISO-NE settlement account at the ISO New England pricing node ("pnode") for the Facility established in accordance with ISO-New England Rules. The Delivery Point is the ISO New England Pool Transmission Facilities ("PTF") in the vicinity of the referenced pnode. Seller shall be responsible for all charges, fees and losses required for Delivery of Energy from the generator to the Delivery Point, including but not limited to (1) all non-PTF and/or distribution system losses, (2) all transmission and/or distribution interconnection charges associated with the Facility, and (3) the cost of Delivery of the Products to the Delivery Point, including all related administrative fees and non-PTF and/or distribution wheeling charges. In addition Seller shall also be responsible to apply for and schedule all such services.

Proposed Facility Size: 30.0 MWac.

Criteria for Substantial Completion: See Exhibit B.

EXHIBIT B

i. All significant land use, stormwater, and building permits necessary to construct the **Chinook Solar** Facility will be in place on or before July 1, 2019, as summarized below. This is inclusive of the following:

Town: If required, Town of Fitzwilliam approvals for construction including site plan approval and any variances or conditional uses.

State: If required, New Hampshire Site Evaluation Committee (“NHSEC”) Certificate of Site and Facility, New Hampshire Department of Environmental Services (“NHDES”) NPDES Stormwater General Permit for Construction, NHDES Section 401 Water Quality Certification Under Section 401 of the Clean Water Act, NHDES Alteration of Terrain permit, NHDES Wetland and Dredge permit, New Hampshire Division of Historical Resources (“NHDHR”) Section 106 NHPA Consultation.

Federal: If required, U.S. Army Corps of Engineers (“ACOE”) Section 10 and 404 Authorization and U.S. Fish and Wildlife Service (“USFWS”) Endangered Species Act (ESA) Section 7 consultation.

Ancillary and minor permits, including if required, all road crossing agreements with the municipal, county, or state department of transportation (such as New Hampshire Department of Transportation, (“NH DOT”)) access permits will be in place on or before July 1, 2019.

ii. **Chinook Solar, LLC** will have acquired all required real property rights necessary for construction and operation of the Facility and the interconnection of the Facility to the Interconnecting Utility in full and final form with all options and/or contingencies having been exercised demonstrating complete site control by July 1, 2019.

iii. **Chinook Solar, LLC** will have closed all of the Financing adequate for the development and construction of the Facility or other demonstration to Buyer’s reasonable satisfaction of the financial capability to construct the Facility, including, as applicable, Seller’s financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades on or before June 1, 2019.

iv. **Chinook Solar, LLC** will achieve Commercial Operation Date by November 1, 2019.

Permitting Critical Path

Agency	Description of Permit/Authorization
Federal	
1. ACOE	Section 10 and 404 Authorization: The discharge of dredged or fill material into wetlands, streams, and lakes that are subject to regulation under the Clean Water Act (what are commonly referred to as “jurisdictional waters”). New Hampshire Programmatic General Permit is assumed to be applicable to this Facility, although an individual permit may be required.

2. USFWS	Endangered Species Act (ESA) Section 7 consultation: The USFWS has regulatory authority over the Endangered Species Act of 1973, which protects federally listed threatened and endangered species, and the Migratory Bird Treaty Act. Any federal action, such as a decision on a wetland permit or Section 10 permit modification will trigger a review for endangered species.
State	
1. NHSEC	Certificate of Site and Facility for a Renewable Energy Facility: Per RSA 162(H), newly sited energy facilities producing 30 MW of power or more falls under the jurisdiction and oversight of the NH Site Evaluation Committee (“SEC”) permitting process.
2. NHDES	NPDES Stormwater General Permit for Construction : Required for construction work area >1 acre. Requires preparation of a Stormwater Pollution Prevention Plan and filing of Notice of Intent (“NOI”).
3. NHDES	Section 401 Water Quality Certification: Under Section 401 of the Clean Water Act, the OEPA evaluates facilities that will result in the discharge of dredge or fill material into state waters and whether the discharge violates water quality standards.
4. NHDES	Alteration of Terrain permit : Required when alteration of more than 1) 100,000 square feet (or 2.30 acres) or 2) 50,000 square feet (or 1.15 acres) of area within a Shoreland Protection Zone or 3) an area with 25 percent grade and within 50 feet of any surface water.
5. NHDES	Wetland and Dredge permit: Required when activities occur within identified wetland and stream boundaries. Facility with more than 20,000 square feet of direct wetland impact are classified as “major” impacts and facilities requiring less than 20,000 square feet of direct wetland impacts are classified as “minor” impacts.
6. NHDHR	Section 106 NHPA Consultation – Federal permitting decisions will trigger consultation on the presence of any historically and culturally significant properties or areas that may be impacted by the Facility.
7. NHDOT	NH DOT access permits: Required for ingress and egress to/from state highway.
Local	
1. Town of Fitzwilliam	Local ministerial permits (building, electrical, road access permits): Required for new developments.

2. Town of Fitzwilliam	Site Plan Approval: if Facility not permitted through state SEC process discussed above, Facility would need site plan approval from Town of Fitzwilliam Planning Board, as well as potential zoning relief from the Fitzwilliam Zoning Board.
------------------------	---

Land Control

<u>Owner</u>	<u>Agreement Type</u>	<u>Land Use</u>	<u>Acreage</u>
David and Mary Rich	Purchase Option	Solar Power Facilities	310 acres
Edward and Carmen Van Blarcom	Purchase Option	Solar Power Facilities	45 acres
Ewa Duz	Lease	Solar Power Facilities	139.85 acres
James H. Guenther	Purchase Option	Solar Power Facilities	47.2 acres
Jonas Damon Realty Company, Inc.	Purchase Option	Solar Power Facilities	50 acres
Mukhbain and Navdeep Sidhu	Lease	Solar Power Facilities	83.8 acres
Thomas T. Frazier	Purchase Option	Solar Power Facilities	142.7

EXHIBIT C

FORM OF PROGRESS REPORT

For the Quarter Ending: _____

Milestones Achieved:

Milestones Pending:

Status of Progress toward achievement of Milestones during the quarter:

Status of permitting and Permits obtained during the quarter:

Status of Financing for Facility:

Current projection for Financial Closing Date:

Events expected to result in delays in achievement of any Milestones:

Critical Milestones not yet achieved and projected date for achievement:

Current projection for Commercial Operation Date:

EXHIBIT D

PRODUCTS AND PRICING

1. Price for Buyer's Percentage Entitlement of Products up to the Contract Maximum Amount. The Price for the Buyer's Percentage Entitlement of Delivered Products up to the Contract Maximum Amount in nominal dollars shall be as follow:

(a) Commencing on the Commercial Operation Date, the Price per MWh for each billing period shall be \$81.75 per MWh and shall be allocated between Energy and RECs as follows:

(i) Energy = The \$/MWh price of Energy for the applicable month shall be equal to the weighted average of the Real-Time or Day Ahead Locational Marginal Price (as applicable consistent with Section 4.2(a)) in that month (also on a \$/MWh basis) for the Node on the Pool Transmission Facilities to which the Facility is interconnected.

(ii) RECs = The Price less the Energy allocation determined above for the applicable billing period, expressed in \$/MWh.

(b) The Adjusted Price for Energy shall be equal to \$56.75 per MWh.

If the market price at the Delivery Point in the Real-Time or Day-Ahead markets, as applicable, for Energy Delivered by Seller is negative in any hour, the payment to Seller for deliveries of Energy shall be reduced by the difference between the absolute value of the hourly LMP at the Delivery Point and \$0.00 per MWh for that Energy for each such hour. Each monthly invoice shall reflect a reduction for all hours in the applicable month in which the LMP for the Energy at the Delivery Point is less than \$0.00 per MWh.

Examples. If delivered Energy equals 1 MWh and Price equals \$50.00/MWh:

LMP at the Delivery Point equals (or is greater than) \$0.00/MWh	
Buyer payment of Price to Seller	\$50.00
Seller credit/reimbursement for negative LMP to Buyer	\$0.00
Net Result:	Buyer pays Seller \$50 for that hour

LMP at the Delivery Point equals -\$150.00/MWh	
Buyer payment of Price to Seller	\$50.00
Seller credit/reimbursement for negative LMP to Buyer	\$150.00
Net Result:	Seller credits or reimburses Buyer \$100 for that hour

(c) Price for Buyer's Percentage Entitlement of Products Delivered in excess of Contract Maximum Amount. The Products Delivered in excess of the Contract Maximum Amount shall be purchased by Buyer at a Price equal to the product of (x) the MWhs of Energy in excess of the

Contract Maximum Amount Delivered to the Delivery Point and (y) the lesser of (i) ninety percent (90%) of the Real Time LMP at such Delivery Point, or (ii) the Price determined in accordance with Section 1(a) of this Exhibit D for each hour of the month during which such Energy in excess of the Contract Maximum Amount is Delivered to Buyer.

(d) For those hours when the Real Time LMP at the Delivery Point (as determined by ISO-NE) is negative, the payment from Buyer to Seller shall be reduced for Products Delivered in excess of the Contract Maximum Amount by an amount equal to the product of (x) the MWhs of Energy in excess of the Contract Maximum Amount Delivered to the Delivery Point and (y) one hundred percent (100%) of the absolute value of the Real Time LMP at such Delivery Point for each hour of the month during which such Energy in excess of the Contract Maximum Amount is Delivered to Buyer. All rights and title to RECs associated with Energy Delivered in excess of the Contract Maximum Amount shall remain with Buyer whether the Real Time LMP is positive or negative. In the event that Seller received RECs associated with Energy Delivered in excess of the Contract Maximum Amount, Seller shall not hold or claim to hold equitable title to such RECs and shall promptly transfer such RECs to Buyer's GIS account.

EXHIBIT E
RELATED TRANSMISSION FACILITIES

None

**RPS CLASS I RENEWABLE GENERATION UNIT
POWER PURCHASE AGREEMENT
BETWEEN
THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID
AND
FARMINGTON SOLAR, LLC
As of May 25, 2017**

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	1
2. EFFECTIVE DATE; TERM.....	13
2.1 Effective Date	13
2.2 Term.....	13
3. FACILITY DEVELOPMENT AND OPERATION	14
3.1 Critical Milestones.....	14
3.2 Delay Damages.	15
3.3 Construction and Changes in Capacity.	16
3.4 Commercial Operation.....	17
3.5 Operation of the Facility.	19
3.6 Interconnection and Delivery Services.	21
4. DELIVERY OF PRODUCTS.....	22
4.1 Obligation to Sell and Purchase Products.	22
4.2 Scheduling and Delivery.....	22
4.3 Failure of Seller to Deliver Products	23
4.4 Failure by Buyer to Accept Delivery of Products.....	24
4.5 Delivery Point.	24
4.6 Metering.....	24
4.7 RECs.	25
4.8 Deliveries During Test Period	27
4.9 Title to Facility.....	27
5. PRICE AND PAYMENTS FOR PRODUCTS	27
5.1 Price for Products.....	27
5.2 Payment and Netting.....	28
5.3 Taxes, Fees and Levies.	29
6. SECURITY FOR PERFORMANCE.....	30
6.1 Grant of Security Interest.....	30
6.2 Seller’s Support.....	30
6.3 Delivery of Credit Support.....	31
6.4 Reduction and Substitution of Posted Collateral.	31
6.5 [Reserved].	32

TABLE OF CONTENTS (CONT.)

	<u>Page</u>
6.6 Cash.....	32
6.7 Exercise of Rights Against Posted Collateral.	35
7. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS	36
7.1 Representations and Warranties of Buyer.....	36
7.2 Representations and Warranties of Seller	37
7.3 Continuing Nature of Representations and Warranties	39
7.4 Forward Capacity Market Participation.....	39
8. REGULATORY APPROVAL	40
8.1 Receipt of Regulatory Approval	40
8.2 Related Transmission Approvals	40
9. BREACHES; REMEDIES	40
9.1 Events of Default by Either Party	40
9.2 Events of Default by Seller	41
9.3 Remedies.....	42
10. FORCE MAJEURE	46
10.1 Force Majeure.	46
11. DISPUTE RESOLUTION	47
11.1 Dispute Resolution.....	47
11.2 Allocation of Dispute Costs	47
11.3 Consent to Jurisdiction.....	47
11.4 Waiver of Jury Trial and Inconvenient Forum Claim.....	48
12. CONFIDENTIALITY.....	48
12.1 Nondisclosure	48
12.2 Public Statements.....	49
13. INDEMNIFICATION.....	49
14. ASSIGNMENT AND CHANGE OF CONTROL	49
14.1 Prohibition on Assignments.....	49
14.2 Permitted Assignment by Seller.....	49
14.3 Change in Control over Seller.....	49
14.4 Permitted Assignment by Buyer	50
14.5 Prohibited Assignments	50
15. TITLE; RISK OF LOSS	50

TABLE OF CONTENTS (CONT.)

	<u>Page</u>
16. AUDIT	50
16.1 Audit	50
16.2 Access to Financial Information	51
17. NOTICES.....	51
18. WAIVER AND MODIFICATION.....	51
19. INTERPRETATION.....	52
19.1 Choice of Law.....	52
19.2 Headings	52
19.3 Forward Contract	52
19.4 Standard of Review.....	52
19.5 Change in ISO-NE Rules and Practices.....	53
19.6 Dodd Frank Act Representations	53
19.7 Change in Law or Buyer’s Accounting Treatment, Subsequent Judicial or Regulatory Action.....	54
20. COUNTERPARTS; FACSIMILE SIGNATURES	55
21. NO DUTY TO THIRD PARTIES	55
22. SEVERABILITY	55
23. INDEPENDENT CONTRACTOR.....	56
24. ENTIRE AGREEMENT.....	56

Exhibits

Exhibit A	Description of Facility
Exhibit B	Seller’s Critical Milestones – Permits and Real Estate Rights
Exhibit C	Form of Progress Report
Exhibit D	Products and Pricing
Exhibit E	Related Transmission Facilities

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (as amended from time to time in accordance with the terms hereof, this “**Agreement**”) is entered into as of May 25, 2017 (the “**Effective Date**”), by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation (“**Buyer**”), and Farmington Solar, LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller are individually referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**”.

WHEREAS, Seller is developing the Farmington Solar electric generation facility to be located in Farmington, Maine, which is more fully described in Exhibit A hereto (the “**Facility**”), from which the Buyer’s Percentage Entitlement of the Products (as defined below) is to be delivered to Buyer pursuant to the terms of this Agreement; and

WHEREAS, the Facility is, and shall qualify as a RPS Class I Renewable Generation Unit in the state of Rhode Island and which is expected to be in commercial operation by November 1, 2019; and

WHEREAS, pursuant to R.I.G.L. § 39-26.1, Buyer is authorized to enter into certain long-term contracts for the purchase of energy or energy and renewable energy certificates from renewable generators meeting the requirements of R.I.G.L. § 39-26.-5; and

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

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

1. DEFINITIONS

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

“**Actual Facility Size**” shall mean the actual nameplate capacity of the Facility, as built, and as certified by an Independent Engineer, as provided in Section 3.4(b)(xiii).

“**Adjusted Price**” shall mean the purchase price(s) for Energy referenced in Section 5.1 if the RECs fail to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit and Buyer does not purchase the RECs pursuant to Section 4.1(b) hereof.

“**Adverse Determination**” shall have the meaning set forth in Section 19.7.

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

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

“Alternative Compliance Payment Rate” means the rate per MWh paid by electricity suppliers under applicable Law for failure to supply RECs in accordance with the RPS.

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

“Buyer’s Percentage Entitlement” shall mean Buyer’s rights to seven and one-half percent (7.5%) of the Products. Buyer’s Percentage Entitlement may be adjusted in accordance with Section 3.3(c).

“Buyer’s Taxes” shall have the meaning set forth in Section 5.3(a) hereof.

“Capacity Deficiency” means, at the Commercial Operation Date, the amount (expressed in MW), if any, by which the Actual Facility Size is less than the proposed nameplate capacity of the Facility as set forth in Exhibit A.

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

“Certificate” shall mean an electronic certificate created pursuant to the GIS Operating Rules or any successor thereto to represent certain Environmental 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.

“Collateral Account” shall have the meaning specified in Section 6.6(a)(iii)(B) hereof.

“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.

“Collateral Requirement” shall mean at any time the amount of Development Period Security or Operating Period Security required under this Agreement at such time.

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

“Contract Maximum Amount” shall mean 3.702 MWh per hour of Energy and a corresponding portion of all other Products, as may be adjusted in accordance with Section 3.3(b).

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

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

“Credit Support” shall have the meaning specified in Section 6.2(d) hereof.

“Credit Support Delivery Amount” shall have the meaning specified in Section 6.3 hereof.

“Credit Support Return Amount” shall have the meaning specified in Section 6.4 hereof.

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

“Custodian” shall have the meaning specified in Section 6.6(a)(i) hereof.

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

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

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

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

“Deliver” or **“Delivery”** shall mean with respect to (i) Energy, to supply Energy at the Delivery Point in accordance with the terms of this Agreement and the ISO-NE Rules, and (ii) RECs, to supply RECs in accordance with Section 4.7(e).

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

“Delivery Point” shall mean the specific location where Seller shall transmit its Energy to Buyer, as set forth in Exhibit A hereto.

“Development Period Security” shall have the meaning set forth in Section 6.2(a) hereof.

“Dispute” shall have the meaning set forth in Section 11.1 hereof.

“Disputing Party” shall have the meaning set forth in Section 6.7(a) hereof.

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

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

“Eligible Renewable Energy Resource” means resources as defined in R.I.G.L. § 39-26-5.

“Energy” shall mean electric “energy,” as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in MWh 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 RPS laws and regulations of the state of Rhode Island, and under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to Buyer’s Percentage Entitlement to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility, up to and including the Contract Maximum Amount, during the Services Term including Buyer’s Percentage Entitlement to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility’s generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the GIS in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include: (i) any production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; or (iii) any state,

federal or private grants, financing, guarantees or other credit support relating to the construction or ownership, operation or maintenance of the Facility or the output thereof.

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

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

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

“FCM” shall mean the Forward Capacity Market described in the ISO-NE Tariff, which includes a mechanism for procuring capacity in the New England Control Area, or any successor thereto.

“Federal Funds Rate” shall mean the annualized interest rate for the applicable month as set forth in the statistical release designated as H.15, or any successor publication, published by the Board of Governors of the Federal Reserve System.

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

“Financial Closing Date” shall mean the date of the closing of the initial agreements for any Financing of the Facility and of an initial disbursement of funds under such agreements.

“Financing” shall mean any indebtedness (whether secured or unsecured) or other financing arrangement, including without limitation loans, guarantees, notes, convertible debt, bond issuances, tax equity investments, sale/leaseback arrangements and partnership-flips, adequate for the development, construction, or operation of the Facility.

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

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

“GIS” shall mean the NEPOOL 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.

“GIS Operating Rules” are the NEPOOL Generation Information System Operating Rules effective as of the Effective Date, as amended, superseded, or restated from time to time.

“Good Utility Practice” shall mean compliance with all applicable laws, codes, rules and regulations, all ISO-NE Rules and ISO-NE Practices, and any practices, methods and

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

“Guaranteed Commercial Operation Date” shall have the meaning set forth in Section 3.1(a)(iv) hereof.

“I.3.9 Confirmation” refers to the ISO-NE Tariff Section I.3.9 pertaining to ISO-NE’s approval of proposed plans as specified therein.

“Independent Engineer” shall mean a licensed Professional Engineer with expertise in the development of renewable energy projects using the same renewable energy technology as the Facility, reasonably selected by and retained by Seller in order to determine the as-built nameplate capacity of the Facility as provided in Section 3.4(b)(xiii) hereof.

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

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility and ISO-NE, as applicable, regarding the interconnection of the Facility to the Transmission System of the Interconnecting Utility, as the same may be amended from time to time.

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

“Interest Amount” shall mean with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day (but excluding any interest previously earned on such Cash); multiplied by (b) the Collateral Interest Rate for that day; divided by (c) 360.

“Interest Period” shall mean the period from (and including) the last Business Day on which an Interest Amount was Transferred by Buyer (or if no Interest Amount has yet been Transferred by Buyer, the Business Day on which Cash was Transferred to Seller)

to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

“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 in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Agreement, and any applicable successor practices and procedures.

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

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

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

“Late Payment Rate” shall have the meaning set forth in Section 5.2 hereof.

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

“Lender” shall mean any and all Persons (A) lending money, extending credit or providing loan guarantees (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements of the Facility (including the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; (iv) for any capital improvement or replacement related to the Facility; or (v) for the purchase of the Facility and the related rights from Seller; or (B) participating (directly or indirectly) as an equity investor (including a tax equity investor) in the Facility; or (C) any lessor under a lease finance arrangement relating to the Facility.

“Letter of Credit” shall mean an irrevocable, non-transferable, standby letter of credit, issued by a Qualified Institution utilizing a form acceptable to the Party in whose favor

such letter of credit is issued. All costs relating to any Letter of Credit shall be for the account of the Party providing that Letter of Credit.

“Letter of Credit Default” shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events (a) the issuer of such Letter of Credit shall fail to be a Qualified Institution; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (c) the issuer of the Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or (d) the Letter of Credit shall expire or terminate or have a Value of \$0 at any time the Party on whose account that Letter of Credit is issued is required to provide Credit Support hereunder and that Party has not Transferred replacement Credit Support meeting the requirements of this Agreement; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of this Agreement.

“Locational Marginal Price” or “LMP” shall have the meaning set forth in the ISO-NE Rules.

“Market Price” shall mean the price received by Buyer by selling the Energy into either the ISO-NE-administered Day-Ahead or Real-Time Markets, as applicable.

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

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

“MW” shall mean a megawatt AC.

“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 Corporation and shall include any successor thereto.

“Network Upgrades” shall mean upgrades to the Pool Transmission Facilities and the Transmission Provider’s transmission and distribution systems, as determined and identified in the interconnection study approved in connection with construction of the Facility, necessary for Delivery of the Energy to the Delivery Point, including those that are necessary for the Seller’s satisfaction of the obligations under Section 77.4 of this Agreement.

“New England Control Area” shall have the meaning as set forth in the ISO-NE Tariff.

“Newly Developed Renewable Energy Resource” shall mean, pursuant to R.I.G.L. § 39-26.1-2(6), an electrical generation unit that uses exclusively an Eligible Renewable

Energy Resource, and either (x) has neither begun operation, nor have the developers of the unit implemented investment or lending agreements necessary to finance the construction of the unit or (y) is located within the state of Rhode Island and obtained project financing on or after January 1, 2009.

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

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

“Obligations” shall have the meaning specified in Section 6.1 hereof.

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

“Operating Period Security” shall have the meaning set forth in Section 6.2(b) hereof.

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

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

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

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

“Posted Collateral” shall mean all Credit Support and all proceeds thereof that have been Transferred to or received by a Party under this Agreement and not Transferred to the Party providing the Credit Support or released by the Party holding the Credit Support. Any Interest Amount or portion thereof not Transferred will constitute Posted Collateral in the form of Cash.

“Price” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on Exhibit D.

“Products” shall mean Energy and RECs; provided, however, that Energy and RECs generated by or associated with the Facility during the Test Period and RECs not purchased by Buyer under Section 4.1(b) shall not be deemed Products.

“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.

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

“Reference Market-Maker” shall mean a leading dealer in the relevant market that is selected in a commercially reasonable manner and is not an affiliate of either party.

“Regulatory Approval” shall mean the PUC’s approval of this Agreement without material modification or conditions pursuant to R.I.G.L. §§ 39-26.1-3 through 39-26.1-5 and the regulations promulgated thereunder, including the recovery by Buyer of its costs incurred under this Agreement and remuneration equal to two and three-quarters percent (2.75%) of Buyer’s actual annual payments under this Agreement pursuant to R.I.G.L. § 39-26.1-4, which approval shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion.

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

“Related Transmission” shall mean those transmission and distribution facilities to be used by Seller for delivery of the Energy under this Agreement, as described in Exhibit E hereto.

“Related Transmission Approvals” shall mean those FERC filings, agreements, tariffs and approvals associated with service on the Related Transmission.

“Reliability Curtailment” shall mean any curtailment of Delivery of Energy resulting from (i) an emergency condition as defined in the Interconnection Agreement or the ISO-NE Tariff, or (ii) any other order or directive of the Interconnecting Utility or the Transmission Provider pursuant to an Interconnection Agreement or tariff.

“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 satisfy the RPS for a RPS Class I Renewable Generation Unit, and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such RPS Class I Renewable Generation Unit.

“Replacement Energy” shall mean Energy purchased by Buyer as replacement for any Delivery Failure relating to the Energy to be provided hereunder.

“Replacement Price” shall mean the price at which Buyer, acting in a commercially reasonable manner, (A) purchases Replacement Energy and/or Replacement RECs plus (i) costs incurred by Buyer in purchasing such Replacement Energy and/or Replacement RECs, (ii) additional transmission charges, if any, incurred by Buyer to transmit Replacement Energy to the Delivery Point, and (iii) any other costs and losses incurred by Buyer as a result of the Delivery Failure; provided, however, that 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, or (B) elects in its sole discretion not to purchase Replacement Energy and/or Replacement RECs, the market value of Energy and/or RECs (provided that the market value of the RECs shall in no event exceed the Alternative Compliance Payment Rate) as of the date and the time of the Delivery Failure plus any other costs and losses incurred by Buyer as a result of the Delivery Failure will replace the price at which Buyer purchases Replacement Energy and/or Replacement RECs in the calculation of the Replacement Price relating to the Energy and/or RECs to be purchased and sold hereunder.

“Replacement RECs” shall mean any generation or environmental attributes, including any Certificates or other certificates or credits related thereto reflecting generation by a RPS Class I Renewable Generation Unit that are purchased by Buyer as replacement for any Delivery Failure.

“Request Date” shall have the meaning set forth in Section 6.7(a) hereof.

“Requesting Party” shall have the meaning set forth in Section 6.7(a) hereof.

“Resale Damages” shall mean, with respect to any Rejected Purchase, an amount equal to (a) the positive net amount, if any, by which the applicable Price that would have been paid pursuant to Section 5.1 hereof for such Rejected Purchase, had it been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase (in MWh and/or RECs, as applicable), 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 in accordance with the terms of this Agreement. Seller shall provide a written statement for the applicable period 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 that Seller would not have incurred but for the 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.

“Rounding Amount” shall have the meaning specified in Section 6.2(c) hereof.

“RPS” shall mean the requirements established pursuant to R.I.G.L. § 39-26-1 et seq. and the regulations promulgated thereunder that require all retail electricity suppliers in Rhode Island to provide a minimum percentage of electricity from RPS Class I Renewable Generation Units, and such successor laws and regulations as may be in effect from time to time.

“RPS Class I Renewable Generation Unit” shall mean a Newly Developed Renewable Energy Resource that produces RECs that qualify for the RPS.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to 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.

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

“Seller’s Taxes” shall have the meaning set forth in Section 5.3(a) hereof.

“Substitute Credit Support” shall have the meaning assigned in Section 6.6(e) hereof.

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

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

“Test Energy” shall have the meaning set forth in Section 4.8 hereof.

“Test Period” shall have the meaning set forth in Section 3.4(a) hereof.

“Transfer” shall mean, with respect to any Posted Collateral or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

- (a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the Party to whom such Cash is being delivered; and
- (b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the Party to whom such Letter of Credit is being delivered.

“Transmission Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; (b) Buyer; and/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.

“Transmission System” shall mean the transmission facilities operated by a Transmission Provider, now or hereafter in existence, which provide energy transmission service for the Energy to or from the Delivery Point.

“Unit Contingent” shall mean that the Products are to be supplied only from the Facility and only to the extent that the Facility is in operation.

“Valuation Agent” means the Requesting Party; provided, however, that in all cases, if an Event of Default has occurred and is continuing with respect to the Party designated as the Valuation Agent, then in such case, and for so long as the Event of Default continues, the other Party shall be the Valuation Agent.

“Valuation Date” shall mean each Business Day.

“Valuation Percentage” shall have the meaning specified in Section 6.2(d) hereof.

“Valuation Time” shall mean the close of business on the Business Day before the Valuation Date or date of calculation, as applicable.

“Value” shall mean, with respect to Posted Collateral or Credit Support, the Valuation Percentage multiplied by the amount then available under the Letter of Credit to be unconditionally drawn by Buyer.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. Subject in all respects to Section 8.1 and Section 8.2, this Agreement is effective as of the Effective Date.

2.2 Term.

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

(b) The **“Services Term”** is the period during which Buyer is obligated to purchase Products Delivered to Buyer by Seller (not including Energy and RECs Delivered during the Test Period under Section 4.8) commencing on the Commercial Operation Date and continuing for a period of twenty (20) years from the Commercial Operation Date, unless this Agreement is earlier terminated in accordance with the provisions hereof.

(c) At the expiration of the Term or earlier termination of this Agreement pursuant to the terms hereof, the Parties shall no longer be bound by the terms and provisions

hereof, except (i) to the extent necessary to make payments of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of a breach of, this Agreement, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, and (iii) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

3. FACILITY DEVELOPMENT AND OPERATION

3.1 Critical Milestones.

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

- (i) receipt of all Permits necessary to construct the Facility, as set forth in Exhibit B, in final form, by July 1, 2019;
- (ii) acquisition of all required real property rights necessary for construction and operation of the Facility and the interconnection of the Facility to the Interconnecting Utility in full and final form with all options and/or contingencies having been exercised demonstrating complete site control as set forth in Exhibit B, by July 1, 2019;
- (iii) closing of the Financing adequate for the development and construction of the Facility or other demonstration to Buyer's reasonable satisfaction of the financial capability to construct the Facility, including, as applicable, Seller's financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades by June 1, 2019; and
- (iv) achievement of the Commercial Operation Date by November 1, 2019 ("Guaranteed Commercial Operation 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 reasonably demonstrating with reasonable specificity that such Critical Milestone has been achieved. Seller acknowledges that Buyer will receive such notice solely to monitor progress toward the Commercial Operation Date, and Buyer shall have no responsibility or liability for the development, construction, operation or maintenance of the Facility.

(c) Seller may elect to extend all of the dates for the Critical Milestones not yet achieved by up to four six-month periods from the applicable dates set forth in Section 3.1(a) by posting additional Development Period Security in an amount equal to \$18,510 for each such

six-month period. Any such election shall be made in a written notice delivered to Buyer on or prior to the first date for a Critical Milestone that has not yet been achieved (as such date may have previously been extended).

(d) To the extent a Force Majeure event pursuant to Section 10.1 has occurred that prevents the Seller from achieving the Critical Milestone date for acquisition of real property rights and interconnection (Section 3.1(a)(ii)) or the Commercial Operation Date (Section 3.1(a)(iv)) by the applicable Milestone date, the Critical Milestone Date(s) impacted by such Force Majeure event shall be extended for the duration of the Force Majeure event, but under no circumstances shall extensions of those Critical Milestone dates due to Force Majeure events exceed twelve (12) months beyond the applicable Milestone date, and further provided, that the Seller shall not have the right to declare a Force Majeure event related to the Permits Critical Milestone (Section 3.1(a)(i)) or the Financing Critical Milestone (Section 3.1(a)(iii)).

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

(f) If Seller fails to make material progress toward the Commercial Operation Date, as reasonably determined by either Buyer or the PUC based on Seller's progress with respect to the milestones set forth in Section 3.1(a), within three (3) years after the Effective Date, Buyer may terminate this Agreement by written notice to Seller delivered within sixty (60) days after the third anniversary of the Effective Date (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 except for obligations arising under Article 12.

3.2 Delay Damages.

(a) If the Commercial Operation Date is not achieved by the Guaranteed Commercial Operation Date (as extended pursuant to Sections 3.1(c) and 10.1), Seller shall pay to Buyer damages for each day from and after such date in an amount equal to \$370, commencing on the Guaranteed Commercial Operation Date (as extended pursuant to Sections 3.1(c) and 10.1) and ending on the earlier of (i) the Commercial Operation Date, (ii) the date that Buyer exercises its right to terminate this Agreement under Section 9.3, or (iii) the date that is twelve (12) months after the Guaranteed Commercial Operation Date ("**Delay Damages**"). Delay Damages shall be due under this Section 3.2(a) without regard to whether Buyer exercises its right to terminate this Agreement pursuant to Section 9.3; provided, however, that if Buyer exercises its right to terminate this Agreement under Section 9.3, Delay Damages shall be due and owing to the extent that such Delay Damages were due and owing at the date of such termination.

(b) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Article shall

not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date. Any such termination damages shall be determined in accordance with Article 9.

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

3.3 Construction and Changes in Capacity.

(a) Construction of Facility. Seller shall construct the Facility as described in Exhibit A, in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility and all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to Buyer. Seller shall bear all costs related thereto. Seller may contract with other Persons to provide construction functions, so long as Seller maintains overall control over the construction of the Facility through the Term.

(b) Capacity Deficiency. To the extent that Seller has constructed the Facility in accordance with Good Utility Practice, and met all other requirements for the Commercial Operation Date under Section 3.4(b) of this Agreement, but a Capacity Deficiency exists on the Commercial Operation Date as permitted by Section 3.4(b), then on the Commercial Operation Date, the Contract Maximum Amount shall be automatically and permanently reduced commensurate with the Capacity Deficiency, which reduced Contract Maximum Amount shall be stated in a notice from Buyer to Seller, which notice shall be binding absent manifest error.

(c) Increase in Facility Size. To the extent that Seller has constructed the Facility in accordance with Good Utility Practice, and met all other requirements under Section 3.4(b) of this Agreement, if the Independent Engineer's certification provides that the Actual Facility Size exceeds the Proposed Facility Size as provided in Exhibit A, the Buyer's Percentage Entitlement will be recalculated and replaced by the percentage derived by dividing the Contract Maximum Amount by the Actual Facility Size.

(d) Progress Reports. Within ten (10) days of the end of each calendar quarter after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer with a progress report regarding Critical Milestones not yet achieved, including projected time to completion of the Facility, in accordance with the form attached hereto as Exhibit C, and shall provide supporting documents and detail regarding the same upon Buyer's request. Seller shall

permit Buyer and its advisors and consultants to review and discuss with Seller and its advisors and consultants such progress reports during business hours and upon reasonable notice to Seller.

(e) Site Access. Buyer and its representatives shall have the right but not the obligation, during business hours and upon reasonable notice to Seller, to view the construction of the Facility; *provided*, that (i) Buyer and its representatives shall observe all applicable Facility safety rules while such authorized individuals are at the Facility site, and (ii) Seller may remove any such authorized individuals from the Facility site if they have violated any of the Facility safety rules.

3.4 Commercial Operation.

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

(b) The Commercial Operation Date shall occur on the date on which the Facility as described in Exhibit A is completed (subject, if applicable, to a Capacity Deficiency so long as the Actual Facility Size on the Commercial Operation Date is (1) at least ninety percent (90%) of the proposed nameplate capacity of the Facility as set forth in Exhibit A, and (2) not more than ten (10) MW less than the proposed nameplate capacity of the Facility set forth in Exhibit A) and capable of regular commercial operation in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility, all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to the Buyer have been satisfied, and all performance testing for the Facility has been successfully completed, provided Seller has also satisfied the following conditions precedent as of such date:

- (i) completion of all transmission and interconnection facilities and any Network Upgrades, including final acceptance and authorization to interconnect the Facility from ISO-NE or the Interconnecting Utility in accordance with the fully executed Interconnection Agreement;
- (ii) all Related Transmission Facilities as set forth in Exhibit E are complete and in-service;
- (iii) Seller has obtained and demonstrated possession of all Permits required for the lawful construction and operation of the Facility, for the interconnection of the Facility to the Interconnecting Utility (including any Network Upgrades) and for Seller to perform its obligations under this Agreement, including but not limited to Permits related to environmental matters, all as set forth on Exhibit B;

- (iv) Seller has obtained qualification by the PUC qualifying the Facility as a RPS Class I Renewable Generation Unit;
- (v) All Related Transmission Approvals have been received;
- (vi) Seller has acquired all real property rights needed to construct and operate the Facility, to interconnect the Facility to the Interconnecting Utility, to construct the Network Upgrades (to the extent that it is Seller's responsibility to do so) and to perform Seller's obligations under this Agreement;
- (vii) Seller has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;
- (viii) 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 Settlement Market System;
- (ix) Seller has successfully completed all pre-operational testing and commissioning in accordance with manufacturer guidelines;
- (x) Seller has satisfied all Critical Milestones that precede the Commercial Operation Date in Section 3.1;
- (xi) no Default or Event of Default by Seller shall have occurred and remain uncured;
- (xii) the Facility is owned or leased by, and under the care, custody and control of, Seller.
- (xiii) Seller has delivered to Buyer:

(A) an Independent Engineer's certification stating (i) that the Facility has been completed in all material respects (excepting punchlist items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this Agreement, and (ii) the Actual Facility Size;

(B) certificates of insurance evidencing the coverages required under Section 3.5(i); and

(C) the Operating Period Security; and

- (xiv) Seller has demonstrated that it can reliably transmit real time data and measurements to ISO-NE.

3.5 Operation of the Facility.

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

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

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

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

(e) ISO-NE Status. Seller shall, at all times during the Services Term, either: (i) be an ISO-NE "Market Participant" pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with a Market Participant that shall perform all of Seller's ISO-NE-related obligations in connection with the Facility and this Agreement.

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

(g) RPS Class I Renewable Generation Unit. Subject to Section 4.7(b), Seller shall be solely responsible at Seller's cost for qualifying the Facility as a RPS Class I Renewable Generation Unit and maintaining such qualification throughout the Services Term. Seller shall take all actions necessary to register for and maintain participation in the GIS to register, monitor, track, and transfer RECs. Seller shall provide such additional information as Buyer may request relating to such qualification and participation.

(h) Compliance Reporting. Within **thirty (30)** days following the end of each calendar quarter, Seller shall provide Buyer information pertaining to emissions, fuel types, labor information and any other information to the extent required by Buyer to comply with the disclosure requirements contained under applicable Law and any other such disclosure regulations which may be imposed upon Buyer during the Term, which information requirements will be provided to Seller by Buyer at least fifteen (15) days before the beginning of the calendar quarter for which the information is required. To the extent Buyer is subject to any other certification or compliance reporting requirement with respect to the Products produced by Seller and delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, reasonably available to it and not reasonably available to Buyer) requested by Buyer to permit Buyer to comply with any such reporting requirement.

(i) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company (or any successor thereto) the insurance coverage and with the deductibles that are customary for a generating facility of the type and size of the Facility and as otherwise legally required. Upon the execution of this Agreement, and at each subsequent policy renewal date thereafter, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, if such evidence of insurance is not issued on a standard ACORD form, (iii) shall evidence a firm obligation of the insurer to provide Buyer with thirty (30) days prior written notice of cancellation or non-renewal of coverage (for coverage modifications that may adversely affect Buyer, Seller shall provide Buyer with thirty (30) days prior written notice), and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(j) 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.

(k) 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, including all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by FERC and any other Governmental Entity, whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of operational and environmental matters relating to the

Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with applicable requirements of Law.

(l) FERC Status. Seller shall be responsible for ensuring that it is in compliance with all FERC directives and requirements necessary for Seller to fulfill its obligations under this Agreement. As part of Seller's satisfaction of this responsibility, it shall maintain the Facility's status as a QF or EWG (to the extent Seller meets the criteria for such status) at all times after the Commercial Operation Date and shall obtain and maintain any requisite authority to sell the output of the Facility at market-based rates, including market-based rate authority to the extent applicable. If Seller certifies the Facility as a QF, for so long as this Agreement is in effect, Seller waives, and agrees not to assert, any rights Seller may have to require Buyer to purchase or transmit electric power or to pay a specified price for electric power by virtue of the status of the Facility as a QF.

(m) Maintenance. No later than (a) the Commercial Operation Date and (b) two months prior to the end of each calendar year thereafter during the Term, Seller shall submit to Buyer a schedule of planned maintenance for the following calendar year for the Facility. Throughout the Term, Seller shall coordinate all planned maintenance with ISO-NE, consistent with ISO-NE Rules, and shall promptly provide applicable information concerning scheduled outages, as determined by ISO-NE, to Buyer. To maximize the value of the Products, to the extent possible and consistent with ISO-NE Rules, Seller shall not schedule maintenance of the Facility during the months of January through February or June through September, and shall operate the Facility so as to maximize energy production during the hours of anticipated peak load and Energy prices in New England; provided, however, that planned maintenance may be scheduled during such period to the extent the failure to perform such planned maintenance is contrary to operation of the Facility in accordance with Good Utility Practice.

3.6 Interconnection and Delivery Services.

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

(b) Seller shall defend, indemnify and hold Buyer harmless against any and all liabilities, fees, costs and expenses, including but not limited to reasonable attorneys' fees arising due to Seller's performance or failure to perform under the Interconnection Agreement or any agreement for delivery service associated with Seller's performance of this Agreement.

4. DELIVERY OF PRODUCTS

4.1 Obligation to Sell and Purchase Products.

(a) Beginning on the Commercial Operation Date and subject to Section 4.1(b) and 4.2(a), Seller shall sell and Deliver, and Buyer shall purchase and receive all right, title and interest in and to, Buyer's Percentage Entitlement of the Products in accordance with the terms and conditions of this Agreement. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are Unit Contingent and shall be subject to the operation of the Facility. Seller agrees that Seller will not curtail or otherwise reduce deliveries of the Products in order to sell such Products to other purchasers. To maximize the value of the Products, to the extent possible and consistent with ISO-NE Rules and Good Utility Practice, Seller shall use commercially reasonable efforts to minimize outages during the time periods of anticipated peak load and peak Energy prices in New England.

(b) Buyer shall not be obligated to accept or pay for any REC or comparable certificate, credit, attribute or other similar product produced by or associated with the Facility which fails to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit, and, to the extent that Buyer does not purchase any such REC or comparable certificate, credit, attribute or other similar product associated with the Facility, Seller may, in its sole discretion, sell, transfer or otherwise dispose of that REC or comparable certificate, credit, attribute or other similar product. In the event that the Buyer notifies Seller that it will not purchase any REC or comparable certificate, credit, attribute or other similar product produced by the Facility which fails to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit, then Buyer may resume purchasing such RECs or comparable certificates, credits, attributes or other similar products produced by the Facility upon thirty (30) days' prior written notice to Seller, unless otherwise agreed by Buyer and Seller.

(c) Seller shall Deliver Buyer's Percentage Entitlement of the Products produced by or associated with the Facility, up to and including the Contract Maximum Amount, 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 except as permitted under this Section 4.1 or otherwise pursuant to this Agreement. Seller shall not enter into any agreement or arrangement under which such Buyer's Percentage Entitlement of the 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.

(a) During the Services Term and in accordance with Section 4.1, Seller shall Schedule and transfer Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Agreement and all ISO-NE Practices and ISO-NE Rules. Seller shall transfer the Energy to Buyer in the Day Ahead Energy Market or Real Time Energy Market, as reasonably agreed from time to time by Buyer and Seller and consistent with prevailing electric industry practices at the time and Buyer shall have

no obligation to pay for any Energy not transferred to Buyer in the Day Ahead Energy Market or 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 system). Notwithstanding any other provision of this Agreement, if during the Term of this Agreement the LMP at the Delivery Point is negative, or, in the reasonable opinion of Seller, is likely to become negative, then Seller may deliver to Buyer a written notice stating that such condition has occurred or is likely to occur and the period during which such condition has occurred or is likely to occur. Buyer and Seller hereby agree that in such event Seller shall be under no obligation to schedule or Deliver Products to the Delivery Point during such period. Seller shall provide Buyer with detailed information, including but not limited to, the start and stop times of such periods of curtailment under this Section 4.2(a) as well as the quantity curtailed, for all such periods of non-delivery during the preceding calendar month which information shall be provided prior to Seller's delivery of the invoice to Buyer.

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.5(e) 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 imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission up to and at the Delivery Point, and Buyer shall be responsible for all of the foregoing after the Delivery Point, provided that Buyer shall have no responsibility or liability for any Network Upgrade. To the extent a Party incurs costs, charges, penalties or losses which are the responsibility of the other Party, (including amounts not credited to Buyer as described in Section 4.2(a)), the other Party shall reimburse such Party for the same.

4.3 Failure of Seller to Deliver Products. In the event that Seller generates Products and fails to satisfy any of its obligations to Deliver such Products or any portion thereof in accordance with Section 4.1, Section 4.2 and Section 4.7, and such failure is not excused under the express terms of this Agreement (a "**Delivery Failure**"), Seller shall pay Buyer an amount for such Delivery Failure (measured in MWh and/or RECs) 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 Failure would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

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

4.5 Delivery Point.

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

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees, uplift, socialized charges, and all other charges in connection with the satisfaction of Seller’s obligations hereunder, including without limitation the Delivery of Energy to and at the Delivery Point. Seller shall indemnify and hold harmless Buyer for any such charges, fees, or expenses imposed upon Buyer by operation of ISO-NE rules or otherwise in connection with Seller’s performance of its obligations hereunder.

4.6 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “**Meters**”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense once each Contract Year. All Meters used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Meters are to be inspected and tested (or adjusted) in accordance with this Section 4.6. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than two percent (2%), (i)

the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility or the ISO-NE Tariff, whichever is applicable, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test (at its own expense) 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 in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

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

4.7 RECs.

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

(b) Regarding the RPS:

(i) Except as provided in subsection (ii) of this Section 4.7(b), all Energy provided by Seller to Buyer from the Facility under this Agreement shall meet the requirements for eligibility pursuant to the RPS, and Seller's failure to satisfy such requirements shall constitute an Event of Default pursuant to Section 9.1(c) of

this Agreement except as provided in Section 4.7(b)(ii), below;
and

- (ii) If solely as a result of change in Law, Energy provided by Seller to Buyer from the Facility under this Agreement no longer meets the requirements for eligibility pursuant to the RPS, such will not constitute an Event of Default under Article 9, provided Seller promptly uses commercially reasonable efforts to ensure that qualification will continue after the change in Law. If, notwithstanding such commercially reasonable efforts and solely as a result of change in Law, the Facility does not qualify as a RPS Class I Renewable Generation Unit, then (A) Seller shall continue to sell, and Buyer shall continue to purchase Energy under this Agreement at the Adjusted Price in accordance with Section 5.1 and (B) any purchases and sales of RECs shall be in accordance with Section 4.1(b).

(c) At Seller's sole cost, Seller shall also obtain and maintain throughout the Services Term qualification as a RPS Class I generation resource under the renewable portfolio standard or similar law of the New England states of Connecticut, Maine, Massachusetts, and New Hampshire, to the extent the renewable energy technology used in the Facility is eligible under such renewable portfolio standard or similar law. At Buyer's request and at Seller's sole cost, Seller shall also obtain qualification under the renewable portfolio standard or similar law of New York and/or any federal renewable energy standard, to the extent the renewable energy technology used in the Facility is eligible under such renewable portfolio standard, renewable energy standard or similar law, and Seller shall use commercially reasonable efforts, consistent with Good Utility Practice, to maintain such qualifications at all times during the Services Term unless otherwise agreed by Buyer. Seller shall also submit to Buyer or as directed by Buyer any information required by any state or federal agency with regard to administration of its rules regarding Environmental Attributes or its renewable energy standard or renewable portfolio standard or Seller's qualification under the foregoing.

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

(e) Prior to the delivery of any Energy hereunder (including any Energy Delivered during the Test Period), either (i) Seller shall cause Buyer to be registered in the GIS as the initial owner of all Certificates to be Delivered hereunder to Buyer or (ii) Seller and Buyer shall effect an irrevocable Forward Certificate Transfer (as defined in the GIS Operating Rules) of the Certificates to be Delivered hereunder to Buyer in the GIS for the Test Period and the

Services Term; provided, however, that no payment shall be due to Seller for any RECs until either (x) the Certificates are actually deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing, or (y) (i) Buyer and Seller enter such an irrevocable Forward Certificate Transfer of the Certificates to be Delivered to Buyer in the GIS, which Forward Certificate Transfer shall be denoted in the GIS as not being capable of rescission by Seller, and (ii) the Energy with which such RECs are associated has been Delivered to Buyer.

(f) The Parties intend for the transactions entered into hereunder to be physically settled, meaning that the RECs are intended to be Delivered in the GIS account of Buyer or its designee as set forth in this Section 4.7.

4.8 Deliveries During Test Period. During the Test Period, Seller shall sell and Deliver, and Buyer shall purchase and receive Buyer's Percentage Entitlement of any Energy ("**Test Energy**") and RECs produced by or associated with the Facility. Notwithstanding the provisions of Section 5.1, payment for Test Energy Delivered during the Test Period and RECs associated with such Test Energy shall be equal to one hundred percent (100%) of the product of (x) the Test Energy Delivered (in MWh) and (y) the lesser of (i) the Adjusted Price determined in accordance with Section 1(a) of Exhibit D for Year 1, or (ii) the Real Time LMP at such Delivery Point. In the event that the Real Time LMP for the Test Energy at the Delivery Point is less than \$0.00 per MWh in any hour, Seller shall credit to Buyer, on the appropriate monthly invoice, an amount equal to one hundred percent (100%) of the product of (i) such Test Energy delivered in such hour and (ii) the absolute value of the hourly Real Time LMP at the Delivery Point. In no event shall the Test Period extend beyond **six (6)** months, except due to Force Majeure.

4.9 Title to Facility. Seller or Lender shall be the legal and beneficial owner of the Facility at all times.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Price for Products. All Products Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Price specified in Exhibit D; provided, however, that if the RECs fail to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit and Buyer does not purchase the RECs pursuant to Section 4.1(b), then all Energy Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Adjusted Price specified in Exhibit D. Other than the (i) payment for the Products under this Section 5.1, (ii) payments related to Meter testing under Section 4.6(b), (iii) payments related to Meter malfunctions under Section 4.6(e), (iv) payment for Energy and RECs during the Test Period in accordance with Section 4.8, (v) payment of any Resale Damages under Section 4.4, (vi) payment of interest on late payments under Section 5.2, (vii) payments for reimbursement of Buyer's Taxes under Section 5.3(a), (viii) return of any Credit Support under Section 6.4, and (ix) payment of any Termination Payment due from Buyer under Section 9.3, Buyer shall not be required to make any other payments to Seller under this Agreement, and Seller shall be solely responsible for all costs and losses incurred by it in connection with the performance of its obligations under this Agreement. In the event that the LMP for the Energy at the Delivery Point is less than \$0.00 per

MWh in any hour, Seller shall credit to Buyer, on the appropriate monthly invoice, an amount equal to the product of (i) such Energy delivered in such hour and (ii) the absolute value of the hourly LMP at the Delivery Point.

5.2 Payment and Netting.

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

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

(c) Disputes and Adjustments of Invoices.

- (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 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 this Section 5.2.
- (ii) Within twelve (12) months of the issuance of an invoice the Seller may adjust any invoice for any arithmetic or computational error and shall provide documentation and information supporting such adjustment to Buyer. Within twelve (12)

months of the receipt of an invoice (or an adjusted invoice), the Buyer may dispute any charges on that invoice. In the event of such a dispute, the Buyer shall give notice to the Seller and shall state the basis for the dispute. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Any claim for additional payment is waived unless the Seller issues an adjusted invoice within twelve (12) months of issuance of the original invoice. Any dispute of charges is waived unless the Buyer provides notice of the dispute to the Seller within twelve (12) months of receipt of the invoice (or adjusted invoice) including such charges.

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

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

5.3 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer, or imposed on or associated with the purchase of such Products by Buyer (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“**Buyer’s Taxes**”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may also elect to deduct any of the amount of any such Seller’s

Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the Facility's eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes, or to receive any other favorable tax or accounting right or benefit, or any grant or subsidy from a Governmental Entity or other Person. Seller's obligations under this Agreement shall be effective regardless of whether the Facility is eligible for or receives, or the transactions contemplated under this Agreement are eligible for or receives, any federal or state tax credits, grants or other subsidies or any particular accounting, reporting or tax treatment.

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 (other than indemnification obligations surviving the expiration of the Term) 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 Seller's Support.

(a) Seller shall be required to post Credit Support having a Value of \$74,040 to secure Seller's Obligations until the Commercial Operation Date ("**Development Period Security**"). Fifty percent (50%) of the Development Period Security shall be provided to Buyer on the Effective Date, and the remaining fifty percent (50%) of the Development Period Security shall be provided to Buyer within fifteen (15) days after the receipt of the Regulatory Approval. Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days after the later of (x) Buyer's receipt of an undisputed notice from Seller that the Commercial Operation Date has occurred or (y) Buyer's receipt of the full amount of the Operating Period Security.

(b) Beginning not later than three (3) days following the Commercial Operation Date, Seller shall provide Buyer with Credit Support to secure Seller's Obligations after the Commercial Operation Date through and including the date that all of Seller's Obligations are satisfied ("**Operating Period Security**"). The Operating Period Security shall have a Value of \$74,040, as adjusted in accordance with Section 3.3(b).

(c) The Credit Support Delivery Amount, as defined below, will be rounded up, and the Return Amount, as defined below, will be rounded down, in each case to the nearest integral multiple of \$10,000 (“**Rounding Amount**”).

(d) The following items will qualify as “**Credit Support**” hereunder in the amount noted under “Valuation Percentage”:

“Valuation Percentage”

(A) Cash	100%
(B) Letters of Credit	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be 0%.

(e) All calculations with respect to Credit Support shall be made by the Valuation Agent as of the Valuation Time on the Valuation Date.

6.3 Delivery of Credit Support.

On any Business Day during the Services Term on which (a) no Event of Default has occurred and is continuing with respect to Buyer, and (b) no termination date has occurred or has been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations with respect to Buyer, then Buyer may request, by written notice, that Seller Transfer to Buyer, or cause to be Transferred to Buyer, Credit Support for the benefit of Buyer, having a Value of at least the Collateral Requirement (“**Credit Support Delivery Amount**”). Such Credit Support shall be delivered to Buyer on the next Business Day if the request is received by the Notification Time; otherwise Credit Support is due by the close of business on the second Business Day after the request is received.

6.4 Reduction and Substitution of Posted Collateral.

On any Business Day during the Services Term on which (a) no Event of Default has occurred and is continuing with respect to Seller, (b) no termination date has occurred or has been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment Obligations, and (c) the Posted Collateral posted by Seller exceeds the required Operating Period Security (rounding downwards for any fractional amount to the next interval of the Rounding Amount), then Seller may, at its sole cost, request that Buyer return Operating Period Security in the amount of such difference (“**Credit Support Return**”).

Amount”) and Buyer shall be obligated to do so. Such Posted Collateral shall be returned to Seller by the close of business on the second Business Day after Buyer’s receipt of such request. The Parties agree that if Seller has posted more than one type of Credit Support to Buyer, Seller can, in its sole discretion, select the type of Credit Support for Buyer to return; provided, however, that Buyer shall not be required to return the specified Credit Support if immediately after such return, Seller would be required to post additional Credit Support pursuant to the calculation of Operating Period Security.

6.5 [Reserved].

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

(a) Transfer and Holding of Cash.

- (i) 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 6.6(a)(ii) shall not apply with respect to Buyer and Cash shall be held in a Qualified Institution in accordance with the provisions of Section 6.6(a)(iii)(B). 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 6.6(a)(iii)(B). Except as set forth in Section 6.6(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.
- (ii) 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.

- (iii) Notwithstanding Section 6.6(a)(ii), if neither Buyer nor the Custodian is eligible to hold Cash pursuant to Section 6.6(a)(i) then:

- (A) the provisions of Section 6.6(a)(ii) will not apply with respect to Buyer;

and

- (B) 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.

- (iv) So long as no Event of Default with respect to Seller has occurred and is continuing, and no termination date has occurred or been designated for which any unsatisfied payment obligations of Seller exist as the result of an Event of Default with respect to Seller, in the event that Buyer or its Custodian is holding Cash, Buyer will Transfer (or cause to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which shall be retained by Buyer), the Interest Amount. Interest on Cash shall accrue at the Collateral Interest Rate. Interest accrued during the previous month shall be paid by Buyer to Seller on the 3rd Business Day of each calendar month and on any Business Day that posted Credit Support in the form of Cash is returned to Seller, but solely to the extent that, after making such payment, the amount of the Posted Collateral will be at least equal to the required Development Period Security or Operating Period Security, as applicable. On or after the occurrence of an Event of Default with respect to Seller or a termination date as a result of an Event of Default with respect to Seller, Buyer or its

Custodian shall retain any such Interest Amount as additional Posted Collateral hereunder until the Obligations of Seller under the Agreement have been satisfied in the case of a termination date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) 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 9.3(b) of this Agreement, Buyer may exercise one or more of the following rights and remedies: (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. For purposes of this Section 6.6, Buyer may draw on the undrawn portion of any Letter of Credit from time to time up to the amount of the Obligations that are due at the time of such drawing. Cash proceeds that are not applied to the Obligations shall be maintained in accordance with the terms of this Article 6. Seller shall remain liable for amounts due and owing to Buyer that remain unpaid after the application of Posted Collateral, pursuant to this Section 6.6.

(c) Letters of Credit. Credit Support provided in the form of a Letter of Credit shall be subject to the following provisions.

- (i) As one method of providing increased Credit Support, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
- (ii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to Buyer either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the third (3rd) Business Day after the occurrence thereof if only clause (a) under the definition of **Letter of Credit Default** applies.
- (iii) Notwithstanding Sections 6.3 and 6.4, (1) Buyer need not return a Letter of Credit unless the entire principal amount is required to be returned, (2) Buyer shall consent to a reduction of the principal amount of a Letter of Credit to the extent that a Credit Support Delivery Amount would not be created thereby (as of the time of the request or as of the last time the Credit Support Delivery Amount was determined), and (3) if there is more than one form of Posted Collateral when a Credit Support Return Amount is to be Transferred, the Secured Party may elect which to Transfer.

(d) Care of Posted Collateral. Buyer shall exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable Law, and in any event Buyer will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, Buyer will have no duty with respect to the Posted Collateral, including without limitation, any duty to enforce or preserve any rights thereto.

(e) Substitutions. Unless otherwise prohibited herein, upon notice to Buyer specifying the items of Posted Collateral to be exchanged, Seller may, on any Business Day, deliver to Buyer other Credit Support ("**Substitute Credit Support**"). On the Business Day following the day on which the Substitute Credit Support is delivered to Buyer, Buyer shall return to Seller the items of Credit Support specified in Seller's notice; provided, however, that Buyer shall not be required to return the specified Posted Collateral if immediately after such return, Seller would be required to post additional Credit Support pursuant to the calculation of Development Period Security or Operating Period Security set forth in Sections 6.2(a) and 6.2(b), respectively.

6.7 Exercise of Rights Against Posted Collateral.

(a) Disputes regarding amount of Credit Support. If either Party disputes the amount of Credit Support to be provided or returned (such Party the "**Disputing Party**"), then the Disputing Party shall (a) deliver the undisputed amount of Credit Support to the other Party (such Party, the "**Requesting Party**") and (b) notify the Requesting Party of the existence and nature of the dispute no later than 5:00 p.m. Eastern Prevailing Time on the Business Day that the request for Credit Support was made (the "**Request Date**"). On the Business Day following the Request Date, the Parties shall consult with each other in order to reconcile the two conflicting amounts. If the Parties are not able to resolve their dispute, the Credit Support shall be recalculated, on the Business Day following the Request Date, by each Party requesting quotations from two (2) Reference Market-Makers for a total of four (4) quotations. The highest and lowest of the four (4) quotations shall be discarded and the arithmetic average shall be taken of the remaining two (2), which shall be used in order to determine the amount of Credit Support required. On the same day the Credit Support amount is recalculated, the Disputing Party shall deliver any additional Credit Support required pursuant to the recalculation or the Requesting Party shall return any excess Credit Support that is no longer required pursuant to the recalculation.

(b) Further Assurances. Promptly following a request by a Party, the other Party 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 Posted Collateral or other security interest or lien, to enable the requesting party to exercise or enforce its rights or remedies under this Agreement, or with respect to Posted Collateral, or accrued interest.

(c) Further Protection. Seller will promptly give notice to Buyer of, and defend against, any suit, action, proceeding, or lien (other than a banker's lien in favor of the Custodian appointed by Buyer so long as no amount owing from Seller to such Custodian is

overdue) 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 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. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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

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

(e) Consents and Approvals. Except to the extent associated with the Regulatory Approval, the execution, delivery and performance by Buyer of its obligations under this Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken or that shall be duly obtained, made or taken on or prior to the date required, and all such approvals, consents,

permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable as required under applicable Law.

(f) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Buyer and equal bargaining power of the Parties. No principle of law or equity regarding construing ambiguities in this Agreement against the drafting Party shall apply.

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

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

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

(a) Organization and Good Standing; Power and Authority. Seller is a limited liability company, duly formed, validly existing and in good standing under the laws of Delaware. Subject to the receipt of the Permits listed in Exhibit B and any Related Transmission Approvals, Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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

performance of any of its obligations under this Agreement by reason of market power or affiliate transaction issues under federal or state regulatory requirements.

(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 Buyer and receipt of the Permits listed on Exhibit B and any Related Transmission Approvals, constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

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

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

(g) RPS Class I Renewable Generation Unit. The Facility shall be a RPS Class I Renewable Generation Unit, qualified by the PUC as eligible to participate in the RPS program, under R.I.G.L. § 39-26-1 et seq. (subject to Section 4.7(b) in the event of a change in Law affecting such qualification as a RPS Class I Renewable Generation Unit) and shall have a Commercial Operation Date, as verified by the Buyer.

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

(i) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Seller and equal bargaining power of the Parties. No principle of law or equity regarding construing ambiguities in this Agreement against the drafting Party shall apply.

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

(k) No Misrepresentations. The reports and other submittals by Seller to Buyer under this Agreement are not false or misleading in any material respect.

(l) 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.

(m) Site Control. As of the Effective Date, Seller either (i) has acquired all real property rights to construct and operate the Facility subject only to the receipt of the Permits and approvals referenced in Exhibit B, and to perform Seller's obligations under this Agreement, or (ii) has an irrevocable option to acquire such real property rights and the only condition upon Seller's exercise of such option to acquire such real property rights is the payment of monies to acquire such real property rights; provided, however, that (a) with respect to the real property rights to interconnect the Facility to the Interconnecting Utility and to construct the Network Upgrades each as presently contemplated (to the extent it is Seller's responsibility to do so), Seller shall have acquired all such rights as of the date of the applicable Critical Milestone in Section 3.1(a) ; and (b) the Parties understand that as of the Effective Date the Seller has undertaken only a preliminary site design, and that the final design of the Facility, including the Facility's interconnection, may require the acquisition or disposition of additional property and/or property rights in a manner that does not alter the Contract Maximum Amount of the Facility.

7.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term, subject to the removal of the references to the Regulatory Approval and Permits as and when the Regulatory Approval and Permits are obtained. If at any time during the Term, a Party has knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be untrue or misleading, such Party shall provide the other Party with prompt written notice of the event or information, the representations and warranties affected, and the corrective action such Party shall take. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

7.4 Forward Capacity Market Participation. Seller must take (i) all necessary and appropriate actions to qualify and participate; and (ii) commercially reasonable actions to be selected and compensated in every auction applicable to the Services Term, in any capacity market, including the Forward Capacity Market and any successor capacity market. Subject to Good Utility Practice, Seller shall operate the Facility in a manner to maximize the Capacity Supply Obligation of the Facility. Seller shall use best efforts to make Network Upgrades such that the maximum output of the Facility shall be qualified to participate in the FCM. Seller shall provide documentation to the Buyer demonstrating the satisfaction of the foregoing obligations.

8. REGULATORY APPROVAL

8.1 Receipt of Regulatory Approval. The obligations of the Parties to perform this Agreement, other than the Parties' obligations under Section 6.2, Section 8.2, and Section 11, are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the Regulatory Approval or receipt of an order of the PUC regarding this Agreement. This Agreement may be terminated by either Buyer or Seller in the event that Regulatory Approval is not received within 270 days after filing, without liability as a result of such termination, subject to the return of Credit Support as provided in Section 6.4.

8.2 Related Transmission Approvals. The obligation of the Parties to perform this Agreement is further conditioned upon the receipt of any Related Transmission Approvals on or prior to the date such Related Transmission Approvals are required under Applicable Law.

9. BREACHES; REMEDIES

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

(a) Representation or Warranty. Any breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to this Agreement occurs where such breach is not fully cured and corrected within thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if the Defaulting Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the Defaulting Party until such Default has been corrected, but in any event shall be cured within sixty (60) days of the notice from the Non-Defaulting Party; or

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

(c) Other Covenants. Other than:

- (i) a Delivery Failure of ten (10) days or more, which is addressed in Section 9.2(h),
- (ii) failure of the Facility to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date,
- (iii) a failure to maintain the RPS eligibility requirements set forth in Section 4.7(b),
- (iv) a Rejected Purchase, or

- (v) an Event of Default described in Section 9.1(a), 9.1(b), 9.1(d), 9.1(e) or 9.2,

such Party fails to perform, observe or otherwise to comply with any obligation hereunder and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if the Defaulting Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected, but in any event shall be cured within sixty (60) days of the notice from the Non-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 or cause to be obtained and maintained in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under this Agreement where such failure is not fully cured and corrected within thirty (30) days after such Party has knowledge of such failure ; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if such Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by such Party until such Default has been corrected, but in any event shall be cured within seventy-five (75) days of such Party's knowledge of such Default.

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

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

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

(c) Energy Output. The failure of the Facility to produce Energy for **twelve (12)** consecutive months during the Services Term for any reason, other than due to a Force Majeure; or

(d) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under this Agreement or on Buyer or Buyer's ability to receive the benefits under this Agreement; provided that Seller shall have the opportunity to cure such failure within five (5) days of its occurrence; provided, however, if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under this Agreement, Seller shall have the opportunity to cure such failure within thirty (30) days of its occurrence; or

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

(f) Abandonment. On or after the Commercial Operation Date, the permanent relinquishment by Seller of all of its possession and control of the Facility, other than a transfer permitted under this Agreement; or

(g) Assignment. The assignment of this Agreement by Seller, or Seller's sale or transfer of its interest (or any part thereof) in the Facility, except as permitted in accordance with Article 14; or

(h) Recurring Delivery Failure. A Delivery Failure of ten (10) days or more; or

(i) Failure to Provide Status Reports. A failure to provide timely, accurate and complete status reports in accordance with this Agreement, and such failure continues for more than thirty (30) days after notice thereof is given by the Buyer; or

(j) Failure to Maintain RPS Eligibility. A failure to maintain RPS eligibility requirements set forth in Section 4.7(b).

9.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under this Agreement, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in this Agreement including, without limitation, the termination right set forth in Section 9.3(b), and, to the extent not inconsistent with the terms of this Agreement, such remedies available at law and in equity. In addition to the foregoing, except for breaches for

which an express remedy or measure of damages is provided herein, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under this Agreement.

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

- (i) *Termination by Buyer Prior to Commercial Operation Date.* If Buyer terminates this Agreement because of an Event of Default by Seller occurring prior to the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the sum of (x) all Delay Damages due and owing by Seller through the date of such termination plus (y) the full amount of any Development Period Security provided to Buyer by Seller.
- (ii) *Termination by Seller Prior to Commercial Operation Date.* If Seller terminates this Agreement because of an Event of Default by Buyer prior to the Commercial Operation Date, Seller shall only receive a Termination Payment if the Commercial Operation Date either occurs on or before the Guaranteed Commercial Operation Date or would have occurred by such date but for the Event of Default by Buyer giving rise to the termination of this Agreement. In such case, (x) 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 the lesser of: (i) Buyer's Percentage Entitlement to Seller's out-of-pocket expenses incurred in connection with the development and construction of the Facility prior to such termination and for which Seller has provided adequate documentation to enable Buyer to verify the expense claimed, or (ii) the Termination Payment due to Seller as calculated according to the methodology in Section 9.3(b)(iv), as if the Commercial Operation Date had occurred prior to the date of the termination by Seller; and (y) 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 calculated according to the methodology in Section 9.3(b)(iv), as if the Commercial Operation Date had occurred prior to the date of the termination by Seller.
- (iii) *Termination by Buyer On or After Commercial Operation Date.* If Buyer terminates this Agreement because of an Event of

Default by Seller occurring on or after the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the greater of: (i) the security provided in accordance with Article 6, or (ii) the amount, if positive, calculated according to the following formula: (x) the present value, discounted at a rate equal to the prime rate specified in the “Money & Investing” section of *The Wall Street Journal* determined as of the date of the notice of default, plus 300 basis points, for each month remaining in the Services Term, of (i) the amount, if, any, by which the forward market price of Energy and Renewable Energy Credits, as determined by the average of the quotes of at least two nationally recognized energy consulting firms or brokers chosen by Buyer, for Replacement Energy and Replacement RECs, exceeds the applicable Price that would have been paid pursuant to Exhibit D of this Agreement, multiplied by (ii) Buyer’s Percentage Entitlement of the projected Energy output of the Facility as determined by a recognized third party expert selected by Buyer, using a probability of exceedance basis of 50%; plus, (y) any costs and losses incurred by Buyer as a result of the Event of Default and termination of the Agreement.

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

- (iv) *Termination by Seller On or After Commercial Operation Date.* If Seller terminates this Agreement because of an Event of Default by Buyer occurring on or after the Commercial Operation Date, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula: (x) the present value, discounted at a rate equal to the prime rate specified in the “Money & Investing” section of *The Wall Street Journal* determined as of the date of the notice of default, plus 300 basis points, for each month remaining in the Services Term, of (i) the amount, if, any, by which the applicable Price that would have been paid pursuant to Exhibit D of this Agreement, exceeds the forward market price of Energy and Renewable Energy Credits as determined by the average of the quotes of at least two nationally recognized energy consulting firms or brokers chosen by Seller, for Replacement Energy and Replacement RECs, multiplied by (ii) Buyer’s Percentage Entitlement to the projected Energy output of the Facility as determined by a recognized third party expert selected by Seller using a probability of exceedance basis of

50%; plus, (y) any costs and losses incurred by Seller as a result of the Event of Default and termination of the Agreement.

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

(v) *Acceptability of Liquidated Damages.* Each Party agrees and acknowledges that (i) the damages and losses (including without limitation the loss of environmental, reliability and economic benefits contemplated under this Agreement) 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 such notice is effective, regardless whether the Termination Payment calculation is disputed. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

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

(d) Notice to Lenders. Seller shall provide Buyer with a notice identifying a single Lender (if any) to whom default notices are to be issued. Buyer shall provide a copy of the notice of any default of Seller under this Article 9 to that Lender, and Buyer shall afford such Lender the same opportunities to cure Events of Default under this Agreement as are provided to Seller hereunder with such additional days to cure such Events of Default as may reasonably be agreed by Buyer and Lender in any consent executed pursuant to Section 14.2.

(e) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF

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

10. FORCE MAJEURE

10.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under this Agreement. Under no circumstances shall Force Majeure include (v) any reduction or cessation in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such reduction or cessation is caused by one of the following: acts of God such as floods, hurricanes or tornados; sabotage; terrorism; or war. (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in this Agreement, or (z) Buyer's ability to procure the Products at a price lower than that set out in this Agreement. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval) or qualifications, any delay or failure in satisfying the Critical Milestone obligations specified in Section 3.1(a)(i) (Permits) or Section 3.1(a)(iii) (Financing), 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 or be the basis for a claim of Force Majeure. 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 Products 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 herein has occurred.

(b) Subject to Section 3.1(d), if either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Notwithstanding the foregoing, and subject to Seller’s ability to extend Critical Milestones pursuant to Section 3.1(c), 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. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.

11. DISPUTE RESOLUTION

11.1 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**”), in addition to any other remedies provided hereunder, the Parties shall attempt to resolve such Dispute through consultations between the Parties. If the Dispute has not been resolved within fifteen (15) Business Days after such consultations between the Parties, then either Party may seek to resolve such Dispute in the courts of Rhode Island.

11.2 Allocation of Dispute Costs. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees, associated with any Dispute.

11.3 Consent to Jurisdiction. Subject to Section 11.1, the Parties agree to the exclusive jurisdiction of the state and federal courts located in Rhode Island for any legal proceedings that may be brought by a Party arising out of or in connection with any Dispute.

11.4 Waiver of Jury Trial and Inconvenient Forum Claim. EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT. BOTH PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE AS SET FORTH IN THIS ARTICLE 12 AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN ANY INCONVENIENT FORUM.

12. CONFIDENTIALITY

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

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

(b) as required by applicable laws, regulations, filing requirements, rules or orders or by any subpoena or similar legal process of any Governmental Entity so long as the disclosing Party gives the non-disclosing Party written notice at least three (3) Business Days prior to such disclosure, if practicable, so that the non-disclosing Party may seek an appropriate protective order; provided, that, if a protective order or other remedy is not obtained, the non-disclosing Party agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the required disclosure, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information;

(c) to the Affiliates of either Party and to the consultants, attorneys, auditors, financial advisors, lenders or potential lenders and their advisors of either Party or their Affiliates, but solely to the extent they have a need to know that information;

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

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

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

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

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

13. INDEMNIFICATION

Seller shall indemnify, defend and hold Buyer and its partners, shareholders, directors, officers, employees and agents (including, but not limited to, Affiliates and contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever in connection with or arising from Seller's negligence, gross negligence, or willful misconduct, or Seller's failure to perform or satisfy any obligation or liability under this Agreement, or Seller's failure to satisfy any regulatory requirement or commitment associated with this Agreement.

14. ASSIGNMENT AND CHANGE OF CONTROL

14.1 Prohibition on Assignments. Except as permitted under this Article 14, this Agreement (and any portion thereof) 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 "out of pocket" 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 (and shall not impair any Credit Support given by Seller hereunder) unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations thereunder.

14.2 Permitted Assignment by Seller. Buyer's consent shall not be required for Seller to pledge or assign the Facility, this Agreement or the revenues under this Agreement to any Lenders as collateral security for obligations under the Financing documents entered into with such Lender; provided, however, if Seller requests Buyer's consent to such an assignment (i) Buyer shall provide that consent subject to Buyer's execution of a consent to assignment in a form reasonably acceptable to Buyer, Seller and the Lenders, and (ii) Seller will reimburse Buyer for all "out of pocket" costs and expenses Buyer incurs in connection with that consent, without regard to whether such consent is provided.

14.3 Change in Control over Seller. Buyer's consent shall be required for any change in Control over Seller, which consent shall not be unreasonably withheld, conditioned or

delayed and shall be provided if Buyer reasonably determines that such change in Control does not have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement; provided, however, following the Commercial Operation Date, (a) a change of Control of the ultimate parent entity of Seller (defined under Section 7A of the Clayton Act, 15 U.S.C. § 18a, aka the Hart-Scott-Rodino Antitrust Improvements Act of 1976) shall not require the consent of Buyer; and (b) transactions among Affiliates of Seller, any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller and its Affiliates, shall not constitute a change in Control for purposes of this Section 14.3; provided further that, in each case, Seller provides written notice of such change to Buyer within thirty (30) days after such change.

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

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

15. TITLE; RISK OF LOSS

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

16. AUDIT

16.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under this Agreement, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party additional information documenting the quantities of Products delivered or provided hereunder. If any such examination reveals any overcharge, the necessary

adjustments in such statement and the payments thereof shall be made promptly and shall include interest at the Late Payment Rate from the date the overpayment was made until credited or paid.

16.2 Access to Financial Information. Seller shall provide to Buyer, within fifteen (15) days of receipt of Buyer's written request, Seller's financial information and statements as well as reasonable access to financial personnel during normal business hours, so that Buyer may address any reasonable inquiries relating to Seller's financial resources.

17. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); or (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); or (4) by reputable overnight courier; 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: Attn: Renewable Contract Manager, Environmental Transactions
National Grid
100 East Old Country Road, Second Floor
Hicksville, NY 11801-4218
Email: RenewableContracts@nationalgrid.com
With a copy to: ElectricSupply@nationalgrid.com

With a copy to: Legal Department
Attn: Jennifer Brooks Hutchinson, Esq.
Senior Counsel
National Grid
280 Melrose Street
Providence, RI 02907
Email: Jennifer.Hutchinson@nationalgrid.com

If to Seller: Gregory Schneck
Vice President
700 Universe Boulevard
Juno Beach, FL 33408
Gregory.schneck@nexteraenergy.com

With a copy to: Mitch Ross
Vice President and General Counsel
700 Universe Boulevard
Juno Beach, FL 33408
mitch.ross@nexteraenergy.com

18. WAIVER AND MODIFICATION

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

19. INTERPRETATION

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

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

19.3 Forward Contract. 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.

19.4 Standard of Review. The Parties acknowledge and agree that the standard of review for any avoidance, breach, rejection, termination or other cessation of performance of or changes to any portion of this integrated, non-severable Agreement (as described in Section 22) over which FERC has jurisdiction, whether proposed by Seller, by Buyer, by a non-party of, by FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Co.*, 350 U.S. 332 (1956) and *Federal Power Comm’n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956)), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010). Each Party agrees that if it seeks to amend any applicable power sales tariff during the Term, such amendment shall not in any way materially and adversely affect this Agreement without the prior written consent of the other Party. Each Party further agrees that it shall not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

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

19.6 Dodd Frank Act Representations. The Parties agree that this Agreement (including all transactions reflected herein) is not a "swap" within the meaning of the Commodity Exchange Act ("CEA") and the rules, interpretations and other guidance of the Commodity Futures Trading Commission ("CFTC rules"), and that the primary intent of this Agreement is physical settlement (i.e., actual transfer of ownership) of the nonfinancial commodity and not solely to transfer price risk. In reliance upon such agreement, each Party represents to the other that:

(a) With respect to the commodity to be purchased and sold hereunder, it is a commercial market participant, a commercial entity and a commercial party, as such terms are used in the CFTC rules, and it is a producer, processor, or commercial user of, or a merchant handling, the commodity and it is entering into this Agreement for purposes related to its business as such;

(b) It is not registered or required to be registered under the CFTC rules as a swap dealer or a major swap participant;

(c) It has entered into this Agreement in connection with the conduct of its regular business and it has the capacity or ability to regularly make or take delivery of the commodity to be purchased and sold hereunder;

(d) With respect to the commodity to be purchased and sold hereunder, it intends to make or take physical delivery of the commodity;

(e) At the time that the Parties enter into this Agreement, any embedded volumetric optionality in this Agreement is primarily intended by the holder of such option or optionality to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, the commodity to be purchased and sold hereunder;

(f) With respect to any embedded commodity option in this Agreement, such option is intended to be physically settled so that, if exercised, the option would result in the sale

of the commodity to be purchased or sold hereunder for immediate or deferred shipment or delivery;

(g) The commodity to be purchased and sold hereunder is a nonfinancial commodity, and is also an exempt commodity or an agricultural commodity, as such terms are defined and interpreted in the CFTC rules.

To the extent that reporting of any transactions related to this Agreement is required by the CFTC rules, the Parties agree that Seller shall be responsible for such reporting (the "Reporting Party"). The Reporting Party's reporting obligations shall continue until the reporting obligation has expired or has been terminated in accordance with CFTC rules. The Buyer, as the Party that is not undertaking the reporting obligations shall timely provide the Reporting Party all necessary information requested by the Reporting Party for it to comply with CFTC rules.

19.7 Change in Law or Buyer's Accounting Treatment, Subsequent Judicial or Regulatory Action.

(a) If, during the Term of this Agreement, there is a change in Law or accounting standards or rules or a change in the interpretation or applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with this Agreement or the amounts paid for Products purchased hereunder the Buyer shall prepare an amendment to this Agreement to avoid or mitigate such impacts. Buyer shall prepare such amendment in a manner that is designed to be limited to changes required to avoid or mitigate the adverse balance sheet or creditworthiness impact on Buyer. Buyer shall use commercially reasonable efforts to prepare such amendment in a manner that mitigates any material adverse effect(s) on Seller (as identified by Seller, acting reasonably) that could reasonably be expected to result from such amendment, but only to the extent that such mitigation can be accomplished in a manner that is consistent with the purpose of such amendment. Seller agrees to execute such amendment; provided that such amendment does not (unless Seller otherwise agrees) alter: (i) the purchase and sale obligations of the Parties pursuant to this Agreement, or (ii) the Price or the Adjusted Price, as applicable; provided, further, that Seller may terminate the Agreement if it is agreed by Buyer and Seller or determined in a final and non-appealable order of a court that the proposed amendment will impose costs (imposed solely by such proposed amendment) on Seller's purchase and sale obligations in an amount equal to or greater than ten percent (10%) of the Price.

(b) Upon a determination by a court or regulatory body having jurisdiction (i) over this Agreement or any of the Parties hereto, or (ii) over the establishment and enforcement of any of the statutes or regulations or orders or actions of regulatory agencies (including the PUC) supporting this Agreement or (iii) over the rights or obligations of the Parties hereunder that any of the statutes or regulations supporting this Agreement or the rights or obligations of the Parties hereunder, or orders of or actions of regulatory agencies (including the PUC) implementing such statutes or regulations, or this Agreement on its face or as applied, in the reasonable determination by a Party, violates any Law (including the State or Federal Constitution) (an "Adverse Determination"), each Party shall have the right to suspend performance under this Agreement without liability. Seller may deliver and sell Products to a

third party during any period of time for which Buyer suspends payments or purchases under this Section.

Upon an Adverse Determination becoming final and non-appealable, Buyer shall make a good faith determination regarding whether the Adverse Determination does or may adversely affect the enforceability of any provision of this Agreement and/or Buyer's continued ability to recover all of its costs incurred under and in connection with this Agreement for the entire term and to recover remuneration equal to two and three quarters percent (2.75%) of Buyer's annual payments under this Agreement for the term of this Agreement and whether such adverse effect(s) of the Adverse Determination can reasonably be mitigated by amending the Agreement in a manner that allows the Agreement to continue with modification. If, in Buyer's sole reasonable judgment, such adverse effect(s) of the Adverse Determination cannot be reasonably mitigated by amending the Agreement, either Party shall have the right to terminate the Agreement. If Buyer determines that such effect(s) can be so mitigated, it shall promptly prepare an amendment to this Agreement designed to be limited to changes required to avoid or mitigate such effect(s). Thereafter, Buyer and Seller shall negotiate the terms of such amendment in good faith; provided, however, that neither Buyer nor Seller will be required to agree to any particular amendment. If Seller and Buyer cannot reach agreement on such amendment within sixty (60) days after Buyer delivers to Seller the first draft thereof, then either Party may terminate this Agreement by written notice to the other Party delivered within thirty (30) days after such sixty (60) day period. Upon a termination pursuant to this section, (A) Seller shall: (a) prepare a final invoice to Buyer for Products Delivered to Buyer, which Buyer shall pay in the normal course pursuant to Section 5.2(b); (b) have no further obligations or liabilities to Buyer and (c) have the right to sell Energy, Environmental Attributes and capacity to third parties and (B) Seller and Buyer shall have no further obligations or liabilities to the other Party under this Agreement.

20. COUNTERPARTS; FACSIMILE SIGNATURES

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

21. NO DUTY TO THIRD PARTIES

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

22. SEVERABILITY

If any term or provision of this Agreement or the interpretation or application of any term or provision to any prior circumstance is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, the remainder of this Agreement and the interpretation or application of all other terms or provisions to Persons or circumstances other than those which

are unenforceable, illegal or invalid shall not be affected thereby, and each term and provision shall be valid and be enforced to the fullest extent permitted by law so long as all essential terms and conditions of this Agreement for both Parties remain valid, binding and enforceable and have not been declared to be unenforceable, illegal or invalid by a Governmental Entity of competent jurisdiction. The Parties acknowledge and agree that essential terms and conditions of this Agreement for each Party include, without limitation, all pricing and payment terms and conditions of this Agreement, and that the essential terms and conditions of this Agreement for Buyer also include, without limitation, the terms and conditions of Section 19.7 of this Agreement.

23. INDEPENDENT CONTRACTOR

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

24. ENTIRE AGREEMENT

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

[Signature page follows]

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

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

By: _____
Name: John V. Vaughn
Title: Authorized Signatory

CR
CM

FARMINGTON SOLAR, LLC

By: _____
Name:
Title:

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.

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

By: _____
Name:
Title:

FARMINGTON SOLAR, LLC

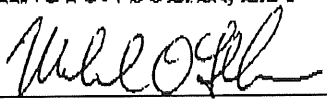
By:  _____
Name: Michael O'Sullivan
Title: Vice President

EXHIBIT A

DESCRIPTION OF FACILITY

Facility: The Facility is a net 49.36 MWac nameplate solar photovoltaic generation facility. The Facility is located on properties on both sides of U.S. Route 2 in Farmington, Franklin County, Maine.

Operational Limitations: Utility-scale solar generation will only operate during daytime periods when sufficient sunlight is available to generate electricity from the Facility, however once the weather conditions are favorable the Facility should begin producing without significant startup time required. The Facility is not limited on the number of scheduled startups per year, which could occur daily or more than once per day, depending on weather conditions.

Delivery Point: Settlement in the ISO-NE energy market system will occur when Energy is supplied into Buyer's ISO-NE settlement account at the ISO New England pricing node ("pnode") for the Facility established in accordance with ISO-New England Rules. The Delivery Point is the ISO New England Pool Transmission Facilities ("PTF") in the vicinity of the referenced pnode. Seller shall be responsible for all charges, fees and losses required for Delivery of Energy from the generator to the Delivery Point, including but not limited to (1) all non-PTF and/or distribution system losses, (2) all transmission and/or distribution interconnection charges associated with the Facility, and (3) the cost of Delivery of the Products to the Delivery Point, including all related administrative fees and non-PTF and/or distribution wheeling charges. In addition Seller shall also be responsible to apply for and schedule all such services.

Proposed Facility Size: 49.36 MWac.

Criteria for Substantial Completion: See Exhibit B.

EXHIBIT B

SELLER’S CRITICAL MILESTONES

i. All significant land use, stormwater, and building permits necessary to construct the **Farmington Solar** Facility will be in place on or before July 1, 2019, as summarized below. This is inclusive of the following:

Town: If required, Town of Farmington local ministerial permits (e.g., road access permits).

State: If required, Maine Department of Environmental Protection (“MDEP”) Site Location of Development Act Permit (“SLODA”), MDEP Natural Resources Protection Act (“NRPA”) and MDEP Permits by Rule (“BR”), MDEP NPDES Stormwater General Permit for Construction, MDEP Section 401 Water Quality Certification, Maine Historic Preservation Commission (MHPC) Section 106 NHPA Consultation.

Federal: If required, U.S. Army Corps of Engineers (“ACOE”) Section 10 and 404 Authorization and U.S. Fish and Wildlife Service (“USFWS”) Endangered Species Act (“ESA”) Section 7 consultation.

Ancillary and minor permits, including if required, all road crossing agreements with the municipal, county, or state department of transportation access permits will be in place on or before July 1, 2019.

ii. Farmington Solar, LLC will have acquired all required real property rights necessary for construction and operation of the Facility and the interconnection of the Facility to the Interconnecting Utility in full and final form with all options and/or contingencies having been exercised demonstrating complete site control by July 1, 2019.

iii. Farmington Solar, LLC will have closed all of the Financing adequate for the development and construction of the Facility or other demonstration to Buyer’s reasonable satisfaction of the financial capability to construct the Facility, including, as applicable, Seller’s financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades on or before June 1, 2019.

iv. Farmington Solar, LLC will achieve Commercial Operation Date by November 1, 2019.

Permitting Critical Path

Agency	Description of Permit/Authorization
<u>Federal</u>	
1. ACOE	Section 10 and 404 Authorization: The discharge of dredged or fill material into wetlands, streams, and lakes that are subject to regulation under the Clean Water Act (what are commonly referred to as “jurisdictional waters”).
2. USFWS	Endangered Species Act (“ESA”) Section 7

	consultation: The USFWS has regulatory authority over the Endangered Species Act of 1973, which protects federally listed threatened and endangered species, and the Migratory Bird Treaty Act. Any federal action, such as a decision on a wetland permit or Section 10 permit modification will trigger a review for endangered species.
State	
1. MDEP	SLODA: Maine’s SLODA provides a regulatory framework for the MDEP to “regulate the location developments which may substantially affect the environment and quality of life in Maine”; including facilities that occupy land areas in excess of 20-acres.
2. MDEP	NRPA & BR: NRPA is required for facilities that have the potential to impact protected natural resources (such as wetlands, streams or significant habitats). Permit review times depend on the size and impacts of the facility, and range depending on the Tier of NRPA review required. BRs may be required for stream crossings or activities adjacent to some natural resources.
3. MDEP	NPDES Stormwater General Permit for Construction: Required for construction work area >1 acre. Requires preparation of a Stormwater Pollution Prevention Plan and filing of Notice of Intent (“NOI”).
4. MDEP	Section 401 Water Quality Certification: Under Section 401 of the Clean Water Act, the MDEP evaluates facilities that will result in the discharge of dredge or fill material into state waters and whether the discharge violates water quality standards.
5. MHPC	Section 106 NHPA Consultation: Federal permitting decisions will trigger consultation on the presence of any historically and culturally significant properties or areas that may be impacted by the facility. Both state and federal permitting requirements obligate consultation with the MHPC.
Local	
1. Town of Farmington	Local ministerial permits (Site Plan Review; building, electrical, road access permits): Required for new developments

Land Control Agreements

<u>Owner</u>	<u>Agreement Type</u>	<u>Land Use</u>	<u>Acreage</u>
Linwood Herbert York	Lease (3 agreements)	Solar Power Facilities	1,037.97 acres
Brenda York	Lease	Solar Power Facilities	335.39 acres
Crowell Energy, LLC	Lease	Solar Power Facilities	156 acres

EXHIBIT C

FORM OF PROGRESS REPORT

For the Quarter Ending: _____

Milestones Achieved:

Milestones Pending:

Status of Progress toward achievement of Milestones during the quarter:

Status of permitting and Permits obtained during the quarter:

Status of Financing for Facility:

Current projection for Financial Closing Date:

Events expected to result in delays in achievement of any Milestones:

Critical Milestones not yet achieved and projected date for achievement:

Current projection for Commercial Operation Date:

EXHIBIT D

PRODUCTS AND PRICING

1. Price for Buyer's Percentage Entitlement of Products up to the Contract Maximum Amount. The Price for the Buyer's Percentage Entitlement of Delivered Products up to the Contract Maximum Amount in nominal dollars shall be as follow:

(a) Commencing on the Commercial Operation Date, the Price per MWh for each billing period shall be \$84.85 per MWh and shall be allocated between Energy and RECs as follows:

(i) Energy = The \$/MWh price of Energy for the applicable month shall be equal to the weighted average of the Real-Time or Day Ahead Locational Marginal Price (as applicable consistent with Section 4.2(a)) in that month (also on a \$/MWh basis) for the Node on the Pool Transmission Facilities to which the Facility is interconnected.

(ii) RECs = The Price less the Energy allocation determined above for the applicable billing period, expressed in \$/MWh.

(b) The Adjusted Price for Energy shall be equal to \$59.85 per MWh.

If the market price at the Delivery Point in the Real-Time or Day-Ahead markets, as applicable, for Energy Delivered by Seller is negative in any hour, the payment to Seller for deliveries of Energy shall be reduced by the difference between the absolute value of the hourly LMP at the Delivery Point and \$0.00 per MWh for that Energy for each such hour. Each monthly invoice shall reflect a reduction for all hours in the applicable month in which the LMP for the Energy at the Delivery Point is less than \$0.00 per MWh.

Examples. If delivered Energy equals 1 MWh and Price equals \$50.00/MWh:

LMP at the Delivery Point equals (or is greater than) \$0.00/MWh
Buyer payment of Price to Seller \$50.00
Seller credit/reimbursement for negative LMP to Buyer \$0.00
Net Result: Buyer pays Seller \$50 for that hour

LMP at the Delivery Point equals -\$150.00/MWh
Buyer payment of Price to Seller \$50.00
Seller credit/reimbursement for negative LMP to Buyer \$150.00
Net Result: Seller credits or reimburses Buyer \$100 for that hour

(c) Price for Buyer's Percentage Entitlement of Products Delivered in excess of Contract Maximum Amount. The Products Delivered in excess of the Contract Maximum Amount shall be purchased by Buyer at a Price equal to the product of (x) the MWhs of Energy in excess of the

Contract Maximum Amount Delivered to the Delivery Point and (y) the lesser of (i) ninety percent (90%) of the Real Time LMP at such Delivery Point, or (ii) the Price determined in accordance with Section 1(a) of this Exhibit D for each hour of the month during which such Energy in excess of the Contract Maximum Amount is Delivered to Buyer.

(d) For those hours when the Real Time LMP at the Delivery Point (as determined by ISO-NE) is negative, the payment from Buyer to Seller shall be reduced for Products Delivered in excess of the Contract Maximum Amount by an amount equal to the product of (x) the MWhs of Energy in excess of the Contract Maximum Amount Delivered to the Delivery Point and (y) one hundred percent (100%) of the absolute value of the Real Time LMP at such Delivery Point for each hour of the month during which such Energy in excess of the Contract Maximum Amount is Delivered to Buyer. All rights and title to RECs associated with Energy Delivered in excess of the Contract Maximum Amount shall remain with Buyer whether the Real Time LMP is positive or negative. In the event that Seller received RECs associated with Energy Delivered in excess of the Contract Maximum Amount, Seller shall not hold or claim to hold equitable title to such RECs and shall promptly transfer such RECs to Buyer's GIS account.

EXHIBIT E
RELATED TRANSMISSION FACILITIES

None

**RPS CLASS I RENEWABLE GENERATION UNIT
POWER PURCHASE AGREEMENT
BETWEEN
THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID
AND
QUINEBAUG SOLAR, LLC
As of May 25, 2017**

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	1
2. EFFECTIVE DATE; TERM.....	13
2.1 Effective Date	13
2.2 Term.	13
3. FACILITY DEVELOPMENT AND OPERATION	14
3.1 Critical Milestones.	14
3.2 Delay Damages.	15
3.3 Construction and Changes in Capacity.	16
3.4 Commercial Operation.	17
3.5 Operation of the Facility.	19
3.6 Interconnection and Delivery Services.	21
4. DELIVERY OF PRODUCTS.....	22
4.1 Obligation to Sell and Purchase Products.	22
4.2 Scheduling and Delivery.	22
4.3 Failure of Seller to Deliver Products	23
4.4 Failure by Buyer to Accept Delivery of Products.....	24
4.5 Delivery Point.	24
4.6 Metering.	24
4.7 RECs.	25
4.8 Deliveries During Test Period	27
4.9 Title to Facility.....	27
5. PRICE AND PAYMENTS FOR PRODUCTS	27
5.1 Price for Products.....	27
5.2 Payment and Netting	28
5.3 Taxes, Fees and Levies.	29
6. SECURITY FOR PERFORMANCE.....	30
6.1 Grant of Security Interest.....	30
6.2 Seller’s Support.....	30
6.3 Delivery of Credit Support.....	31
6.4 Reduction and Substitution of Posted Collateral.	31
6.5 [Reserved].....	32

TABLE OF CONTENTS (CONT.)

Page

6.6	Cash.....	32
6.7	Exercise of Rights Against Posted Collateral.	35
7.	REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS	36
7.1	Representations and Warranties of Buyer.....	36
7.2	Representations and Warranties of Seller	37
7.3	Continuing Nature of Representations and Warranties	39
7.4	Forward Capacity Market Participation.....	39
8.	REGULATORY APPROVAL	40
8.1	Receipt of Regulatory Approval	40
8.2	Related Transmission Approvals	40
9.	BREACHES; REMEDIES	40
9.1	Events of Default by Either Party	40
9.2	Events of Default by Seller	41
9.3	Remedies.....	42
10.	FORCE MAJEURE	46
10.1	Force Majeure.	46
11.	DISPUTE RESOLUTION.....	47
11.1	Dispute Resolution.....	47
11.2	Allocation of Dispute Costs	47
11.3	Consent to Jurisdiction.....	47
11.4	Waiver of Jury Trial and Inconvenient Forum Claim.....	48
12.	CONFIDENTIALITY.....	48
12.1	Nondisclosure	48
12.2	Public Statements.....	49
13.	INDEMNIFICATION.....	49
14.	ASSIGNMENT AND CHANGE OF CONTROL	49
14.1	Prohibition on Assignments.....	49
14.2	Permitted Assignment by Seller.....	49
14.3	Change in Control over Seller.....	49
14.4	Permitted Assignment by Buyer	50
14.5	Prohibited Assignments	50
15.	TITLE; RISK OF LOSS	50

TABLE OF CONTENTS (CONT.)

		<u>Page</u>
16.	AUDIT	50
16.1	Audit	50
16.2	Access to Financial Information	51
17.	NOTICES	51
18.	WAIVER AND MODIFICATION	51
19.	INTERPRETATION	52
19.1	Choice of Law	52
19.2	Headings	52
19.3	Forward Contract	52
19.4	Standard of Review	52
19.5	Change in ISO-NE Rules and Practices	53
19.6	Dodd Frank Act Representations	53
19.7	Change in Law or Buyer’s Accounting Treatment, Subsequent Judicial or Regulatory Action	54
20.	COUNTERPARTS; FACSIMILE SIGNATURES	55
21.	NO DUTY TO THIRD PARTIES	55
22.	SEVERABILITY	55
23.	INDEPENDENT CONTRACTOR	56
24.	ENTIRE AGREEMENT	56

Exhibits

Exhibit A	Description of Facility
Exhibit B	Seller’s Critical Milestones – Permits and Real Estate Rights
Exhibit C	Form of Progress Report
Exhibit D	Products and Pricing
Exhibit E	Related Transmission Facilities

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (as amended from time to time in accordance with the terms hereof, this “**Agreement**”) is entered into as of May 25, 2017 (the “**Effective Date**”), by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation (“**Buyer**”), and Quinebaug Solar, LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller are individually referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**”.

WHEREAS, Seller is developing the Farmington Solar electric generation facility to be located in Brooklyn and Canterbury, Connecticut, which is more fully described in Exhibit A hereto (the “**Facility**”), from which the Buyer’s Percentage Entitlement of the Products (as defined below) is to be delivered to Buyer pursuant to the terms of this Agreement; and

WHEREAS, the Facility is, and shall qualify as a RPS Class I Renewable Generation Unit in the state of Rhode Island and which is expected to be in commercial operation by November 1, 2019; and

WHEREAS, pursuant to R.I.G.L. § 39-26.1, Buyer is authorized to enter into certain long-term contracts for the purchase of energy or energy and renewable energy certificates from renewable generators meeting the requirements of R.I.G.L. § 39-26.-5; and

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

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

1. DEFINITIONS

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

“**Actual Facility Size**” shall mean the actual nameplate capacity of the Facility, as built, and as certified by an Independent Engineer, as provided in Section 3.4(b)(xiii).

“**Adjusted Price**” shall mean the purchase price(s) for Energy referenced in Section 5.1 if the RECs fail to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit and Buyer does not purchase the RECs pursuant to Section 4.1(b) hereof.

“**Adverse Determination**” shall have the meaning set forth in Section 19.7.

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

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

“Alternative Compliance Payment Rate” means the rate per MWh paid by electricity suppliers under applicable Law for failure to supply RECs in accordance with the RPS.

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

“Buyer’s Percentage Entitlement” shall mean Buyer’s rights to seven and one-half percent (7.5%) of the Products. Buyer’s Percentage Entitlement may be adjusted in accordance with Section 3.3(c).

“Buyer’s Taxes” shall have the meaning set forth in Section 5.3(a) hereof.

“Capacity Deficiency” means, at the Commercial Operation Date, the amount (expressed in MW), if any, by which the Actual Facility Size is less than the proposed nameplate capacity of the Facility as set forth in Exhibit A.

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

“Certificate” shall mean an electronic certificate created pursuant to the GIS Operating Rules or any successor thereto to represent certain Environmental 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.

“Collateral Account” shall have the meaning specified in Section 6.6(a)(iii)(B) hereof.

“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.

“Collateral Requirement” shall mean at any time the amount of Development Period Security or Operating Period Security required under this Agreement at such time.

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

“Contract Maximum Amount” shall mean 3.702 MWh per hour of Energy and a corresponding portion of all other Products, as may be adjusted in accordance with Section 3.3(b).

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

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

“Credit Support” shall have the meaning specified in Section 6.2(d) hereof.

“Credit Support Delivery Amount” shall have the meaning specified in Section 6.3 hereof.

“Credit Support Return Amount” shall have the meaning specified in Section 6.4 hereof.

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

“Custodian” shall have the meaning specified in Section 6.6(a)(i) hereof.

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

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

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

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

“Deliver” or **“Delivery”** shall mean with respect to (i) Energy, to supply Energy at the Delivery Point in accordance with the terms of this Agreement and the ISO-NE Rules, and (ii) RECs, to supply RECs in accordance with Section 4.7(e).

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

“Delivery Point” shall mean the specific location where Seller shall transmit its Energy to Buyer, as set forth in Exhibit A hereto.

“Development Period Security” shall have the meaning set forth in Section 6.2(a) hereof.

“Dispute” shall have the meaning set forth in Section 11.1 hereof.

“Disputing Party” shall have the meaning set forth in Section 6.7(a) hereof.

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

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

“Eligible Renewable Energy Resource” means resources as defined in R.I.G.L. § 39-26-5.

“Energy” shall mean electric “energy,” as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in MWh 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 RPS laws and regulations of the state of Rhode Island, and under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to Buyer’s Percentage Entitlement to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility, up to and including the Contract Maximum Amount, during the Services Term including Buyer’s Percentage Entitlement to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility’s generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the GIS in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include: (i) any production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; or (iii) any state,

federal or private grants, financing, guarantees or other credit support relating to the construction or ownership, operation or maintenance of the Facility or the output thereof.

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

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

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

“FCM” shall mean the Forward Capacity Market described in the ISO-NE Tariff, which includes a mechanism for procuring capacity in the New England Control Area, or any successor thereto.

“Federal Funds Rate” shall mean the annualized interest rate for the applicable month as set forth in the statistical release designated as H.15, or any successor publication, published by the Board of Governors of the Federal Reserve System.

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

“Financial Closing Date” shall mean the date of the closing of the initial agreements for any Financing of the Facility and of an initial disbursement of funds under such agreements.

“Financing” shall mean any indebtedness (whether secured or unsecured) or other financing arrangement, including without limitation loans, guarantees, notes, convertible debt, bond issuances, tax equity investments, sale/leaseback arrangements and partnership-flips, adequate for the development, construction, or operation of the Facility.

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

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

“GIS” shall mean the NEPOOL 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.

“GIS Operating Rules” are the NEPOOL Generation Information System Operating Rules effective as of the Effective Date, as amended, superseded, or restated from time to time.

“Good Utility Practice” shall mean compliance with all applicable laws, codes, rules and regulations, all ISO-NE Rules and ISO-NE Practices, and any practices, methods and

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

“Guaranteed Commercial Operation Date” shall have the meaning set forth in Section 3.1(a)(iv) hereof.

“I.3.9 Confirmation” refers to the ISO-NE Tariff Section I.3.9 pertaining to ISO-NE’s approval of proposed plans as specified therein.

“Independent Engineer” shall mean a licensed Professional Engineer with expertise in the development of renewable energy projects using the same renewable energy technology as the Facility, reasonably selected by and retained by Seller in order to determine the as-built nameplate capacity of the Facility as provided in Section 3.4(b)(xiii) hereof.

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

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility and ISO-NE, as applicable, regarding the interconnection of the Facility to the Transmission System of the Interconnecting Utility, as the same may be amended from time to time.

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

“Interest Amount” shall mean with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day (but excluding any interest previously earned on such Cash); multiplied by (b) the Collateral Interest Rate for that day; divided by (c) 360.

“Interest Period” shall mean the period from (and including) the last Business Day on which an Interest Amount was Transferred by Buyer (or if no Interest Amount has yet been Transferred by Buyer, the Business Day on which Cash was Transferred to Seller)

to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

“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 in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Agreement, and any applicable successor practices and procedures.

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

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

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

“Late Payment Rate” shall have the meaning set forth in Section 5.2 hereof.

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

“Lender” shall mean any and all Persons (A) lending money, extending credit or providing loan guarantees (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements of the Facility (including the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; (iv) for any capital improvement or replacement related to the Facility; or (v) for the purchase of the Facility and the related rights from Seller; or (B) participating (directly or indirectly) as an equity investor (including a tax equity investor) in the Facility; or (C) any lessor under a lease finance arrangement relating to the Facility.

“Letter of Credit” shall mean an irrevocable, non-transferable, standby letter of credit, issued by a Qualified Institution utilizing a form acceptable to the Party in whose favor

such letter of credit is issued. All costs relating to any Letter of Credit shall be for the account of the Party providing that Letter of Credit.

“Letter of Credit Default” shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events (a) the issuer of such Letter of Credit shall fail to be a Qualified Institution; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (c) the issuer of the Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or (d) the Letter of Credit shall expire or terminate or have a Value of \$0 at any time the Party on whose account that Letter of Credit is issued is required to provide Credit Support hereunder and that Party has not Transferred replacement Credit Support meeting the requirements of this Agreement; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of this Agreement.

“Locational Marginal Price” or “LMP” shall have the meaning set forth in the ISO-NE Rules.

“Market Price” shall mean the price received by Buyer by selling the Energy into either the ISO-NE-administered Day-Ahead or Real-Time Markets, as applicable.

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

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

“MW” shall mean a megawatt AC.

“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 Corporation and shall include any successor thereto.

“Network Upgrades” shall mean upgrades to the Pool Transmission Facilities and the Transmission Provider’s transmission and distribution systems, as determined and identified in the interconnection study approved in connection with construction of the Facility, necessary for Delivery of the Energy to the Delivery Point, including those that are necessary for the Seller’s satisfaction of the obligations under Section 77.4 of this Agreement.

“New England Control Area” shall have the meaning as set forth in the ISO-NE Tariff.

“Newly Developed Renewable Energy Resource” shall mean, pursuant to R.I.G.L. § 39-26.1-2(6), an electrical generation unit that uses exclusively an Eligible Renewable

Energy Resource, and either (x) has neither begun operation, nor have the developers of the unit implemented investment or lending agreements necessary to finance the construction of the unit or (y) is located within the state of Rhode Island and obtained project financing on or after January 1, 2009.

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

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

“Obligations” shall have the meaning specified in Section 6.1 hereof.

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

“Operating Period Security” shall have the meaning set forth in Section 6.2(b) hereof.

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

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

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

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

“Posted Collateral” shall mean all Credit Support and all proceeds thereof that have been Transferred to or received by a Party under this Agreement and not Transferred to the Party providing the Credit Support or released by the Party holding the Credit Support. Any Interest Amount or portion thereof not Transferred will constitute Posted Collateral in the form of Cash.

“Price” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on Exhibit D.

“Products” shall mean Energy and RECs; provided, however, that Energy and RECs generated by or associated with the Facility during the Test Period and RECs not purchased by Buyer under Section 4.1(b) shall not be deemed Products.

“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.

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

“Reference Market-Maker” shall mean a leading dealer in the relevant market that is selected in a commercially reasonable manner and is not an affiliate of either party.

“Regulatory Approval” shall mean the PUC’s approval of this Agreement without material modification or conditions pursuant to R.I.G.L. §§ 39-26.1-3 through 39-26.1-5 and the regulations promulgated thereunder, including the recovery by Buyer of its costs incurred under this Agreement and remuneration equal to two and three-quarters percent (2.75%) of Buyer’s actual annual payments under this Agreement pursuant to R.I.G.L. § 39-26.1-4, which approval shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion.

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

“Related Transmission” shall mean those transmission and distribution facilities to be used by Seller for delivery of the Energy under this Agreement, as described in Exhibit E hereto.

“Related Transmission Approvals” shall mean those FERC filings, agreements, tariffs and approvals associated with service on the Related Transmission.

“Reliability Curtailment” shall mean any curtailment of Delivery of Energy resulting from (i) an emergency condition as defined in the Interconnection Agreement or the ISO-NE Tariff, or (ii) any other order or directive of the Interconnecting Utility or the Transmission Provider pursuant to an Interconnection Agreement or tariff.

“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 satisfy the RPS for a RPS Class I Renewable Generation Unit, and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such RPS Class I Renewable Generation Unit.

“Replacement Energy” shall mean Energy purchased by Buyer as replacement for any Delivery Failure relating to the Energy to be provided hereunder.

“Replacement Price” shall mean the price at which Buyer, acting in a commercially reasonable manner, (A) purchases Replacement Energy and/or Replacement RECs plus (i) costs incurred by Buyer in purchasing such Replacement Energy and/or Replacement RECs, (ii) additional transmission charges, if any, incurred by Buyer to transmit Replacement Energy to the Delivery Point, and (iii) any other costs and losses incurred by Buyer as a result of the Delivery Failure; provided, however, that 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, or (B) elects in its sole discretion not to purchase Replacement Energy and/or Replacement RECs, the market value of Energy and/or RECs (provided that the market value of the RECs shall in no event exceed the Alternative Compliance Payment Rate) as of the date and the time of the Delivery Failure plus any other costs and losses incurred by Buyer as a result of the Delivery Failure will replace the price at which Buyer purchases Replacement Energy and/or Replacement RECs in the calculation of the Replacement Price relating to the Energy and/or RECs to be purchased and sold hereunder.

“Replacement RECs” shall mean any generation or environmental attributes, including any Certificates or other certificates or credits related thereto reflecting generation by a RPS Class I Renewable Generation Unit that are purchased by Buyer as replacement for any Delivery Failure.

“Request Date” shall have the meaning set forth in Section 6.7(a) hereof.

“Requesting Party” shall have the meaning set forth in Section 6.7(a) hereof.

“Resale Damages” shall mean, with respect to any Rejected Purchase, an amount equal to (a) the positive net amount, if any, by which the applicable Price that would have been paid pursuant to Section 5.1 hereof for such Rejected Purchase, had it been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase (in MWh and/or RECs, as applicable), 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 in accordance with the terms of this Agreement. Seller shall provide a written statement for the applicable period 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 that Seller would not have incurred but for the 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.

“Rounding Amount” shall have the meaning specified in Section 6.2(c) hereof.

“RPS” shall mean the requirements established pursuant to R.I.G.L. § 39-26-1 et seq. and the regulations promulgated thereunder that require all retail electricity suppliers in Rhode Island to provide a minimum percentage of electricity from RPS Class I Renewable Generation Units, and such successor laws and regulations as may be in effect from time to time.

“RPS Class I Renewable Generation Unit” shall mean a Newly Developed Renewable Energy Resource that produces RECs that qualify for the RPS.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to 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.

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

“Seller’s Taxes” shall have the meaning set forth in Section 5.3(a) hereof.

“Substitute Credit Support” shall have the meaning assigned in Section 6.6(e) hereof.

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

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

“Test Energy” shall have the meaning set forth in Section 4.8 hereof.

“Test Period” shall have the meaning set forth in Section 3.4(a) hereof.

“Transfer” shall mean, with respect to any Posted Collateral or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

- (a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the Party to whom such Cash is being delivered; and
- (b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the Party to whom such Letter of Credit is being delivered.

“Transmission Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; (b) Buyer; and/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.

“Transmission System” shall mean the transmission facilities operated by a Transmission Provider, now or hereafter in existence, which provide energy transmission service for the Energy to or from the Delivery Point.

“Unit Contingent” shall mean that the Products are to be supplied only from the Facility and only to the extent that the Facility is in operation.

“Valuation Agent” means the Requesting Party; provided, however, that in all cases, if an Event of Default has occurred and is continuing with respect to the Party designated as the Valuation Agent, then in such case, and for so long as the Event of Default continues, the other Party shall be the Valuation Agent.

“Valuation Date” shall mean each Business Day.

“Valuation Percentage” shall have the meaning specified in Section 6.2(d) hereof.

“Valuation Time” shall mean the close of business on the Business Day before the Valuation Date or date of calculation, as applicable.

“Value” shall mean, with respect to Posted Collateral or Credit Support, the Valuation Percentage multiplied by the amount then available under the Letter of Credit to be unconditionally drawn by Buyer.

2. EFFECTIVE DATE; TERM

2.1 **Effective Date.** Subject in all respects to Section 8.1 and Section 8.2, this Agreement is effective as of the Effective Date.

2.2 **Term.**

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

(b) The **“Services Term”** is the period during which Buyer is obligated to purchase Products Delivered to Buyer by Seller (not including Energy and RECs Delivered during the Test Period under Section 4.8) commencing on the Commercial Operation Date and continuing for a period of twenty (20) years from the Commercial Operation Date, unless this Agreement is earlier terminated in accordance with the provisions hereof.

(c) At the expiration of the Term or earlier termination of this Agreement pursuant to the terms hereof, the Parties shall no longer be bound by the terms and provisions

hereof, except (i) to the extent necessary to make payments of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of a breach of, this Agreement, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, and (iii) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

3. FACILITY DEVELOPMENT AND OPERATION

3.1 Critical Milestones.

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

- (i) receipt of all Permits necessary to construct the Facility, as set forth in Exhibit B, in final form, by July 1, 2019;
- (ii) acquisition of all required real property rights necessary for construction and operation of the Facility and the interconnection of the Facility to the Interconnecting Utility in full and final form with all options and/or contingencies having been exercised demonstrating complete site control as set forth in Exhibit B, by July 1, 2019;
- (iii) closing of the Financing adequate for the development and construction of the Facility or other demonstration to Buyer’s reasonable satisfaction of the financial capability to construct the Facility, including, as applicable, Seller’s financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades by June 1, 2019; and
- (iv) achievement of the Commercial Operation Date by November 1, 2019 (“Guaranteed Commercial Operation 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 reasonably demonstrating with reasonable specificity that such Critical Milestone has been achieved. Seller acknowledges that Buyer will receive such notice solely to monitor progress toward the Commercial Operation Date, and Buyer shall have no responsibility or liability for the development, construction, operation or maintenance of the Facility.

(c) Seller may elect to extend all of the dates for the Critical Milestones not yet achieved by up to four six-month periods from the applicable dates set forth in Section 3.1(a) by posting additional Development Period Security in an amount equal to \$18,510 for each such

six-month period. Any such election shall be made in a written notice delivered to Buyer on or prior to the first date for a Critical Milestone that has not yet been achieved (as such date may have previously been extended).

(d) To the extent a Force Majeure event pursuant to Section 10.1 has occurred that prevents the Seller from achieving the Critical Milestone date for acquisition of real property rights and interconnection (Section 3.1(a)(ii)) or the Commercial Operation Date (Section 3.1(a)(iv)) by the applicable Milestone date, the Critical Milestone Date(s) impacted by such Force Majeure event shall be extended for the duration of the Force Majeure event, but under no circumstances shall extensions of those Critical Milestone dates due to Force Majeure events exceed twelve (12) months beyond the applicable Milestone date, and further provided, that the Seller shall not have the right to declare a Force Majeure event related to the Permits Critical Milestone (Section 3.1(a)(i)) or the Financing Critical Milestone (Section 3.1(a)(iii)).

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

(f) If Seller fails to make material progress toward the Commercial Operation Date, as reasonably determined by either Buyer or the PUC based on Seller's progress with respect to the milestones set forth in Section 3.1(a), within three (3) years after the Effective Date, Buyer may terminate this Agreement by written notice to Seller delivered within sixty (60) days after the third anniversary of the Effective Date (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 except for obligations arising under Article 12.

3.2 Delay Damages.

(a) If the Commercial Operation Date is not achieved by the Guaranteed Commercial Operation Date (as extended pursuant to Sections 3.1(c) and 10.1), Seller shall pay to Buyer damages for each day from and after such date in an amount equal to \$370, commencing on the Guaranteed Commercial Operation Date (as extended pursuant to Sections 3.1(c) and 10.1) and ending on the earlier of (i) the Commercial Operation Date, (ii) the date that Buyer exercises its right to terminate this Agreement under Section 9.3, or (iii) the date that is twelve (12) months after the Guaranteed Commercial Operation Date ("**Delay Damages**"). Delay Damages shall be due under this Section 3.2(a) without regard to whether Buyer exercises its right to terminate this Agreement pursuant to Section 9.3; provided, however, that if Buyer exercises its right to terminate this Agreement under Section 9.3, Delay Damages shall be due and owing to the extent that such Delay Damages were due and owing at the date of such termination.

(b) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Article shall

not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date. Any such termination damages shall be determined in accordance with Article 9.

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

3.3 Construction and Changes in Capacity.

(a) Construction of Facility. Seller shall construct the Facility as described in Exhibit A, in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility and all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to Buyer. Seller shall bear all costs related thereto. Seller may contract with other Persons to provide construction functions, so long as Seller maintains overall control over the construction of the Facility through the Term.

(b) Capacity Deficiency. To the extent that Seller has constructed the Facility in accordance with Good Utility Practice, and met all other requirements for the Commercial Operation Date under Section 3.4(b) of this Agreement, but a Capacity Deficiency exists on the Commercial Operation Date as permitted by Section 3.4(b), then on the Commercial Operation Date, the Contract Maximum Amount shall be automatically and permanently reduced commensurate with the Capacity Deficiency, which reduced Contract Maximum Amount shall be stated in a notice from Buyer to Seller, which notice shall be binding absent manifest error.

(c) Increase in Facility Size. To the extent that Seller has constructed the Facility in accordance with Good Utility Practice, and met all other requirements under Section 3.4(b) of this Agreement, if the Independent Engineer's certification provides that the Actual Facility Size exceeds the Proposed Facility Size as provided in Exhibit A, the Buyer's Percentage Entitlement will be recalculated and replaced by the percentage derived by dividing the Contract Maximum Amount by the Actual Facility Size.

(d) Progress Reports. Within ten (10) days of the end of each calendar quarter after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer with a progress report regarding Critical Milestones not yet achieved, including projected time to completion of the Facility, in accordance with the form attached hereto as Exhibit C, and shall provide supporting documents and detail regarding the same upon Buyer's request. Seller shall

permit Buyer and its advisors and consultants to review and discuss with Seller and its advisors and consultants such progress reports during business hours and upon reasonable notice to Seller.

(e) Site Access. Buyer and its representatives shall have the right but not the obligation, during business hours and upon reasonable notice to Seller, to view the construction of the Facility; *provided*, that (i) Buyer and its representatives shall observe all applicable Facility safety rules while such authorized individuals are at the Facility site, and (ii) Seller may remove any such authorized individuals from the Facility site if they have violated any of the Facility safety rules.

3.4 Commercial Operation.

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

(b) The Commercial Operation Date shall occur on the date on which the Facility as described in Exhibit A is completed (subject, if applicable, to a Capacity Deficiency so long as the Actual Facility Size on the Commercial Operation Date is (1) at least ninety percent (90%) of the proposed nameplate capacity of the Facility as set forth in Exhibit A, and (2) not more than ten (10) MW less than the proposed nameplate capacity of the Facility set forth in Exhibit A) and capable of regular commercial operation in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility, all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to the Buyer have been satisfied, and all performance testing for the Facility has been successfully completed, provided Seller has also satisfied the following conditions precedent as of such date:

- (i) completion of all transmission and interconnection facilities and any Network Upgrades, including final acceptance and authorization to interconnect the Facility from ISO-NE or the Interconnecting Utility in accordance with the fully executed Interconnection Agreement;
- (ii) all Related Transmission Facilities as set forth in Exhibit E are complete and in-service;
- (iii) Seller has obtained and demonstrated possession of all Permits required for the lawful construction and operation of the Facility, for the interconnection of the Facility to the Interconnecting Utility (including any Network Upgrades) and for Seller to perform its obligations under this Agreement, including but not limited to Permits related to environmental matters, all as set forth on Exhibit B;

- (iv) Seller has obtained qualification by the PUC qualifying the Facility as a RPS Class I Renewable Generation Unit;
- (v) All Related Transmission Approvals have been received;
- (vi) Seller has acquired all real property rights needed to construct and operate the Facility, to interconnect the Facility to the Interconnecting Utility, to construct the Network Upgrades (to the extent that it is Seller's responsibility to do so) and to perform Seller's obligations under this Agreement;
- (vii) Seller has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;
- (viii) 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 Settlement Market System;
- (ix) Seller has successfully completed all pre-operational testing and commissioning in accordance with manufacturer guidelines;
- (x) Seller has satisfied all Critical Milestones that precede the Commercial Operation Date in Section 3.1;
- (xi) no Default or Event of Default by Seller shall have occurred and remain uncured;
- (xii) the Facility is owned or leased by, and under the care, custody and control of, Seller.
- (xiii) Seller has delivered to Buyer:

(A) an Independent Engineer's certification stating (i) that the Facility has been completed in all material respects (excepting punchlist items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this Agreement, and (ii) the Actual Facility Size;

(B) certificates of insurance evidencing the coverages required under Section 3.5(i); and

(C) the Operating Period Security; and

- (xiv) Seller has demonstrated that it can reliably transmit real time data and measurements to ISO-NE.

3.5 Operation of the Facility.

(a) Compliance With Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; (ii) the Operational Limitations; and (iii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under this Agreement (including obligations related to the generation, Scheduling, interconnection, and transmission of Energy, and the transfer of REC's), 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, as applicable.

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

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

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

(e) ISO-NE Status. Seller shall, at all times during the Services Term, either: (i) be an ISO-NE "Market Participant" pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with a Market Participant that shall perform all of Seller's ISO-NE-related obligations in connection with the Facility and this Agreement.

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

(g) RPS Class I Renewable Generation Unit. Subject to Section 4.7(b), Seller shall be solely responsible at Seller's cost for qualifying the Facility as a RPS Class I Renewable Generation Unit and maintaining such qualification throughout the Services Term. Seller shall take all actions necessary to register for and maintain participation in the GIS to register, monitor, track, and transfer RECs. Seller shall provide such additional information as Buyer may request relating to such qualification and participation.

(h) Compliance Reporting. Within **thirty (30)** days following the end of each calendar quarter, Seller shall provide Buyer information pertaining to emissions, fuel types, labor information and any other information to the extent required by Buyer to comply with the disclosure requirements contained under applicable Law and any other such disclosure regulations which may be imposed upon Buyer during the Term, which information requirements will be provided to Seller by Buyer at least fifteen (15) days before the beginning of the calendar quarter for which the information is required. To the extent Buyer is subject to any other certification or compliance reporting requirement with respect to the Products produced by Seller and delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, reasonably available to it and not reasonably available to Buyer) requested by Buyer to permit Buyer to comply with any such reporting requirement.

(i) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company (or any successor thereto) the insurance coverage and with the deductibles that are customary for a generating facility of the type and size of the Facility and as otherwise legally required. Upon the execution of this Agreement, and at each subsequent policy renewal date thereafter, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, if such evidence of insurance is not issued on a standard ACORD form, (iii) shall evidence a firm obligation of the insurer to provide Buyer with thirty (30) days prior written notice of cancellation or non-renewal of coverage (for coverage modifications that may adversely affect Buyer, Seller shall provide Buyer with thirty (30) days prior written notice), and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(j) 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.

(k) 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, including all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by FERC and any other Governmental Entity, whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of operational and environmental matters relating to the

Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with applicable requirements of Law.

(l) FERC Status. Seller shall be responsible for ensuring that it is in compliance with all FERC directives and requirements necessary for Seller to fulfill its obligations under this Agreement. As part of Seller's satisfaction of this responsibility, it shall maintain the Facility's status as a QF or EWG (to the extent Seller meets the criteria for such status) at all times after the Commercial Operation Date and shall obtain and maintain any requisite authority to sell the output of the Facility at market-based rates, including market-based rate authority to the extent applicable. If Seller certifies the Facility as a QF, for so long as this Agreement is in effect, Seller waives, and agrees not to assert, any rights Seller may have to require Buyer to purchase or transmit electric power or to pay a specified price for electric power by virtue of the status of the Facility as a QF.

(m) Maintenance. No later than (a) the Commercial Operation Date and (b) two months prior to the end of each calendar year thereafter during the Term, Seller shall submit to Buyer a schedule of planned maintenance for the following calendar year for the Facility. Throughout the Term, Seller shall coordinate all planned maintenance with ISO-NE, consistent with ISO-NE Rules, and shall promptly provide applicable information concerning scheduled outages, as determined by ISO-NE, to Buyer. To maximize the value of the Products, to the extent possible and consistent with ISO-NE Rules, Seller shall not schedule maintenance of the Facility during the months of January through February or June through September, and shall operate the Facility so as to maximize energy production during the hours of anticipated peak load and Energy prices in New England; provided, however, that planned maintenance may be scheduled during such period to the extent the failure to perform such planned maintenance is contrary to operation of the Facility in accordance with Good Utility Practice.

3.6 Interconnection and Delivery Services.

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

(b) Seller shall defend, indemnify and hold Buyer harmless against any and all liabilities, fees, costs and expenses, including but not limited to reasonable attorneys' fees arising due to Seller's performance or failure to perform under the Interconnection Agreement or any agreement for delivery service associated with Seller's performance of this Agreement.

4. DELIVERY OF PRODUCTS

4.1 Obligation to Sell and Purchase Products.

(a) Beginning on the Commercial Operation Date and subject to Section 4.1(b) and 4.2(a), Seller shall sell and Deliver, and Buyer shall purchase and receive all right, title and interest in and to, Buyer's Percentage Entitlement of the Products in accordance with the terms and conditions of this Agreement. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are Unit Contingent and shall be subject to the operation of the Facility. Seller agrees that Seller will not curtail or otherwise reduce deliveries of the Products in order to sell such Products to other purchasers. To maximize the value of the Products, to the extent possible and consistent with ISO-NE Rules and Good Utility Practice, Seller shall use commercially reasonable efforts to minimize outages during the time periods of anticipated peak load and peak Energy prices in New England.

(b) Buyer shall not be obligated to accept or pay for any REC or comparable certificate, credit, attribute or other similar product produced by or associated with the Facility which fails to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit, and, to the extent that Buyer does not purchase any such REC or comparable certificate, credit, attribute or other similar product associated with the Facility, Seller may, in its sole discretion, sell, transfer or otherwise dispose of that REC or comparable certificate, credit, attribute or other similar product. In the event that the Buyer notifies Seller that it will not purchase any REC or comparable certificate, credit, attribute or other similar product produced by the Facility which fails to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit, then Buyer may resume purchasing such RECs or comparable certificates, credits, attributes or other similar products produced by the Facility upon thirty (30) days' prior written notice to Seller, unless otherwise agreed by Buyer and Seller.

(c) Seller shall Deliver Buyer's Percentage Entitlement of the Products produced by or associated with the Facility, up to and including the Contract Maximum Amount, 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 except as permitted under this Section 4.1 or otherwise pursuant to this Agreement. Seller shall not enter into any agreement or arrangement under which such Buyer's Percentage Entitlement of the 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.

(a) During the Services Term and in accordance with Section 4.1, Seller shall Schedule and transfer Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Agreement and all ISO-NE Practices and ISO-NE Rules. Seller shall transfer the Energy to Buyer in the Day Ahead Energy Market or Real Time Energy Market, as reasonably agreed from time to time by Buyer and Seller and consistent with prevailing electric industry practices at the time and Buyer shall have

no obligation to pay for any Energy not transferred to Buyer in the Day Ahead Energy Market or 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 system). Notwithstanding any other provision of this Agreement, if during the Term of this Agreement the LMP at the Delivery Point is negative, or, in the reasonable opinion of Seller, is likely to become negative, then Seller may deliver to Buyer a written notice stating that such condition has occurred or is likely to occur and the period during which such condition has occurred or is likely to occur. Buyer and Seller hereby agree that in such event Seller shall be under no obligation to schedule or Deliver Products to the Delivery Point during such period. Seller shall provide Buyer with detailed information, including but not limited to, the start and stop times of such periods of curtailment under this Section 4.2(a) as well as the quantity curtailed, for all such periods of non-delivery during the preceding calendar month which information shall be provided prior to Seller's delivery of the invoice to Buyer.

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.5(e) 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 imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission up to and at the Delivery Point, and Buyer shall be responsible for all of the foregoing after the Delivery Point, provided that Buyer shall have no responsibility or liability for any Network Upgrade. To the extent a Party incurs costs, charges, penalties or losses which are the responsibility of the other Party, (including amounts not credited to Buyer as described in Section 4.2(a)), the other Party shall reimburse such Party for the same.

4.3 Failure of Seller to Deliver Products. In the event that Seller generates Products and fails to satisfy any of its obligations to Deliver such Products or any portion thereof in accordance with Section 4.1, Section 4.2 and Section 4.7, and such failure is not excused under the express terms of this Agreement (a "**Delivery Failure**"), Seller shall pay Buyer an amount for such Delivery Failure (measured in MWh and/or RECs) 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 Failure would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

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

4.5 Delivery Point.

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

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees, uplift, socialized charges, and all other charges in connection with the satisfaction of Seller’s obligations hereunder, including without limitation the Delivery of Energy to and at the Delivery Point. Seller shall indemnify and hold harmless Buyer for any such charges, fees, or expenses imposed upon Buyer by operation of ISO-NE rules or otherwise in connection with Seller’s performance of its obligations hereunder.

4.6 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “**Meters**”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense once each Contract Year. All Meters used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Meters are to be inspected and tested (or adjusted) in accordance with this Section 4.6. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than two percent (2%), (i)

the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility or the ISO-NE Tariff, whichever is applicable, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test (at its own expense) 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 in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

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

4.7 RECs.

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

(b) Regarding the RPS:

(i) Except as provided in subsection (ii) of this Section 4.7(b), all Energy provided by Seller to Buyer from the Facility under this Agreement shall meet the requirements for eligibility pursuant to the RPS, and Seller's failure to satisfy such requirements shall constitute an Event of Default pursuant to Section 9.1(c) of

this Agreement except as provided in Section 4.7(b)(ii), below;
and

- (ii) If solely as a result of change in Law, Energy provided by Seller to Buyer from the Facility under this Agreement no longer meets the requirements for eligibility pursuant to the RPS, such will not constitute an Event of Default under Article 9, provided Seller promptly uses commercially reasonable efforts to ensure that qualification will continue after the change in Law. If, notwithstanding such commercially reasonable efforts and solely as a result of change in Law, the Facility does not qualify as a RPS Class I Renewable Generation Unit, then (A) Seller shall continue to sell, and Buyer shall continue to purchase Energy under this Agreement at the Adjusted Price in accordance with Section 5.1 and (B) any purchases and sales of RECs shall be in accordance with Section 4.1(b).

(c) At Seller's sole cost, Seller shall also obtain and maintain throughout the Services Term qualification as a RPS Class I generation resource under the renewable portfolio standard or similar law of the New England states of Connecticut, Maine, Massachusetts, and New Hampshire, to the extent the renewable energy technology used in the Facility is eligible under such renewable portfolio standard or similar law. At Buyer's request and at Seller's sole cost, Seller shall also obtain qualification under the renewable portfolio standard or similar law of New York and/or any federal renewable energy standard, to the extent the renewable energy technology used in the Facility is eligible under such renewable portfolio standard, renewable energy standard or similar law, and Seller shall use commercially reasonable efforts, consistent with Good Utility Practice, to maintain such qualifications at all times during the Services Term unless otherwise agreed by Buyer. Seller shall also submit to Buyer or as directed by Buyer any information required by any state or federal agency with regard to administration of its rules regarding Environmental Attributes or its renewable energy standard or renewable portfolio standard or Seller's qualification under the foregoing.

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

(e) Prior to the delivery of any Energy hereunder (including any Energy Delivered during the Test Period), either (i) Seller shall cause Buyer to be registered in the GIS as the initial owner of all Certificates to be Delivered hereunder to Buyer or (ii) Seller and Buyer shall effect an irrevocable Forward Certificate Transfer (as defined in the GIS Operating Rules) of the Certificates to be Delivered hereunder to Buyer in the GIS for the Test Period and the

Services Term; provided, however, that no payment shall be due to Seller for any RECs until either (x) the Certificates are actually deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing, or (y) (i) Buyer and Seller enter such an irrevocable Forward Certificate Transfer of the Certificates to be Delivered to Buyer in the GIS, which Forward Certificate Transfer shall be denoted in the GIS as not being capable of rescission by Seller, and (ii) the Energy with which such RECs are associated has been Delivered to Buyer.

(f) The Parties intend for the transactions entered into hereunder to be physically settled, meaning that the RECs are intended to be Delivered in the GIS account of Buyer or its designee as set forth in this Section 4.7.

4.8 Deliveries During Test Period. During the Test Period, Seller shall sell and Deliver, and Buyer shall purchase and receive Buyer's Percentage Entitlement of any Energy ("Test Energy") and RECs produced by or associated with the Facility. Notwithstanding the provisions of Section 5.1, payment for Test Energy Delivered during the Test Period and RECs associated with such Test Energy shall be equal to one hundred percent (100%) of the product of (x) the Test Energy Delivered (in MWh) and (y) the lesser of (i) the Adjusted Price determined in accordance with Section 1(a) of Exhibit D for Year 1, or (ii) the Real Time LMP at such Delivery Point. In the event that the Real Time LMP for the Test Energy at the Delivery Point is less than \$0.00 per MWh in any hour, Seller shall credit to Buyer, on the appropriate monthly invoice, an amount equal to one hundred percent (100%) of the product of (i) such Test Energy delivered in such hour and (ii) the absolute value of the hourly Real Time LMP at the Delivery Point. In no event shall the Test Period extend beyond **six (6)** months, except due to Force Majeure.

4.9 Title to Facility. Seller or Lender shall be the legal and beneficial owner of the Facility at all times.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Price for Products. All Products Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Price specified in Exhibit D; provided, however, that if the RECs fail to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit and Buyer does not purchase the RECs pursuant to Section 4.1(b), then all Energy Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Adjusted Price specified in Exhibit D. Other than the (i) payment for the Products under this Section 5.1, (ii) payments related to Meter testing under Section 4.6(b), (iii) payments related to Meter malfunctions under Section 4.6(e), (iv) payment for Energy and RECs during the Test Period in accordance with Section 4.8, (v) payment of any Resale Damages under Section 4.4, (vi) payment of interest on late payments under Section 5.2, (vii) payments for reimbursement of Buyer's Taxes under Section 5.3(a), (viii) return of any Credit Support under Section 6.4, and (ix) payment of any Termination Payment due from Buyer under Section 9.3, Buyer shall not be required to make any other payments to Seller under this Agreement, and Seller shall be solely responsible for all costs and losses incurred by it in connection with the performance of its obligations under this Agreement. In the event that the LMP for the Energy at the Delivery Point is less than \$0.00 per

MWh in any hour, Seller shall credit to Buyer, on the appropriate monthly invoice, an amount equal to the product of (i) such Energy delivered in such hour and (ii) the absolute value of the hourly LMP at the Delivery Point.

5.2 Payment and Netting.

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

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

(c) Disputes and Adjustments of Invoices.

- (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 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 this Section 5.2.
- (ii) Within twelve (12) months of the issuance of an invoice the Seller may adjust any invoice for any arithmetic or computational error and shall provide documentation and information supporting such adjustment to Buyer. Within twelve (12)

months of the receipt of an invoice (or an adjusted invoice), the Buyer may dispute any charges on that invoice. In the event of such a dispute, the Buyer shall give notice to the Seller and shall state the basis for the dispute. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Any claim for additional payment is waived unless the Seller issues an adjusted invoice within twelve (12) months of issuance of the original invoice. Any dispute of charges is waived unless the Buyer provides notice of the dispute to the Seller within twelve (12) months of receipt of the invoice (or adjusted invoice) including such charges.

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

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

5.3 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products ("**Seller's Taxes**"). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer, or imposed on or associated with the purchase of such Products by Buyer (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) ("**Buyer's Taxes**"). In the event Seller shall be required by law or regulation to remit or pay any Buyer's Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller's Taxes, Seller shall reimburse Buyer for such payment, and Buyer may also elect to deduct any of the amount of any such Seller's

Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the Facility's eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes, or to receive any other favorable tax or accounting right or benefit, or any grant or subsidy from a Governmental Entity or other Person. Seller's obligations under this Agreement shall be effective regardless of whether the Facility is eligible for or receives, or the transactions contemplated under this Agreement are eligible for or receives, any federal or state tax credits, grants or other subsidies or any particular accounting, reporting or tax treatment.

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 (other than indemnification obligations surviving the expiration of the Term) 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 Seller's Support.

(a) Seller shall be required to post Credit Support having a Value of \$74,040 to secure Seller's Obligations until the Commercial Operation Date ("**Development Period Security**"). Fifty percent (50%) of the Development Period Security shall be provided to Buyer on the Effective Date, and the remaining fifty percent (50%) of the Development Period Security shall be provided to Buyer within fifteen (15) days after the receipt of the Regulatory Approval. Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days after the later of (x) Buyer's receipt of an undisputed notice from Seller that the Commercial Operation Date has occurred or (y) Buyer's receipt of the full amount of the Operating Period Security.

(b) Beginning not later than three (3) days following the Commercial Operation Date, Seller shall provide Buyer with Credit Support to secure Seller's Obligations after the Commercial Operation Date through and including the date that all of Seller's Obligations are satisfied ("**Operating Period Security**"). The Operating Period Security shall have a Value of \$74,040, as adjusted in accordance with Section 3.3(b).

(c) The Credit Support Delivery Amount, as defined below, will be rounded up, and the Return Amount, as defined below, will be rounded down, in each case to the nearest integral multiple of \$10,000 (“**Rounding Amount**”).

(d) The following items will qualify as “**Credit Support**” hereunder in the amount noted under “Valuation Percentage”:

“Valuation Percentage”	
(A) Cash	100%
(B) Letters of Credit	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be 0%.

(e) All calculations with respect to Credit Support shall be made by the Valuation Agent as of the Valuation Time on the Valuation Date.

6.3 Delivery of Credit Support.

On any Business Day during the Services Term on which (a) no Event of Default has occurred and is continuing with respect to Buyer, and (b) no termination date has occurred or has been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations with respect to Buyer, then Buyer may request, by written notice, that Seller Transfer to Buyer, or cause to be Transferred to Buyer, Credit Support for the benefit of Buyer, having a Value of at least the Collateral Requirement (“**Credit Support Delivery Amount**”). Such Credit Support shall be delivered to Buyer on the next Business Day if the request is received by the Notification Time; otherwise Credit Support is due by the close of business on the second Business Day after the request is received.

6.4 Reduction and Substitution of Posted Collateral.

On any Business Day during the Services Term on which (a) no Event of Default has occurred and is continuing with respect to Seller, (b) no termination date has occurred or has been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment Obligations, and (c) the Posted Collateral posted by Seller exceeds the required Operating Period Security (rounding downwards for any fractional amount to the next interval of the Rounding Amount), then Seller may, at its sole cost, request that Buyer return Operating Period Security in the amount of such difference (“**Credit Support Return**”).

Amount”) and Buyer shall be obligated to do so. Such Posted Collateral shall be returned to Seller by the close of business on the second Business Day after Buyer’s receipt of such request. The Parties agree that if Seller has posted more than one type of Credit Support to Buyer, Seller can, in its sole discretion, select the type of Credit Support for Buyer to return; provided, however, that Buyer shall not be required to return the specified Credit Support if immediately after such return, Seller would be required to post additional Credit Support pursuant to the calculation of Operating Period Security.

6.5 [Reserved].

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

(a) Transfer and Holding of Cash.

- (i) 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 6.6(a)(ii) shall not apply with respect to Buyer and Cash shall be held in a Qualified Institution in accordance with the provisions of Section 6.6(a)(iii)(B). 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 6.6(a)(iii)(B). Except as set forth in Section 6.6(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.
- (ii) 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, comingle 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.

- (iii) Notwithstanding Section 6.6(a)(ii), if neither Buyer nor the Custodian is eligible to hold Cash pursuant to Section 6.6(a)(i) then:

- (A) the provisions of Section 6.6(a)(ii) will not apply with respect to Buyer;

and

- (B) 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.

- (iv) So long as no Event of Default with respect to Seller has occurred and is continuing, and no termination date has occurred or been designated for which any unsatisfied payment obligations of Seller exist as the result of an Event of Default with respect to Seller, in the event that Buyer or its Custodian is holding Cash, Buyer will Transfer (or cause to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which shall be retained by Buyer), the Interest Amount. Interest on Cash shall accrue at the Collateral Interest Rate. Interest accrued during the previous month shall be paid by Buyer to Seller on the 3rd Business Day of each calendar month and on any Business Day that posted Credit Support in the form of Cash is returned to Seller, but solely to the extent that, after making such payment, the amount of the Posted Collateral will be at least equal to the required Development Period Security or Operating Period Security, as applicable. On or after the occurrence of an Event of Default with respect to Seller or a termination date as a result of an Event of Default with respect to Seller, Buyer or its

Custodian shall retain any such Interest Amount as additional Posted Collateral hereunder until the Obligations of Seller under the Agreement have been satisfied in the case of a termination date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) 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 9.3(b) of this Agreement, Buyer may exercise one or more of the following rights and remedies: (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. For purposes of this Section 6.6, Buyer may draw on the undrawn portion of any Letter of Credit from time to time up to the amount of the Obligations that are due at the time of such drawing. Cash proceeds that are not applied to the Obligations shall be maintained in accordance with the terms of this Article 6. Seller shall remain liable for amounts due and owing to Buyer that remain unpaid after the application of Posted Collateral, pursuant to this Section 6.6.

(c) Letters of Credit. Credit Support provided in the form of a Letter of Credit shall be subject to the following provisions.

- (i) As one method of providing increased Credit Support, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
- (ii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to Buyer either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the third (3rd) Business Day after the occurrence thereof if only clause (a) under the definition of **Letter of Credit Default** applies.
- (iii) Notwithstanding Sections 6.3 and 6.4, (1) Buyer need not return a Letter of Credit unless the entire principal amount is required to be returned, (2) Buyer shall consent to a reduction of the principal amount of a Letter of Credit to the extent that a Credit Support Delivery Amount would not be created thereby (as of the time of the request or as of the last time the Credit Support Delivery Amount was determined), and (3) if there is more than one form of Posted Collateral when a Credit Support Return Amount is to be Transferred, the Secured Party may elect which to Transfer.

(d) Care of Posted Collateral. Buyer shall exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable Law, and in any event Buyer will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, Buyer will have no duty with respect to the Posted Collateral, including without limitation, any duty to enforce or preserve any rights thereto.

(e) Substitutions. Unless otherwise prohibited herein, upon notice to Buyer specifying the items of Posted Collateral to be exchanged, Seller may, on any Business Day, deliver to Buyer other Credit Support ("**Substitute Credit Support**"). On the Business Day following the day on which the Substitute Credit Support is delivered to Buyer, Buyer shall return to Seller the items of Credit Support specified in Seller's notice; provided, however, that Buyer shall not be required to return the specified Posted Collateral if immediately after such return, Seller would be required to post additional Credit Support pursuant to the calculation of Development Period Security or Operating Period Security set forth in Sections 6.2(a) and 6.2(b), respectively.

6.7 Exercise of Rights Against Posted Collateral.

(a) Disputes regarding amount of Credit Support. If either Party disputes the amount of Credit Support to be provided or returned (such Party the "**Disputing Party**"), then the Disputing Party shall (a) deliver the undisputed amount of Credit Support to the other Party (such Party, the "**Requesting Party**") and (b) notify the Requesting Party of the existence and nature of the dispute no later than 5:00 p.m. Eastern Prevailing Time on the Business Day that the request for Credit Support was made (the "**Request Date**"). On the Business Day following the Request Date, the Parties shall consult with each other in order to reconcile the two conflicting amounts. If the Parties are not able to resolve their dispute, the Credit Support shall be recalculated, on the Business Day following the Request Date, by each Party requesting quotations from two (2) Reference Market-Makers for a total of four (4) quotations. The highest and lowest of the four (4) quotations shall be discarded and the arithmetic average shall be taken of the remaining two (2), which shall be used in order to determine the amount of Credit Support required. On the same day the Credit Support amount is recalculated, the Disputing Party shall deliver any additional Credit Support required pursuant to the recalculation or the Requesting Party shall return any excess Credit Support that is no longer required pursuant to the recalculation.

(b) Further Assurances. Promptly following a request by a Party, the other Party 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 Posted Collateral or other security interest or lien, to enable the requesting party to exercise or enforce its rights or remedies under this Agreement, or with respect to Posted Collateral, or accrued interest.

(c) Further Protection. Seller will promptly give notice to Buyer of, and defend against, any suit, action, proceeding, or lien (other than a banker's lien in favor of the Custodian appointed by Buyer so long as no amount owing from Seller to such Custodian is

overdue) 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 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. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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

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

(e) Consents and Approvals. Except to the extent associated with the Regulatory Approval, the execution, delivery and performance by Buyer of its obligations under this Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken or that shall be duly obtained, made or taken on or prior to the date required, and all such approvals, consents,

permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable as required under applicable Law.

(f) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Buyer and equal bargaining power of the Parties. No principle of law or equity regarding construing ambiguities in this Agreement against the drafting Party shall apply.

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

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

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

(a) Organization and Good Standing; Power and Authority. Seller is a limited liability company, duly formed, validly existing and in good standing under the laws of Delaware. Subject to the receipt of the Permits listed in Exhibit B and any Related Transmission Approvals, Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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

performance of any of its obligations under this Agreement by reason of market power or affiliate transaction issues under federal or state regulatory requirements.

(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 Buyer and receipt of the Permits listed on Exhibit B and any Related Transmission Approvals, constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

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

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

(g) RPS Class I Renewable Generation Unit. The Facility shall be a RPS Class I Renewable Generation Unit, qualified by the PUC as eligible to participate in the RPS program, under R.I.G.L. § 39-26-1 et seq. (subject to Section 4.7(b) in the event of a change in Law affecting such qualification as a RPS Class I Renewable Generation Unit) and shall have a Commercial Operation Date, as verified by the Buyer.

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

(i) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Seller and equal bargaining power of the Parties. No principle of law or equity regarding construing ambiguities in this Agreement against the drafting Party shall apply.

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

(k) No Misrepresentations. The reports and other submittals by Seller to Buyer under this Agreement are not false or misleading in any material respect.

(l) 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.

(m) Site Control. As of the Effective Date, Seller either (i) has acquired all real property rights to construct and operate the Facility subject only to the receipt of the Permits and approvals referenced in Exhibit B, and to perform Seller's obligations under this Agreement, or (ii) has an irrevocable option to acquire such real property rights and the only condition upon Seller's exercise of such option to acquire such real property rights is the payment of monies to acquire such real property rights; provided, however, that (a) with respect to the real property rights to interconnect the Facility to the Interconnecting Utility and to construct the Network Upgrades each as presently contemplated (to the extent it is Seller's responsibility to do so), Seller shall have acquired all such rights as of the date of the applicable Critical Milestone in Section 3.1(a) ; and (b) the Parties understand that as of the Effective Date the Seller has undertaken only a preliminary site design, and that the final design of the Facility, including the Facility's interconnection, may require the acquisition or disposition of additional property and/or property rights in a manner that does not alter the Contract Maximum Amount of the Facility.

7.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term, subject to the removal of the references to the Regulatory Approval and Permits as and when the Regulatory Approval and Permits are obtained. If at any time during the Term, a Party has knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be untrue or misleading, such Party shall provide the other Party with prompt written notice of the event or information, the representations and warranties affected, and the corrective action such Party shall take. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

7.4 Forward Capacity Market Participation. Seller must take (i) all necessary and appropriate actions to qualify and participate; and (ii) commercially reasonable actions to be selected and compensated in every auction applicable to the Services Term, in any capacity market, including the Forward Capacity Market and any successor capacity market. Subject to Good Utility Practice, Seller shall operate the Facility in a manner to maximize the Capacity Supply Obligation of the Facility. Seller shall use best efforts to make Network Upgrades such that the maximum output of the Facility shall be qualified to participate in the FCM. Seller shall provide documentation to the Buyer demonstrating the satisfaction of the foregoing obligations.

8. REGULATORY APPROVAL

8.1 Receipt of Regulatory Approval. The obligations of the Parties to perform this Agreement, other than the Parties' obligations under Section 6.2, Section 8.2, and Section 11, are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the Regulatory Approval or receipt of an order of the PUC regarding this Agreement. This Agreement may be terminated by either Buyer or Seller in the event that Regulatory Approval is not received within 270 days after filing, without liability as a result of such termination, subject to the return of Credit Support as provided in Section 6.4.

8.2 Related Transmission Approvals. The obligation of the Parties to perform this Agreement is further conditioned upon the receipt of any Related Transmission Approvals on or prior to the date such Related Transmission Approvals are required under Applicable Law.

9. BREACHES; REMEDIES

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

(a) Representation or Warranty. Any breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to this Agreement occurs where such breach is not fully cured and corrected within thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if the Defaulting Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the Defaulting Party until such Default has been corrected, but in any event shall be cured within sixty (60) days of the notice from the Non-Defaulting Party; or

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

(c) Other Covenants. Other than:

- (i) a Delivery Failure of ten (10) days or more, which is addressed in Section 9.2(h),
- (ii) failure of the Facility to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date,
- (iii) a failure to maintain the RPS eligibility requirements set forth in Section 4.7(b),
- (iv) a Rejected Purchase, or

- (v) an Event of Default described in Section 9.1(a), 9.1(b), 9.1(d), 9.1(e) or 9.2,

such Party fails to perform, observe or otherwise to comply with any obligation hereunder and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if the Defaulting Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected, but in any event shall be cured within sixty (60) days of the notice from the Non-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 or cause to be obtained and maintained in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under this Agreement where such failure is not fully cured and corrected within thirty (30) days after such Party has knowledge of such failure ; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if such Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by such Party until such Default has been corrected, but in any event shall be cured within seventy-five (75) days of such Party's knowledge of such Default.

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

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

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

(c) Energy Output. The failure of the Facility to produce Energy for **twelve (12)** consecutive months during the Services Term for any reason, other than due to a Force Majeure; or

(d) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under this Agreement or on Buyer or Buyer's ability to receive the benefits under this Agreement; provided that Seller shall have the opportunity to cure such failure within five (5) days of its occurrence; provided, however, if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under this Agreement, Seller shall have the opportunity to cure such failure within thirty (30) days of its occurrence; or

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

(f) Abandonment. On or after the Commercial Operation Date, the permanent relinquishment by Seller of all of its possession and control of the Facility, other than a transfer permitted under this Agreement; or

(g) Assignment. The assignment of this Agreement by Seller, or Seller's sale or transfer of its interest (or any part thereof) in the Facility, except as permitted in accordance with Article 14; or

(h) Recurring Delivery Failure. A Delivery Failure of ten (10) days or more;
or

(i) Failure to Provide Status Reports. A failure to provide timely, accurate and complete status reports in accordance with this Agreement, and such failure continues for more than thirty (30) days after notice thereof is given by the Buyer; or

(j) Failure to Maintain RPS Eligibility. A failure to maintain RPS eligibility requirements set forth in Section 4.7(b).

9.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under this Agreement, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in this Agreement including, without limitation, the termination right set forth in Section 9.3(b), and, to the extent not inconsistent with the terms of this Agreement, such remedies available at law and in equity. In addition to the foregoing, except for breaches for

which an express remedy or measure of damages is provided herein, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under this Agreement.

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

- (i) *Termination by Buyer Prior to Commercial Operation Date.* If Buyer terminates this Agreement because of an Event of Default by Seller occurring prior to the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the sum of (x) all Delay Damages due and owing by Seller through the date of such termination plus (y) the full amount of any Development Period Security provided to Buyer by Seller.
- (ii) *Termination by Seller Prior to Commercial Operation Date.* If Seller terminates this Agreement because of an Event of Default by Buyer prior to the Commercial Operation Date, Seller shall only receive a Termination Payment if the Commercial Operation Date either occurs on or before the Guaranteed Commercial Operation Date or would have occurred by such date but for the Event of Default by Buyer giving rise to the termination of this Agreement. In such case, (x) 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 the lesser of: (i) Buyer's Percentage Entitlement to Seller's out-of-pocket expenses incurred in connection with the development and construction of the Facility prior to such termination and for which Seller has provided adequate documentation to enable Buyer to verify the expense claimed, or (ii) the Termination Payment due to Seller as calculated according to the methodology in Section 9.3(b)(iv), as if the Commercial Operation Date had occurred prior to the date of the termination by Seller; and (y) 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 calculated according to the methodology in Section 9.3(b)(iv), as if the Commercial Operation Date had occurred prior to the date of the termination by Seller.
- (iii) *Termination by Buyer On or After Commercial Operation Date.* If Buyer terminates this Agreement because of an Event of

Default by Seller occurring on or after the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the greater of: (i) the security provided in accordance with Article 6, or (ii) the amount, if positive, calculated according to the following formula: (x) the present value, discounted at a rate equal to the prime rate specified in the “Money & Investing” section of *The Wall Street Journal* determined as of the date of the notice of default, plus 300 basis points, for each month remaining in the Services Term, of (i) the amount, if, any, by which the forward market price of Energy and Renewable Energy Credits, as determined by the average of the quotes of at least two nationally recognized energy consulting firms or brokers chosen by Buyer, for Replacement Energy and Replacement RECs, exceeds the applicable Price that would have been paid pursuant to Exhibit D of this Agreement, multiplied by (ii) Buyer’s Percentage Entitlement of the projected Energy output of the Facility as determined by a recognized third party expert selected by Buyer, using a probability of exceedance basis of 50%; plus, (y) any costs and losses incurred by Buyer as a result of the Event of Default and termination of the Agreement.

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

- (iv) *Termination by Seller On or After Commercial Operation Date.* If Seller terminates this Agreement because of an Event of Default by Buyer occurring on or after the Commercial Operation Date, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula: (x) the present value, discounted at a rate equal to the prime rate specified in the “Money & Investing” section of *The Wall Street Journal* determined as of the date of the notice of default, plus 300 basis points, for each month remaining in the Services Term, of (i) the amount, if, any, by which the applicable Price that would have been paid pursuant to Exhibit D of this Agreement, exceeds the forward market price of Energy and Renewable Energy Credits as determined by the average of the quotes of at least two nationally recognized energy consulting firms or brokers chosen by Seller, for Replacement Energy and Replacement RECs, multiplied by (ii) Buyer’s Percentage Entitlement to the projected Energy output of the Facility as determined by a recognized third party expert selected by Seller using a probability of exceedance basis of

50%; plus, (y) any costs and losses incurred by Seller as a result of the Event of Default and termination of the Agreement.

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

(v) *Acceptability of Liquidated Damages.* Each Party agrees and acknowledges that (i) the damages and losses (including without limitation the loss of environmental, reliability and economic benefits contemplated under this Agreement) 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 such notice is effective, regardless whether the Termination Payment calculation is disputed. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

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

(d) Notice to Lenders. Seller shall provide Buyer with a notice identifying a single Lender (if any) to whom default notices are to be issued. Buyer shall provide a copy of the notice of any default of Seller under this Article 9 to that Lender, and Buyer shall afford such Lender the same opportunities to cure Events of Default under this Agreement as are provided to Seller hereunder with such additional days to cure such Events of Default as may reasonably be agreed by Buyer and Lender in any consent executed pursuant to Section 14.2.

(e) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF

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

10. FORCE MAJEURE

10.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under this Agreement. Under no circumstances shall Force Majeure include (v) any reduction or cessation in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such reduction or cessation is caused by one of the following: acts of God such as floods, hurricanes or tornados; sabotage; terrorism; or war. (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in this Agreement, or (z) Buyer's ability to procure the Products at a price lower than that set out in this Agreement. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval) or qualifications, any delay or failure in satisfying the Critical Milestone obligations specified in Section 3.1(a)(i) (Permits) or Section 3.1(a)(iii) (Financing), 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 or be the basis for a claim of Force Majeure. 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 Products 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 herein has occurred.

(b) Subject to Section 3.1(d), if either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Notwithstanding the foregoing, and subject to Seller’s ability to extend Critical Milestones pursuant to Section 3.1(c), 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. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.

11. DISPUTE RESOLUTION

11.1 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**”), in addition to any other remedies provided hereunder, the Parties shall attempt to resolve such Dispute through consultations between the Parties. If the Dispute has not been resolved within fifteen (15) Business Days after such consultations between the Parties, then either Party may seek to resolve such Dispute in the courts of Rhode Island.

11.2 Allocation of Dispute Costs. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees, associated with any Dispute.

11.3 Consent to Jurisdiction. Subject to Section 11.1, the Parties agree to the exclusive jurisdiction of the state and federal courts located in Rhode Island for any legal proceedings that may be brought by a Party arising out of or in connection with any Dispute.

11.4 Waiver of Jury Trial and Inconvenient Forum Claim. EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT. BOTH PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE AS SET FORTH IN THIS ARTICLE 12 AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN ANY INCONVENIENT FORUM.

12. CONFIDENTIALITY

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

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

(b) as required by applicable laws, regulations, filing requirements, rules or orders or by any subpoena or similar legal process of any Governmental Entity so long as the disclosing Party gives the non-disclosing Party written notice at least three (3) Business Days prior to such disclosure, if practicable, so that the non-disclosing Party may seek an appropriate protective order; provided, that, if a protective order or other remedy is not obtained, the non-disclosing Party agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the required disclosure, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information;

(c) to the Affiliates of either Party and to the consultants, attorneys, auditors, financial advisors, lenders or potential lenders and their advisors of either Party or their Affiliates, but solely to the extent they have a need to know that information;

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

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

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

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

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

13. INDEMNIFICATION

Seller shall indemnify, defend and hold Buyer and its partners, shareholders, directors, officers, employees and agents (including, but not limited to, Affiliates and contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever in connection with or arising from Seller's negligence, gross negligence, or willful misconduct, or Seller's failure to perform or satisfy any obligation or liability under this Agreement, or Seller's failure to satisfy any regulatory requirement or commitment associated with this Agreement.

14. ASSIGNMENT AND CHANGE OF CONTROL

14.1 Prohibition on Assignments. Except as permitted under this Article 14, this Agreement (and any portion thereof) 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 "out of pocket" 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 (and shall not impair any Credit Support given by Seller hereunder) unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations thereunder.

14.2 Permitted Assignment by Seller. Buyer's consent shall not be required for Seller to pledge or assign the Facility, this Agreement or the revenues under this Agreement to any Lenders as collateral security for obligations under the Financing documents entered into with such Lender; provided, however, if Seller requests Buyer's consent to such an assignment (i) Buyer shall provide that consent subject to Buyer's execution of a consent to assignment in a form reasonably acceptable to Buyer, Seller and the Lenders, and (ii) Seller will reimburse Buyer for all "out of pocket" costs and expenses Buyer incurs in connection with that consent, without regard to whether such consent is provided.

14.3 Change in Control over Seller. Buyer's consent shall be required for any change in Control over Seller, which consent shall not be unreasonably withheld, conditioned or

delayed and shall be provided if Buyer reasonably determines that such change in Control does not have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement; provided, however, following the Commercial Operation Date, (a) a change of Control of the ultimate parent entity of Seller (defined under Section 7A of the Clayton Act, 15 U.S.C. § 18a, aka the Hart-Scott-Rodino Antitrust Improvements Act of 1976) shall not require the consent of Buyer; and (b) transactions among Affiliates of Seller, any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller and its Affiliates, shall not constitute a change in Control for purposes of this Section 14.3; provided further that, in each case, Seller provides written notice of such change to Buyer within thirty (30) days after such change.

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

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

15. TITLE; RISK OF LOSS

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

16. AUDIT

16.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under this Agreement, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party additional information documenting the quantities of Products delivered or provided hereunder. If any such examination reveals any overcharge, the necessary

adjustments in such statement and the payments thereof shall be made promptly and shall include interest at the Late Payment Rate from the date the overpayment was made until credited or paid.

16.2 Access to Financial Information. Seller shall provide to Buyer, within fifteen (15) days of receipt of Buyer's written request, Seller's financial information and statements as well as reasonable access to financial personnel during normal business hours, so that Buyer may address any reasonable inquiries relating to Seller's financial resources.

17. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); or (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); or (4) by reputable overnight courier; 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: Attn: Renewable Contract Manager, Environmental Transactions
National Grid
100 East Old Country Road, Second Floor
Hicksville, NY 11801-4218
Email: RenewableContracts@nationalgrid.com
With a copy to: ElectricSupply@nationalgrid.com

With a copy to: Legal Department
Attn: Jennifer Brooks Hutchinson, Esq.
Senior Counsel
National Grid
280 Melrose Street
Providence, RI 02907
Email: Jennifer.Hutchinson@nationalgrid.com

If to Seller: Gregory Schneck
Vice President
700 Universe Boulevard
Juno Beach, FL 33408
Gregory.schneck@nexteraenergy.com

With a copy to: Mitch Ross
Vice President and General Counsel
700 Universe Boulevard
Juno Beach, FL 33408
mitch.ross@nexteraenergy.com

18. WAIVER AND MODIFICATION

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

19. INTERPRETATION

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

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

19.3 Forward Contract. 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.

19.4 Standard of Review. The Parties acknowledge and agree that the standard of review for any avoidance, breach, rejection, termination or other cessation of performance of or changes to any portion of this integrated, non-severable Agreement (as described in Section 22) over which FERC has jurisdiction, whether proposed by Seller, by Buyer, by a non-party of, by FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Co.*, 350 U.S. 332 (1956) and *Federal Power Comm’n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956)), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010). Each Party agrees that if it seeks to amend any applicable power sales tariff during the Term, such amendment shall not in any way materially and adversely affect this Agreement without the prior written consent of the other Party. Each Party further agrees that it shall not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

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

19.6 Dodd Frank Act Representations. The Parties agree that this Agreement (including all transactions reflected herein) is not a "swap" within the meaning of the Commodity Exchange Act ("CEA") and the rules, interpretations and other guidance of the Commodity Futures Trading Commission ("CFTC rules"), and that the primary intent of this Agreement is physical settlement (i.e., actual transfer of ownership) of the nonfinancial commodity and not solely to transfer price risk. In reliance upon such agreement, each Party represents to the other that:

(a) With respect to the commodity to be purchased and sold hereunder, it is a commercial market participant, a commercial entity and a commercial party, as such terms are used in the CFTC rules, and it is a producer, processor, or commercial user of, or a merchant handling, the commodity and it is entering into this Agreement for purposes related to its business as such;

(b) It is not registered or required to be registered under the CFTC rules as a swap dealer or a major swap participant;

(c) It has entered into this Agreement in connection with the conduct of its regular business and it has the capacity or ability to regularly make or take delivery of the commodity to be purchased and sold hereunder;

(d) With respect to the commodity to be purchased and sold hereunder, it intends to make or take physical delivery of the commodity;

(e) At the time that the Parties enter into this Agreement, any embedded volumetric optionality in this Agreement is primarily intended by the holder of such option or optionality to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, the commodity to be purchased and sold hereunder;

(f) With respect to any embedded commodity option in this Agreement, such option is intended to be physically settled so that, if exercised, the option would result in the sale

of the commodity to be purchased or sold hereunder for immediate or deferred shipment or delivery;

(g) The commodity to be purchased and sold hereunder is a nonfinancial commodity, and is also an exempt commodity or an agricultural commodity, as such terms are defined and interpreted in the CFTC rules.

To the extent that reporting of any transactions related to this Agreement is required by the CFTC rules, the Parties agree that Seller shall be responsible for such reporting (the "Reporting Party"). The Reporting Party's reporting obligations shall continue until the reporting obligation has expired or has been terminated in accordance with CFTC rules. The Buyer, as the Party that is not undertaking the reporting obligations shall timely provide the Reporting Party all necessary information requested by the Reporting Party for it to comply with CFTC rules.

19.7 Change in Law or Buyer's Accounting Treatment, Subsequent Judicial or Regulatory Action.

(a) If, during the Term of this Agreement, there is a change in Law or accounting standards or rules or a change in the interpretation or applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with this Agreement or the amounts paid for Products purchased hereunder the Buyer shall prepare an amendment to this Agreement to avoid or mitigate such impacts. Buyer shall prepare such amendment in a manner that is designed to be limited to changes required to avoid or mitigate the adverse balance sheet or creditworthiness impact on Buyer. Buyer shall use commercially reasonable efforts to prepare such amendment in a manner that mitigates any material adverse effect(s) on Seller (as identified by Seller, acting reasonably) that could reasonably be expected to result from such amendment, but only to the extent that such mitigation can be accomplished in a manner that is consistent with the purpose of such amendment. Seller agrees to execute such amendment; provided that such amendment does not (unless Seller otherwise agrees) alter: (i) the purchase and sale obligations of the Parties pursuant to this Agreement, or (ii) the Price or the Adjusted Price, as applicable; provided, further, that Seller may terminate the Agreement if it is agreed by Buyer and Seller or determined in a final and non-appealable order of a court that the proposed amendment will impose costs (imposed solely by such proposed amendment) on Seller's purchase and sale obligations in an amount equal to or greater than ten percent (10%) of the Price.

(b) Upon a determination by a court or regulatory body having jurisdiction (i) over this Agreement or any of the Parties hereto, or (ii) over the establishment and enforcement of any of the statutes or regulations or orders or actions of regulatory agencies (including the PUC) supporting this Agreement or (iii) over the rights or obligations of the Parties hereunder that any of the statutes or regulations supporting this Agreement or the rights or obligations of the Parties hereunder, or orders of or actions of regulatory agencies (including the PUC) implementing such statutes or regulations, or this Agreement on its face or as applied, in the reasonable determination by a Party, violates any Law (including the State or Federal Constitution) (an "Adverse Determination"), each Party shall have the right to suspend performance under this Agreement without liability. Seller may deliver and sell Products to a

third party during any period of time for which Buyer suspends payments or purchases under this Section.

Upon an Adverse Determination becoming final and non-appealable, Buyer shall make a good faith determination regarding whether the Adverse Determination does or may adversely affect the enforceability of any provision of this Agreement and/or Buyer's continued ability to recover all of its costs incurred under and in connection with this Agreement for the entire term and to recover remuneration equal to two and three quarters percent (2.75%) of Buyer's annual payments under this Agreement for the term of this Agreement and whether such adverse effect(s) of the Adverse Determination can reasonably be mitigated by amending the Agreement in a manner that allows the Agreement to continue with modification. If, in Buyer's sole reasonable judgment, such adverse effect(s) of the Adverse Determination cannot be reasonably mitigated by amending the Agreement, either Party shall have the right to terminate the Agreement. If Buyer determines that such effect(s) can be so mitigated, it shall promptly prepare an amendment to this Agreement designed to be limited to changes required to avoid or mitigate such effect(s). Thereafter, Buyer and Seller shall negotiate the terms of such amendment in good faith; provided, however, that neither Buyer nor Seller will be required to agree to any particular amendment. If Seller and Buyer cannot reach agreement on such amendment within sixty (60) days after Buyer delivers to Seller the first draft thereof, then either Party may terminate this Agreement by written notice to the other Party delivered within thirty (30) days after such sixty (60) day period. Upon a termination pursuant to this section, (A) Seller shall: (a) prepare a final invoice to Buyer for Products Delivered to Buyer, which Buyer shall pay in the normal course pursuant to Section 5.2(b); (b) have no further obligations or liabilities to Buyer and (c) have the right to sell Energy, Environmental Attributes and capacity to third parties and (B) Seller and Buyer shall have no further obligations or liabilities to the other Party under this Agreement.

20. COUNTERPARTS; FACSIMILE SIGNATURES

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

21. NO DUTY TO THIRD PARTIES

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

22. SEVERABILITY

If any term or provision of this Agreement or the interpretation or application of any term or provision to any prior circumstance is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, the remainder of this Agreement and the interpretation or application of all other terms or provisions to Persons or circumstances other than those which

are unenforceable, illegal or invalid shall not be affected thereby, and each term and provision shall be valid and be enforced to the fullest extent permitted by law so long as all essential terms and conditions of this Agreement for both Parties remain valid, binding and enforceable and have not been declared to be unenforceable, illegal or invalid by a Governmental Entity of competent jurisdiction. The Parties acknowledge and agree that essential terms and conditions of this Agreement for each Party include, without limitation, all pricing and payment terms and conditions of this Agreement, and that the essential terms and conditions of this Agreement for Buyer also include, without limitation, the terms and conditions of Section 19.7 of this Agreement.

23. INDEPENDENT CONTRACTOR

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

24. ENTIRE AGREEMENT

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

[Signature page follows]

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

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

By: _____

Name: John V. Vaughn
Title: Authorized Signatory

CRG
AMB

QUINEBAUG SOLAR, LLC

By: _____

Name:
Title:

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.

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

By: _____
Name:
Title:

QUINEBAUG SOLAR, LLC

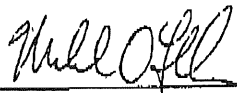
By: 
Name: Michael O'Sullivan
Title: Vice President

EXHIBIT A

DESCRIPTION OF FACILITY

Facility: The Facility is a net 49.36 MWac nameplate solar photovoltaic generation facility located on properties on or close to Wauregan Road in Canterbury, Connecticut, and Rukstella Road, in Brooklyn, Connecticut. Both towns are located in Windham County, Connecticut.

Operational Limitations: Utility-scale solar generation will only operate during daytime periods when sufficient sunlight is available to generate electricity from the Facility, however once the weather conditions are favorable the Facility should begin producing without significant startup time required. The Facility is not limited on the number of scheduled startups per year, which could occur daily or more than once per day, depending on weather conditions.

Delivery Point: Settlement in the ISO-NE energy market system will occur when Energy is supplied into Buyer's ISO-NE settlement account at the ISO New England pricing node ("pnode") for the Facility established in accordance with ISO-New England Rules. The Delivery Point is the ISO New England Pool Transmission Facilities ("PTF") in the vicinity of the referenced pnode. Seller shall be responsible for all charges, fees and losses required for Delivery of Energy from the generator to the Delivery Point, including but not limited to (1) all non-PTF and/or distribution system losses, (2) all transmission and/or distribution interconnection charges associated with the Facility, and (3) the cost of Delivery of the Products to the Delivery Point, including all related administrative fees and non-PTF and/or distribution wheeling charges. In addition Seller shall also be responsible to apply for and schedule all such services.

Proposed Facility Size: 49.36 MWac.

Criteria for Substantial Completion: See Exhibit B.

EXHIBIT B

SELLER’S CRITICAL MILESTONES

i. All significant land use, stormwater, and building permits necessary to construct the **Quinebaug Solar** Facility will be in place on or before July 1, 2019, as summarized below. This is inclusive of the following:

Town: If required, Towns of Brooklyn and Canterbury local ministerial permits (e.g., road access permits).

State: If required, Connecticut Siting Council Declaratory Ruling, Connecticut Department of Energy & Environmental Protection (“CTDEEP”), CTDEEP NPDES Stormwater General Permit for Construction, CTDEEP Section 401 Water Quality Certification, Connecticut State Historic Preservation Office (“CTSHPO”) Section 106 NHPA Consultation, Connecticut Department of Transportation (“CTDOT”) access permits.

Federal: If required, U.S. Army Corps of Engineers (“ACOE”) Section 10 and 404 Authorization and U.S. Fish and Wildlife Service (“USFWS”) Endangered Species Act (“ESA”) Section 7 consultation.

Ancillary and minor permits, including if required, all road crossing agreements with the utility, municipal, county, or state department of transportation access permits will be in place on or before July 1, 2019.

ii. Quinebaug Solar, LLC will have acquired all required real property rights necessary for construction and operation of the Facility and the interconnection of the Facility to the Interconnecting Utility in full and final form with all options and/or contingencies having been exercised demonstrating complete site control by July 1, 2019.

iii. Quinebaug Solar, LLC will have closed all of the Financing adequate for the development and construction of the Facility or other demonstration to Buyer’s reasonable satisfaction of the financial capability to construct the Facility, including, as applicable, Seller’s financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades on or before June 1, 2019.

iv. Quinebaug Solar, LLC will achieve Commercial Operation Date by November 1, 2019.

Permitting Critical Path

Agency	Description of Permit/Authorization
Federal	
1. ACOE	Section 10 and 404 Authorization: The discharge of dredged or fill material into wetlands, streams, and lakes that are subject to regulation under the Clean Water Act (what are commonly referred to as “jurisdictional waters”).

2.	USFWS	ESA Section 7 consultation: The USFWS has regulatory authority over the Endangered Species Act of 1973, which protects federally listed threatened and endangered species, and the Migratory Bird Treaty Act. Any federal action, such as a decision on a wetland permit or Section 10 permit modification will trigger a review for endangered species.
<u>State</u>		
1.	Connecticut Siting Council	Declaratory Ruling: A Declaratory Ruling is available to a facility with less than 65 megawatts capacity “as long as such project meets air and water quality standards of the Department of Energy and Environmental Protection” [CGS 16-50k(a)].
2.	CTDEEP	NPDES Stormwater General Permit for Construction: Required for construction work area >1 acre. Requires preparation of a Stormwater Pollution Prevention Plan and filing of NOI.
3.	CTDEEP	Section 401 Water Quality Certification: Under Section 401 of the Clean Water Act, the OEPA evaluates projects that will result in the discharge of dredge or fill material into state waters and whether the discharge violates water quality standards.
4.	CTSHPO	Section 106 NHPA Consultation: Federal permitting decisions will trigger consultation on the presence of any historically and culturally significant properties or areas that may be impacted by the facility.
5.	CTDOT	DOT access permits: Required for ingress and egress to/from state highway.
<u>Local</u>		
1.	Towns of Brooklyn and Canterbury / Local Distribution Utility	Local ministerial permits (building, electrical, road access permits): New developments and road crossings; local zoning superseded by Siting Council but potentially relevant for Siting review.

Land Control Agreements

<u>Owner</u>	<u>Agreement Type</u>	<u>Land Use</u>	<u>Acreage</u>
River Junction Estates, LLC	Lease	Solar Power Facilities	504.65 acres
River Junction Estates, LLC	Purchase Option & Easement	Solar Power Facilities	2 acres
Founders-Bee	Lease	Solar Power Facilities	40 acres

Properties & Investments LLC			
Canterbury Sand & Gravel, LLC	Lease	Solar Power Facilities	16 acres
John F. Ennis & Frederick E. Eggers	Lease	Solar Power Facilities	78.2 Acres
Victoria Robinson & Ernest H. Lewis, IV	Purchase Option	Solar Power Facilities	25 Acres

EXHIBIT C

FORM OF PROGRESS REPORT

For the Quarter Ending: _____

Milestones Achieved:

Milestones Pending:

Status of Progress toward achievement of Milestones during the quarter:

Status of permitting and Permits obtained during the quarter:

Status of Financing for Facility:

Current projection for Financial Closing Date:

Events expected to result in delays in achievement of any Milestones:

Critical Milestones not yet achieved and projected date for achievement:

Current projection for Commercial Operation Date:

EXHIBIT D

PRODUCTS AND PRICING

1. Price for Buyer's Percentage Entitlement of Products up to the Contract Maximum Amount. The Price for the Buyer's Percentage Entitlement of Delivered Products up to the Contract Maximum Amount in nominal dollars shall be as follow:

(a) Commencing on the Commercial Operation Date, the Price per MWh for each billing period shall be \$89.17 per MWh and shall be allocated between Energy and RECs as follows:

(i) Energy = The \$/MWh price of Energy for the applicable month shall be equal to the weighted average of the Real-Time or Day Ahead Locational Marginal Price (as applicable consistent with Section 4.2(a)) in that month (also on a \$/MWh basis) for the Node on the Pool Transmission Facilities to which the Facility is interconnected.

(ii) RECs = The Price less the Energy allocation determined above for the applicable billing period, expressed in \$/MWh.

(b) The Adjusted Price for Energy shall be equal to \$64.17 per MWh.

If the market price at the Delivery Point in the Real-Time or Day-Ahead markets, as applicable, for Energy Delivered by Seller is negative in any hour, the payment to Seller for deliveries of Energy shall be reduced by the difference between the absolute value of the hourly LMP at the Delivery Point and \$0.00 per MWh for that Energy for each such hour. Each monthly invoice shall reflect a reduction for all hours in the applicable month in which the LMP for the Energy at the Delivery Point is less than \$0.00 per MWh.

Examples. If delivered Energy equals 1 MWh and Price equals \$50.00/MWh:

LMP at the Delivery Point equals (or is greater than) \$0.00/MWh	
Buyer payment of Price to Seller	\$50.00
Seller credit/reimbursement for negative LMP to Buyer	\$0.00
Net Result:	Buyer pays Seller \$50 for that hour

LMP at the Delivery Point equals -\$150.00/MWh	
Buyer payment of Price to Seller	\$50.00
Seller credit/reimbursement for negative LMP to Buyer	\$150.00
Net Result:	Seller credits or reimburses Buyer \$100 for that hour

(c) Price for Buyer's Percentage Entitlement of Products Delivered in excess of Contract Maximum Amount. The Products Delivered in excess of the Contract Maximum Amount shall be purchased by Buyer at a Price equal to the product of (x) the MWhs of Energy in excess of the

Contract Maximum Amount Delivered to the Delivery Point and (y) the lesser of (i) ninety percent (90%) of the Real Time LMP at such Delivery Point, or (ii) the Price determined in accordance with Section 1(a) of this Exhibit D for each hour of the month during which such Energy in excess of the Contract Maximum Amount is Delivered to Buyer.

(d) For those hours when the Real Time LMP at the Delivery Point (as determined by ISO-NE) is negative, the payment from Buyer to Seller shall be reduced for Products Delivered in excess of the Contract Maximum Amount by an amount equal to the product of (x) the MWhs of Energy in excess of the Contract Maximum Amount Delivered to the Delivery Point and (y) one hundred percent (100%) of the absolute value of the Real Time LMP at such Delivery Point for each hour of the month during which such Energy in excess of the Contract Maximum Amount is Delivered to Buyer. All rights and title to RECs associated with Energy Delivered in excess of the Contract Maximum Amount shall remain with Buyer whether the Real Time LMP is positive or negative. In the event that Seller received RECs associated with Energy Delivered in excess of the Contract Maximum Amount, Seller shall not hold or claim to hold equitable title to such RECs and shall promptly transfer such RECs to Buyer's GIS account.

EXHIBIT E
RELATED TRANSMISSION FACILITIES

None



November 12, 2015

SPECIFIED STATE AGENCIES AND ELECTRIC DISTRIBUTION COMPANIES IN CONNECTICUT, MASSACHUSETTS AND RHODE ISLAND

NOTICE OF REQUEST FOR PROPOSALS FROM PRIVATE DEVELOPERS FOR CLEAN ENERGY AND TRANSMISSION

IMPLEMENTATION OF CERTAIN PROCUREMENT STATUTES

INTRODUCTION

Pursuant to the clean energy goals of the States of Connecticut, Rhode Island, and the Commonwealth of Massachusetts (collectively the “Procuring States”), this Request for Proposals (“RFP”) is soliciting offers for clean energy and transmission to deliver clean energy. The solicitation is conducted in accordance with and in fulfillment of certain legal requirements in the three states. The Soliciting Parties, as defined below, seek to identify projects that may enable parties in each state to achieve their respective state’s clean energy goals more cost effectively than if each state were to proceed unilaterally while also complying with the applicable legal requirements of each state.

Accordingly, the Commissioner of the Connecticut Department of Energy and Environmental Protection (“CT DEEP”) provides this RFP regarding the acceptance of proposals from developers pursuant to Sections 6 and 7 of Connecticut Public Act 13-303, *An Act Concerning Connecticut’s Clean Energy Goals* (as amended by Sections 32 and 33 of Public Act 14-94, *An Act Concerning Connecticut’s Recycling and Materials Management Strategy, The Underground Damage Prevention Program and Revisions to Energy and Environmental Statutes*), and Section 1(c) of Public Act 15-107, *An Act Concerning Affordable and Reliable Energy* as well as the Commissioner’s authority under Connecticut General Statutes Section 16a-14. In addition, Fitchburg Gas and Electric Light Company, d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, and NSTAR Electric Company and Western

Massachusetts Electric Company d/b/a Eversource Energy (collectively, “Massachusetts EDCs”) provide this RFP regarding the acceptance of proposals from developers pursuant to Section 83A of the Green Communities Act as added by chapter 209 of the Acts of 2012, An Act relative to competitively priced electricity in the Commonwealth (“Section 83A”). Further, The Narragansett Electric Company, d/b/a National Grid (“Narragansett”), provides this RFP regarding acceptance of proposals from developers pursuant to Chapter 31 of Title 39 of the General Laws of Rhode Island, the Affordable Clean Energy Security Act (“Chapter 39-31”) (collectively, the “Procurement Statutes”). CT DEEP, the Massachusetts EDCs and Narragansett shall collectively be referred to herein as the “Soliciting Parties.”

I. OVERVIEW

1.1 BACKGROUND, PURPOSE AND ORGANIZATIONAL STRUCTURE

Pursuant to the clean energy goals of the Procuring States, this RFP is soliciting offers for clean energy and for transmission to allow for the delivery of clean energy to the Procuring States. The essential purpose of this three-state procurement is for parties in each state to identify any projects that offer the potential for the Procuring States to meet their clean energy goals in a cost-effective manner consistent with their Procurement Statutes. Soliciting Parties in the three states have decided to act jointly to open the possibility of procuring large-scale projects that no state could procure if it acted unilaterally. Although the three-state process opens up the possibility of large-scale projects, parties in each state will select the project(s) that is/are most beneficial to its customers and consistent with its particular Procurement Statutes. Consequently, evaluation and selection will involve an iterative process by which, after an initial threshold examination followed by a quantitative analysis of the bids, the parties from each state will review and rank bids based on the qualitative requirements of their respective state. Then the parties from all three of the Procuring States will collaborate to determine whether together they can create a portfolio of projects that would reduce the cost to customers in each of the three states and still comply with each state’s requirements and clean energy goals.

The Procurement Statutes are described in Appendix F to this RFP. Prospective bidders are expected to thoroughly review the Procurement Statutes to have a full understanding of the purpose and goals of this solicitation for each of the Procuring States.

Please note that although some of the Procurement Statutes address only generation, this solicitation also invites bids for transmission projects that would deliver Incremental Qualified Clean Energy. This is in recognition of the fact that Transmission Projects may offer the potential to deliver Incremental Qualified Clean Energy to the Procuring States, and that some of the generation projects that submit bids may require new transmission to deliver their output.

The organizational structure for this RFP is as follows:

The “Evaluation Team” will receive the bids including confidential materials and conduct evaluation and rank bids and will also engage an independent consultant (“Evaluation Team Consultant”) who will be an integral part of the Evaluation Team to assist in the evaluation. The Evaluation Team consists of entities listed in the Introduction to this RFP, as well as The Connecticut Light & Power Company (“CL&P”), The United Illuminating Company (“UI”), the Connecticut Procurement Manager¹, the Connecticut Office of Consumer Counsel, the Connecticut Office of the Attorney General, and the Massachusetts Department of Energy Resources (“DOER”). All bid evaluation for Connecticut will be conducted by CT DEEP, in consultation with the Connecticut Office of Consumer Counsel, Connecticut Office of Attorney General, Connecticut Procurement Manager, and the Connecticut EDCs, with the assistance of a separate consultant engaged by CT DEEP (the “CT Consultant”). The CT Consultant will act independently of the EDCs and the Evaluation Team Consultant to assist the CT DEEP in reviewing and analyzing any modeling performed by the Evaluation Team Consultant retained by the Evaluation Team. In Rhode Island, consistent with Chapter 39-31 and the Rules and Regulations Governing Long-term Contracting Standards for Renewable Energy, Narragansett, in consultation and coordination with the Rhode Island Division of Public Utilities and Carriers and the Rhode Island Office of Energy Resources, will evaluate bids. The Evaluation Team Consultant will be responsible to the entire Evaluation Team in reporting methodologies and findings.

The electric distribution companies that are a part of the Evaluation Team (“EDCs”) have all executed the Standard of Conduct document attached as Appendix H to this RFP. The Standard of Conduct prohibits any discussion of this RFP between EDC personnel participating on the Evaluation Team and EDC personnel involved in the preparation of bids in response to this RFP, other than as part of discussions that are conducted as part of the RFP process (e.g. bidder conferences or formal bidder Q&A).

The “Selection Team” will consider the evaluation results and project rankings to determine projects for selection. In Massachusetts the Selection Team consists of the EDCs, however, the DOER shall be an advisory participant to MA EDCs. In Connecticut, the selection team is the CT DEEP acting in consultation with the Connecticut Procurement Manager, the Connecticut Office of Consumer Counsel, and the Connecticut Office of the Attorney General. The Selection Team may consult with the Evaluation Team. Narragansett will select projects in consultation and coordination with the Division of Public Utilities and Carriers and Office of Energy Resources and subject to review and approval by the Rhode Island Public Utilities Commission.

¹ As identified in subsection (i) of section 16-2 of the Connecticut General Statutes

The EDCs will be responsible for negotiation and execution of any final Power Purchase Agreement (“PPA”). The EDCs may make certain filings and conduct other regulatory compliance activities connected with this solicitation. With respect to the MA EDCs, DOER will have the opportunity to monitor contract negotiations between the EDCs and selected bidders. With respect to the Connecticut EDCs, DEEP will monitor contract negotiations between the EDCs and selected bidders. With respect to Narragansett, the Rhode Island Division of Public Utilities and Carriers and Rhode Island Office of Energy Resources will have the opportunity monitor contract negotiations between Narragansett and selected bidders. However, in addition to and separately from these, bidders may be also subject to certain filing requirements and other regulatory obligations pursuant to the arrangements and/or transactions they may enter into pursuant to this solicitation and the activities arising therefrom. Bidders will be responsible for identifying and satisfying such requirements and obligations applicable to them.

Staff of the New England States Committee on Electricity (“NESCOE”) are neither one of the Soliciting Parties nor a member of any of the aforementioned teams. NESCOE assisted the Soliciting Parties in the development of the RFP as a facilitator; NESCOE staff will not take receipt of submitted bid packages or make project selections under this RFP. Given the New England states’ continuing interest in various infrastructure investments that would alleviate constraints in the region’s natural gas infrastructure and improve power system reliability and economic competitiveness, and further environmental objectives it is possible that, following the evaluation of bids received, the Soliciting Parties may invite certain bidders to consider sharing their submitted bids with NESCOE and relevant representatives of non-procuring New England states.²

1.2 CALL FOR PROPOSALS

The Soliciting Parties are seeking proposals from qualified renewable and/or qualified large-scale hydropower resources (Qualified Clean Energy, defined in Section 1.2.1), and/or from developers of Transmission Projects to provide for the Delivery (each as defined in Section 1.2.1) of Incremental Qualified Clean Energy to the New England system.

If a bidder of Incremental Qualified Clean Energy offers the same such energy in more than one proposal (e.g., teamed with a new Transmission Project required for Delivery in one proposal, and teamed with an alternative new Transmission Project in another proposal), then the bidder must note such multiple submissions in each of its affected proposals in order to ensure no more than one is selected. Likewise, notice must be provided by a bidder of a Transmission Project or upgrade supporting the Delivery of energy in more than one proposal, but not able to

² The appropriate terms to protect and limit disclosure of confidential information would be subject to negotiation with NESCOE staff and/or any representatives of non-procuring states.

support all proposals if accepted. In order to accommodate combination bids, it is acceptable to submit negative contingent bids (e.g., Bid A cannot be accepted with Bid B).

Individual Projects may be combined to form one bid; however, positive contingent bids (e.g. Bid A cannot be accepted unless Bid B is also accepted) are not allowed.

Any resulting contracts must be finalized between one or more EDCs and the successful bidders based on the offers submitted in response to this RFP. This RFP process, including any selection of preferred projects, does not obligate any EDC to accept any bid or any state or federal regulatory authority to approve any proposed power purchase agreement (“PPA”) or transmission tariff or rate schedule or GWh level procured. Any PPAs, tariffs or rate schedules entered into following this RFP process are subject to any applicable state and federal laws and regulatory approvals. In the case of federal transmission rates and tariffs, such charges are subject to the review and acceptance by the Federal Energy Regulatory Commission (“FERC”) pursuant to the provisions of the Federal Power Act.

1.2.1 DEFINITION OF KEY TERMS

“Delivery”, “Deliver”, or “Delivered” means that Qualified Clean Energy is recognized in the ISO New England (“ISO-NE”) settlement system as: i) injected in the ISO-NE energy market at a specified and agreed upon pricing node (e.g., the generator asset node applicable to an internal resource or the external interface node applicable to an import), and ii) injected under any additional agreed upon conditions intended to reflect and realize a generally unconstrained/uncongested delivery of the Qualified Clean Energy.

“Incremental Qualified Clean Energy” means whether resulting from an Eligible Facility or a new Transmission Project, an increase in the amount of Qualified Clean Energy delivered in or to New England, whether associated with (i) the construction of a new generating unit, (ii) the construction of an upgrade to an existing generating unit, (iii) an increase (as compared to the 3 year historical average and/or expected system conditions) in the capacity factor/dispatch ability of an existing generating unit, and/or (iv) an increase (as compared to the 3 year

historical average and/or expected system conditions) in imports into New England from an external control area.³

“Qualified Clean Energy Delivery Commitment” means that a specified amount of Qualified Clean Energy must be Delivered or there will be a credit due to the EDCs which will be passed through to the EDC’s transmission customers pursuant to a Performance-Based Tariff.

“Performance-Based Tariff” means a FERC-accepted Rate Schedule or Tariff and Service Agreement for a Transmission Project with payments reduced for failure to meet the Qualified Clean Energy Delivery Commitment.

“Qualified Clean Energy” means (i) energy produced by a generating resource qualified to produce Class I⁴ or New⁵ (collectively, “Tier 1”) Renewable Energy Credits (“RECs”) under the Renewable Portfolio Standard (“RPS”) statutes of at least one of the Procuring States (“Tier 1 Qualified Energy”⁶), or (ii) energy produced by a generating resource that meets the

³ For purposes of clarification the Commercial Operation Date for Connecticut Class I as specified in the definition of Qualified Clean Energy, Connecticut will not consider bids for Class I resources with a Commercial Operation Date prior to July 1, 2016 that are associated with an increase in imports into New England from an external control area. Connecticut will consider bids for incremental large-scale hydropower resources over new and/or existing transmission lines if the Commercial Operation date for such resources is on or after January 1, 2003 but no later than December 31, 2020. See definition of Qualified Clean Energy.

⁴ See M.G.L.c.25A § 11F(c), Conn. Gen. Stat. § 16-1(20). Class I generating resources must have a Commercial Operation date on or after January 1 2013 for Massachusetts pursuant to Section 83A. For Connecticut, Class I resources must have a Commercial Operation date on or after July 1, 2016 but no later than December 31, 2020; balancing resources eligible under Public Act 15-107 can be existing but must be newly Delivered into New England or be Delivered utilizing part of a Transmission Project.

⁵ R.I. G.L. § 39-26-2(15)

requirements of (i) except that it is located in a non-contiguous control area, or (iii) energy produced by a hydropower resource (for CT a resource that meets the requirements of Conn. Gen. Stat. § 16-1(47) and for RI a resource that meets the requirements of Chapter 39-31 of the General Laws of Rhode Island, for MA a resource with a capacity greater than 30 MW) (“Hydropower Resource”)⁷ In Connecticut, up to 2750 GWh per year (quantity under P.A. 15-107) of Class I resources can be balanced by Class II resources as defined in Conn. Gen. Stat. section 16-1 and/or hydropower resources other than resources defined in 16-1(47) provided that (1) (a) the maximum combined delivery of such resources under a PPA does not exceed the nameplate capacity of the Class I resources being balanced or (b) under a delivery commitment as set forth in Section 2.2.3.3 of this RFP the delivery of the balancing resource does not exceed the Class I resources being delivered and (2) under either a PPA or delivery commitment, the delivery of the balancing energy is to the same Delivery Point as the delivery of the Class I energy being balanced in the bid and (3) must be included in the same bid as the Class I resource being balanced.

“Rate Schedule” has the meaning provided in 18 CFR §35.2(b).

“Service Agreement” has the meaning provided in 18 CFR §35.2(c)(2).

“Tariff” has the meaning provided in 18 CFR §35.2(c)(1).

“Transmission Project” means significant new AC or DC lines or facilities, or significant upgrades to existing lines or facilities, including network upgrades required by ISO-NE to accommodate

⁶ In Connecticut, new energy storage systems will also be considered collectively as Tier I Qualified Energy, provided that such energy storage systems meet the definition of Section 2 of Connecticut Public Act 15-107, have an in-service date on or after July 1, 2016 and no later than December 31, 2020, and are paired with Tier 1 Qualified Energy sources and function to reduce, in whole or in part the intermittency of the Class I renewable energy source with which it is paired. “Paired with Tier I Qualified Energy” means co-located and only storing energy produced by the Class I renewable energy source and delivering such stored energy to the energy grid at a later time. If an energy storage system qualifies for ISO-NE markets other than the energy and REC markets e.g. ancillary services, there are no restrictions on doing so. However, such other market services are not being purchased in the Clean Energy RFP and will not be directly evaluated as part of the quantitative evaluation process (though the physical capability to provide such services may be evaluated as part of the qualitative criteria discussed below).

⁷ See Conn. Gen. Stat. § 16-1(47) (large-scale hydropower eligible under Section 7 of Public Act 13-303 must have a commercial operation date on or after January 1, 2003, but must begin deliveries on or after July 1, 2016 but no later than December 31, 2020); R.I. G.L. §39-31-5.

such new or upgraded facilities. A “Transmission Project” excludes local generator interconnection facilities.

1.2.2 BID CATEGORIES

Subsections 1.2.2.1 through 1.2.2.3 below describe the three categories of bids that the Soliciting Parties are seeking. Bids with a transmission component must provide for Qualified Clean Energy and/or RECs as part of a PPA (Category 1.2.2.2), or a Qualified Clean Energy Delivery Commitment (Category 1.2.2.3), or a combination of both.

Bids may include multiple categories in a single bid (e.g., a bid including a Transmission Project can be comprised of a sale of “Qualified Clean Energy and/or RECs via PPA” portion with a “Transmission Project under a FERC Tariff” portion for part of the Transmission Project’s capacity and “Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment” portion for another part of the Transmission Project’s capacity).

1.2.2.1 QUALIFIED CLEAN ENERGY AND/OR RECS VIA PPA

This category of bids includes the following products: (i) Qualified Clean Energy only; (ii) RECs only; and (iii) Qualified Clean Energy and associated RECs. Bids in this category must be for or, in the case of RECs, associated with, Incremental Qualified Clean Energy from Eligible Facilities producing Qualified Clean Energy that satisfies that applicable state’s Procurement Statute. The Incremental Qualified Clean Energy must be Delivered to the EDCs throughout the term of the commitment. For proposals in this category the purchase and sale of Qualified Clean Energy and/or RECs would take place under a long-term PPA and would only be for Qualified Clean Energy and/or RECs satisfying the applicable Procurement Statute. Narragansett does not intend to procure any energy or RECS under a PPA pursuant to Chapter 39-31 and is only seeking bids for Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment (described in Section 1.2.2.3 below).

1.2.2.2 QUALIFIED CLEAN ENERGY AND/OR RECS VIA PPA WITH A TRANSMISSION PROJECT UNDER FERC TARIFF

This category of bids is the same as 1.2.2.1 above, but includes a separate Transmission Project component under a FERC-filed tariff. For example, one or more developers of Qualified Clean Energy generation and a developer of a Transmission Project can jointly offer a combined bid that includes the purchase and sale of Incremental Qualified Clean Energy under one or more PPAs, and a Transmission Project necessary to Deliver such Qualified Clean Energy. Under this bid category, it is intended that any required Transmission Project to Deliver the Qualified Clean

Energy, other than direct interconnection facilities, be priced separately within the proposals and with recovery of associated costs expected to be recovered through a FERC-filed tariff. Under such a proposal, the Transmission Project developer would be responsible for any FERC tariff and rate filings related to the Transmission Project. As stated above, Narragansett does not intend to procure any energy or RECS under a PPA pursuant to Chapter 39-31.

1.2.2.3 QUALIFIED CLEAN ENERGY VIA TRANSMISSION PROJECT UNDER A PERFORMANCE-BASED TARIFF CONTAINING A QUALIFIED CLEAN ENERGY DELIVERY COMMITMENT; NO PPA

This category of bids includes a Transmission Project without an associated PPA. Instead of the EDCs purchasing Qualified Clean Energy via PPAs, the Transmission Project provider would commit to a Performance-Based Tariff containing a Qualified Clean Energy Delivery Commitment. The Incremental Qualified Clean Energy provided under this category does not necessarily need to satisfy an existing Procurement Statute. An explanation with additional details of the model for this category of bids is provided in Appendix E.

1.2.3 ELIGIBLE PROJECTS

Eligible Projects are either Eligible Facilities (described in Section 1.2.4) or Transmission Projects providing for the Delivery of Qualified Clean Energy from Eligible Facilities.

1.2.4 ELIGIBLE FACILITY

An Eligible Facility must satisfy the criteria in the Procurement Statutes of one of the three Procuring States. The Evaluation Team will consider bids for other types and quantities of Qualified Clean Energy if submitted in the form of Qualified Clean Energy Via Transmission Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment under Section 1.2.2.3.

1.2.5 QUANTITIES AND CONTRACT TERM LENGTHS

Pursuant to the Procurement Statutes, the current approximate authorized procurement levels for Qualified Clean Energy and/or RECs is:

Connecticut:

2750 GWh per year of Qualified Clean Energy under Section 1(c) of Public Act 15-107⁸

1375 GWh per year of Qualified Clean Energy under Section 7 of Public Act 13-303; and

125 GWh per year of Class I Qualified Clean Energy under Section 6 of Public Act 13-303

Massachusetts:

817 GWh per year of Class I Qualified Clean Energy under Section 83(a)

Rhode Island:

No specific procurement quantity is specified under Chapter 39-31.

The Soliciting Parties are also interested in receiving bids for Qualified Clean Energy in excess of these amounts or that do not qualify under the specified state statutes, so long as those bids are in the form of Qualified Clean Energy Via Transmission Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment. As stated above, Narragansett is seeking only this category of bids under Chapter 39-31.

The contract term lengths for the procurement of Qualified Clean Energy and/or RECs provided for under the Procurement Statutes vary by state. The table below sets forth the statutory contract term lengths:

⁸ In determining the quantity of Qualified Clean Energy pursuant to P.A. 15-107, the costs and benefits of bids received will be compared to the expected or actual costs and benefits of other resources eligible to bid in other potential procurements authorized pursuant P.A. 15-107. Connecticut DEEP intends to conduct one or more additional solicitations pursuant to P.A. 15-107 resources eligible under sections 1(b) and (d) of that statute. The 2750 GWh is the maximum amount that the selection team can procure under all solicitations pursuant to sections 1(b) and 1(c) of P.A. 15-107. The Connecticut Selection Team, with the help of its consultant, may develop proxy bids for the other resources.

Tier 1 Renewables

Hydropower

Connecticut	Up to 20 years	Under P.A. 13-303 15 years Under P.A. 15-107 20 years ⁹
Massachusetts	10-20 years	N/A
Rhode Island	Not specified in statute	Not specified in statute

Qualified Clean Energy Via Transmission Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment that do not qualify under the specified state statutes should include a proposed term length for the EDC commitments thereunder.

1.3 FILING PROTOCOL AND COMMUNICATIONS BETWEEN THE EVALUATION TEAM AND BIDDERS

This RFP and related information can be found under www.cleanenergyRFP.com.

All communications with the Evaluation Team pertaining to this RFP must be submitted via e-mail with the subject line “Regional RFP Procurement” to the Evaluation Team at cleanenergyRFP@gmail.com. Bidders are prohibited from direct contact with individual members of the Evaluation Team or the Evaluation Team’s consultant(s) regarding this RFP (other than as directed by the Evaluation Team). Note that staff of the EDCs who are participating in the solicitation and evaluation of bids under this RFP are bound by a Utility Standard of Conduct, which, among other things, prohibits signatory staff from communicating

⁹ The Connecticut Selection Team will determine pursuant to which statute a bid is selected. To the extent a bid is for 20 years, the bidder should indicate whether the bid is the same price for 15 years. If the bidder wishes to offer a different price for a 15 year contract, the bidder must comply with the additional pricing bid fees in compliance with Section 1.6 of this RFP.

any non-public information regarding this RFP with any other utility staff who may be developing or submitting a bid responsive to this RFP.¹⁰

Prospective bidders may submit written questions to the Evaluation Team pertaining to the solicitation. The Evaluation Team is under no obligation to answer any question submitted after the deadline provided in the schedule set forth in Section 3.1 of this RFP (the "Schedule"). The Evaluation Team will endeavor to publish written responses to questions on a rolling basis, but will not post any responses after the deadline provided in the Schedule. All questions must be submitted to the Evaluation Team at: cleanenergyRFP@gmail.com no later than 12/29/15. All Evaluation Team responses to the questions will be published on the Evaluation Team's website for all participants to view no later than 01/14/16.

Proposals shall demonstrate how the bidder and proposed project(s) meet the project eligibility and threshold requirements set forth in this RFP. The Schedule for the competitive solicitation issued in this RFP is set forth below.

1.3.1 PROPOSAL SUBMISSION DEADLINE: 01/28/16 at 12:00 P.M. E.P.T. (noon).

Proposals received by the Evaluation Team after the deadline will be rejected.

1.3.2 SUBMISSION REQUIREMENTS

Bidders must submit 17 separate CD ROM copies of a public version of each proposal (discussed in 1.3.2.1), and shall also submit 17 separate CD ROM copies of an un-redacted confidential version (discussed in 1.3.2.2) to the company contacts in Appendix I. The public version may be redacted to remove information that qualifies for confidential treatment pursuant to the state requirements described in Appendix G. Each proposal shall contain the full name and business address of the bidder and bidder's contact person and shall be signed by an authorized officer or duly authorized representative of the bidder. Bidders must sign the original proposal and include copies of the signature page with the bids. The full name and business address of the bidder must be included in the public version of the proposal(s).

1.3.2.1 PUBLIC VERSIONS OF PROPOSALS

Each proposal must be submitted publicly, with confidential material redacted at the bidder's option, to the Evaluation Team. This public version will be posted on the public website www.cleanenergyrfp.com shortly after the bid submittal deadline. The CD title should include the words "Public Version" to alert the Evaluation Team that the version will be publicly posted. The public proposals must be complete in all respects other than the redaction of confidential information. Complete proposals must include a properly completed Certification, Project and Pricing Data ("CPPD") Form, although at the bidder's option the CPPD submitted as part of the

¹⁰ See "Utility Standard of Conduct, available at Appendix H.

public version may be a PDF instead of a working Excel file if the bidder submits the un-redacted CPPD form as a working Excel file with the confidential version of the proposal. If there is conflicting information between the information in the CPPD and information in other forms, then the information in the CPPD will be used in the evaluation. Information elsewhere in the bid cannot be used to modify or qualify any information in the CPPD.

The Evaluation Team will not redact the public versions of proposals. Anything submitted in the public version will be made AVAILABLE TO THE PUBLIC.

1.3.2.2 CONFIDENTIAL VERSIONS OF PROPOSALS

If a bidder elects to redact any confidential business information in the public version of its proposal(s), it must also submit an un-redacted, complete version of the proposal(s). The confidential versions of proposals must include the CPPD forms as a working Excel file, with all required information included. The confidential versions of proposals will be treated as confidential and sensitive information by the Evaluation Team, subject to the treatment of confidential information discussed in Section 1.3.3 below, which can vary by state.

1.3.3 CONFIDENTIAL INFORMATION

Bidders must clearly identify all confidential or proprietary information including pricing. Only legitimate non-public proprietary or sensitive information may be considered confidential, and bidders should not designate any portions of their proposal confidential that do not merit confidential treatment. The Evaluation Team shall use commercially reasonable efforts to treat the confidential information that it receives from bidders in a confidential manner and will not use such information for any purpose other than in connection with this RFP.¹¹ The Evaluation Team expects to disclose bid information to the Evaluation Team Consultants and to ISO-NE staff as part of the bid evaluation process. In addition, the Bidder authorizes ISO-NE to share any information regarding its project, including but not limited to the results of any interconnection studies performed by the ISO with the Evaluation Team which information also

¹¹ As it has done with previous RFPs, CT DEEP intends to disclose certain bid information in its final determination once contract negotiations are completed and a filing is made with PURA for review and approval. At this time, DEEP anticipates such disclosure will include some information attributed to named projects responsive to the CT portion of the RFP: specifically, the qualitative and quantitative score and threshold eligibility determinations attributed to specific projects responsive to the CT portion of this RFP, and pricing data for winning bids. DEEP may also disclose aggregate or average pricing data for all bids responsive to the CT portion of the RFP but without attribution to specific projects.

will be treated as confidential. The Bidder shall provide written confirmation of its consent for the sharing of this information as the Evaluation Team may request. Depending upon the evaluation of bids received, however, the Evaluation Team may seek permission from bidders to share bids with other individuals or entities. In all such cases, the Evaluation Team would work with bidders on developing appropriate means to protect and limit disclosure of confidential information. If confidential information is sought in any regulatory or judicial inquiry or proceeding or pursuant to a request for information by a government agency with supervisory authority over any of the EDCs, reasonable steps shall be taken to limit disclosure and use of said confidential information through the use of non-disclosure agreements or requests for orders seeking protective treatment, and bidders shall be informed that the confidential information is being sought. The bidder shall be responsible for filing, submitting, and/or providing to the EDCs for such filing or submission, any motions or other pleadings (including associated affidavits, etc.) for protective orders or other relief to justify withholding the confidential information.

Similarly, bidders shall use commercially reasonable efforts to treat all confidential information received from the Evaluation Team or individual entities serving on the Evaluation Team in a confidential manner and will not, except as required by law or in a regulatory or judicial proceeding, disclose such information to any third party or use such information for any purpose other than in connection with this RFP; provided, however that if such confidential information is sought in any regulatory or judicial proceeding, the bidders shall take reasonable steps to limit disclosure and use of said confidential information through the use of non-disclosure agreements or requests for orders seeking protective treatment, and shall inform the Evaluation Team that the confidential information is being sought.

Additional state-specific information concerning the confidentiality of information pursuant to state statutes is provided in Appendix G.

In the event confidential information is submitted to the Evaluation Team and confidential treatment is not afforded by a governmental agency of one of the Procuring States, the entities and individuals on the Evaluation Team shall not be held responsible. Each of the members of the Evaluation Team, as well as their employees, agents, and consultants, shall be held harmless for any release of confidential information as long as reasonable efforts to protect the information have been followed. In any event, each of the Soliciting Parties, as well as their employees, agents, and consultants, shall be held harmless for any release of confidential information made available through any public source by any other party.

1.3.3.1 CONFIDENTIAL INFORMATION SHARING AUTHORIZATION FOR ISO-NE

ISO-NE will be requested to provide information to the Evaluation Team concerning proposals as part of the proposal evaluation process. By participating in this RFP bidders agree that the

ISO may release information, related to the projects and that may otherwise be considered confidential under the ISO New England Information Policy, to the Evaluation Team. The Evaluation Team will treat the information provided as confidential as described above in accordance with the Confidential Information policies and practices described in 1.3.3 above.

1.3.4 APPENDICES

All bidders shall sign and submit attached Appendix D with their bids. **A proposal will be considered incomplete unless the required Appendix D is signed and submitted with the proposal.**

1.4 BIDDER CERTIFICATION

An authorized officer or other duly authorized representative of a bidder is required to certify by its submission of its proposal that:

1. the bidder has reviewed this RFP and has investigated and informed itself with respect to all matters pertinent to this RFP and its proposal;
2. the bidder's proposal is submitted in compliance with all applicable federal, state and local laws and regulations, including antitrust and anti-corruption laws;
3. the bidder is bidding independently and has no knowledge of non-public information associated with a proposal being submitted by another party in response to this RFP other than: (1) a response submitted (a) by an affiliate of bidder or (b) for a project where bidder is also a project proponent or participant, which in each case must be disclosed in writing to the Evaluation Team with each such bidder's or affiliated bidder's proposal; or (2) a submission of multiple bids for the same Qualified Clean Energy as discussed in Section 1.2:
4. the bidder has no knowledge of any non-public information associated with the development of this RFP; and
5. the bidder's proposal has not been developed utilizing knowledge of any non-public information associated with the development of this RFP.

Violation of any of the above requirements will disqualify the bidder from the solicitation described in this RFP and may be reported to the appropriate government authorities. See the required Certification in Appendix D.

1.5 CHANGES OR CANCELLATIONS

The terms and conditions of this RFP may, at any time, be changed, postponed, withdrawn and/or canceled, including any requirement, term or condition of this RFP, any and all of which shall be without any liability to any members of the Soliciting Parties or the Evaluation Team. Any changes to or cancellations of this RFP will be posted on www.cleanenergyRFP.com.

1.6 NON-REFUNDABLE BID FEES

Each Project shall be required to pay a non-refundable bid fee which will be used to offset the cost of the quantitative evaluation of bids performed by an independent consultant experienced in the evaluation of such proposals on behalf of the Evaluation Team. The minimum bid fee will be \$7,500 for a project with a nameplate capacity of 20 MW. The bid fee will increase by \$375 for each MW above 20 MW to a maximum bid fee of \$100,000. The bid fee includes one pricing offer. Each additional pricing offer will cost an additional \$10,000 for projects of less than 100 MW nameplate capacity and \$25,000 for all others. The fee for an additional pricing offer only applies for variations in pricing for the same Project. For all other cases a new bid fee is required. For clarity, if there are changes to any physical aspect of a Project, including but not limited to Project size, technology type(s), production/delivery profile, in-service date, and delivery location, a new bid fee is required¹² Bid fees must be wired to the companies and in the percentages applicable via the instructions contained in appendix I. The fee should be wired no later than the final date for submission of bids. No applications will be reviewed without a bid fee. Submission of a bid fee does not obligate the Selection Team to select a project.

If the total amount of the bid fees collected is not adequate to cover the cost of the quantitative evaluation, the EDCs may either seek recovery of that shortfall through retail rates or terminate the evaluation and selection process under this RFP.¹³ If the RFP is terminated uncommitted bid fees will be returned.

¹² Additional bid fees apply because any change in physical parameters will necessitate an additional run of the nodal electric market simulation model for the calculation of indirect economic benefits set forth in Section 2.3.1.1 of this RFP.

¹³ If sufficient bid fees are not collected and the three states RFP is terminated, Connecticut DEEP, in consultation with the Connecticut EDCs, the Connecticut Attorney General, the Connecticut Office of Consumer Counsel, and the Connecticut Procurement Manager, may proceed with an evaluation of submitted project bids and may select bid(s) consistent with Connecticut's Procurement Statutes. Evaluation criteria will be generally consistent with the criteria outlined in this RFP and will include direct and indirect benefits to the extent permitted by budgetary constraints as the bid fees will not be used to conduct the evaluation (other than bid fees already committed to the Evaluation Team's consultant prior to bid submission). If project(s) is/are identified that is/are in the interest of Connecticut rate payers, the commissioner of DEEP may direct the Connecticut EDCs to enter into PPAs with the project bidders and/or recommend Transmission Project(s) to the Connecticut

II. EVALUATION AND SELECTION PROCESS

2.1 OVERVIEW

The essential purpose of this three-state procurement is for the Soliciting Parties in each of the states to identify any projects that offer the potential for the Procuring States to meet their clean energy goals in a cost-effective manner consistent with their Procurement Statutes. The Soliciting Parties in the three states have decided to act jointly to open the possibility of procuring large-scale projects that no state could procure if it acted unilaterally. Although the three-state process opens up the possibility of large-scale projects, the Selection Team in each state will select the project or projects that are consistent with its Procurement Statute and clean energy goals and are most beneficial to its customers. Consequently, evaluation and selection will involve an iterative process by which, after an initial threshold examination and quantitative analysis of bids, the Evaluation Team from each Procuring State will first review and rank bids taking into account the legal requirements and policies of their respective state. These state-specific processes and the related legal requirements are described in the Procurement Statutes which are described in Appendix F. The Selection Team from each state will consider the evaluation results and project rankings to determine projects for selection. Then the Selection Team members from all three of the Procuring States will collaborate to determine whether together they can create a portfolio of projects that would reduce the cost to customers in each of the three states consistent with each state's Procurement Statutes and clean energy goals.

Once proposals are received, the proposals will be subject to a review, evaluation and selection process. The first stage ("Stage One") consists of a review of whether the proposals satisfy specified eligibility, threshold and other minimum requirements set forth in Section 2.2 of this RFP. The second stage ("Stage Two") consists of quantitative and qualitative evaluation of proposals that pass the Stage One review, as described in Section 2.3 of this RFP.

2.2 STAGE ONE – MINIMUM THRESHOLD REQUIREMENTS

In order for a proposal to qualify for evaluation, it must satisfy the requirements described in this Section. These requirements are designed to ensure that proposed projects comply with the requirements of this RFP, satisfy any relevant statutory criteria under the Procurement Statutes, and meet minimum standards demonstrating project viability. Following receipt of the proposals, the proposals will be reviewed to determine whether they satisfy these minimum requirements. Proposals that do not satisfy the Stage One requirements may be disqualified from further review and evaluation. Stage One requirements are set forth in the following section of this RFP.

EDCs. The same regulatory project approval process contained within this RFP will apply to a Connecticut only project evaluation and selection.

2.2.1 ELIGIBLE BIDDER

An Eligible Bidder is a bidder who is the owner of an Eligible Project or the owner of development rights to an Eligible Project, i.e., the developer of the Eligible Project.

2.2.2 ELIGIBLE FACILITY

An Eligible Facility must satisfy the requirements outlined in Section 1.2.4.

2.2.3 ELIGIBLE BIDS

Each bid must satisfy this Section 2.2.3. No bid may require, or allow for, payment for energy, RECs, transmission service, any delivery commitment or for any other reason, cost or service until service has commenced from the Eligible Project.

2.2.3.1 QUALIFIED CLEAN ENERGY AND/OR RECS VIA PPA

An Eligible Bidder bidding to sell Incremental Qualified Clean Energy and/or Tier 1 RECs through a PPA must propose separate prices on a dollar per megawatt-hour (\$/MWh) basis for Qualified Clean Energy and/or on a dollar per REC (\$/REC) basis for RECs, and a price schedule that conforms with Section 2.2.12. Any RECs sold under a PPA or REC-only contract will only be purchased by the applicable EDC to the extent that those RECs conform to the eligibility criteria for Tier 1 RECs in the RPS program applicable to the EDC's state. If an EDC agrees to purchase both Qualified Clean Energy and/or RECs under a PPA and the RECs cease to conform to the RPS Tier 1 eligibility criteria, the applicable EDC may thereafter only purchase electric energy under that PPA, and if the EDC decides not to purchase those non-conforming RECs, then the Seller will be permitted to sell them to a third party. Any biomass or landfill methane gas facility that has entered into a PPA under Section 6 of Connecticut P.A. 13-303 shall be exempt from the gradually reduced REC value outlined in Section 5 of Connecticut Public Act 13-303.

The Form PPA for Tier 1 renewable resources (attached as Appendix C-1 to this RFP) contains terms and conditions for the sale of both Incremental Qualified Clean Energy and RECs.

2.2.3.1.1 QUALIFIED CLEAN ENERGY FROM A HYDROPOWER RESOURCE (CONNECTICUT ELIGIBILITY REQUIREMENT ONLY)

An Eligible Bidder bidding to sell energy and environmental attributes to the Connecticut EDCs from a Hydropower Resource pursuant to a PPA must propose a price on a dollar per megawatt-hour (\$/MWh) basis for firm Qualified Clean Energy Deliveries. The Eligible Bidder must provide a schedule of Qualified Clean Energy Deliveries with their bid. The Soliciting Parties are seeking firm delivery commitments of Qualified Clean Energy Deliveries particularly during on-peak hours in peak demand periods, i.e. the five peak months of January, February,

July, August, and December. On-peak hours are defined as hours ending 0800 to hour ending 2300 on Monday through Friday, excluding North American Electric Reliability Corporation holidays. If the specified amount of Qualified Clean Energy is not Delivered during the specified periods, then the seller will pay damages equal to the amount of Qualified Clean Energy Delivery shortfall in any hour multiplied by the difference between the contract price and the Replacement Price specified in the firm PPA. The economic evaluation for Qualified Clean Energy Deliveries during these on-peak hours in the peak demand months will be expected to score better under the quantitative analysis. The Bidder must detail in its bid how it proposes to certify the environmental attributes are included with the energy delivered which is a requirement under the PPA.

The Form PPA for firm Incremental Qualified Clean Energy from a Hydropower Resource (attached as Appendix C-2 to this RFP) contains terms and conditions for the sale of firm Qualified Clean Energy.

The Massachusetts EDCs and Narragansett will not procure energy or environmental attributes from a Hydropower Resource pursuant to a PPA.

2.2.3.2 QUALIFIED CLEAN ENERGY AND/OR RECS VIA PPA WITH A TRANSMISSION PROJECT UNDER FERC TARIFF

An Eligible Bidder bidding to develop a Transmission Project as part of a packaged bid with Qualified Clean Energy resources as defined in Section 1.2.2.2 above must submit a bid (i) complying with Section 2.2.3.1 or 2.2.3.1.1 for the energy and/or RECs associated with its bid and (ii) providing for payment for its proposed Transmission Project through a FERC-accepted Rate Schedule or Tariff and Service Agreement. The Eligible Bidder must provide detailed information on the Rate Schedule or Tariff and Service Agreement , including:

- a. The proposed payment required. If the proposed payment may change during the contract term, then the Eligible Bidder must also provide the method that the Transmission Owner shall use to determine the payment for the Transmission Project under the transmission Rate Schedule or Tariff and Service Agreement to be filed with FERC. If the proposed payment is a formula rate, the Eligible Bidder must also provide the formula that the transmission owner will file with FERC;
- b. If the proposed payment is based on the Transmission Project's cost of service and may change during the contract term based on changes in the cost of service, a full revenue requirements model submitted as a working Excel spreadsheet with the formulas intact; and

- c. The expected average Incremental Qualified Clean Energy Delivery profile across all hours of a year, including the detailed information and explanation necessary to support such an expectation.

An Eligible Bidder shall comply with any requirements concerning submission of a Transmission Project and the associated proposed Rate Schedule or Tariff and Service Agreement for review through ISO-NE processes, including any applicable requirements related to the interconnection of the proposed Transmission Project to the ISO-NE system.

Bidders should be aware that any Transmission Project(s) presented in their bids will be assumed to include all the activities and costs required to make the Delivery of the Incremental Qualified Clean Energy a reality, including but not limited to the cost of any interconnection facilities and ISO-NE network upgrades associated with the Transmission Project.

The Bidder must also detail in its bid the process to ensure that the associated environmental attributes are included with the energy delivered in New England, and that they are not being applied to any other control area.

2.2.3.3 QUALIFIED CLEAN ENERGY VIA TRANSMISSION PROJECT UNDER A PERFORMANCE-BASED TARIFF CONTAINING A QUALIFIED CLEAN ENERGY DELIVERY COMMITMENT

An Eligible Bidder bidding to develop or receive cost recovery for a Transmission Project to Deliver Qualified Clean Energy under a Performance-Based Tariff containing a Qualified Clean Energy Delivery Commitment as defined in Section 1.2.2.3 above, if selected, will recover the costs of its proposed Transmission Project through a Rate Schedule or Tariff and Service Agreement, as filed with and accepted by the FERC. Bids must include the minimum Qualified Clean Energy Delivery Commitments provided as specified MWhs of Qualified Clean Energy Delivered at specified ISO-NE Node(s) during specified periods of time. At a minimum, the bidder shall provide such Delivery commitments, but may also provide more refined/targeted Delivery commitments (e.g., seasonal and/or seasonal peak hour minimum Delivery requirements) which, other things being equal, are expected to score better under bid analysis. Bids must also include the proposed ownership of associated transmission rights and obligations (e.g., any transmission capacity rights, or any FTR market incremental auction revenue rights) during and after the term of the Qualified Clean Energy Delivery Commitment.

An overview of the Transmission Project under a Performance-Based FERC Tariff containing a Qualified Clean Energy Delivery Commitment approach, including an overview of the regulatory filings and approvals expected to be required, is attached as Appendix E to this RFP.

The Eligible Bidder is required to provide the elements described in 2.2.3.2 a-c above.

An Eligible Bidder shall comply with any requirements concerning submission of a Transmission Project and the associated proposed tariff, Rate Schedule or Tariff and Service Agreement for review through ISO-NE processes, including any applicable requirements related to the interconnection of the proposed Transmission Project to the ISO-NE system.

Bidders should be aware that any Transmission Project(s) presented in their bids will be assumed to include all the activities and costs required to make the Delivery of the Qualified Clean Energy a reality, including but not limited to the cost of any interconnection facilities and ISO-NE network upgrades associated with the Transmission Project.

The bidder must also detail in its bid the process to ensure that the associated environmental attributes are included with the energy delivered in New England, and that they are not being applied to any other control area.

2.2.4 CAPACITY REQUIREMENTS

Eligible Bidders must describe the amount of capacity, and the capacity commitment period, for which they expect the Eligible Facilities in their bids to qualify under the Forward Capacity Auction Qualification ("FCAQ") requirements set forth in Section III.13.1 of Market Rule 1 of ISO-NE's Transmission Markets and Services Tariff and how they expect to meet those requirements which include, among others, satisfaction of network capability interconnections standards and the remedying of any issues identified in the overlapping impact analysis. This FCAQ amount must be consistent with the amount that would typically be expected for similar projects of the same nameplate rating and technology type. There will be no payments or price supports from the EDCs for capacity associated with any Qualified Clean Energy procured under this RFP. The Bidder will retain any capacity revenues received from ISO-NE. The Eligible Bidder must disclose in its proposal if the Bidder is committing to bid that qualified capacity amount into the capacity market and if so, must take (i) any necessary and appropriate actions to qualify and participate; and (ii) commercially reasonable actions to be selected and compensated in the capacity market, including the use of the Renewable Technology Resource exemption (Section III.13.1.1.1.7) if the Eligible Facility would qualify for use of such exemption. Please note, however that under the CT PPA for firm Qualified Clean Energy from a Hydropower Resource, the Bidder does not have this option and the qualified capacity must be bid into the capacity market.

For consideration under Massachusetts Section 83A, bids will also be accepted from Eligible Bidders which may choose to offer Eligible Facilities without a commitment to qualify capacity for participation in the ISO-NE Forward Capacity Market. Such bids should be clear on this issue to ensure proper consideration and evaluation against other bids submitted under Massachusetts Section 83A which may include commitments to qualify capacity in accordance with requirements in the paragraph above.

2.2.5 INTERCONNECTION REQUIREMENTS

The interconnection location of the Hydropower Resources which seek to qualify for consideration under Section 4 of Connecticut Public Act 13-303 or Section 1(c) of Public Act 15-107 must meet the location requirements of those statutes. The Delivery of Qualified Clean Energy from Eligible Facilities must occur throughout the term of the PPA or Qualified Clean Energy Delivery Commitment. It is the responsibility of the Eligible Bidder to satisfy the Delivery requirement. The Delivery point must be located so that EDCs are not responsible for wheeling charges to move energy to the ISO-NE Pool Transmission Facilities. The EDCs will not be responsible for any costs associated with Delivery other than the payment of the bid prices. Similarly, EDCs will not be responsible for any scheduling associated with Delivery.

The Eligible Bidder will be responsible for all costs associated with and/or arising from interconnecting its project to the transmission grid and for ensuring that the Qualified Clean Energy is recognized in ISO-NE's settlement system as injected in the ISO-NE energy market at a specified and agreed upon pricing node. At no time will one or more EDCs assume the responsibility of Lead Market Participant. GIS certificates representing the environmental attributes associated with the Qualified Clean Energy must be delivered into the EDCs' NEPOOL GIS accounts.

A facility will not be eligible under this RFP if it is net-metered or behind the meter.

The Eligible Facility shall comply with all ISO-NE and FERC interconnection requirements for generation facilities and interregional ties, as applicable.

To meet this threshold requirement, Eligible Bidders must submit a plan that clearly demonstrates how Qualified Clean Energy will be Delivered from or by the proposed Eligible Project to the Delivery point that is a PTF Node as outlined in Section 6 of Appendix B. Additionally, the Eligible bidder must detail the status (and conclusions, as available) of interconnection applications and studies, as further described in Section 6 of Appendix B.

2.2.6 ALLOWABLE CONTRACT TERMS

The contract terms for product delivery for mandated procurements under the Procurement Statutes in each State are specified in 1.2.5 above. Bidders are encouraged to make their own determination as to the product delivery terms that best fit their individual needs while meeting the state requirements.

2.2.7 MINIMUM CONTRACT SIZE

Any bid must provide for the Delivery of Qualified Clean Energy and/or associated RECs from Eligible Facilities with a minimum nameplate rating of 20 MW. An Eligible Bidder may offer bids for a portion of the production of Qualified Clean Energy and/or RECs from its proposed Eligible Facility, provided such portion is 20 MW or greater. Similarly, an Eligible Bidder may offer bids for a portion of a Transmission Project provided that such portion provides for the Delivery of Qualified Clean Energy with a minimum nameplate rating of 20 MW or greater. An Eligible Bidder may also offer bids that aggregate capacity among two or more Eligible Facilities, provided that the Eligible Facilities have the same contract purchase rate (if the bid is for Qualified Clean Energy via a PPA), Deliver to the same Delivery point, and that the aggregation allows for the execution of one contract per EDC for all the Eligible Facilities included in the bid (i.e. each EDC will only execute one contract for the bid, with one price and one Delivery point).

2.2.8 GENERATION SITE/TRANSMISSION ROUTE CONTROL

The Eligible Bidder of a generation project must demonstrate that it has control, or an unconditional right to acquire control, over the generation site included in the bid. In all cases, site control and property rights include all necessary leases, easements or development rights necessary to operate or develop the generation project. In order to be considered to have site control for generation projects, the Eligible Bidder must provide documentation showing one of the following: that they own the site or have a lease or easement with respect to the site on which the proposed project will be located for a term at least as long as the PPA or Qualified Clean Energy Delivery Commitment term; or have an unconditional option agreement to purchase or lease the site for such term. This requirement applies to both new and existing facilities.

Eligible Bidders for a Transmission Project must have property rights for a substantial portion of the property necessary for the Transmission Project, and include a plan for acquiring the rest of the required property rights. If all property rights have not yet been obtained, the Eligible Bidder must describe the authority the Transmission Project developer has to acquire necessary rights of way; the experience of the Transmission Project developer in acquiring rights of way; the status of acquisition of right, title and interest in rights of way, substations and other property or facilities, if any, that are necessary for the proposed project; a detailed explanation of the feasibility of the Transmission Project and potential constraints and challenges; and the means by which the Transmission Project Developer proposes to satisfy state legal or regulatory requirements for siting, constructing, owning and operating the Transmission Project.

2.2.9 TECHNICAL VIABILITY; ABILITY TO FINANCE THE PROPOSED ELIGIBLE PROJECT

The Eligible Bidder must demonstrate that the technology it proposes to use is technically viable. Technical viability may be demonstrated by showing that the technology is commercially available and has been used successfully as outlined in Section 8 of Appendix B.

The Eligible Bidder must demonstrate the financial viability of the proposed Eligible Project, including the funding of development costs and the required development period security and the ability to acquire the required equipment in the time frame proposed (see section 5 of Appendix B).

2.2.10 EXPERIENCE

The Eligible Bidder must demonstrate that it has a sufficient amount of relevant experience and expertise, as applicable, to successfully develop, finance, construct, and operate and maintain its proposed Eligible Project. Development, financing and construction experience can be established by demonstrating that key member(s) of the bidder's development team have undertaken project management responsibilities, including:

- a. Successful development and construction of a similar type of project; or
- b. Successful development and construction of one or more projects of similar size or complexity or requiring similar skill sets; and
- c. Experience successfully financing power generation or transmission projects (or demonstrating the financial means to finance the Eligible Project on the Eligible Bidder's, Eligible Project developer's or Eligible Project owner's balance sheet).

Operations and maintenance experience should be addressed as outlined in Section 9 of Appendix B.

2.2.11 PROPOSAL CERTIFICATION

Eligible Bidders are required to sign the Proposal Certification Form in the CPPD verifying that the price(s), terms and conditions of the proposal are valid for at least 270 days following submission. Only an officer or other duly authorized representative of the Eligible Bidder may sign the Proposal Certification Form.

2.2.12 ALLOWABLE FORMS OF PRICING

2.2.12.1 PRICING FOR QUALIFIED CLEAN ENERGY AND/OR RECS VIA PPA

Proposals for Qualified Clean Energy, Qualified Clean Energy and Tier 1 RECs, or Tier 1 RECs only, will be accepted **only if** they conform to the following requirements:

- a. The proposal must provide fixed prices (in \$/MWh and/or \$/REC) annually for the term of the contract, and prices may be the same each year or increase by a defined escalation rate over time. Separate Qualified Clean Energy prices must be provided for on- and off-peak periods.¹⁴
- b. Prices must be paid on a \$/MWh or \$/REC basis for actual production following Delivery. No fixed payments, pre-payments or fees shall be paid.
- c. Proposals including Qualified Clean Energy and RECs, or a portion thereof, must provide separate prices for such Qualified Clean Energy and RECs. For such proposals, if an EDC agrees to purchase both Qualifying Clean Energy and RECs under a PPA and the RECs cease to conform to the RPS Class 1 eligibility criteria, the applicable EDC will thereafter only purchase electric energy under that PPA, and the Seller will be permitted to sell those non-conforming RECs to a third party.¹⁵ Pricing for Qualified Clean Energy and RECs must closely align with the relative market value of those products. Any biomass or landfill methane gas facility that has entered into a PPA under Section 6 of Connecticut PA 13-303 shall be exempt from the gradually reduced REC value outlined in Section 5 of Connecticut Public Act 13-303.
- d. Proposals for RECs only must be priced in \$/REC. For such proposals, if an EDC agrees to purchase RECs under a REC contract and the RECs cease to conform to the RPS Tier 1 eligibility criteria, the contract will be terminated.
- e. For the National Grid Mass EDCs, payment for RECs associated with generating facilities in the ISO-NE balancing area will be made following Delivery of the Qualified Clean Energy so long as the National Grid Mass EDC and the seller enter an irrevocable Forward Certificate Transfer of those RECs in the NEPOOL GIS. For all other EDCs and for RECs associated with generating facilities outside the ISO-NE balancing area payment for RECs shall be made after receipt of the RECs in the EDC's NEPOOL GIS Account.

¹⁴ For Connecticut, bids that have variable fuel costs (biomass and fuel cells) may submit bids with a variable price that is adjusted based on a publicly available energy related index that appears in a publication that is common to, and widely accepted by the energy industry.

¹⁵ For PPAs executed by, Massachusetts Electric Company and Nantucket Electric Company (the "National Grid Mass EDCs"), the bidders should propose an "Adjusted Price" that would be paid under a PPA for Qualified Clean Energy and RECs if the RECs cease to be Tier 1 RECs, with those non-conforming RECs no longer being purchased by the applicable EDC.

Proposed prices may not be conditioned upon or subject to adjustment based upon the availability of the Federal Production Tax Credit or the Federal Investment Tax Credit, or the availability or receipt or continuation for any period of any other tax treatment or government grant or subsidy.

An Eligible Bidder may submit up to five pricing proposals for the sale of Qualified Clean Energy and/or RECs from an Eligible Facility. The bidder may submit proposals that include more than one contract term (*e.g.*, 15 and/or 20 years), or different products (Qualified Clean Energy; Qualified Clean Energy and RECs; RECs only); or different quantities of products.

Bidders should indicate whether any of their Eligible Facility or contract size (MW) is scalable, and to what degree, based upon the pricing submitted in the CPPD.

The Eligible Bidder must identify its proposed Delivery point for Qualified Clean Energy.

Under the terms of the Class I PPA, in the event that the LMP for the Qualified Clean Energy at Delivery point is less than \$0.00 per MWh in any hour, then the Buyer will purchase the Delivered Energy and or RECs at the contract rate and the seller shall credit to buyer, on the appropriate monthly invoice, an amount equal to the product of (i) such Qualified Clean Energy Delivered in each such hour and (ii) the absolute value of the hourly LMP at that Delivery point.

These forms of pricing are conforming under this RFP. The Evaluation Team may consider other forms of pricing as an alternative as long as the Bidder submits a proposal for the project with conforming pricing as described above. Alternative pricing may be considered subject to the following conditions:

- a. Any index used in a pricing formula must be energy related and publicly available;
and
- b. There must be a price cap for each year under the proposed contract.

The Evaluation Team is under no obligation to consider or accept any form of alternative pricing.

2.2.12.2 PRICING FOR TRANSMISSION PROJECTS AS PART OF A PACKAGE BID WITH QUALIFIED CLEAN ENERGY AND/OR RECS VIA PPA

Proposals that include a Transmission Project packaged with a PPA for Qualified Clean Energy and/or RECs should have two components. Pricing for the PPA should conform to the requirements of Section 2.2.12.1 above. Pricing for the Transmission Project should be proposed separately under a FERC-filed tariff or rate schedule, and if that pricing is based on the Transmission Project's cost of service and may change during the contract term based on

changes in the cost of service, a full revenue requirements model must be submitted as a working Excel spreadsheet. Fixed prices are encouraged for Transmission Projects. Cost of service is allowed for transmission pricing proposals, but proposals including cost containment features such as fixed price components, cost overrun restrictions, or other cost bandwidth provisions to limit customer risk will be viewed more favorably¹⁶.

2.2.12.3 PRICING FOR TRANSMISSION PROJECTS UNDER A PERFORMANCE-BASED TARIFF CONTAINING A QUALIFIED CLEAN ENERGY DELIVERY COMMITMENT

Pricing for Transmission Projects under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment must provide for payments to be reduced for failure to meet the Qualified Clean Energy Delivery Commitment. Bidders may, but are not required to, base that pricing on the Transmission Project's cost of service, which may or may not change during the contract term based on changes in the cost of service. If the cost of service may change during the contract term, a full revenue requirements model should be submitted as a working Excel spreadsheet. Fixed prices are encouraged for Transmission Projects. Cost of service is allowed for transmission pricing proposals, but proposals including cost containment features such as fixed price components, cost overrun restrictions, or other cost bandwidth provisions to limit ratepayer risk will be viewed more favorably¹⁷.

2.2.13 FACILITATE FINANCING OF RENEWABLE ENERGY GENERATION (MASSACHUSETTS SECTION 83A ONLY)

An Eligible Bidder that seeks to qualify for consideration under Massachusetts Section 83A must demonstrate that its proposal advances the goal of Section 83A for the selection of cost-effective long-term contracts that facilitate the financing of renewable energy generation. The Eligible Bidder should specify how a contract resulting from this RFP process would either permit it to finance a project that would otherwise not be financeable or assist it in obtaining financing of its project.

2.2.14 PROPOSAL COMPLETENESS: ELIGIBLE BIDDER RESPONSE FORMS AND THE FORM PPA

Eligible Bidders must follow the instructions provided in Appendix B and provide complete responses. Eligible Bidders are also required to fill out Appendices D, E, and F. Eligible Bidders

¹⁶ The Selection Team is unlikely to select a Transmission Project without significant cost containment features and strongly encourages Bidders to include such features in any proposal for a Transmission Project that includes variable cost-of-service rate treatment. In any case, proposals for such Transmission Projects should include all information available (e.g. basis and assumptions for transmission cost estimates) to support consideration of the expected accuracy of the proposed costs/offered rates.

¹⁷ See footnote above.

are required to provide the information specified in each section of the CPPD. If any of the information requested is inconsistent with the type of technology or product proposed, the Eligible Bidder should include “N/A” and describe the basis for this determination. If an Eligible Bidder does not have the information requested in the bid forms and cannot obtain access to the information prior to the bid submittal due date, the Eligible Bidder should provide an appropriate explanation. If Eligible Projects are not in the ISO-NE interconnection queue they are expected to initiate the process.

Appendices C-1 and C-2 are the forms of the PPAs (“Form PPAs”) being used in this solicitation. The Form PPA contained in Appendix C-2 shall only be used for bids of firm Qualified Clean Energy from a Hydropower Resource, as described in Section 2.2.3.1.1 (Connecticut Eligibility Only). Eligible Bidders must include a marked version showing any proposed changes to the Form PPAs with their bid, and it is assumed that Eligible Bidders would be willing to execute the marked-up PPA included in their bids. **Eligible Bidders are discouraged from proposing material changes to the Form PPAs.**

2.2.15 BID FEES

Each applicant must submit the bid fee for each proposed Eligible Project as described in Section 1.6.

2.3 STAGE TWO – QUANTITATIVE AND QUALITATIVE ANALYSIS

Proposals that meet the requirements of the Stage One review will be subject to a quantitative and qualitative analysis in Stage Two of the evaluation process. The results of the quantitative and qualitative analysis will be a relative ranking and scoring of all proposals. Stage 2 scoring will be based on a 100-point scale. Proposals will be scored with up to 75 points for quantitative factors. The remaining 25 points will be scored for qualitative factors for purposes of conducting the Stage Two evaluation.

Since each state may have different qualitative scores, there may be different rank orders among states.

Pursuant to Public Act 15-107, the Connecticut Evaluation Team is required to compare the costs and benefits of all proposals being evaluated pursuant to P.A. 15-107 to the expected or actual costs and benefits of other resources eligible to respond to other procurements pursuant to P.A. 15-107.

2.3.1 EVALUATION USING QUANTITATIVE EVALUATION CRITERIA

The quantitative evaluation will take place in multiple steps, and the evaluation will vary based on whether a bid includes a PPA or not. The first step will be a screening process wherein the

Evaluation Team will compare bids directly and determine whether one or more bids are not economically competitive when compared to other bids. If the consensus view of the Evaluation Team and the Evaluation Teams consultant is that one or more bids are not economically competitive enough based upon an objective benchmark to be selected irrespective of qualitative evaluation results or indirect benefits, then such bids will not proceed to the quantitative evaluation. Bids that proceed to the quantitative evaluation will be evaluated based on a combination of their indirect economic benefits and direct contract price benefits where applicable.

2.3.1.1 INDIRECT ECONOMIC BENEFITS

The quantitative evaluation process will include an evaluation of the indirect economic benefits to customers using the outputs from a nodal electric market simulation model (e.g. Ventyx PROMOD). The indirect economic benefits will be measured by comparing the model outputs with and without the bid. Benefits to be considered are based on a combination of change in locational marginal price (LMP) and change in production cost including consideration of net imports and exports to customers of the Procuring States. Benefits may also include economic impact based upon changes in LMP during stressed system conditions to customers of the Procuring States. The references case system topology will be based on the 2015 ISO New England Capacity, Energy, Load and Transmission (CELT”) report. At the Evaluation Team’s option, the evaluation may use representative projects to estimate the indirect benefits of projects that are bid that are very similar in technology type, size and delivery location.

2.3.1.2 DIRECT CONTRACT BENEFITS

Bids including one or more PPA’s will be evaluated on both direct contract price benefits and indirect economic benefits. Direct contract price benefits will be evaluated using a mark-to-market comparison of the purchase price of any Incremental Qualified Clean Energy and/or RECs under a PPA (including any associated transmission costs under a Rate Schedule or Tariff and Service Agreement) to their projected market prices at the delivery point with the project in-service.

2.3.1.3 QUANTITATIVE EVALUATION METRICS

The quantitative evaluation will use a multi-year net present value analysis to preliminarily rank all projects that pass the initial screening (described in Section 2.3.1). For purposes of computing the net present value, a discount factor of 7% will be used. The metric used for ranking bids will be the benefit to cost ratios of projects, based on the combination of direct and indirect benefits divided by the payments required by the project.

The Qualifying Clean Energy production profile provided by the Eligible Bidder will be evaluated for reasonableness. The Evaluation Team and the Evaluation Team Consultant will also

evaluate the reasonableness of transmission cost estimates associated with any proposal involving cost-of-service ratemaking or modified cost-of-service ratemaking. It is the bidder's responsibility to support the basis for all estimates and underlying assumptions. The Evaluation Team reserves the right to modify any bidder production profile or estimated cost (i.e., use a different profile or estimated cost from that provided by the bidder) or any other estimate in order to produce a reasonable and appropriate evaluation.

2.3.2 QUALITATIVE EVALUATION

The qualitative evaluation will consist of the factors mandated by the Procurement Statutes as well as factors deemed important by the Evaluation Team, identified in Section 2.3.2.1 below. Evaluation Team members in individual states may weight these factors differently, or may not include individual factors in their evaluation, based on the individual state statutes and/or preferences of the different entities. The purpose of such criteria is to permit evaluation of state specific factors, including reliability, economic and environmental impacts.

2.3.2.1 FACTORS TO BE ASSESSED IN QUALITATIVE EVALUATION

The qualitative factors that will be assessed are summarized as follows¹⁸:

- Eligible Project Viability:
 - Eligible Project team financing experience
 - Demonstration of Project Financial Viability
 - Need for and likelihood of subsidies
 - Completeness and credibility of detailed critical path schedule
 - Credibility of any fuel resource plans or energy resource plans
 - Reliability of proposed technology
 - Commercial access to proposed technology

¹⁸ The individual state Evaluation Teams will not necessarily include or weight all of the criteria in the same manner.

- Viability of any proposed Transmission Project plans
- Eligible Project feasibility, including:
 - Experience and capability of the Eligible Bidder and Eligible Project team including, where applicable, any associated transmission development team, in project development, operations and maintenance, and experience in the ISO-NE market
 - Status of permits and credibility of plan to obtain approvals
 - Demonstrated progress in the interconnection process
 - Identification of required permits and approvals
 - Extent to which site or route control has been achieved, including acquisition of necessary easements or rights-of-way
 - Community relations plan and status
 - Conformance with FERC's applicable regulatory requirements
- Eligible Project development status and operational viability
 - Ability to meet scheduled construction start date and commercial operation date
 - Progress in interconnection process
- Extent to which the price offered is firm, contains cost containment provisions for cost of service transmission projects, or proposes purely cost-of-service pricing
- Other qualitative factors that may be considered by the Selection Team, as required by a specific procurement statute, include:
 - Reductions in greenhouse gas emissions
 - Consistency with the policy goals outlined in the Connecticut Comprehensive Energy Strategy, including but not limited to:
 - Base load capacity
 - Peak load shaving
 - Promotion of wind, solar and other renewable and low carbon energy technologies

- Economic development benefits
- Installed Capacity and Local sourcing requirements
- Improvements to reliability to the electric system in general and improvements to winter reliability specifically, consistency with the policy goals and outlines in the 2014 Connecticut Integrated Resource Plan, and contributing to fuel diversity
- Improvements to air quality
- Benefits to the Forward Capacity Market
- Price Risk
- Reasonableness of proposed contractual or tariff arrangements, including reasonableness of exceptions to Form PPAs
- The extent to which bidder accepts provisions of the Form PPAs, if applicable
- The extent to which bidder proposes exceptions to form PPAs or proposes contractual or tariff arrangements that are adverse to the EDCs and their customers

The quantitative evaluation may be conducted before the qualitative evaluation, and the Evaluation Team may elect not to conduct the qualitative evaluation for any proposal that could not be selected based upon the quantitative results even if it received the maximum possible qualitative score. It is expected that not all proposals will pass to Stage Two and that not all proposals evaluated in Stage Two will be offered the opportunity to proceed to contract negotiation.

The Selection Team from each state will then consider the evaluation results and rankings to determine projects for selection. Finally, the Selection Team members from all three states will collaborate to determine whether together they can create a portfolio of projects that would reduce costs to customers in each state while still complying with their respective Procurement Statutes and clean energy goals.

For Connecticut, the Procurement Statutes allow the CT DEEP Commissioner to direct the Connecticut EDCs to enter into PPAs, but do not allow the Commissioner to direct the EDCs to contract for transmission. Therefore, if CT DEEP selects any Transmission Project(s), it would recommend such project(s) to the Connecticut EDCs.

Bidders will not be offered the opportunity to refresh their pricing.

2.4 CONTRACTING/TARIFF PROCESS

2.4.1 PPAs

Eligible Bidders will be notified whether they have been selected to enter into a PPA with one or more of the EDCs.

The Eligible Bidders will enter into separate contracts with one or more EDCs at the discretion of the EDCs. If an Eligible Facility is selected by both Massachusetts and Connecticut, the amount selected will be divided equally between the states up to their statutory limits. The EDCs within the states will then negotiate to contract for their load ratio share. The Selection Team will coordinate the finalization of contracts between the selected Eligible Bidders and the EDCs. Contract finalization between the selected Eligible Bidders and the EDCs may occur on a rolling basis throughout the 270-day period during which the proposals are valid.

2.4.2 TRANSMISSION TARIFFS

Selected Eligible Bidders whose projects include Transmission Projects will file any necessary Rate Schedules or Tariff and Service Agreements with the FERC pursuant to Section 205 of the Federal Power Act. Any allocation of the transmission projects among the EDCs will be based upon their load ratio percentage.

2.4.3 SECURITY

Eligible Bidders who are selected will be required to post Security.

The required level of Security for PPAs for RPS Class I Renewable Generation Units is the Per MWh per hour Security Amount multiplied by the Contract Maximum Amount (as defined in the Form PPA) in MWh per hour for the Eligible Facility. The per MWh per hour Security Amount is \$20,000. Fifty percent (50%) of the Security must be provided at the time of contract execution. The remaining fifty percent (50%) of the Security must be provided upon regulatory approval of the contract. Security will be promptly returned if the applicable regulatory agency does not approve the PPA.

The required level of fixed security for a PPA for firm Qualified Clean Energy from a Hydropower Resource is similar to that for RPS Class I Renewable Generation Units. However, additional security may be required after regulatory approval is received. If the Buyer's market exposure over the ensuing 60 contract months exceeds the Seller's unsecured credit limit, then additional security to cover the excess Buyer's market exposure will be required. The Seller's unsecured credit limit will be based on the Seller's (or Guarantor's) credit ratings. The Buyer will not provide security to the Seller under any circumstances.

The required level of Security for Transmission Projects under a performance based tariff (no PPA) is \$10,000 per MW. Fifty percent (50%) of the Security must be provided within five

business days after the Eligible Bidder has been notified that it has been selected to file a Rate Schedule or Tariff and Service Agreement with the FERC. The remaining fifty percent (50%) of the Security must be provided upon FERC acceptance of the Rate Schedule or Tariff and Service Agreement. Security will be promptly returned if agreement is not reached on the Rate Schedule or Tariff and Service Agreement or if they are not accepted by FERC.

The required security must be in the form of a cash deposit or a letter of credit from a U.S. commercial bank or the U.S. branch of a foreign bank, in either case having (x) assets on its most recent balance sheet of at least \$10 billion and (y) a credit rating of at least A2/A. More detail on the security requirements is included in the Form PPAs.

2.5 REGULATORY APPROVAL

The EDCs' obligations to procure any Incremental Qualified Clean Energy selected are conditioned upon approval of the Rate Schedules, and Tariffs and associated cost recovery by the appropriate state regulatory authority and any other relevant regulatory authorities. Once the parties have executed a PPA, the EDCs shall submit the executed PPA to the applicable state regulatory authority for approval.

In the case of federal transmission rates, such charges are subject to the review and approval of the FERC pursuant to the Federal Power Act. The EDC's obligations under such rate schedules are also conditioned upon approval of the associated cost recovery by the appropriate state regulatory authority and any other relevant regulatory authorities.

Any Eligible Bidder requiring regulatory approval by a certain deadline must state that deadline in its proposal, and that deadline will be considered in assessing the overall viability of the Eligible Project.

2.5.1 CONNECTICUT REGULATORY APPROVAL

Under Section 6 of Connecticut Public Act 13-303, any PPA shall be subject to review and approval by the Public Utilities Regulatory Authority, ("PURA"), which review shall be completed no later than thirty days after the date on which such agreement is filed with PURA. Under Section 7 of Connecticut Public Act 13-303, any PPA shall be subject to review and approval by PURA, which review shall include a public hearing and be completed no later than sixty days after the date on which such agreement is filed with PURA. Under Public Act 15-107, any PPA shall be subject to review and approval by PURA, which review shall be completed no later than ninety days after the date on which such agreement is filed with PURA, If any Projects

are selected for PPAs under multiple statutes, the most restrictive regulatory approval process will apply¹⁹

2.5.2 MASSACHUSETTS REGULATORY APPROVAL

Under Section 83A in Massachusetts, the obligations of both the Massachusetts EDCs and the successful bidders to perform under each contract shall not become effective or binding until receipt of the approval of the Massachusetts Department of Public Utilities (“MDPU”) as described in each contract except for the provision of security as described in Section 2.4.3. After a Massachusetts EDC and successful bidder have executed a contract that satisfies the requirements of Section 83A as a result of this RFP process, the Massachusetts EDCs intend to submit the proposed contract to the MDPU for review and approval within 30 days of execution, unless circumstances require a longer period to prepare the MDPU filing materials.

Section 83A, as implemented by the MDPU, establishes several requirements relating to the MDPU’s review and approval. In addition, the MDPU has promulgated regulations at 220 CMR 21.00 et seq., setting forth the criteria for its review pursuant to the requirements of Section 83A. When evaluating a proposed contract under Section 83A, the MDPU will consider the recommendations of the Massachusetts Office of the Attorney General (“MA AGO”), which must be submitted to the MDPU within 45 days of the filing of the proposed contract.

Once the MDPU issues a decision approving a Massachusetts EDC’s request for approval of an executed contract under Section 83A, the Massachusetts EDC shall have five (5) business days after the appeal period has elapsed and after any motions or appeals are resolved to review the form and substance of the MDPU’s approval. Each Massachusetts EDC shall have the opportunity to terminate the contract if the MDPU’s approval contains terms or conditions that are deemed to be unsatisfactory to the Massachusetts EDC, in its sole discretion. Terms or conditions that may be unsatisfactory include but are not limited to denial of annual remuneration equal to 2.75 percent of the annual payments under the contract, which is required by Section 83A and is intended to compensate the Massachusetts EDC for accepting the financial obligation of the long-term contract at issue.

2.5.3 RHODE ISLAND REGULATORY APPROVAL

¹⁹ For example, if a PPA is awarded under both Section 7 of Public Act 13-303 and Section 1(c) of Public Act 15-107, the regulatory process would be 60 days and require a public hearing.

Pursuant to Chapter 39-31 in Rhode Island, once Narragansett (in consultation with the Rhode Island Division of Public Utilities and Carriers and Rhode Island Office of Energy Resources) has executed a contract as a result of this RFP process, the proposed contract will be submitted to the RIPUC for review and approval within thirty (30) days of execution, unless circumstances require a longer period to prepare the filing materials. Once submitted, the RIPUC shall accept public comments on any contracts filed by Narragansett pursuant to Chapter 39-31 for a period no less than thirty (30) days, including advisory opinions by other Rhode Island state agencies. The RIPUC shall hold evidentiary hearings and public hearings to review any contract filed pursuant to Chapter 39-31, and issue a written order approving or rejecting the contract. The RIPUC will approve the contract if it determines that the contract: (1) is consistent with the purposes of Chapter 39-31; (2) will benefit Rhode Island by improving local and regional energy system reliability and security; (3) will benefit Rhode Island customers by offering the potential for reduced-energy price volatility and reduction of energy-supply costs in the context of an integrated regional energy system; (4) will not cause unacceptable harm to the environment and is consistent with the region's greenhouse gas-reduction goals; and (5) will enhance the economic fabric of the state. No contract will be effective unless and until it is approved by the RIPUC.

Once the RIPUC issues a decision approving a request for approval of an executed contract under Chapter 39-31, Narragansett shall have five (5) business days after the appeal period has elapsed and after any motions or appeals are resolved to review the form and substance of the RIPUC's approval. Narragansett shall have the opportunity to terminate the contract if the RIPUC's approval contains terms or conditions that are deemed to be unsatisfactory to the Narragansett, in its sole discretion.

2.5.4 FERC APPROVAL

Any FERC-jurisdictional Rate Schedule or Tariff and Service Agreement agreed upon by an Eligible Bidder and the applicable EDCs will be filed with the FERC under Section 205 of the Federal Power Act. The FERC must accept the filing before the Rate Schedule or Tariff and Service Agreement can become effective.

III. INSTRUCTIONS TO BIDDERS

3.1 SCHEDULE

The proposed schedule for the bidding process is set forth below. The Soliciting Parties reserve the right to revise the schedule as necessary. **Any changes or revisions to the schedule will be posted on the Soliciting Parties' website www.cleanenergyrfp.com.**

Release of the Draft RFP	02/25/15
Public Comment Period	02/25/15 – 03/27/15
Release RFP to Bidders	11/12/15
Bidder Conference	12/03/15
Deadline for the submission of written questions	12/29/15
Responses to Q&A submitted posted	01/14/16
Due Date for Proposal Submissions	01/28/16
Selection of Bidders	04/26/16 – 07/26/16
EDCs Execute Contacts	06/23/16 – 09/22/16
Submit Contracts for Regulatory Approval	07/26/16 – 10/25/16
Regulatory Approval	2016

3.2 QUESTIONS FROM BIDDERS AND NOTICE OF INTENT TO BID

Prospective bidders are encouraged to submit questions about this RFP to the Soliciting Parties on or before the deadline for submission of questions listed in the schedule. The Soliciting Parties will answer questions submitted by that deadline by posting the questions and answers on its website www.cleanenergyRFP.com.

Prospective bidders are encouraged to submit a Notice of Intent to Bid form, which is attached as Appendix A to this RFP. Please submit the Notice of Intent to bid to cleanenergyRFP@gmail.com. The Soliciting Parties will endeavor to email updates regarding this RFP to prospective bidders who submit a Notice of Intent to Bid. This does not relieve bidders of their responsibility to check the website for news and updates. Prospective bidders who submit a Notice of Intent to Bid are not obligated to submit a proposal, and proposals will be accepted from Eligible Bidders who do not submit a Notice of Intent to Bid. Any Notices of Intent to Bid submitted will be made public to encourage potential bidders to match Qualified Clean Energy projects with transmission in combination bids.

3.3 PREPARATION OF PROPOSALS

Each Eligible Bidder shall have sole responsibility for carefully reviewing this RFP and for thoroughly investigating and informing itself with respect to all matters pertinent to this RFP and its proposal, including pertinent ISO-NE tariffs, Market Rules and other information. Eligible Bidders should rely on information provided in this RFP when preparing their proposals. Each Eligible Bidder shall be solely responsible for and shall bear all of its costs incurred in the preparation of its proposal and/or its participation in this RFP.

3.4 ORGANIZATION OF THE PROPOSAL

Eligible Bidders are required to organize their proposal **consistent with the Submission Instructions in Appendix B**. The organization and contents of the proposal should be organized as follows:

1. Certification, Project and Pricing Data (CPPD form)
2. Executive Summary of the Proposal
3. Operational Parameters
4. Energy Resource Plan
5. Financial/Legal
6. Siting, Interconnection, and Deliverability
7. Environmental Assessment, Permit Acquisition Plan and Tier 1 Certification
8. Engineering and Technology; Commercial Access to Equipment
9. Operation and Maintenance
10. Project Schedule
11. Project Management/Experience
12. Emissions
13. Contributions to Employment and Economic Development and Other Direct and Indirect Benefits
14. Additional Information Required for Transmission Projects
15. Exceptions to Form PPA

The Eligible Bidder must also provide the information specified in the following Appendices:

Appendix D – Certification

3.5. UPDATES TO PROPOSAL

After proposal submissions, an Eligible Bidder may provide new information, e.g., the status of obtaining permits and financing, to the Soliciting Parties about the Eligible Project that was not available at the time of proposal submission. These updates are for informational purposes only and will not be treated as a change or revision to the terms of the bidder's proposal by the Soliciting Parties.

3.6 REQUESTS FOR ADDITIONAL INFORMATION

Following the submission of proposals, the Soliciting Parties, EDCs or CT DEEP may request clarification and additional information from Eligible bidders at any time during the evaluation process. Such information will be subject to public posting and protection of confidential information as described elsewhere in this RFP, consistent with other bid submission materials. Eligible Bidders that do not respond promptly to such information requests or do not provide adequate information may be eliminated from further consideration or have the information in their proposals modified by the Evaluation Team and the Evaluation Team Consultant to produce a reasonable and appropriate evaluation.

3.7 LIMITATION OF LIABILITY

Neither this RFP nor any other aspect of this solicitation shall create an agency, partnership, joint venture, or cotenancy relationship among the Soliciting Parties, the members of the Evaluation Team or the Selection Team or any other individuals or entities involved in the development or administration of this RFP (collectively, the "RFP Parties"), nor any other relationship or liability beyond those (if any) explicitly adopted in writing and executed by authorized representatives of the applicable RFP Parties. None of the RFP Parties shall be liable for any act or omission of any other RFP Party. Neither this RFP nor any other aspect of this solicitation creates or is intended to create third-party beneficiaries hereunder. In no event will an RFP Party be liable to any person for special, incidental, punitive, exemplary, indirect or consequential damages or lost profits, whether by statute, in tort or contract or otherwise.

APPENDIX A

NOTICE OF INTENT TO BID

1. Company Name: _____
2. Project Name: _____
3. Contact Person Information:

Name:	
Title/Position:	
Mailing Address:	
Telephone Number:	
Fax Number:	
E-mail Address	

4. Project Size (MW/KV): _____
5. Project Location: _____

6. Estimated Commencement of Construction Date (Month-Year): _____
Estimated Commercial Operation Date (Month-Year): _____
7. Authorized Signature: _____
Title: _____ Date: _____

Bidders should send the Notice of Intent to Bid Form by to the Soliciting Parties to cleanenergyRFP@gmail.com

APPENDIX B

Proposal Submission Instructions

All proposals shall be submitted in accordance with Section 1.3 of the RFP. Proposals should be organized into the following Sections:

1. Certification, Project and Pricing Data (CPPD form)
2. Executive Summary of the Proposal
3. Operational Parameters
4. Energy Resource Plan
5. Financial/Legal
6. Siting, Interconnection, and Deliverability
7. Environmental Assessment, Permit Acquisition Plan and Tier 1 Certification
8. Engineering and Technology; Commercial Access to Equipment
9. Operation and Maintenance
10. Project Schedule
11. Project Management/Experience
12. Emissions
13. Contribution to Employment and Economic Development and Other Direct and Indirect Benefits
14. Additional Information Required for Transmission Projects
15. Exceptions to Form PPA

Appendix D – Certification

Directions for each section are outlined below. Each section must be filled out in its entirety with all of the supporting information requested. If any section is not applicable it should be so stated with a full explanation.

1. CERTIFICATION, PROJECT AND PRICING DATA

The Certification, Project and Pricing Data (“CPPD”) document is a Microsoft Excel workbook that is provided on the website at www.cleanenergyrfp.com. The CPPD must be submitted as a working Microsoft Excel file. Parties may also submit a signed PDF in addition to the working Microsoft Excel file. The CPPD document has eight parts, listed below. If the bidder provides information in other sections of its proposal that conflicts with the information provided in the CPPD, the CPPD shall be considered to contain the governing and binding information for both the evaluation and any resulting contract offer.²⁰ The bidder may provide up to five different offers on terms and/or pricing (e.g., 10 year and 15 year) for the same facility, which should be submitted on a single CPPD. All bids must include the appropriate bid fees as described in the body of the RFP in section 1.6 or the bid will be considered not eligible for consideration.

Part I Guidelines and Instructions for completing the spreadsheet

Part II Proposal Certification Form and Contact Information

Part III Proposal Compliance, Bid Overview and Bid Fee

Information includes compliance descriptions, maximum delivery amount, term(s), products offered and bid fee

Part IV Eligible Facility Summary Information

Information includes dates, various amounts, location and delivery point applicable to new facilities, information for facilities under a Firm PPA or a balancing resource, and information associated with a Delivery Commitment

Part V Operational Information

Information for hourly generation profiles (aka 12 X 24 profiles), monthly adjustment factors and an informational table which converts the hourly profile into monthly generation amounts prior to applying the monthly adjustment factors..

²⁰ One exception is that if operational information in Part V of the CPPD conflicts with information elsewhere in the proposal or information otherwise known the energy production information in Part V of the CPPD may be modified in conducting the price evaluation.

Part VI Pricing Information

Information includes peak and off-peak energy prices and REC prices by contract year. Included are inputs for five conforming offers and one alternative pricing offer.

Part VII ISO-NE Forward Capacity Market

Information associated with a facility's expected status in the capacity market.

Part VIII Contract Information

Information to be used in various parts of a PPA.

2. EXECUTIVE SUMMARY OF THE PROPOSAL (INCLUDING THE BASE PROPOSAL AND ANY ALTERNATIVE PROPOSALS)

The bidder is required to provide an executive summary of the project proposal that includes a complete description of the proposed project, the proposed contract term and pricing schedule, and other factors the bidder deems to be important.

3. OPERATIONAL PARAMETERS

- 3.1 Maintenance Outage Requirements – Specify partial and complete planned outage requirements in weeks or days. Also, list the number of months required for the cycle to repeat (e.g., list time interval of minor and major overhauls, and the duration of overhauls). (Not applicable for bids for Firm Qualified Clean Energy from a Large Scale Hydro Resource)
- 3.2 Operating Constraints – Specify all the expected operating constraints and operational restrictions for the project (i.e., limits on the number of hours a unit may be operated per year or unit of time). (Not applicable for bids for Firm Qualified Clean Energy from a Large Scale Hydro Resource)
- 3.3 Reliability – Describe how the proposal would provide enhanced electricity reliability within the States of Connecticut, Massachusetts and Rhode Island, including its impact on transmission constraints.
- 3.4 Moderation of System Peak Load – Describe how the proposal would contribute to moderating system peak load requirements. If the project is an intermittent resource, please provide the following information:

- i) Estimated average output for each summer period (June- September) from 1:00 - 6:00 pm
- ii) Estimated average output for each winter period (October-May) from 5:00 – 7:00 pm

3.5 Development Stage of Facility – Describe whether the project is in operation, in construction or in the development phase.

- (a) If in operation, when did the project achieve initial operation and commercial operation?
- (b) If in construction, when did construction commence and what are the projected dates for initial testing commercial operation.
- (c) If the project is partly in one development stage and partly in another, please explain in detail the status of the project.

If the proposed project is an expansion, repowering, environmental investment or other modification of an existing Facility, please describe the project in detail, the total cost and cost on a \$/kW basis specifying the existing project and the proposed expansion, repowering or other modification. Indicate any incremental or decremental capacity.

4. ENERGY RESOURCE PLAN

For Eligible Facilities, the bidder is required to provide an energy resource or fuel supply plan for its proposed project, including supporting documentation. The fuel supply/energy resource profile information should be consistent with the type of technology/resource option proposed and the term proposed. The information requested is organized according to the type of project or energy resource. Bidders should respond only to relevant questions.

Wind Energy Projects

Provide a summary of all collected wind data for the proposed site. Identify when the data was collected and by whom.

Indicate where the data was collected and its proximity to the proposed site. Include an identification of the location and height for the anemometers that were used to arrive at an assessment of the site generation capability.

Provide (a) at least one year of hourly wind resource data, or (b) a wind resource assessment report from a qualified resource assessment firm or meteorologist, or (c) both. Include an analysis of the available wind data which addresses the relationship

between wind conditions and electrical output. Provide a projection of net annual energy production, including projections of average net hourly energy production, based on the wind resource data (a 12 x 24 energy projection).

Provide a site-adjusted power curve. Each curve should list the elevation, temperature and air density used.

Identify the assumptions for losses in the calculation of projected annual energy production, including each element in the calculation of losses.

Landfill Gas

Provide a gas production forecast for each landfill. Provide a table that shows the annual, monthly and hourly projection of gas flow and energy export from each landfill.

Provide supporting data that illustrates the expected generation from each landfill based on the projected gas production.

Describe any contingencies or constraints that could affect the availability of fuel or the energy resource for the project and any contingency plans for meeting projected generation levels.

If the landfill gas is provided by pipeline, provide information related to gas pipeline delivery, including gas pipeline interconnection points of the landfills delivering the gas into the pipeline system.

Biomass

Describe specifically how the project will conform to: (1) Conn. Gen. Stat. Sec. 16-1(26) and Connecticut Public Act 13-303, *An Act Concerning Connecticut's Clean Energy Goals*, governing resources using biomass fuel, including how your fuel source complies with Conn. Gen. Stat. Sec. 16-1(26); (2) the Massachusetts biomass laws and regulations M.G.L. c. 25A, § 11F, and 225 CMR 14.00; and/or Chapter 39-26 of the Rhode Island General Laws.

Provide a resource assessment of available biomass fuel for the proposed project and its proximity to the project site.

Provide a plan for obtaining the biomass fuel, including a transportation plan.

Provide any contracts or letters of intent to acquire and transport the biomass fuel.

Demonstrate that projected energy output for the project over the term of the contract is consistent with the energy supply available.

Describe any contingencies or constraints that could affect the availability of fuel or the energy resource for the project and any contingency plans for meeting projected generation levels.

Solar

Provide an assessment of the available solar incidence or resource. Describe any trends in generation capability over time (i.e., annual decline rate of expected output).

Describe the methodology used to generate the projected generation and describe the in-house or consulting expertise used to arrive at the generation estimates.

Hydropower

Describe the project characteristics in terms of water flow (on a monthly basis) and head, and state the assumptions regarding seasonal variations, and a conversion of such flow into megawatts and megawatt-hours.

Provide monthly flow duration curves based upon daily stream flow records.

Identify if the project is run-of-river or has storage capability.

Specify if the project is new, or an expansion of an existing facility.

Specify if the energy would qualify as Tier I Renewable Generation. If the project already has Tier I certification, provide or reference the documentation providing such qualification. If the project does not have Tier I certification; (1) describe the actions proposed to be taken by the bidder to accomplish such qualification; or (2) describe how the project meets the requirements of Section 4 of the Connecticut Public Act 13-303 or Section 1(c) of Connecticut Public Act 15-107.

The bidder must disclose in its bid how they propose to certify that the environmental attributes are included with the energy delivered.

Fuel Cell

Describe how the natural gas for the Fuel Cell will be procured and whether its energy will be delivered on a firm or non-firm basis for the term of the agreement.

Provide supporting data that illustrates the expected generation from the fuel cell considering the need for restacking.

Other

Identification of fuel supply (if applicable).

What is the availability of the fuel supply?

Does the bidder have any firm commitments from fuel suppliers? If so, please provide a copy of any agreements with confidential information redacted if necessary.

5. FINANCIAL/LEGAL

Bidders are required to demonstrate the financial viability of their proposed project. Bidders should provide the following information:

- 5.1 Provide a description of the business entity structure of the bidder's organization from a financial and legal perspective, including any general and limited partners, officers, directors, managers, members and shareholders, involvement of any subsidiaries supporting the project, and the providers of equity and debt during project development. Provide an organization chart showing the relationship between the equity participants and an explanation of the relationships. For jointly owned facilities, identify all owners and their respective interests, and document the Bidder's right to submit a binding proposal.
- 5.2 For projects that include new facilities or capital investment, provide a description of the financing plan for the project, including construction and term financing. The financing plan should address the following:
 - i. Who will finance the project and how it will be financed
 - ii. The project's projected financial structure
 - iii. Expected sources of debt and equity financing
 - iv. Estimated construction costs
 - v. The projected capital structure
 - vi. Describe any agreements entered into with respect to equity ownership in the proposed project and any other financing arrangement.

In addition, the financing plan should address the status of the above activities as well as the financing of development and permitting costs. All bidders are required to provide this information.

- 5.3 Provide documentation illustrating the experience of the project sponsor in securing financing for projects of similar size and technology. For each project previously financed provide the following information:
- i. Project name and location
 - ii. Project type and size
 - iii. Date of construction and permanent financing
 - iv. Form of debt and equity financing
- 5.4 For projects that include new facilities or capital investment, provide evidence that the bidder has the financial resources and financial strength to complete and operate the project as planned.
- 5.5 Provide copies of the most recent audited financial statement or annual report for each bidder for each of the past three years; including affiliates of the bidder (if audited statements are not available, unaudited statements are to be provided). Also, provide the credit ratings from Standard & Poor's and Moody's (the senior unsecured long term debt rating or if not available, the corporate rating) of the bidder and any affiliates and partners.
- 5.6 The bidder should demonstrate its ability (and/or the ability of its credit support provider) to provide the required security, including its plan for doing so.
- 5.7 Provide a description of any current or recent credit issues/ credit rating downgrade events regarding the bidder or affiliate entities raised by rating agencies, banks, or accounting firms.
- 5.8 Describe the role of the Federal Production Tax Credit or Investment Tax Credit (or other incentives) on the financing of the project.
- 5.9 Bidders must disclose any pending (currently or in the past three years) or threatened litigation or disputes related to projects developed, owned or managed by Bidder or any of its affiliates in the United States, or related to any energy product sale agreement.
- 5.10 What is the expected operating life of the proposed project?

- 5.11 For projects that include new facilities or capital investment, has the bidder already obtained financing, or a commitment of financing, for the project? Is such financing or financing commitment contingent on obtaining a long-term agreement, such as one that would be obtained if the bidder's proposal is accepted? If financing has not been obtained, explain how obtaining a long-term agreement as proposed will help you in obtaining financing for the proposed project or in obtaining more favorable terms for the financing of the proposed project.
- 5.12 State whether the bidder or its affiliates have executed agreements with respect to energy, RECs and/or capacity for the project (including any agreements that have been terminated) and provide information regarding the associated term and quantities, and whether bidder has been alleged to have defaulted under or breached any such agreement.
- 5.13 Description of Bidder and all affiliated entities and joint ventures transacting business in the energy sector.
- 5.14 Has Bidder, or any affiliate of Bidder, in the last five years, (a) consented to the appointment of, or was taken in possession by, a receiver, trustee, custodian or liquidator of a substantial part of its assets, (b) filed a bankruptcy petition in any bankruptcy court proceeding, (c) answered, consented or sought relief under any bankruptcy or similar law or failed to obtain a dismissal of an involuntary petition, (d) admitted in writing of its inability to pay its debts when due, (e) made a general assignment for the benefit of creditors, (f) was the subject of an involuntary proceeding seeking to adjudicate that Party bankrupt or insolvent, (g) sought reorganization, arrangement, adjustment, or composition of it or its debt under any law relating to bankruptcy, insolvency or reorganization or relief of debtors.
- 5.15 Briefly describe any known conflicts of interest between Bidder or an affiliate of Bidder and any Soliciting Party, or any affiliates of the foregoing.
- 5.16 Describe any litigation, disputes, claims or complaints involving the Bidder or an affiliate of Bidder, against any Soliciting Party or any affiliate of any Soliciting Party.
- 5.17 Describe any litigation, disputes, claims or complaints, or events of default or other failure to satisfy contract obligations, or failure to deliver products, involving Bidder or an affiliate of Bidder, and relating to the purchase or sale of energy, capacity or renewable energy certificates or products.
- 5.18 Confirm that Bidder, and the directors, employees and agents of Bidder and any affiliate of Bidder are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State

or Federal law in any jurisdiction involving conspiracy, collusion or other impropriety with respect to bidding on any contract, or have been the subject of any debarment action (detail any exceptions).

- 5.19 Identify all regulatory and other approvals needed by Bidder to execute a binding sale agreement.
- 5.20 Describe how the project will conform to FERC's applicable regulatory requirements, including, but not limited to, FERC requirements relating to allocation of transmission capacity and open access, the justness and reasonableness of rates, the potential for undue preference or discrimination, and affiliate dealings, if any.

6. SITING, INTERCONNECTION, AND DELIVERABILITY

This section of the proposal addresses project location, siting, real property rights and interconnection issues. Bidders should ensure that the threshold criteria outlined in Section 2.2 of the RFP for generation and interconnection siting are verified in their responses.

- 6.1 Provide a site plan including a map of the site that clearly identifies the location of the Eligible Facility site and/or Transmission Project route, the assumed right-of-way width, the total acreage for Eligible Facilities, the anticipated interconnection point (or, if applicable, multiple points for a Transmission Project), and the relationship of the site to other local infrastructure, including transmission facilities, roadways, and water sources. In addition to providing the required map, provide a site layout plan which illustrates the location of all major equipment and facilities on the site.
- 6.2 Provide evidence (including applicable documentation) of the right to use the Eligible Facility site and/or Transmission Project route, including, for Eligible Facilities, and any rights of way needed for interconnection.
 - i. Does the project have a right to use the Eligible Facility site and/or Transmission Project route for the entire proposed term of the PPA or tariff (e.g., by virtue of ownership or land development rights obtained from the owner)?
 - ii. If so, please detail the Bidder's rights to control the Eligible Facility site and/or Transmission Project route control.
 - iii. Identify any real property rights (e.g., fee-owned parcels, rights-of-way, development rights or easements or leases) that are required for access to the Eligible Facility site and/or Transmission Project route or for interconnection. Describe the status of acquisition of real property rights, any options in place for the exercise of these rights and describe the plan for securing the necessary real

property rights, including the proposed timeline. Include these plans and the timeline in the overall project timeline.

- 6.3 Provide evidence that the Eligible Facility site and/or Transmission Project route is properly zoned or permitted. If the Eligible Facility site and/or Transmission Project route is not currently zoned or permitted properly, identify present and required zoning and/or land use designations and permits and provide a permitting plan and timeline to secure the necessary approvals.
- 6.4 Provide a description of the area surrounding the Eligible Facility site and/or Transmission Project route, including a description of the local zoning, flood plain information, existing land use and setting (woodlands, grasslands, agriculture, other).
- 6.5 For Eligible Facilities, describe and provide a map of the proposed interconnection that includes the path from the generation site to the ISO-New England Pool Transmission Facilities ("PTF"). Describe how the bidder plans to gain interconnection site control.
- 6.6 Please describe the status of any planned interconnection to the grid. Has the bidder made a valid interconnection request to ISO New England Inc. ("ISO-NE"), the applicable New England Transmission Owner, or any neighboring control areas? Describe the type of interconnection service requested, i.e., Capacity Network Resource Interconnection Service, Capacity Network Import Interconnection Service or Network Resource Interconnection Service or Network Import Service.
- 6.7 Describe the Project's electrical system performance and its impact to the reliability of the New England Transmission system. For Transmission Projects provide a description of how the project would satisfy ISO NE's I.3.9 requirements. Provide the status of any interconnection studies already underway with ISO-NE and/or the transmission owner. Provide a copy of any studies completed to date. Provide a copy of an interconnection agreement, if any, executed by the bidder with respect to the proposed project. If an interconnection agreement has not been executed, please provide the steps that need to be completed before an interconnection agreement can be executed and the associated timeline.
- 6.8 Provide the electrical models of all energy resources supporting the proposed project in accordance with the filing requirements of the ISO-NE Tariff Schedule 22 and 23.
- 6.9 Provide a copy of an electrical one-line diagram showing the interconnection facilities and the relevant facilities of the transmission provider.

- 6.10 Specify and describe the current or new interconnection facilities (lines, transformers, switching equipment, system control protection, etc.) that bidder owns or is intending to construct or have constructed in order to deliver the proposed energy.
- 6.11 Incremental data requirements for Projects that include Transmission facilities;
1. IDV file(s) in PSSE v32 format modeling only the new/modified Transmission components of the project.
 2. If the Bidder does not use PSSE, provide in text format necessary modeling data as follows:
 - Line Data: Voltage/Thermal Ratings/Impedances (r, X and B)/Line Length/to and from bus numbers and names
 - Transformer data: (including Phase shifting transformers if applicable): Terminal Voltages/Thermal Ratings/Impedance/To and from bus numbers and names
 - Reactive compensation models as necessary
 - Other changes to the model that would occur due to a Project such as terminal changes for lines/transformer/generator leads/loads etc.

7. ENVIRONMENTAL ASSESSMENT, PERMIT ACQUISITION PLAN AND TIER 1 CERTIFICATION

This section addresses environmental and other regulatory issues associated with project siting, development and operations.

- 7.1 Provide a list of all the permits, licenses, and environmental assessments and/or environmental impact statements required. If a bidder has secured any permit or has applied for a permit, please identify in the response.
- i. Provide a list of all Federal, state and local permits, licenses, and environmental assessments and/or environmental impact statements required to construct and operate the project.
 - ii. Identify the governmental agencies that will issue or approve the required permits, licenses, and environmental assessments and/or environmental impact statements.
- 7.2 Provide the anticipated timeline for seeking and receiving the required permits, licenses, and environmental assessments and/or environmental impact statements. Include a project approval assessment which describes, in narrative form, each segment of the

process, the required permit or approval, the status of the request or application and the basis for projection of success by the milestone date. All requirements should be included on the project schedule in Section 10.

7.3 Provide a preliminary environmental assessment of the site and project, including both construction and operation, as applicable. In addition, the bidder should identify environmental impacts associated with the proposed project, any potential impediments to development, and its plan to mitigate such impacts or impediments. The analysis should address each of the major environmental areas presented below, as applicable to the proposed project:

- i. Impacts during site development
- ii. Transportation infrastructure
- iii. Air quality impacts
- iv. Access to water resources/water quality impacts
- v. Ecological and natural resources impacts
- vi. Land use impacts
- vii. Cultural resources
- viii. Previous site use (e.g., greenfield, brownfield, industrial, etc.)
- ix. Noise level impacts
- x. Aesthetic/visual impacts
- xi. Transmission infrastructure impacts
- xii. Fuel supply access, where applicable

7.4 Provide documentation identifying the level of public support for the project including letters from public officials, newspaper articles, etc. Include information on specific localized support and/or opposition to the project of which the bidder is aware. Provide copies of any agreements with communities and other constituencies impacted by the project, and a plan for community outreach activities, and discuss the status of that plan.

- 7.5 For bids that include Tier 1 Qualified Clean Energy, provide documentation demonstrating that the project was or will be qualified as a Tier 1 Class I renewable energy source under Conn. Gen. Stat. Section 16-1(20) as amended by Connecticut Public Act 13-303; M.G.L. c. 25A, § 11F, and 225 CMR 14.00; and/or R.I.G.L. § 39-26-1 and Rules and Regulations Governing the Implementation of a Renewable Energy Standard. If the facility is already in operation, please indicate when the facility received such qualification.
- 7.6 Identify any existing, preliminary or pending claims or litigation, or matters before any federal agency or any state legislature or regulatory agency that might affect the feasibility of the project or the ability to obtain or retain the required permits for the project.

8. ENGINEERING AND TECHNOLOGY; COMMERCIAL ACCESS TO EQUIPMENT

This section includes questions pertinent to the engineering design and project technology. This section must be completed for a project that includes new facilities or capital investments. Bidders should provide information about the specific technology or equipment including the track record of the technology and equipment and other information as necessary to demonstrate that the technology is viable.

- 8.1 Provide a reasonable but preliminary engineering plan which includes the following information:
- i. Type of generation technology, if applicable
 - ii. Major equipment to be used
 - iii. Manufacturer of the equipment
 - iv. Status of acquisition of the equipment
 - v. Whether the bidder has a contract for the equipment. If not, describe the bidder's plan for securing equipment and the status of any pertinent commercial arrangements
 - vi. Equipment vendors selected/considered
 - vii. History of equipment operations
 - viii. If the equipment manufacturer has not yet been selected, identify in the equipment procurement strategy the factors under consideration for selecting the preferred equipment

- 8.2 If the bidder has not yet selected the major generation equipment for a project, please provide a list of the key equipment suppliers under consideration.
- 8.3 Please identify the same or similar equipment by the same manufacturer that are presently in commercial operation including the number installed, installed capacity and estimated generation for the past three years.
- 8.4 For less mature technologies, provide evidence (including identifying specific applications) that the technology to be employed for energy production is ready for transfer to the design and construction phases. Also, address how the status of the technology is being considered in the financial plan for the project.
- 8.5 Please indicate if the bidder has secured its equipment for the project. If not, identify the long-lead equipment options and describe the timing for securing equipment.

9. OPERATION AND MAINTENANCE

Projects that can demonstrate that the operation and maintenance (“O&M”) plan, level of funding, and mechanism for funding will ensure reliable operations during the term of the contract or the tariff are preferred.

- 9.1 Provide an O&M plan for the project that demonstrates the long term operational viability of the proposed project. The plan should include a discussion of the staffing levels proposed for the project, the expected role of the project sponsor or outside contractor, scheduling of major maintenance activity, and the plan for testing equipment.
- 9.2 Describe in detail the proposed O&M funding mechanism and funding levels to support planned and unplanned O&M requirements.
- 9.3 Describe the terms (or expected terms) of the warranties and/or guarantees on major equipment that the bidder is utilizing or proposing to utilize.
- 9.4 Describe the status of the project sponsor in securing any O&M agreements or contracts. Include a discussion of the sponsor’s plan for securing a medium-term or long-term O&M contract, including the expected provider of O&M services.
- 9.5 Provide examples of the bidder’s experience with O&M services for other similar projects.

10. PROJECT SCHEDULE

For Eligible Facilities or Transmission Projects that are not yet in-service, bidders are required to provide a complete critical path schedule for the project from the notice of selection of the project for contract consideration to the start of commercial operations. For each project element, list the start and end date.

10.1 Identify the elements on the critical path. The schedule should include, at a minimum, facility contracts, start of construction, construction schedule, siting, fuel supply, financing, engineering and procurement, acquisition of real property rights, Federal, state and/or local permits, licenses, environmental assessments and/or environmental impact statements (including anticipated permit submittal and approval dates) and any other requirements that could influence the project schedule and the commercial operation date, including requirements pertaining to the generator interconnection process and any transmission facilities for which the bidder seeks recovery through federal transmission rates.

10.2 Detail the status of all critical path items.

11. PROJECT MANAGEMENT/EXPERIENCE

Bidders are required to demonstrate project experience and management capability to successfully develop (for a project that includes new facilities or capital investment) and operate the project proposed. The Soliciting Parties are particularly interested in project teams that have demonstrated success in projects of similar type, size and technology and, for projects that include new facilities or capital investment, can demonstrate an ability to work together effectively to bring the project to commercial operation in a timely fashion.

11.1 Provide an organizational chart for the project that lists the project participants and identifies the corporate structure, including general and limited partners.

11.2 For a project that includes new facilities or capital investment, provide statements that list the specific experience of the bidder and each of the project participants (including, when applicable, the bidder, partners, EPC contractor and proposed contractors), in developing, financing, owning, and operating generating or transmission facilities (as applicable), other projects of similar type, size and technology, and any evidence that the project participants have worked jointly on other projects.

11.3 For a bid that includes existing facilities, provide statements that list the specific experience of the bidder and each of the project participants (including, when applicable, the bidder, partners, EPC contractor and proposed contractors), in owning and operating generating or transmission facilities (as applicable), other projects of

similar type, size and technology, and any evidence that the project participants have worked jointly on other projects.

- 11.4 Provide a management chart that lists the key personnel dedicated to this project and provide resumes of the key personnel. For Eligible Facilities or Transmission Projects that are not yet in-service, key personnel of the bidder's development team having substantial project management responsibilities must have:
- i. Successfully developed and/or operated one or more projects of similar size or complexity or requiring similar skill sets; AND
 - ii. For a project that includes new facilities or capital investment, experience in financing one or more projects of a similar size and complexity (or have the financial means to finance the project on the bidder's balance sheet).
- 11.5 Provide a listing of all projects the project sponsor has successfully developed or that are currently under construction. Provide the following information as part of the response:
- i. Name of the project
 - ii. Location of the project
 - iii. Project type, size and technology
 - iv. Commercial operation date
 - v. Estimated and actual capacity factor of the project for the past three years
 - vi. Availability factor of the project for the past three years
 - vii. References, including the names and current addresses and telephone numbers of individuals to contact for each reference.
- 11.6 With regard to the bidder's project team, identify and describe the entity responsible for the following, as applicable:
- i. Construction Period Lender, if any
 - ii. Operating Period Lender and/or Tax Equity Provider, as applicable
 - iii. Financial Advisor

- iv. Environmental Consultant
- v. Facility Operator and Manager
- vi. Owner's Engineer
- vii. EPC Contractor (if selected)
- viii. Transmission Consultant
- ix. Legal Counsel

11.7 Provide details of the bidder's experience in ISO-NE Markets. With regard to bidder's experience with ISO-NE markets, please indicate the entity that will assume the duties of Lead Market Participant for your Project. Please provide a summary of the proposed Lead Market Participant's experience with each of the ISO-NE markets.

12. EMISSIONS

12.1 For existing generation facilities, provide emissions estimates based on available continuous emissions monitoring data. Where continuous emissions monitoring data is not available, provide emissions estimates based on the most recent stack emissions test conducted using an EPA reference method approved by the applicable permitting and enforcement authority. Where continuous emissions data or actual stack emissions test data are not available, provide emissions estimates based on emissions factors from the latest edition of EPA's AP-42, Compilation of Air Pollutant Emissions Factors.

For new generation facilities, provide emissions estimates based on available data from the unit manufacturer. Alternatively, provide actual emissions data determined in accordance with the paragraph above for a similar facility built within the past 3 years. Include copies of supporting documentation for all emissions estimates.

Project Anticipated Emissions, expressed in pounds/megawatt-hour (lbs./MWh)

Source of Information	Date of Test (if applicable)	Greenhouse Gases (all except methane) Expressed as Carbon Dioxide	Nitrogen Oxides (NOx)	Sulfur Oxides (SOx)	Carbon Monoxide (CO)	Particulate Matter (PM _{2.5})	Methane (CH ₄)

		equivalent (CO ₂ e)					

12.2 Describe any past investments that will, or have been made to your facility to improve its emissions profile or any planned future investments made to your facility in order to improve its emissions profile. Pollutant specific emissions improving technologies include, but are not limited to:

- NO_x – Selective/Non-Selective Catalytic Reduction
- SO_x – wet/dry scrubbers
- PM – fabric filter/bag house, electrostatic precipitator, cyclone separator
- CO – oxidation catalyst

Investments that improve overall emissions include, but are not limited to:

- equipment tune-ups (improves combustion efficiency and emissions)
- boiler tube replacements (improves heat transfer efficiency and reduces fuel use)
- other efficiency improvements (*e.g.*, installing a heat exchanger to use waste heat to pre-heat feed water to the boiler)

Include control equipment specifications, date(s) of installation, expected life of equipment, benefits gained from the addition of such equipment, etc.

12.3 Describe how your project will contribute to (i) Connecticut’s goals under Connecticut Public Act 08-98, *An Act Concerning Connecticut Global Warming Solutions* (2008),

codified in Section 22a-200a of the Connecticut General Statutes; (ii) the Massachusetts 2008 Global Warming Solutions Act (GWSA) and the 2010 Clean Energy and Climate Plan for 2020. Describe how your project will contribute both to the short term 2020 goal, and longer term 2050 goal found in these laws. And (iii) Rhode Island's purposes under Chapter 39-31

13. CONTRIBUTION TO EMPLOYMENT AND ECONOMIC DEVELOPMENT AND OTHER DIRECT AND INDIRECT BENEFITS

- 13.1 Please provide an estimate of the number of jobs to be created directly during project development and construction (for a project that includes new facilities or capital investment), and during operations, and a general description of the types of jobs created, estimated annual compensation, the employer(s) for such jobs, and the location. Please treat the development, construction, and operation periods separately in your response.
- 13.2 Please provide the same information as provided in response to question 13.1 above but with respect to jobs that would be indirectly created as a result of the proposed project.
- 13.3 Please describe any other economic development impacts (either positive or negative) that could result from the proposed project, such as creating property tax revenues or purchasing capital equipment, materials or services for New England businesses. Please provide the location(s) where these economic development benefits are expected to occur.
- 13.4 To the extent not already specified elsewhere in your response, please address the factors listed in Section 2.3.2.1 and describe any benefits or impacts associated with the proposed project.

14. ADDITIONAL INFORMATION REQUIRED FOR TRANSMISSION PROJECTS

Bids that include Transmission Projects must also provide the following information:

14.1 The following information regarding the proposed new Transmission Project:

- i. Overall project description
- ii. The operating voltage of the proposed project
- iii. The type of structures (such as steel towers or poles) that would be used for the proposed project
- iv. The length of the proposed transmission line and the type(s) of terrain and land ownership of the proposed ROW

- v. The substation facilities (number of breakers, transformers, etc.) required at each terminal of the proposed project and information as to how the new facilities would interconnect to any existing facilities.
- vi. The estimated costs of the proposed project broken out into separate categories for transmission facilities and substation facilities in nominal year dollars.
- vii. Provide a proposed schedule for project development through release for operation that includes, as a minimum, key critical path items such as:
 - a. Develop contracts for project work;
 - b. Permitting; R/W and land acquisition;
 - c. Engineering and design;
 - d. Material and equipment procurement;
 - e. Facility construction;
 - f. Agreements (interconnection, operating, scheduling, etc.) with other entities;
 - g. Pre-operations testing;
 - h. Project in-service date;
 - i. Other items identified by the bidder.

14.2 The proposed payment required.

- i. If the proposed payment may change during the contract term, then the Eligible Bidder must also provide the method that transmission owner shall use to determine the payment for the Transmission Project under the transmission Rate Schedule or Tariff and Service Agreement to be filed with FERC. If the proposed payment is a formula rate, the Eligible Bidder must also provide the formula and its proposed inputs that the transmission owner will file with FERC.
- ii. If the proposed payment is based on the Transmission Project's cost of service and may change during the contract term based on changes in the cost of service, a full revenue requirements model submitted as a working Excel spreadsheet with the formulas intact. All assumptions must be detailed as follows:
 - a. Provide the capital cost estimate presented as a buildup of costs by category, such as environmental, engineering, civil works, materials, equipment, construction, construction management, physical and price contingencies, allowance for funds used during construction (AFUDC), and all other categories for which recovery under FERC would be sought. These categories are illustrative; aggregate costs into the categories

most relevant to the development of the proposed project. All costs should be provided in nominal dollars.

- b. For projects with transmission and substation components, separate the costs into two rows (e.g. use one row for substation construction and a second for transmission construction). Describe the detailed financial plan on a monthly basis during the construction period, e.g., for 3 years or as long as necessary. The plan should present the costs and financial outlays in each month of the construction period, and the corresponding sources of financing (equity contribution and debt drawdown). Data should include an estimate of the cost of both physical and price contingencies during the construction period. The financing plan should indicate the ability to finance the construction of the proposed project under base case and contingency scenarios.
 - c. Describe the proposed financing sources and instruments:
 - i. Sources of funds for construction and working capital - include name of entity providing debt financing, loan amounts, interest rates, repayment period, grace period during construction; and equity provided by project sponsor,
 - ii. Sources of funds for unexpected repairs or replacement construction during the operating period, e.g., replacement of tower. Note: the operating period is the applicant's estimate of the useful life or accounting life of the transmission project element(s).
 - d. Provide the annual revenue requirement forecasts for the project – including assumptions. Provide a draft version of the revenue requirement calculation in a format that is similar to what would be included in the Rate Schedule or Tariff and Service Agreement application to FERC, indicating the forecast revenue requirement amounts and all assumptions used in the calculations. This should include but not be limited to the assumptions regarding rate of return, depreciation life, split between debt and capital, AFUDC and weighted cost of capital, and a detailed estimate of the anticipated average annual operating and maintenance cost
- iii. If the pricing proposed is based on cost of service, detailed cost containment commitments such as fixed price components, cost overrun restrictions, or other

cost bandwidth provisions that are proposed to limit ratepayer risk must be clearly defined.

- 14.3 The schedule of the payments defined in 14.2 above including when the payments will commence, how often payments will be required and the length of time over which payments will be required. In no event may payments commence before the Transmission Project is placed in service.
- 14.4 The design life of the project.
- 14.5 If the bidder is proposing the use of a Performance-Based Tariff in connection with the Delivery commitment model, the bidder is required to state the proposal for liquidated damages to compensate the buyer and to keep it financially whole for non-Delivery.
- 14.6 If the bidder is proposing the use of a Performance-Based Tariff in connection with the Delivery commitment model, the bidder is required to provide details of the source and reliability of the Qualified Clean Energy supply along with the rights and ownership of that energy.
- 14.7 A description of the reliability benefits of the proposed Transmission Project and its impact on existing transmission constraints.
- 14.8 For the Delivery commitment model, please describe the process for the transfer of the environmental attributes associated with the Qualified Clean Energy Delivery Commitment.

15. EXCEPTIONS TO FORM PPA

Please attach an explanation of any exceptions to the Form PPA set forth in Appendix C to this Notice, including any specific alternative provisions in a redline format to the Form PPA.

Bidders are discouraged from proposing changes to the Form PPA.

APPENDIX C - 1

Form of Class 1 Power Purchase Agreement

[See Separate Document]

APPENDIX C - 2

Form of Power Purchase Agreement

**[Use Only For Firm Bids of Qualified Clean Energy from a Hydropower Resource
– Connecticut Eligibility Only]**

[See Separate Document]

APPENDIX D

Certification

A proposal will be considered incomplete unless all required signatures are provided.

The undersigned certifies that he or she is an authorized officer or other authorized representative of the Bidder, and further certifies that: (1) the Bidder has reviewed this RFP and all attachments and has investigated and informed itself with respect to all matters pertinent to this RFP and its proposal; (2) the Bidder's proposal is submitted in compliance with all applicable federal, state and local laws and regulations, including antitrust and anti-corruption laws; and (3) the Bidder is bidding independently and has no knowledge of non-public information associated with a proposal being submitted by another party in response to this RFP other than: (a) a response submitted (i) by an affiliate of bidder or (ii) for a project where bidder is also a project proponent or participant, which in each case must be disclosed in writing to the Evaluation Team with each such bidder's or affiliated bidder's proposal; or (b) a submission of multiple bids for the same Qualified Clean Energy as discussed in Section 1.2; (4) the Bidder has no knowledge of any non-public information associated with the development of this RFP; and (5) the Bidder's proposal has not been developed utilizing knowledge of any non-public information associated with the development of this RFP.

The undersigned further certifies that the prices, terms and conditions of the Bidder's proposal are valid and shall remain open for at least 270 days from the submission date.

The undersigned further certifies that he or she has personally examined and is familiar with the information submitted in this proposal and all appendices thereto, and based on reasonable investigation, including inquiry of the individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of the undersigned's knowledge and belief.

The undersigned understands that a false statement or failure to disclose material information in the submitted proposal may be punishable as a criminal offense under applicable law. The undersigned further certifies that that this proposal is on complete and accurate forms as provided without alteration of the text.

Bidder or Bidder's Authorized Representative

Print or Type Name

Project Title(s) as Submitted to the Soliciting Parties

Title

Date

APPENDIX E

- **Overview of the Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment Model.** The Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment model is designed to be a variant on more traditional transmission funding and energy procurement models intended to achieve the Procuring States' clean energy and environmental statutory requirements and goals, including renewable portfolio standard ("RPS") requirements. Under the model, electric distribution companies ("EDCs") in the Procuring States will pay all or part of the cost of the development of new transmission facilities constructed to facilitate the delivery of clean energy in New England.
- The model is an alternative to both traditional power purchase agreements ("PPA") as a means of procuring clean energy generation and an alternative to typical transmission service agreements ("TSAs") for financing the construction of Transmission Projects to deliver Qualified Clean Energy. Consistent with the definition in Section 1.2.1, the Transmission Project may include significant new AC or DC lines or facilities, or significant upgrades to existing lines or facilities. A bid for Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment does not require a proposal for point-to-point transmission service, but bids proposing point-to-point service in appropriate circumstances may be submitted. The objective of any proposed Transmission Project under this model should be for Delivery of incremental Qualified Clean Energy. Under the first option for implementing this model (Model A), a transmission developer, likely teamed with a supplier of clean energy (which could be a separate entity from the transmission developer), would build, if selected through an RFP process, a Transmission Project for which cost recovery from load in participating states would be dependent on and in proportion to the fulfillment of a "Qualified Clean Energy Delivery Commitment" tied to a supplier's resource. The transmission

tariff between the EDCs and transmission developer establishing these arrangements would be filed at FERC by the transmission developer.

- Under and alternate approach (“Model B”), acceptable to some but not all of the Soliciting Parties,²¹ The supplier could enter into arrangements with the EDC to pay for the transmission necessary to enable the supplier to flow energy to the ISO-NE energy market. This transmission payment arrangement would be filed at FERC by the supplier. The arrangement for the delivery commitment would require supplier to enter into (or demonstrate) appropriate transmission arrangements for transmission service necessary to fulfill the delivery commitment.
- The “Qualified Clean Energy Delivery Commitment” would be a commitment for the Delivery of a defined minimum number of MWh per year (or other defined period) of Incremental Qualified Clean Energy from a defined supplier resource into the ISO-NE system in real-time at a defined system node. “Delivery” of the Qualified Clean Energy Delivery Commitment shall satisfy the definition in Section 1.2.1 of the RFP.
- As noted above, the transmission developer’s (or supplier’s, in the case of Model B) ability to recover the transmission project costs from the EDC load in Procuring States would be dependent on and in proportion to the fulfillment of the Qualified Clean Energy Delivery Commitment. Under Model A, any failure to perform on the part of the clean energy supplier will be a matter strictly between

²¹ National Grid does not intend to select any Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment bid proposals under “Model B.” National Grid will consider bid proposals for Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment where the relevant portion of the capacity of a proposed Transmission Project is associated with a Model A proposal even if the remaining portion of the proposed Transmission Project’s capacity is associated with a Model B bid proposal.

the supplier and the transmission developer; the EDCs will have no contractual relations with the supplier, nor bear any risk of supplier non-performance. Under Model B as well, the EDCs will accept no risk of supplier non-performance. Under Models A and B, liabilities, rights, and duties, as between the transmission developer and the clean energy supplier are solely their responsibility. (Such responsibilities might be arranged via contract, tariff, or other arrangement acceptable to the transmission developer and clean energy supplier, as discussed further below.).

- Market settlement for Delivery under the Qualified Clean Energy Delivery Commitment model will be the responsibility of the supplier and will follow ISO-NE processes. ISO-NE market settlement data will be used to measure fulfillment of the Qualified Clean Energy Delivery Commitment. ISO-NE will exercise operational control of any Transmission Projects in New England proposed under this model in accordance with an appropriate operating agreement between ISO-NE and the transmission developer.
- Figure E-1 “Option A” shows the contemplated relationships among the various entities with the EDC entering into agreements with the transmission developer. Figure E-2 “Option B” shows the contemplated relationships among the various entities with the EDC entering into agreements with the energy supplier. Specific arrangements with ISO-NE will need to be determined with the ISO-NE.

Figure E-1: Delivery Commitment Model “Option A”

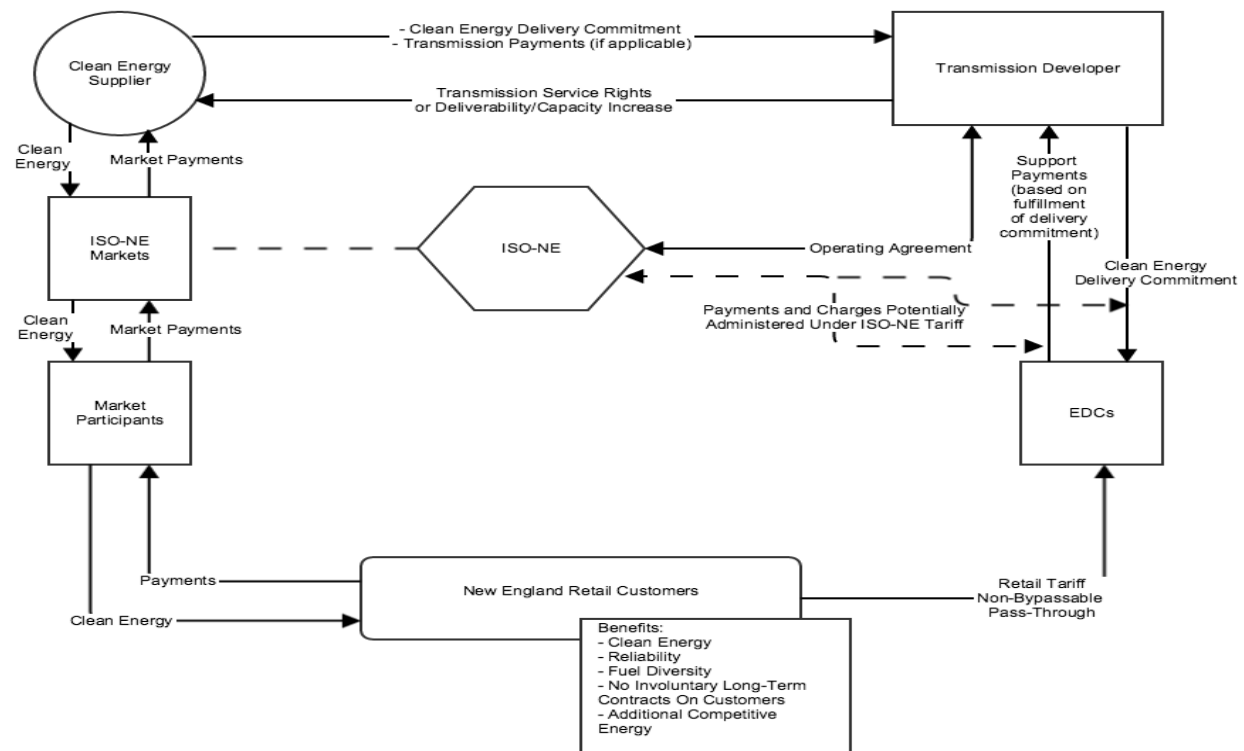
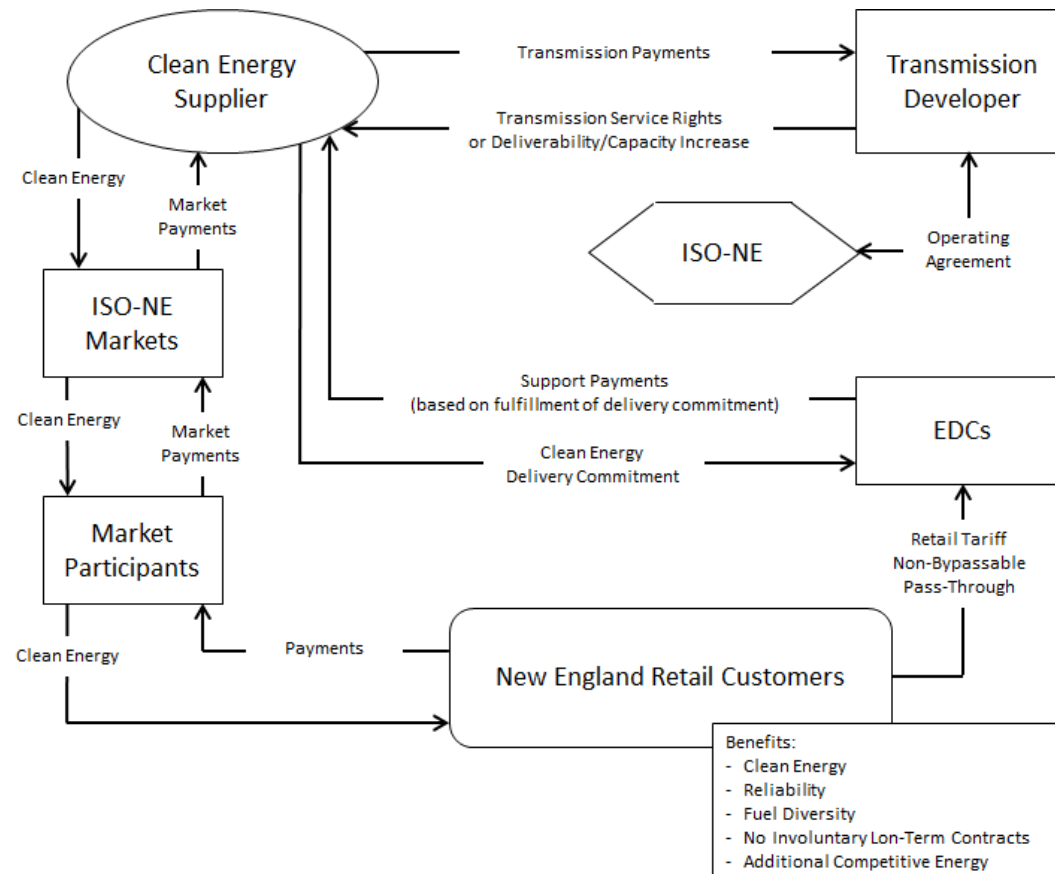


Figure E-2: Delivery Commitment Model “Option B”



Contractual Framework

- The Qualified Clean Energy Delivery Commitment model contractual framework could vary depending on whether the selected supplier is the same entity as the transmission developer, and depending on which entity enters into arrangements with the EDC. If there are separate entities, two related FERC-filed agreements could be used:

(1) The Transmission Developer Performance Based Tariff

This Performance Based Tariff would recover the transmission revenue requirement through the EDCs and other load-serving entities in the participating New England states.

Under the Performance Based Tariff, the EDCs would only be obligated to pay the transmission developer or (under Model “B”) energy supplier, through non-bypassable FERC approved transmission charges collected from all end use customers, the accepted bid price, perhaps billed by ISO-NE, in exchange for the transmission developer's agreement to build the Transmission Project and effect the Delivery of Qualified Clean Energy.

The obligation of the EDCs to collect and pay the accepted bid price would be reduced in any year/period following a year/period in which the clean energy delivery commitment had not been fully met. The Performance-Based Tariff would provide for a partial or full credit against the price that the EDCs would otherwise pay during such a year/period. (As noted below, the transmission developer and supplier could negotiate between themselves for any other arrangements they might require, such as a right to receive liquidated damages if their respective commitments are not fully satisfied.)

The EDC’s obligations under the Performance-Based Tariff would terminate in the event that Delivery of an agreed minimum amount of the Qualified Clean Energy was not made during a specified period.

The Performance-Based Tariff would need to be filed with FERC.

As examples only, provisions which could be added within the framework of any formula rate sheet to incorporate this model are shown in the attachment at the end of this overview.

(2) The Supplier/Transmission Developer Agreement

This contract would be between the supplier and the transmission developer. It would set forth the terms and conditions of the agreed arrangements between the transmission developer and the supplier for the Transmission Project and associated Qualified Clean Energy Delivery Commitment. The EDCs/load would have no direct rights or responsibilities flowing therefrom.

For example, the arrangements between the transmission developer and the supplier tied to the Qualified Clean Energy Delivery Commitment could be conditioned on either: (i) the developer providing the supplier with no cost transmission service on the developer's Project, or (ii) the agreement of the developer to build a Transmission Project consisting of or including specific transmission upgrades to relieve congestion within the New England system to allow a less constrained dispatch of the supplier's existing or planned resource.

Also, the supplier could retain full discretion regarding: (i) the prices at which it offers to supply electric energy and other electricity products into the ISO New England markets; (ii) which electricity products to supply, as long as the supplied products satisfy the minimum Delivery commitment and Qualified Clean Energy criteria, and (iii) the purchaser to which it supplies those products. The supplier would retain the revenues from these sales.

Under Model A, the supplier and transmission developer might agree to a specified amount of liquidated damages to be paid to the transmission developer following any year/period when the supplier does not fully meet its Qualified Clean Energy Delivery Commitment. Or, the transmission developer could charge a rate that would be set equal to any credit paid by the transmission developer to EDCs under the Performance-Based Tariff for any failure of the supplier to meet its Qualified Clean Energy Delivery Commitment. Other arrangements may be put in place under Model B.

Depending on the specific terms, the supplier agreement with the transmission developer may need to be filed with FERC for approval as an agreement related to wholesale power sales or transmission service.

Other Characteristics

- The EDCs will require full recovery of all payments they make under Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment arrangements as non-bypass-able FERC approved transmission charges from all end use customers. The EDCs will work with the Procuring States to confirm that appropriate mechanisms for recovering such costs from end-use customers are in place under applicable state law.
- No generation charges may be compensated, either directly or indirectly, in the transmission charge payments made by the EDCs under any Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment arrangement. It will be the bidder's responsibility to verify and provide assurances that all Renewable Energy Credits ("RECs") and other environmental attributes associated with the Qualified Clean Energy Delivered under the Qualified Clean Energy Delivery Commitment Model are available for use within the New England balancing authority area and are not being counted as environmental attributes in another balancing authority area (i.e., double counted).
- The Transmission developer will be responsible for entering into any separate agreements needed with ISO-NE concerning such matters as operational control of the Transmission Project, settlement and billing, etc. Rules, policies, practices, and definitions relating to transmission, delivery, congestion, priority, and other matters arising from implementation of the Qualified Clean Energy Delivery Commitment model will be as specified in the ISO-NE tariff and operating manuals unless specific provisions to the contrary are agreed and approved in the agreements, Rate Schedules, and Tariffs implementing the Qualified Clean Energy Delivery Commitment Model.
- Aspects of these arrangements would require FERC approval, but the Procuring States will be involved in establishing the initial terms of the delivery commitment arrangements and, together with the EDCs, will retain final discretion over whether or not to proceed with any Qualified Clean Energy Delivery Commitment model arrangements after FERC review.

- Preference will be given to Qualified Clean Energy Delivery Commitment model bid proposals that contain significant and effective cost containment provisions and provisions protecting load from cost overruns and other risks.
- Qualified Clean Energy Delivery Commitment model bids should include information on benefits to load over a 20-year period, as certain state entities have indicated an intention to evaluate production cost benefits over no more than a 20-year period. Bids may include information on additional benefits both within and beyond this 20-year period.
- Bids for Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment shall describe how the project will conform to FERC's applicable regulatory requirements, including, but not limited to, FERC requirements relating to allocation of transmission capacity and open access, the justness and reasonableness of rates, the potential for undue preference or discrimination, and affiliate dealings, if any, consistent with Section 5.20 of appendix "B".
- Provided below by way of example only, are provisions of a formula rate sheet showing how the Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment model could be incorporated in a FERC filed rate schedule. The provision of this cost-based formula rate example does not prevent bidders from proposing alternative rate models.

Attachment

Formula Rate Sheet (For Example Only)

I. Methodology

....

...This formula also sets forth the method that owner shall use, if and when Minimum Energy Delivery Commitments associated with the _____ transmission line and AC Upgrades are not met, to determine the reduction to its revenue requirement recoverable from the participating states' transmission customers.

II. Definitions

Capitalized terms not otherwise defined elsewhere in the Agreement and as used in this

Attachment has the following definitions

.....

·*Minimum Energy Delivery Commitments* will equal the specified MW hours of energy dispatched/delivered at the specified ISO-NE node(s) during the specified periods of time, as provided in the table directly below.

Minimum Energy Delivery Commitments

<u>Energy (MWh)</u>	<u>Location (ISO-NE Node ID)</u>	<u>Period (Year)</u>
xxxxxxx	Nodeyyyy	2018 ...
...		
Etc.	Etc.	Etc.

[Note: While the table above, provided as an example, suggests only yearly based delivery commitments, more refined/targeted delivery commitments could be included (e.g., seasonal and/or seasonal peak hour minimum delivery requirements).]

.....

III. Calculation of Revenue Requirement

The Revenue Requirement for the _____ Transmission Line ...will equal...

...

IV. Calculation of the Revenue Requirement Recoverable from Participating States' EDC Customers.

The Revenue Requirement recoverable from Participating States' EDC customers for the _____ Transmission Line will be equal to the sum of the Revenue Requirement as determined in Section III and any Reduction for Unmet Minimum Energy Delivery Commitments, with such reduction calculated as follows:

Reduction for Unmet Minimum Energy Delivery Commitments will equal the product of the Revenue Requirement calculated for the prior year and the ratio of the unmet portion of the Minimum Energy Delivery Commitment over the Minimum Energy Delivery Commitment for that prior year.

For example, assume the Revenue Requirement calculated for recovery in the prior year was equal to \$200,000, and assume 40% of the Minimum Energy Delivery Commitment was unmet in that same prior year. In that case, the Reduction for Unmet Minimum energy Delivery Commitment, to be applied to the Revenue Requirement recoverable from Participating States' Transmission Customers in the current year, would be the product of \$200,000 and 40%, or \$80,000.

[Note: While the reduction calculation provided above reflects a reimbursement of transmission support charges to EDC customers in direct proportion to unmet Delivery Commitment, other calculations could also be considered to provide additional incentives for achieving the Delivery Commitment, including a greater than one-to-one reduction in transmission support charges relative to delivery shortfalls (for example, greater reductions for delivery shortfalls during peak demand periods). The reduction in the transmission support charges should be designed to at least insulate EDC customers from any damages, injury, or loss of their bargain arising from unmet delivery commitment. On the other hand, reimbursement of transmission support charges to EDC customers is not intended to exceed the transmission support charges themselves on an aggregate basis.]

Appendix F

Procurement Statutes

CONNECTICUT PROCUREMENT STATUTES

Pursuant to Sections 6 and 7 of Connecticut Public Act 13-303, *An Act Concerning Connecticut's Clean Energy Goals*, the CT DEEP is soliciting proposals for PPAs for Tier 1 renewable energy resources and large scale hydropower (as defined by Conn. Gen. Stat. Section 16-1(26) and (53) and as amended by Public Act 13-303) in a quantity of up to 5% of Connecticut EDC load. The solicitation is being conducted in consultation with the State's Procurement Manager, the Office of Consumer Counsel, the Office of the Attorney General, the CT DEEP's independent Consultant, and the Connecticut EDCs. In the event that the CT DEEP finds any proposals submitted in response to Sections 6 and 7 of Connecticut Public Act 13-303 to be in the interest of ratepayers, it may direct the Connecticut EDCs to enter into PPAs for energy and environmental attributes, or a combination thereof, for periods of up to Twenty (20) years for Tier 1 Qualified Energy and fifteen (15) years for Hydropower Resources.

Pursuant to Section 1(c) of Connecticut Public Act 15-107, *An Act Concerning Affordable and Reliable Energy*, the CT DEEP is also seeking proposals for PPAs for Tier 1 renewable energy resources and large scale hydropower (as defined by Conn. Gen. Stat. Section 16-1(26) and (53) and as amended by Public Acts 13-303 and 15-107) in a quantity of up to 5% of Connecticut EDC load. The solicitation is being conducted in consultation with the State's Procurement Manager, the Office of Consumer Counsel, the Office of the Attorney General, the CT DEEP's independent Consultant, and the Connecticut EDCs. In the event that the CT DEEP finds any proposals submitted in response to Section 1(c) of Public Act 15-107 to be in the interest of ratepayers, and the meet the requirements set forth in Section 1(e) of Public Act 15-107, it may direct the Connecticut EDCs to enter into PPAs for energy and environmental attributes, or a combination thereof, for periods of up to Twenty (20) years.

CT DEEP is also soliciting proposals pursuant to Connecticut General Statutes Section 16a-14 for Tier 1 renewable energy resources and large scale hydropower and associated transmission that requires a FERC tariff without a PPA. Large scale hydropower that does not have an associated PPA cannot satisfy Tier 1 renewable energy requirements under the circumstances described in Section 9 of Public Act 13-303.

Once proposals are received by the Soliciting Parties, the proposals will be subject to a review, evaluation and selection process. The first stage ("Stage One") consists of a review of whether

the proposals satisfy specified eligibility, threshold and other minimum requirements set forth in Section 2.2 of this RFP. The second stage ("Stage Two") consists of a quantitative and qualitative evaluation of proposals that pass the Stage One review, as described in Section 2.3 of this RFP.

Stage One analysis, the Stage Two qualitative analysis, and the selection of proposals will be the responsibility solely of the CT DEEP, after consultation with the State's Procurement Manager, the Office of Consumer Counsel, the Office of the Attorney General, the CT DEEP's independent Consultant, and the Connecticut EDCs. For Connecticut, the Procurement Statutes allow the CT DEEP Commissioner to direct the Connecticut EDCs to enter into PPAs, but do not allow the Commissioner to direct the EDCs to contract for transmission. Therefore, if CT DEEP selects any Transmission Project(s), it would recommend such project(s) to the Connecticut EDCs.

The text of the Connecticut Statutes can be found at the following link:

<http://www.cga.ct.gov/2013/act/pa/pdf/2013PA-00303-R00SB-01138-PA.pdf>

http://www.cga.ct.gov/2013/pub/chap_295.htm#sec_16a-14

<http://www.cga.ct.gov/2015/ACT/pa/pdf/2015PA-00107-R00SB-01078-PA.pdf>

MASSACHUSETTS PROCUREMENT STATUTE

Section 83A requires the Massachusetts EDCs jointly to solicit proposals from renewable energy developers in coordination with the Massachusetts DOER at least twice during a four-year period that commenced on January 1, 2013. The Massachusetts EDCs are not required to enter into long-term contracts under Section 83A, to the extent that, in the aggregate, the contract volumes would exceed four percent (4%) of the total energy demand from all distribution customers in the service territory of a Massachusetts EDC, unless they voluntarily do so, with the approval of the MDPU. Section 83A of the Act reserves ten percent (10%) of that amount, or 0.4% of demand, for the output of newly developed small, emerging or diverse renewable energy distributed generation facilities that each Massachusetts EDC will solicit in a separate process. The Massachusetts EDCs are consulting with DOER with respect to this RFP and, with respect to the method of solicitation, but not the timetable, will consult with the MA AGO. Any contracts will be subject to review and approval by the MDPU, including review of any recommendations offered by the MA AGO with respect to each such contract.

A Massachusetts EDC may decline to consider contract proposals that otherwise satisfy the requirements of Section 83A if the Massachusetts EDC determines that the terms and

conditions would place an unreasonable burden on its balance sheet, and may structure its contracts, pricing or administration of the Eligible Products purchased to mitigate impacts on the balance sheet or income statement of the Massachusetts EDC or its parent company, subject to the approval of the MDPU. Further, a Massachusetts EDC is not required to enter into a long-term contract to facilitate the financing of renewable energy generation unless reasonable proposals conforming to the requirements stated in this RFP have been received and found by the MDPU to be cost effective to Massachusetts electric customers over the term of the contract.

Pursuant to Section 83A, the MDPU's regulations state that "to the extent there are significant transmission costs included in a bid, the department of public utilities shall authorize the contracting parties to seek recovery of such transmission costs of the project through federal transmission rates, consistent with policies and tariffs of the federal energy regulatory commission, to the extent the department finds such recovery is in the public interest"

The long-term contracting obligation established by Section 83A is separate and distinct from the Massachusetts EDCs' obligation to meet applicable annual RPS requirements pursuant to Section 11F of Chapter 25A of the Massachusetts General Laws. However, under Section 83A, the renewable-generation resource from which energy and/or RECs are procured under a long-term PPA must be eligible to participate in the Massachusetts RPS program and to sell RECs under the program, and a Massachusetts EDC may use RECs purchased under such a long-term PPA to satisfy its RPS requirements.

The Massachusetts EDCs, the DOER and the MA AGO have agreed to collaborate on a coordinated process with respect to this solicitation. The participation of each of the Massachusetts EDCs in this RFP provides prospective bidders with consistent bid submittal and evaluation requirements across all territories. Responses to the RFP will be submitted to the Evaluation Team for evaluation consistent with the terms of the RFP.

The initial evaluation and ranking will be conducted by the Massachusetts EDCs, and then the Massachusetts EDCs will collaborate with parties from all three of the Procuring States to determine whether together they can create a portfolio of projects that would reduce the cost to customers while still complying with the Massachusetts legal requirements and achieving the Massachusetts clean energy goals. Each Massachusetts EDC will consider the results of the evaluation, determine projects for selection, and finalize and execute contracts with any successful bidders that it selects as a result of this process. Each Massachusetts EDC will separately file any executed contracts with the MDPU for approval before they become effective. Prior to entering into any contract, and filing any contract for approval with the

MDPU, the Massachusetts EDCs will consult with DOER. At or after such time that an executed contract is proposed to the MDPU, DOER will submit its assessment of: (1) the process followed by the Massachusetts EDCs resulting in the execution of the contract; and (2) the merits of the particular contract proposed for approval.

Consistent with Section 83A, the Massachusetts EDCs may execute contracts associated with this RFP that are outside of the requirements of the Section 83A, and submit such contracts to the MDPU for approval. Section 83A of the Green Communities Act and the Department's regulations at 220 C.M.R. § 21.00 et seq. require the Department to make specific determinations regarding a proposed long-term contract for renewable energy. As a threshold matter, the Department must determine that the proposed contracts facilitate the financing of the renewable energy generating source to which the contract applies. In addition, the Department must make findings related to: (1) the facility's proposed commercial operation date; (2) the facility's qualification by DOER for the Massachusetts Class I RPS; (3) the facility's ability to provide enhanced electric reliability within Massachusetts; (4) the facility's contribution to the moderation of system peak load; (5) the cost-effectiveness to Massachusetts customers over the term of the contract; and, (6) where feasible, whether the facility creates additional employment and economic development benefits in Massachusetts. 220 C.M.R. § 21.05(1). In addition, the Department considers whether the proposed contract is in the public interest.

RHODE ISLAND PROCUREMENT STATUTE

Narragansett Electric Company, in consultation with the Rhode Island Office of Energy Resources and the Rhode Island Division of Public Utilities and Carriers, is authorized to voluntarily participate in multi-state or regional efforts to procure commercially reasonable: (1) domestic or international large or small scale hydroelectric power; and (2) eligible renewable energy resources, including wind, as defined by R.I. G.L. § 39-26-5(a), on behalf of electric customers; provided, however, that large scale hydroelectric power shall not be eligible under the renewable energy standard established by chapter 26 of title 39 of the General Laws of Rhode Island. The term "commercially reasonable" shall mean terms and pricing that are reasonably consistent with what an experienced power market analyst would expect to see in transactions involving regional energy resources and regional energy infrastructure. Commercially reasonable shall include having a credible project operation date, as determined by the Rhode Island Public Utilities Commission ("RIPUC"), but a project need not have completed the requisite permitting process to be considered commercially reasonable. The determination of whether terms and pricing are "commercially reasonable" shall be made ultimately by the RIPUC. In addition, each long-term contract entered into pursuant to this

solicitation shall contain a condition that it shall not be effective without RIPUC review and approval as provided in Chapter 39-31. Further, Narragansett's method of soliciting proposals from renewable energy developers pursuant to Chapter 39-31 is subject to the review and approval of the RIPUC.

Narragansett, in consultation with the Rhode Island Office of Energy Resources and the Rhode Island Division of Public Utilities and Carriers, is also authorized to voluntarily participate in multi-state or regional efforts to develop and construct regional electric transmission projects that would allow for the reliable transmission of large or small-scale domestic or international hydroelectric power to New England load centers that will benefit the state of Rhode Island and its electric customers. Prior to any binding commitments being made, Narragansett, the Rhode Island Office of Energy Resources and the Rhode Island Division of Public Utilities and Carriers must jointly file that proposal with the RIPUC and the Rhode Island Governor, Senate President, Speaker of the House, Department of Environmental Management and Commerce Corporation. That filing must identify the energy reliability, energy security and customer impacts expected to result from the proposal. The RIPUC is required to approve the rate recovery mechanisms relating to costs of such new transmission proposals.

APPENDIX G

CONFIDENTIAL INFORMATION

CONFIDENTIAL INFORMATION WITH RESPECT TO CONNECTICUT

If you wish to submit information to the Soliciting Parties that is of a confidential nature, please recognize that the Connecticut Freedom of Information Act governs the public's accessibility to that information. This law generally requires the disclosure of material in the possession of the State upon request of any citizen, unless the material is specifically exempt from disclosure. An example of an exemption is a "trade secret," as defined by section 1-210(b)(5) of the Connecticut General Statutes. Information claimed as confidential must be isolated from other material in the proposal and labeled "CONFIDENTIAL." With this submission of information claimed and labeled as confidential, you must provide the legal basis for your confidentiality claim, describe what efforts have been taken to keep the information confidential, and provide whether the information sought to be protected has an independent economic value by not being readily known in the industry. With your legal support and reasonable justification for confidentiality as described herein, the Connecticut state agencies participating on the Soliciting Parties will be better equipped to safeguard your confidential information should it become the subject of a Connecticut Freedom of Information Act inquiry. Subject to footnote 11, *supra*, Information deemed confidential will remain confidential for losing bidders.

All information for winning bidders, including confidential information, will be released and become public 180 days after contracts have been executed and approved by all relevant regulatory authorities, unless otherwise ordered by the Connecticut PURA.

CONFIDENTIAL INFORMATION WITH RESPECT TO MASSACHUSETTS

With respect to the Commonwealth of Massachusetts, and subject to the confidentiality provisions described above for information associated with this solicitation in the possession of the State of Connecticut, the Massachusetts EDCs shall use commercially reasonable efforts to treat the confidential information that they receive from bidders in a confidential manner and not, except: (1) as required by law; (2) pursuant to a request for information in a regulatory or judicial proceeding; or (3) pursuant to a request for information by a public utilities commission with supervisory authority over any of the Massachusetts EDCs, disclose such information to any third party or use such information for any purpose other than in connection with this RFP; provided, however, that if such confidential information is sought in any regulatory or judicial inquiry or proceeding or pursuant to a request for information by a public utilities commission with supervisory authority over any of the Massachusetts EDC, the Massachusetts EDCs shall

take reasonable steps to limit disclosure and use of said confidential information through the use of non-disclosure agreements or requests for orders seeking protective treatment, and shall inform the bidders that the confidential information is being sought. Bidders are advised that the Massachusetts EDCs will share bid information with the Massachusetts DOER and the MA AGO to facilitate DOER's and the MA AGO's ability to perform their roles under Section 83A, which include their obligations to assess: (1) the process followed by the Massachusetts EDCs; and (2) the merits of one or more PPAs proposed for approval to the MDPU. Pursuant to G.L. c. 25A, § 7, DOER has statutory authority to protect price, inventory and product delivery data. Notwithstanding the foregoing, in the event such confidential information is shared pursuant to a request for confidential treatment and confidential treatment is not afforded, the Massachusetts EDCs shall not be held responsible. Similarly, bidders shall use commercially reasonable efforts to treat all confidential information received from the Massachusetts EDCs in a confidential manner and will not, except as required by law or in a regulatory or judicial proceeding, disclose such information to any third party or use such information for any purpose other than in connection with this RFP; provided, however that if such confidential information is sought in any regulatory or judicial proceeding, the bidders shall take reasonable steps to limit disclosure and use of said confidential information through the use of non-disclosure agreements or requests for orders seeking protective treatment, and shall inform the Massachusetts EDCs that the confidential information is being sought.

Bidders are advised that, per MDPU requirements, confidential bidder information may be disclosed during the MDPU approval process to parties that are granted intervenor status in the proceeding. In past proceedings, intervenor status has been granted to competitive suppliers and industry trade groups, and therefore, confidential bidder information has been required to be disclosed to legal counsel and/or a third-party consultant retained by the intervenor for purposes of the proceeding.

Bidders are advised that, for any requests of the Massachusetts EDCs for bidder information other than as described in the previous two paragraphs, the Massachusetts EDCs will recommend that the party seeking bidder information contact the bidder directly to request such information and negotiate a non-disclosure agreement, as necessary.

CONFIDENTIAL INFORMATION WITH RESPECT TO RHODE ISLAND

With respect to the State of Rhode Island, and subject to the confidentiality provisions described above for information associated with this solicitation in the possession of the State of Connecticut, Narragansett agrees to use commercially reasonable efforts to treat the non-public information it receives from bidders in a confidential manner and will not, except as required by law or in a regulatory proceeding, disclose such information to any third party or

use such information for any purpose other than in connection with this RFP; provided, that, in any regulatory, administrative or jurisdictional proceeding in which confidential information is sought, Narragansett shall take reasonable steps to limit disclosure and use of said confidential information through the use of nondisclosure agreements or orders seeking protective treatment, and shall inform the bidders if confidential information is being sought. Notwithstanding the foregoing, in any regulatory proceeding in which such confidential information is sought and a request for confidential treatment is made to the PUC, Narragansett shall not be responsible in the event that it is determined that the request for treating information in a confidential manner is not warranted. The bidders shall be required to use commercially reasonable efforts to treat all information received from Narragansett in a confidential manner and will not, except as required by law or in a regulatory proceeding, disclose such information to any third party. Bidders are advised that, for any requests of Narragansett for bidder information other than as described in this paragraph, Narragansett will recommend that the party seeking bidder information contact the bidder directly to request such information and negotiate a non-disclosure agreement, as necessary.

APPENDIX H

UTILITY STANDARD OF CONDUCT

June 12, 2014

INTRODUCTION

In a December 2013 statement²², the New England Governors set forth the need for strategic investments in regional energy infrastructure, including electric transmission to access no- and low-carbon energy serving New England consumers. The New England States have agreed to coordinate certain activities through the New England States Committee on Electricity (“NESCOE”).

Given certain current or pending state statutory powers permitting or, in some states, mandating New England electric distribution companies (“EDCs”) to solicit Class I resources and/or large-scale hydropower (“State Statutory Authorities”), the New England States seek to engage EDCs in the development of a solicitation and evaluation process for no- and low-carbon energy and associated electric transmission infrastructure, consistent with respective State Statutory Authorities. The EDCs participating in these solicitation processes are each referred to herein as a “Utility”; and collectively, the “Utilities.”

The obligations of the Utilities are set forth in the respective State Statutory Authorities, as such statutes may be enacted or amended from time to time, and in orders and regulations of the applicable state utility commissions. In Connecticut, for example, the Utilities are not required by statute or regulatory order to participate in the evaluation or selection of proposals; however, their participation has been requested by the Connecticut Department of Energy and Environmental Protection. The purpose of this Utility Standards of Conduct is to establish uniform protocols and guidelines to govern the Utilities’ voluntary participation in the New

²² The December 6, 2013 New England Governors’ Statement is available at http://www.nescoe.com/uploads/New_England_Governors_Statement-Energy_12-5-13_final.pdf.

England States' collaborative development of the proposed solicitation process, and nothing in this document is intended to affect or modify the rights, obligations or duties of the Utilities arising under the applicable state statutes.

The Utilities acknowledge the need to follow certain standards of conduct to ensure that any solicitation and evaluation process for no- and low-carbon energy and associated electric transmission infrastructure (the "Solicitation Process"), is conducted in a fair, transparent, and competitive manner, that all laws, regulations, rules and standards and codes of conduct are observed, that all potential bidders are treated equally, that no potential bidder receives preferential treatment or non-public information not available to other potential bidders, enabling it to gain an unfair advantage, and that the efforts of the Utilities in the Solicitation Process do not create any actual or apparent conflict of interest. The New England States and Utilities seek to avoid any actual or apparent conflict of interest by those Utilities who (themselves or their affiliates) may seek to submit a proposal and who (themselves or their affiliates) may be participating in the solicitation and evaluation of proposals.

GUIDELINES

The following guidelines would be followed by the Utility team members participating in the Solicitation Process and those team members must acknowledge and be bound to follow these guidelines in all circumstances.

1. Each Utility shall designate the individuals participating in the Solicitation Process, and shall identify the role of each individual in the process. Utility individuals shall be designated to be on either a Bid Team or an Evaluation Team within their respective companies. No individual shall be a member of both teams, and no individual may change from one team to the other during the solicitation process. The Bid Team shall comprise members of the Utility who are responsible for the development of proposals in response to the Request for Proposals ("RFP"), including any subject matter experts. The Evaluation Team, which will also collaboratively participate with the New England States and NESCOE in developing the Solicitation Process consistent with respective State Statutory Authorities, will be responsible for the development of the RFP, the evaluation of proposals, selection of proposed projects, negotiation of any agreements, and related filings with state and/or federal regulatory authorities. With respect to each aspect of the Solicitation Process listed in the preceding sentence, the degree of participation of each Utility will be consistent with the statutes and regulations of that

Utility's state, and to the extent allowed by statute and regulation each Utility will have the option to take further action as it deems necessary or appropriate to avoid an actual or perceived conflict of interest. Throughout the Solicitation Process the Bid Team and the Evaluation Team will each be represented by separate legal counsel. In connection with the development of RFP(s) that will form part of any Solicitation Process, there should be an ongoing assessment regarding any additional measures that could be instituted to avoid any actual or apparent conflict of interest and whether it would be practicable to do so.

2. The Bid Team and the Evaluation Team shall report through and operate within independent companies, business units or departments, to the extent feasible based on the corporate and organizational structure of the Utility.
3. Each Utility agrees and commits to include in any bid offered in response to the Solicitation Process full disclosure of any ownership interest, financial interest, or other potential conflict of interest with respect to that bid.
4. Each Utility shall ensure that no non-public information regarding the solicitation or evaluation process, a proposal, or the evaluation of any proposal shall be communicated from members of its Evaluation Team to any Bid Team, except as provided to all bidders pursuant to the Solicitation Process. Further, no member of the Evaluation Team may consult, advise or communicate directly or indirectly with a member of any Bid Team about the solicitation process, any proposal, or the evaluation of any proposal during the bid preparation, submission or evaluation process, and vice-versa, except through the Solicitation Process.
5. Since Utility members are divided into an Evaluation Team and a Bid Team subject to the standards contained in these guidelines, Evaluation Team members shall be permitted to participate in the evaluation of all projects including any proposal submitted by that Utility and/or that Utility's affiliates.
6. Each Utility shall communicate these guidelines to all persons on a Bid Team or Evaluation Team, and those persons shall certify in writing their commitment to honoring the guidelines and to referring any questions regarding compliance with the

guidelines to the Utility legal counsel designated to assist such Team members.

7. Each Utility shall designate and provide to the participating New England States, through NESCOE, one or more legal points of contact to work through any unforeseen issues relative to standards of conduct that may arise over the course of the Solicitation Process.
8. These guidelines shall be in place until the earlier of (1) the conclusion of the regulatory filing or approval proceeding resulting from the applicable Solicitation Process, or (2) the Utility's withdrawal from the Solicitation Process.

[UTILITY SIGNATURE BLOCKS TO BE INSERTED]

Appendix I

BID SUBMITTAL

Bids must be submitted as both confidential and public and should be delivered marked as such on separate CD ROMS. A copy of the confidential version and separate copies of the public version of the bids should be submitted in the required volumes to each of the contacts below.

Department of Energy Resources

1 copy of each version

c/o
Judith Judson
Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Unitil

1 copy of each version

c/o
Lisa Glover
Energy Analyst
Unitil Service Corp.
6 Liberty Lane
Hampton, NH 03842-1720

Eversource

1 copy of each version

c/o
Jeffery S. Waltman
Manager, Planning & Power Supply
One NSTAR way, NE220
Westwood, MA 02090-9230

The United Illuminating Company

1 copy of each version

Attn: Alan Trotta

157 Church Street, 16th floor
New Haven, CT 06506

National Grid

3 copies of each version

c/o
Corinne DiDomenico
Manager, Environmental Transactions
100 East Old Country Road
Energy Procurement, 2nd Floor
Hicksville, NY, 11801

Connecticut Department of Energy and Environmental Protection **10 copies of each version**

c/o
Debra Morrell
Administrative Coordinator
Bureau of Energy and Technology Policy
Connecticut Department of Energy and Environmental Protection
10 Franklin Square, New Britain, CT 06051

BID FEE REMITTANCE

Bid fee should be calculated based upon the instructions in section 1.6 of the body of the RFP. The total fee should then be remitted to each electric distribution company listed below in the percentages listed in the table below to the entities listed. Calculation is made in the last column of the table for a hypothetical \$10,000 bid fee.

To insure that the bid fee remittance checks are tracked and received by the appropriate electric distribution company, please send the checks via OVERNIGHT DELIVERY using either Federal Express or UPS.

Please make the checks out to the company name listed in bold below.

		Example <u>Bid Fee Calculation</u>
Fitchburg Gas and Electric	0.54%	\$54

United Illuminating	6.54%	\$654
National Grid	36.27%	\$3,627
<u>Eversource</u>	<u>56.65%</u>	<u>\$5,665</u>
Total	100%	\$10,000

Payment must be submitted to each electric distribution company via wire transfer. Upon request, wire transfer information will be made available. Please send a wire transfer information request to the email address cleanenergyRFP@gmail.com.

REDACTED

Bid Score Summary - Initial Selection

CONFIDENTIAL DRAFT

Bid	PPA Type	Fy	RFC	Cap Tx	Term Yrs	ISD M/Y	Unit St	Net MW	Net Avg Annual MWh (b)	Net Avg Annual REC's (b)	LevNom S/MW hr	Direct Benefit Cost	Direct Costs PV MS	Net Dir Benefit PV MS	Partic % (c)	Decr. CO2(d) (KST)	Dlr B/C	B/C Ratio CT MA PrtSt	CT Score	CT Qual Score	CT Total Score	MA Score	MA Qual Score	MA Total Score	Avg Total Score
																			(a)						

(a) _____ is the highest B/C bid and has a participating state B/C more than 0.2 higher than next best non-_____ bid. Next best non-_____ bid _____ becomes anchor bid.

(b) Net average annual MWh & REC's are net of curtailment. Levelized nominal cost per MWh is based on bid energy after curtailment. If REC only bid, REC's used in place of MWh.

(c) For overall bid screening, CT and MA assumed to participate equally in bid, unless noted, with RI participation not assigned. MA does not participate in fuel cell bids.

(d) CO2 decrease is over the full bid term. Cassadaga CO2 decrease estimated using Antrim results.

(e) Average Annual MWh/RECS and Net Capacity are for 75% of the unit. Direct benefits and costs are for 75% of the unit. CO2 decrease and indirect benefits are for 100% of the unit.

(f) NPT is a DCM bid type with indirect benefits only and is allocated by 2017 energy for load among the three states, RI participation results not shown above.

(g) Participation shares based on energy supplied by technology: For CEC, Hydropower and Balancing Wind 100% CT, Other Wind 100% MA. For VGL, Hydropower 100% CT, Wind 50% CT and 50% MA.

(h) A number of sensitivity cases were run for the transmission bids, one sensitivity for each bid is included above, the remainder are shown below

New England Clean Energy RFP Evaluation Report

Submitted by:

Navigant Consulting, Inc.
1200 19th Street, N.W
Suite 700
Washington, DC 20036

navigant.com

June 26, 2017



New England Clean Energy RFP Evaluation Report

TABLE OF CONTENTS

1. Summary and Overview..... 1

2. General Methodology..... 2

 2.1 Reference Case 2

 2.2 Bid Cases 3

 2.3 Bid Scoring 3

3. Reference Case Key Assumptions 5

 3.1 Demand and Capacity Expansion 5

 3.2 Natural Gas Prices 6

 3.3 RGGI 8

 3.4 Transmission 9

 3.5 Export/Import Profiles (ISO-NE Only Model)..... 9

 3.6 REC Pricing 10

4. Bid Evaluations 12

 4.1 Small PPA Bids 12

 4.2 Transmission Bids 13

5. Bid Scoring 15



New England Clean Energy RFP Evaluation Report

1. SUMMARY AND OVERVIEW

Navigant served as an independent evaluation team consultant for the New England Clean Energy RFP (CERFP)¹ to assess the quantitative benefits and costs of each bid project, and to develop the resulting benefit to cost ratio for each project. The CERFP was conducted to help meet the clean energy goals of Connecticut, Massachusetts and Rhode Island (Participating States). As part of this effort, Navigant reviewed and assisted in the drafting of the CERFP and formulated a Reference Case prior to the receipt of the CERFP bids. Throughout the CERFP evaluation process, Navigant worked closely with the CERFP Evaluation Team, in particular the CERFP Quantitative Evaluation Committee.

For the quantitative analysis, Navigant used the PROMOD IV model (PROMOD), a detailed hourly chronological market model that simulates the dispatch and operation of the wholesale electricity market. PROMOD is a least-cost optimization model that simulates the hourly operation of the energy market, while observing generator operating limitations and transmission constraints, and is commercial software that is widely used in the U.S. for electric market modeling. In the PROMOD analysis conducted by Navigant, CERFP bids replace energy from generating units in the Reference Case, thereby reducing overall production costs and CO₂ emissions.

CERFP bids were received from solar, wind, hydropower, fuel cell and transmission developers. Numerous individual solar and wind unit bids (Small PPA Bids) were received in which clean energy was delivered to New England under purchased power agreements (PPAs) from a single new generating unit. Additional bids incorporating much larger amounts of clean energy capacity were submitted that included the development of new transmission facilities (Transmission Bids), all but one of which were linked to PPAs.²

Each bid was incorporated into the Reference Case by Navigant to model the quantitative impact over the term of the bid with respect to the value of the energy revenue and Renewable Energy Credits (RECs) received (direct benefits), as well as load payment savings and production cost savings (indirect benefits).³ The present value of these benefits over the term of the bid were then compared by Navigant to the present value of the cost of the bid, including PPA charges and any transmission costs, to derive a benefit-cost ratio. Each bid's indirect benefits varied by Participating State leading to each bid having a different benefit-cost ratio for each Participating State.

The quantitative cost-benefit ratio for each bid was then scored on a 75-point scale and combined with the qualitative score (25-point scale) for each bid provided by the Participating States to arrive at an overall score and ranking for each bid. The state participation share for each specific bid was dependent on the clean-energy technology underlying the bid. As a result, the scores for each bid were calculated and ranked separately by state.

¹ Specified State Agencies and Electric Distribution Companies in Connecticut, Massachusetts and Rhode Island. Notice of Request for Proposals from Private Developers for Clean Energy and Transmission, November 12, 2015.

² There were term, capacity and other variations on a number of the CERFP bids.

³ The quantitative analysis performed is described in Section 2.3.1 of the CERFP issued on November 12, 2015. Only projects that passed a minimum threshold test per Section 2.2 of the CERFP were analyzed.



New England Clean Energy RFP Evaluation Report

2. GENERAL METHODOLOGY

2.1 Reference Case

A Reference Case was first established by Navigant and run through PROMOD to establish a baseline for ISO-NE prices, production costs and other parameters without any CERFP bids included.⁴ The input assumptions into PROMOD for the CERFP evaluations were based on Navigant's continually updated PROMOD model representation of the North American electrical system.⁵ The model was augmented over a multi-month period in close coordination with the CERFP Quantitative Evaluation Committee.

Two separate gas price forecasts were used to develop the Reference Case, 1) Base and 2) Winter Peak. The Winter Peak gas price forecast included higher winter season gas prices in ISO-NE. The impact of each forecast was separately analyzed in PROMOD, and results were then blended together (70% Base gas/30% Winter Peak gas during the winter season, 100% Base gas in the other months of the year) to create the Reference Case results. Two different PROMOD model geographic footprints were developed: 1) an ISO-NE only model in which only the transmission system, loads, and resources located in ISO-NE were modeled in PROMOD, and 2) and an EI-model, in which the transmission system, loads, and resources encompassing the entire Eastern Interconnection (EI) were modeled in PROMOD.

The Reference Case was developed to be internally consistent with the ISO New England's Forecast Report of Capacity, Energy, Loads, and Transmission for 2015 (2015 CELT report)⁶, updated for ongoing changes in the market and incorporating the collective expertise and research of Navigant assisted by the CERFP Quantitative Evaluation Committee. Transmission system updates and additional detail to incorporate current ISO-NE transmission study cases and to increase the range of monitored elements on the ISO-NE grid were applied in the Reference Case by Navigant as assisted by the CERFP Transmission Committee. See Section 3 for a discussion of the key input assumptions used in the Reference Case.

⁴ PROMOD can be run as a zonal or nodal model, although Navigant runs it in the full nodal model configuration with full transmission representation. Separate models are used for Eastern Interconnection (EI), ERCOT, and Western Electricity Coordinating Council (WECC.) For the CERFP work, Navigant developed simulations for the large transmission and Maine Wind projects using the full EI model which covers 147 separate control areas. For the remaining Small PPA Bids, Navigant adopted a subset of the EI model that assumed fixed-schedule imports and exports at the interfaces between the ISO-NE and surrounding areas. This version incorporates only the 13 control areas modeled in New England but retains all transmission configurations and constraints for ISO-NE that is used in the full EI model.

⁵ Experts on the Navigant CERFP team have extensive experience using PROMOD and similar commercial dispatch models for client engagements and utility studies, including many applications in the ISO-NE and NYISO markets and the EI.

⁶ Demand forecasts from the 2015 CELT Report were adopted for this study as the 2016 Report was still months away when the project's base case forecasts were prepared. Results of the February 2016 FCA #10 auction were incorporated on the supply side.



New England Clean Energy RFP Evaluation Report

2.2 Bid Cases

After the Reference Case was established, a Bid Case was conducted by Navigant in which each CERFP bid was included in the PROMOD model, and PROMOD was re-solved to determine the market revenues for the bid energy for PPA bids as well as the resulting impact on production costs, load payments and CO₂ emissions relative to the Reference Case.⁷ Proxy bids were used in PROMOD to analyze the benefits of individual solar bids located in Connecticut, Massachusetts and Rhode Island. Bid Cases were set up and monitored by Navigant through quality control steps so that the only difference between the Reference Case and the Bid Case analyses in PROMOD were related to the bid's inclusion in PROMOD.⁸

The results of the Bid Case were then included by Navigant in an economic template that captured the market impacts of the bid relative to the costs of each bid over the bid term. The economic template was used to calculate a quantitative benefit-cost ratio for each bid, including the ratio for each individual participating state. A B/C ratio was calculated for each bid as the sum of the direct and indirect benefits divided by bid costs.

Direct benefits were comprised of the present value of the energy revenue of a PPA bid energy valued at the locational price at the bid injection point plus the value of the RECs provided, if any. Bid costs were the present value of the PPA charges for the bid energy and/or RECs, and the cost of any associated transmission. Load payment savings were calculated as the present value of the reduction in annual load payments, for the load zones comprising the Participating States and multiplied by the Electric Distribution Company (EDC) share of the load in these states.⁹ Production cost savings were calculated as the present value of the reduction in ISO-NE production costs¹⁰ multiplied by the load ratio share for the EDCs by state. Indirect benefits were comprised of a weighting of 70% load payment savings and 30% production cost savings. Each bid's indirect benefits varied by Participating State leading to each bid having a different benefit-cost ratio for each Participating State.

See Section 4 for a more detailed discussion of the Bid Case evaluations.

2.3 Bid Scoring

Using the state-specific benefit-cost ratios for each bid, along with state-specific qualitative bid scores developed by the Evaluation Committee, the bids were then scored and ranked against one another. The

⁷ Benefits were analyzed in PROMOD over the 20-year 2017-2038 period. For bids whose 20-year term extended to 2039 or 2040, annual benefits were extrapolated through 2040. For proposed projects with terms lengths of less than 20 years, benefits were evaluated over the term length of the proposal. All benefits and costs were present valued to 2016 at a 7% discount rate.

⁸ Over the course of the CERFP bid evaluations, numerous tests and sensitivity runs were performed in PROMOD by Navigant to ensure the quality of the results. A separate team of Navigant PROMOD experts closely examined the input assumptions and solution techniques being used to further ensure the quality of the modeling results.

⁹ The EDC load was comprised of Fitchburg Gas and Electric Light Company d/b/a Unitil; Massachusetts Electric Company, Nantucket Electric Company, and The Narragansett Electric Company d/b/a National Grid; NSTAR Electric Company, Western Massachusetts Electric Company, and Connecticut Light & Power Company d/b/a Eversource Energy; and United Illuminating Company

¹⁰ Production costs are comprised of generating unit fuel costs, variable operating and maintenance costs, and emission costs.



New England Clean Energy RFP Evaluation Report

cost-benefit ratios were scored on a 75-point scale, with the bid with the highest cost-benefit ratio, exclusive of outliers, given a 75 point score. Qualitative scores for each bid were provided by the participating states on a 25-point scale and combined with the quantitative score to obtain an overall bid score. See Section 5 for a more detailed discussion of the bid scoring process.



New England Clean Energy RFP Evaluation Report

3. REFERENCE CASE KEY ASSUMPTIONS

Key assumptions in the Reference Case as applied by Navigant in the PROMOD model included demand and capacity expansion, natural gas prices, Regional Greenhouse Gas Initiative (RGGI) CO₂ prices, transmission topology, export/import profiles, and REC pricing. Each is described in turn below.

3.1 Demand and Capacity Expansion

ISO-NE load growth was based on the ISO New England's Forecast Report of Capacity, Energy, Loads, and Transmission for 2015 (2015 CELT report) through 2024 and extrapolated for the remainder of the forecast period using the 10-year average growth rate from 2014-2024. Existing ISO-NE capacity by type was benchmarked to the 2015 CELT report and the results of the February 2016 Forward Capacity Market auction (FCA #10) and modified by firm announced generation additions and retirements. Long term supply expansions were based on Navigant's Portfolio Optimization Model (POM)¹¹ and retirements were assumed at 50 years for CTs and 70 years for coal-fired and steam oil/gas units.

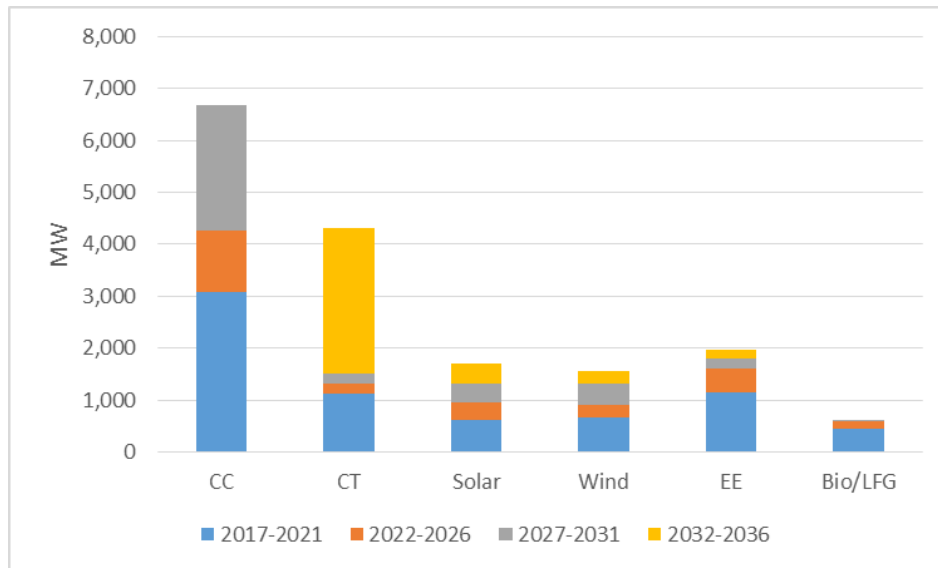
The initial POM expansion plan, which was simulated to meet assumed long-term RPS requirements, was modified to remove 1,200 MW of new generic renewable capacity additions to reflect a reasonable amount of renewable capacity that potentially would be procured through the CERFP. A second and final CERFP POM expansion plan was then conducted in which gas-fired capacity replaced the renewable capacity that had been removed so that ISO-NE would not be energy and/or capacity short in the PROMOD analysis. The intent of this was to provide a baseline against which proposals in the CERFP would be compared for system and economic benefits. The resulting ISO-NE capacity expansions over the 2017-2038 period are summarized in Figure 1, broken out separately in 5-year periods for new combined-cycle, combustion turbine, solar, wind, energy efficiency (EE), and biomass/landfill gas (LFG) capacity.

Figure 1: Reference Case ISO-NE New Capacity by Type, 2017-2038

¹¹ POM is a capacity expansion model that optimizes the mix of new capacity by region over a long-term horizon.



New England Clean Energy RFP Evaluation Report



Solar and Wind capacity factors for the Reference Case were derived by Navigant from the CELT report, resulting in a 16.5% capacity factor for rooftop solar and 20.1% for utility-scale solar (measured on an AC Nameplate basis), and a 35% annual capacity factor for wind.

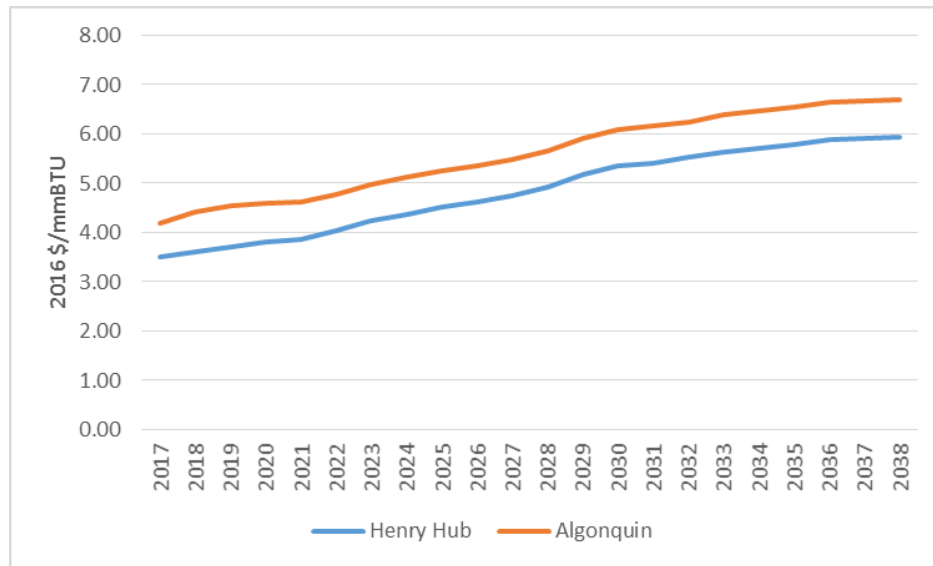
3.2 Natural Gas Prices

Two natural gas prices forecasts (Base and Winter Peak) were developed for use in creating the Reference Case. Base natural gas prices in ISO-NE were projected in Navigant's GPCM model incorporating two planned pipeline expansions (AIM and Kinder-Morgan CT) plus enough future pipeline expansion to meet LDC load growth. Figure 2 illustrates the resulting annual average Algonquin and Henry Hub prices over the 2017-2038 period for the base gas case.

Figure 2: Reference Case Natural Gas Prices – Base Gas



New England Clean Energy RFP Evaluation Report



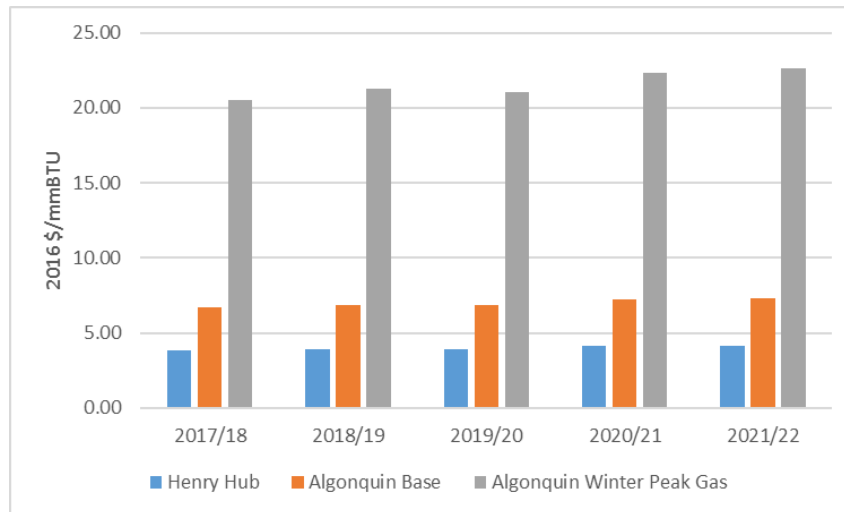
A separate “winter peak gas” forecast was created reflecting recent winter gas price differentials relative to monthly averages. The differentials were assessed based on the highest 30% of the distribution of daily gas prices, relative to Henry Hub prices, over a 5-year historical test period covering winter months from December 2010 through February 2015. Figure 3 illustrates the difference between the base and winter peak gas forecasts at Algonquin during the winter season over the 2017/18 to 2020/21 period.

To create the final “Blended” Reference Case, PROMOD results for the winter months of each year (December through January) reflected a 70% weighting of the base gas forecast PROMOD results and a 30% weighting of the winter peak gas forecast PROMOD results. For the remaining nine months of each year, the PROMOD results reflecting the base gas forecast were used.



New England Clean Energy RFP Evaluation Report

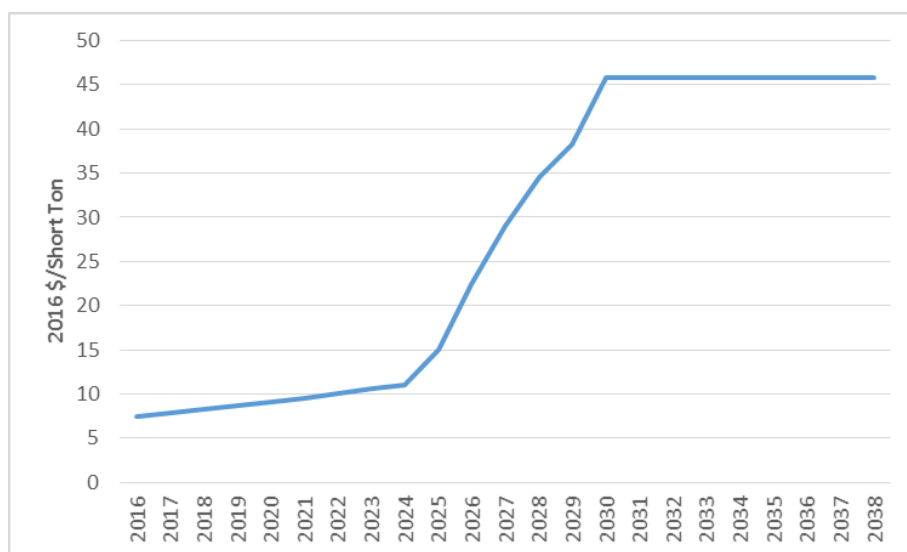
Figure 3: Reference Case Winter Season Natural Gas Prices



3.3 RGGI

RGGI was assumed to remain in place after 2020 with declines in the RGGI CO₂ emissions target falling to roughly 8 to 12% below 2022-2030 Clean Power Plan targets for the RGGI states. RGGI prices were extrapolated from the most recent auction results, increasing at 5% per year given banking, transitioning to the projected prices in Navigant's POM forecast. RGGI CO₂ prices were held constant after 2030. The RGGI CO₂ prices per short ton used are shown in Figure 4.

Figure 4: Reference Case RGGI CO₂ Prices (2016\$ per Short Ton)





New England Clean Energy RFP Evaluation Report

3.4 Transmission

The nodal set-up for the PROMOD Reference Case Model was established using the ISO-NE portion of the 2015, 2020, and 2025 summer peak cases from the FERC 715 Part 2 power flow cases, as filed by ISO-NE in 2015, and supplemented for 2020 and 2025 by additional planned transmission improvements included in the December 2015 *ISO New England Basecase DB - Projects Summary Report*. Navigant's technical team received authorization to review CEII data on the ISO-NE transmission grid and worked with similarly-authorized members of the CERFP Quantitative Evaluation Committee to update, and refine the power flow cases.

The 2015 case is applied to model years 2016-2019, the 2020 case applies to 2020-2024, and the 2025 case applies to years 2025 and beyond. The most common ISO-NE generic binding constraints (both contingencies and monitored branches) were obtained based on three year publicly available historical ISO-NE data. Additional constraints were added that included local conditions (115 kV.)

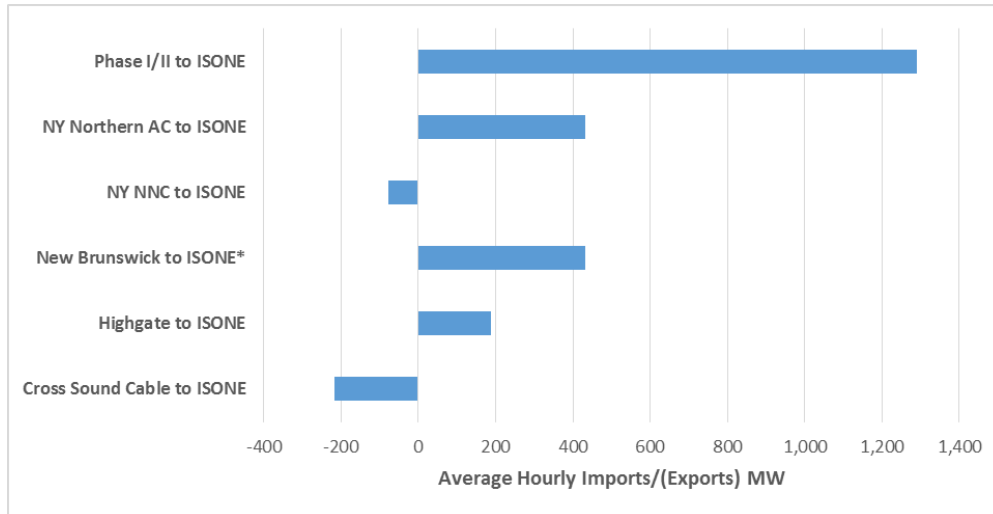
3.5 Export/Import Profiles (ISO-NE Only Model)

As noted above, the ISO-NE only version of the Reference Case PROMOD model included the load, generation and transmission of the ISO-NE region only. For imports and exports into ISO-NE, historical hourly interchange flow data was used to create a typical 24x365 hourly interchange profile to use as import/export transactions at the boundary buses of ISO-NE in PROMOD. For all interfaces except New Brunswick, the hourly profile was based on five years data (2011-2015.). A shorter period, 2013-2015, was used for New Brunswick due to significant changes on the New Brunswick-New England path that were underway during 2011-2012 and therefore made those years non-representative of common transmission flows. The average hourly ISO-NE imports/(exports) across the year in the ISO-NE Only model are summarized by interchange point in Figure 5.



New England Clean Energy RFP Evaluation Report

Figure 5: Average Hourly Imports (Exports) in Reference Case ISO-NE Only Model



3.6 REC Pricing

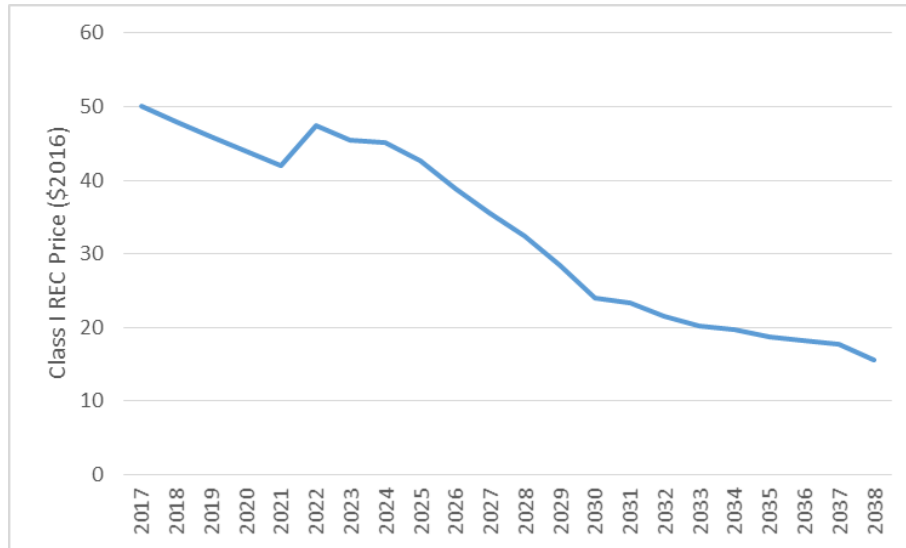
Navigant used a Levelized Cost of Energy (LCOE) for Wind in the ISO-NE based on National Energy Renewable Laboratory (NREL) wind capital, O&M, and operating life assumptions from the NREL 2014 Cost of Energy Review, including incorporating a 20% locational cost premium for capital and O&M for an ISO-NE location. Class I REC prices were then calculated as the difference between this LCOE and the aggregate energy revenue per MWh for ISO-NE wind units in the PROMOD Reference Case.

Capacity revenues for the wind units were not netted from the LCOE given uncertainty regarding the ability of the wind units to qualify as capacity resources in the market. The resulting Class I REC prices were compared to a weighted average of the Alternative Compliance Payments (ACPs) across the ISO-NE states (excluding Vermont). The ACP was not binding in any year. Results are presented in Figure 6. As shown, the REC prices decline over time as CO₂ prices increase and, in turn, increase the energy revenues for wind units. The higher energy revenues result in less REC revenue being needed for the wind units to meet their LCOE, reducing REC prices.



New England Clean Energy RFP Evaluation Report

Figure 6: Class I REC Prices (2016\$)





New England Clean Energy RFP Evaluation Report

4. BID EVALUATIONS

The bid evaluations conducted are discussed below separately for Small PPA bids and transmission bids.

4.1 Small PPA Bids

Navigant evaluated a number of Small PPA bids in PROMOD, ranging from 20 to 125 MW in size.¹² These small bids were evaluated using the Reference Case PROMOD model encompassing only the ISO-NE footprint. Based on Navigant's experience, the impact of small incremental changes in generation resources within ISO-NE would have minimal impacts on transmission flows at the ISO's external interfaces and on LMPs within ISO-NE.

Solar bids located in Connecticut, Massachusetts and Rhode Island were modeled in PROMOD using a 100 MW-sized solar proxy in each state. The results were then pro-rated to the actual size and state location of each solar bid. The remaining Small PPA solar bids and wind bids located in Maine and New Hampshire were each individually analyzed in PROMOD.

Based on a thorough review of the Small PPA bid results using the ISO-NE only PROMOD model, Navigant recommended incorporating in the small PPA bid benefits for each Small PPA bid: 1) the direct energy revenues for the bid energy, 2) ISO-NE production costs savings, and 3) the ISO-NE CO₂ emission reductions. Aside from certain bids with special characteristics, these production cost savings, CO₂ emission savings, and bid energy revenues were within a tight band across the small PPA bids on a per MW basis. The small load price differences found between the Reference Case and the Small PPA bids were within a range of uncertainty. As such, Navigant recommended that the small PPA bid B-C ratios be assessed assuming no load payment savings.¹³ This assisted in providing a more conservative estimate of the B-C ratios for the small PPA bids.

The resulting B-C ratios for the small PPA bids are consistent with respect to direct and indirect benefits, with just a few exceptions that result from known specific parameters of those bids. The key factor in the resulting range in the Small PPA bid B-C ratios is the underlying cost proposed by each bidder for the energy and/or RECs provided by the bid. The costs proposed for Small PPA bids varied by a nearly a factor of two on a per unit basis, while the benefits as measured in PROMOD generally were in a much tighter range.

To further assess the reasonableness of the Small PPA bid energy results, the bid energy revenues from the ISO-NE only PROMOD bid analyses were compared to those what would be obtained using the pricing from the full EI-footprint PROMOD Reference Case. Using the EI Reference Case prices, the overall B-C ratios for the small PPA bids were largely unchanged, increasing slightly in a uniform way across the bids. This further confirmed the reasonableness of the ISO-NE footprint PROMOD results for the Small PPA bids.

¹² One Small PPA bid was evaluated using the results of the Reference Case and not individually analyzed in PROMOD. Two of the Small PPA bids had variations in terms or products offered.

¹³ While the load payment savings were assumed to be zero, production cost savings were included in the Small PPA bid indirect benefits at a 30% weighting.



New England Clean Energy RFP Evaluation Report

Levitan & Associates, Inc. (LAI) separately performed an analysis of the benefit-cost ratios of these Small PPA bids using the Aurora model, a zonal model, and the LAI results were largely consistent with those found by Navigant. Some differences are expected as PROMOD, as used by Navigant, captures the impact of any intra-zonal transmission congestion, while a zonal model does not.

4.2 Transmission Bids

Based on analyses conducted by Navigant, using a fixed import/export profile into ISO-NE across all borders limits the ability of the PROMOD model to fully capture ISO-NE price impacts. As such, transmission bids, which involved hundreds of megawatts of clean energy capacity, were evaluated using a PROMOD model encompassing the entire Eastern Interconnection (EI).

Required system upgrades and upgrade costs for three of the transmission bids received were generally well understood as a result of the advanced state of their ISO-NE interconnection analyses. However, for bids in which new transmission facilities in Maine were proposed (Maine Transmission Bids), there was much greater uncertainty regarding potential required system upgrades and upgrade costs. As a result, different approaches were used to analyze these two sets of transmission bids as summarized below.

The Bid Cases for the three CERFP transmission bids with well-developed system upgrade costs were analyzed in PROMOD by incorporating the new transmission facility representation into PROMOD along with the additional associated bid capacity. For these three transmission bids, given the large amount of associated clean energy provided through the bids, selected future generic combined-cycle capacity additions in ISO-NE in the Reference Case were replaced in PROMOD over a 5- to 7-year period with combustion turbine capacity additions. This "market response" in capacity build assumptions was instituted to reflect the reduction in energy margins that these generic combined-cycle facilities would obtain if the transmission bids and associated clean energy were placed into service, while still maintaining reserve margin requirements in the ISO-NE.

In the PROMOD analyses for these three transmission bids, production cost and CO₂ emission savings were consistent across the years, after taking into account escalation in fuel and CO₂ costs, and the amount of bid energy injected during the day or overnight. Load payment savings for the EDC load in the CERFP participating states varied year by year, and differed between on- and off-peak periods. Nodal analysis also identified local congestion for some of the projects. Sensitivity cases without market response (i.e., using the capacity build set in the Reference Case) were also analyzed in PROMOD for these three bids, with results largely consistent with the market response case results.

LAI separately assessed the B-C ratios for these three transmission bids using the Aurora model, a zonal model, and while there are some differences in underlying benefit components for some of the bids, the resulting LAI production cost and CO₂ savings were largely consistent with those found by Navigant. Some differences are expected in load payment savings as PROMOD, as used by Navigant, captures the impact of any intra-zonal transmission congestion, while a zonal model like Aurora does not.

For the large wind and transmission bids located in Maine¹⁴, there was significant uncertainty around the technical specifications and costs of the bids given their position in the ISO queue and the future

¹⁴ Alternative configurations of these bids also included small amounts of solar capacity and battery storage.



New England Clean Energy RFP Evaluation Report

configuration of the transmission system in Maine. Specifically, the Maine transmission proposals were relatively far back in the interconnection queue; the proposals did not consider other wind projects that were ahead in the queue; the feasible schedule for completing the interconnection studies was likely beyond the proposed start dates of the projects; and the proposals did not capture all of the necessary upgrades required to interconnect their projects in conformance with ISO-NE interconnection requirements. This resulted in uncertainty around what system upgrades to include in Navigant's system impact analyses and what upgrade costs should be incorporated in the financial analyses.

There were three Maine transmission portfolio bids, each with different generation configurations. To help capture in the analysis the range of uncertainty noted above, two cases were evaluated on a subset of these bid configurations – a stand-alone project case and a cluster case. The benefits for the individual Maine transmission bid projects evaluated under these two cases were determined directly from the results of PROMOD simulations incorporating the new transmission facility representation into PROMOD along with the additional associated bid capacity. For the cluster cases, the production cost and load payment savings benefits identified in PROMOD were for the aggregate of all of the resources added in the cluster. Therefore, for the cluster cases, the benefits for each bid evaluated were derived as an allocated amount based on the on the bid capacity's share of net energy after curtailment relative to the cluster net energy after curtailment.



New England Clean Energy RFP Evaluation Report

5. BID SCORING

Once bids had been evaluated to obtain a benefit/cost (B/C) ratio, the bid with the highest B/C ratio received 75 points and become the “anchor bid” for scoring the other bids. Other bids received a point score based on the ratio of the bid’s B/C ratio to the anchor bid’s B/C ratio (50% weighting) and 75 points less 1 point for each .01 the bid’s B/C ratio was below the anchor bid’s B/C ratio (50% weighting).

Based on rules developed prior to the receipt of the CERFP bids, if the highest bid had a B/C ratio 0.20 units higher than the next best bid (*i.e.*, the best bid is considered an outlier), the next best bid received the 75 point score and become the anchor bid, with all other bids scored against this second best bid. If, alternatively, if the best bid had a B/C ratio that was 0.20 units higher than the second best bid and the second best bid had a B/C ratio that was 0.20 units higher than the third best bid, then that third best bid received the 75 point score and become the anchor bid, with all other bids scored against this third best bid. This adjustment allowed the relative scoring among the non-outlier bids to be unaffected by outliers.

Qualitative scores (measured on a 25 point scale) provided by the Participating States were added to quantitative scores to obtain each bid’s total score, which was bounded to be between zero and 100.¹⁵ The scores were developed separately for each Participating State based on the Participating State’s share of the individual bid. Potential participation in transmission bids was split based on state procurement laws and the technology of the bid based on guidance from the CERFP Evaluation Team.

A summary of the bid scores and ranking is provided in Confidential Attachment A.

¹⁵ Quantitative scores calculations that yielded a quantitative score for a bid below zero were set to zero. Combined overall scores calculated to be above 100 for a bid were set to 100.

**NG-CMD-12,
Tabs A-F
CONFIDENTIAL
Only**

REDACTED**CONFIDENTIAL****DO NOT COPY OR DISTRIBUTE**

CLEAN ENERGY RFP EVALUATION TEAM REPORT OF LEVITAN & ASSOCIATES, INC.

Background

On November 12, 2015, the Commissioner of the Connecticut Department of Energy and Environmental Protection (CT DEEP), Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy, and The Narragansett Electric Company d/b/a National Grid (collectively, the Soliciting Parties) jointly issued the Clean Energy Request for Proposals (CERFP). The CERFP solicited bids for clean energy resources and for transmission to allow for the delivery of qualified clean energy. Bids were received on January 28, 2016 by the Evaluation Team. The Evaluation Team consisted of representatives from the Soliciting Parties, along with The Connecticut Light & Power Company (CL&P), The United Illuminating Company (UI), the Connecticut Office of the Attorney General, the Connecticut Procurement Manager, the Connecticut Office of Consumer Counsel, and the Massachusetts Department of Energy Resources (MA DOER). The Evaluation Team engaged the services of Navigant Consulting, Inc., as the Evaluation Team Consultant, to provide an independent analysis of the costs and benefits of proposals that were determined to meet the threshold requirements under the CERFP. CT DEEP and the Rhode Island Division of Public Utilities and Carriers (RI DPUC), jointly with the Rhode Island Office of Energy Resources (RI OER), each engaged Levitan & Associates, Inc. (LAI) to advise each agency. LAI is a Boston-based management consulting firm specializing in the energy industry. On behalf of CT DEEP, RI DPUC, and RI OER, LAI was responsible for:

- Participating in the Evaluation Team and other CERFP team meetings, as appropriate;
- Ensuring that the Reference Case – a model of the region’s electric system and energy market future without any new projects procured through the CERFP, against which the economic benefits of proposed projects were gauged – was reasonably defined by Navigant;
- Reviewing and analyzing the quantitative modeling of each project conducted by Navigant;
- Providing updates to RI DPUC and RI OER on the progress of the Evaluation Team.

As the quantitative analysis of proposals proceeded, the Evaluation Team decided it would be prudent and efficient to have LAI conduct a quality control check on the Navigant analyses. This was a sensible approach, given the large financial commitment that potential clean energy contracts represented, and since LAI was already an active participant in the proposal evaluation process. LAI’s assignment was therefore expanded to include development of a simulation model to evaluate the economic benefits of proposed projects, and to summarize those results for the Evaluation Team.

REDACTED

CONFIDENTIAL
DO NOT COPY OR DISTRIBUTE

Quantitative Evaluation

The primary metric for the price-based scoring and ranking of proposals was the benefit-to-cost ratio (B/C). The project cost was computed as the present value of the annual payments from the EDCs to the seller over the contract term. The project benefit was computed as the present value of the benefits over the contract term. Two types of benefits were evaluated: direct and indirect. Direct benefits were determined as a mark-to-market comparison of the bid price of the offered products (energy and/or RECs) to a forecast of market prices at the proposed delivery point. Indirect benefits were determined based on the projected impact of the project on locational marginal prices (LMPs) across each state's wholesale load (referred to as load cost), and on ISO-NE system-wide production costs, relative to the Reference Case. As stipulated in the RFP, present values were computed using a 7% (nominal) discount factor.

Navigant and LAI each used an electric market simulation model to forecast energy prices. Navigant used PROMOD, licensed from Ventyx, Inc. LAI used AURORAxmp, licensed from EPIS, LLC. PROMOD is a nodal model, meaning that it models intra-zonal congestion and power flows and produces a forecast of nodal LMPs. AURORAxmp is a zonal model; it captures transfer limits and congestion between zones, and produces a forecast of zonal LMPs. Nodal and zonal models each have relative strengths and weaknesses. Zonal models are more commonly used for long-term forecasting purposes, whereas nodal models are most often used for shorter-term operational planning and to capture localized congestion effects. In general, nodal models require longer computer processing time than zonal models. Navigant's project runs were modeled using an ISO-NE-only footprint. However, Navigant recognized that the larger transmission projects needed to be run using the full Eastern Interconnection (EI) footprint in order to properly capture energy transfers with neighboring control areas. LAI set up the AURORA model to include ISO-NE and each of the adjacent control areas. In LAI's experience, this footprint reasonably balances model accuracy with manageable computer processing time. Typically, LAI's AURORAxmp runs were completed overnight, whereas Navigant's PROMOD runs required 3 to 5 days for the full EI model. Therefore AURORA was useful as a practical check on the PROMOD results.

REC prices were forecasted by Navigant using a revenue requirements model, as described in the Navigant report. LAI did not prepare a separate REC price forecast.

In developing the AURORAxmp model, LAI utilized the same key input factors as PROMOD, in order to "synch" the Reference Case in both models. [REDACTED]

[REDACTED] LAI and the rest of the Evaluation Team worked closely with Navigant to ensure that the Reference Case reflected an informed, consensus view of the region's most probable energy future, in the absence of new resources procured through the CERFP.

Proposed projects were individually added to the Reference Case to model the impact that each bid would have on transmission flows, production costs and LMPs. Recognizing that small perturbations to the system are difficult to distinguish from model "noise," small projects were modeled using 100 MW proxy generators of the same technology type and generation profile.

REDACTED

CONFIDENTIAL
DO NOT COPY OR DISTRIBUTE

The resulting impacts to production costs, LMPs, and load costs were then scaled to derive the benefits for the small projects. The present value of the direct and indirect benefits were analyzed for each bid, and these benefits were then divided by the present value of the contract cost of the bid to derive the B/C ratio for each bid for the participating states combined, and for each state individually. Because the change in load cost was different for each state, the individual state B/C ratios were different for the same project.

Comparison of Project Results



LAI was directed to model projects using AURORAxmp, and then to use the model results to compute the B/C ratio using the same methodology as Navigant. Results are summarized in the attached table. In light of the difference between the simulation models, the models, as expected, produced similar but not identical B/C ratios. Significant differences only arose in a very limited number of projects where the AURORAxmp model did not capture local congestion effects that were identified in PROMOD. Overall, the PROMOD and AURORAxmp results produced similar relative rankings of projects against one another based on B/C ratios, confirming the integrity of the Navigant analysis.

REDACTED

LEVITAN & ASSOCIATES, INC.

Printed 6/27/2017 11:25 AM

CONFIDENTIAL
DO NOT COPY OR DISTRIBUTE
Clean Energy RFP - CT, MA, RI
Leviton & Associates, Inc. Summary of BC Ratios

Indirect Benefit Weighting	
Load Payment Reduction	70%
Production Cost Savings	30%



#	Bid	Cap Type	Term	ISO	Project State	% of Unit	Net MW	Net Avg	Net Avg	Avg																												
								Annual	Annual	Cap	Participation %				Overall B/C Ratio				B/C Rank				Quantitative Score				Qualitative Score				Total Score				Total Score Rank			
								MWh	RECs	Factor	CT	MA	RI		CT	MA	RI	Prst	CT	MA	RI	Prst	CT	MA	RI	Prst	CT	MA	RI	CT	MA	RI	CT	MA	RI	CT	MA	RI

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--