

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**MASSACHUSETTS ELECTRIC COMPANY AND  
NANTUCKET ELECTRIC COMPANY, D/B/A NATIONAL GRID, AS BUYER**

**AND**

**CAPE WIND ASSOCIATES, LLC, AS SELLER**

**As of May 7, 2010**

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### 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	Insurance
Exhibit E	Products and Pricing
Exhibit F	Form of Certification of Extension and New Escalation Date

## POWER PURCHASE AGREEMENT

**THIS POWER PURCHASE AGREEMENT** (this “**Agreement**”) is entered into as of May 7, 2010 (the “**Effective Date**”), by and between Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, a Massachusetts corporation (collectively, “**Buyer**”), and Cape Wind Associates, 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 a wind-energy generating facility of up to approximately 468 MW to be located offshore of Massachusetts in the adjacent federal waters of Nantucket Sound, the energy from which is to be delivered to the electric grid in Massachusetts via two underwater and underground 115 kilovolt electric transmission lines, approximately 18 miles in length (collectively, the “**Facility**”), which is more fully described in Exhibit A hereto; and

**WHEREAS**, the Facility shall qualify as a RPS Class I Renewable Generation Unit and is expected to be in commercial operation by December 31, 2012; and

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

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

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

### 1. DEFINITIONS

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

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

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

“**Bundled Price**” shall have the meaning set forth in Exhibit E hereof.

“**Business Day**” shall mean a day on which Federal Reserve member banks in New York, New York are open for business; and a Business Day shall start at 8:00 a.m. and

end at 5:00 p.m. Eastern Prevailing Time. Notwithstanding the foregoing, with respect to notices only, a Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

**“Buyer’s Percentage Entitlement”** shall mean Buyer’s rights to fifty percent (50%) of the Products, up to and including the Contract Maximum Amount, subject to possible adjustment under Section 4.10.

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

**“Capacity”** shall mean all capacity from the Facility as determined by ISO-NE’s Seasonal Claimed Capability rating (or successor or replacement rating used to measure capability) as defined in the ISO-NE Rules that is obligated to deliver and receive payments in the Forward Capacity Market (or its successor market) as set forth in the ISO-NE Rules, including without limitation as both a “New” and an “Existing” Capacity Resource as those terms are used in the ISO-NE Rules; provided that the Capacity shall not exceed the Contract Capacity.

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

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

**“Certificates”** shall mean an electronic certificate created pursuant to the Operating Rules of the GIS or any successor thereto to represent the “generation attributes” (as defined in 225 CMR 14.01) of each MWh of Energy generated within the ISO-NE control area and the generation attributes of certain Energy imported into the ISO-NE control area.

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

**“Collateral Account”** shall have the meaning specified in Section 6.5(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 3.3(c) have been satisfied, as set out in a written notice from Seller to Buyer.

**“Contract Capacity”** shall mean 468 MW, subject to possible adjustment under Section 4.10.

**“Contract Maximum Amount”** shall mean 234 MWh per hour of Energy and a corresponding amount of all other Products, subject to possible adjustment under Section 4.10.

**“Contract Year”** shall mean the twelve (12) consecutive calendar months starting on the first day of the calendar month following the first Partial 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 first Partial Commercial Operation Date occurred.

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

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

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

**“Credit Support”** shall 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 6.5(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.

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

**“Delivery Point”** shall mean the specific Node on the ISO-NE Pool Transmission Facilities, as determined by ISO-NE, where Seller shall transmit its Energy to Buyer, as set forth in Exhibit A hereto.

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

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

**“Disputing Party”** shall have the meaning set forth in Section 6.6(a) hereof.

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

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

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

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

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

or ownership of the Facility; (iii) any cash payments or grants made in lieu of such tax credits; (iv) any state or federal tax credit or cash grant introduced after the date of this Agreement intended to supplement, replace or enhance the tax credits described in the foregoing clauses (i) , (ii) or (iii); (v) any depreciation deductions permitted under the Code with respect to the Facility (including any bonus or accelerated depreciation); or (vi) any state, federal or private Financing, grants, guarantees or other credit support relating to the development, construction, ownership, operation or maintenance of the Facility.

**“Escalation Date”** shall have the meaning set forth in Section 5.1(b) hereof.

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

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

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

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

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

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

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

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

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

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

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

**“Good Utility Practice”** shall mean compliance with all applicable laws, codes and regulations, all ISO-NE Rules and ISO-NE Practices, and any practices, methods and acts engaged in or approved by a significant portion of the electric industry in New England during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is

made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the industry in New England.

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

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

**“Interconnection Agreement”** shall mean an agreement between Seller and the Interconnecting Utility regarding the interconnection of the Facility to the transmission 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 and capacity and capacity testing in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Agreement, and any applicable successor practices and procedures.

**“ISO-NE Rules”** shall mean all rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such rules may be amended from time to time, including but not limited to, the ISO-NE Tariff, the Market Rules (as defined in the ISO-NE Tariff), the ISO-NE Operating Procedures (as defined in the ISO-NE Tariff), the ISO-NE Planning Procedures (as defined in the ISO-NE Tariff), the Transmission Operating Agreement (as defined in the

ISO-NE Tariff), the Participants Agreement, the manuals, procedures and business process documents published by ISO-NE via its web site and/or by its e-mail distribution to appropriate NEPOOL participants and/or NEPOOL committees, as amended, superseded or restated from time to time.

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

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

**“ITC”** shall mean the investment tax credit established pursuant to Section 48 of the Code and any successor provisions thereto.

**“kW”** shall mean a kilowatt.

**“kWh”** shall mean a kilowatt-hour.

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

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

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

**“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.

**“Market Participant”** shall have the meaning set forth in the ISO-NE Rules.

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

**“MDPU Order”** shall mean the MDPU’s order satisfying all of the requirements of the Regulatory Approval, except that such order may not be final and may remain subject to appeal or rehearing.

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

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

**“MW”** shall mean a megawatt.

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

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

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

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

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

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

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

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

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

**“Operating Period Security”** shall have the meaning set forth in Section 6.2(b) 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, the limitation on the number of scheduled start-ups per Contract Year and the minimum operating limit(s) for the Facility.

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

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

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

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

**“Phase”** has the meaning set forth in Section 3.3(a).

**“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.

**“Power Cost Reconciliation Tariff”** shall mean a fully reconciling cost recovery tariff mechanism that authorizes the establishment of a distribution charge that fully recovers Buyer’s net costs, by fully reconciling the power costs under this Agreement (including the annual remuneration of four percent (4%)) against proceeds received from the sale of the Products and revenues recovered pursuant to the authorized charge. The authorized charge shall first be established at the beginning of each reconciliation period by a reasonable forecast of costs and recoveries. The rate reconciliation shall be designed in such a way as to limit the build up of any under or over-recoveries over the course of the year. A reconciliation shall occur at least annually, but may also be reconciled quarterly or monthly, to the extent necessary to eliminate regulatory lag for the recovery of costs or crediting of over-recoveries to customers.

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

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

**“Projected Annual Energy Output”** shall mean Buyer’s Percentage Entitlement of the historic average of actual generation of the Facility since the Commercial Operation Date or, solely for the period up to and including the Contract Year immediately after the Contract Year in which the Commercial Operation Date occurred, 760,000 MWh (which amount may be revised by mutual agreement of Seller and Buyer based on final configuration, turbine choice, final wind analysis, and regulatory and permit restrictions or as a result of a reduction in the nameplate capacity of the Facility under Section 4.10), in each case in MWh per Contract Year.

**“PTC”** shall mean production tax credit established pursuant to Section 45 of the Code or any successor provisions thereto.

**“Purchased Power Accounting Authorization”** shall mean authorization for Buyer, at Buyer’s sole discretion, to take appropriate steps to assure avoidance of a material, negative balance sheet impact on Buyer’s direct or indirect parent company, including without limitation National Grid p.l.c., upon appropriate notice and filing with the MDPU, by (1) allocating all Products purchased by Buyer under this Agreement to Buyer’s basic service customers in Massachusetts at the market price for those Products and the allocation of the above-market price, if any, for those Products to all of Buyer’s distribution customers, or (2) by such other method requested by Buyer that is approved by the MDPU; provided that, subject to Section 8.3, such Purchased Power Accounting Authorization shall not impact Buyer’s obligation to purchase the Products under this Agreement or the Price Buyer pays for such Products.

**“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 MDPU’s approval of this entire Agreement, which approval shall include without limitation: (1) confirmation that this Agreement has been approved under Section 83 of the Massachusetts Green Communities Act of 2008 and the regulations promulgated thereunder and that all of the terms of such Section 83 and such regulations apply to this Agreement, and in providing such confirmation, in the event that, at the time of approval, the provisions of such Section 83 and of such regulations limiting the scope thereof to renewable generation located within the

boundaries of the Commonwealth of Massachusetts, including state waters, or in adjacent federal waters, are subject to judicial challenge or have been found by a court to be invalid, the MDPU shall suspend the applicability of such provisions, as provided in such Section 83, as applicable to such approval; (2) definitive regulatory authorization for Buyer to recover all of its power purchase costs incurred under this Agreement for the entire term of this Agreement through the implementation of a Power Cost Reconciliation Tariff; (3) definitive regulatory authorization for Buyer to recover remuneration equal to four percent (4%) of Buyer's annual payments under this Agreement for the term of this Agreement through the Power Cost Reconciliation Tariff; (4) approval of the Purchased Power Accounting Authorization; and (5) a definitive regulatory finding that Buyer's execution, delivery and performance of this Agreement is prudent and the recovery of the costs incurred under this Agreement through rates is not subject to challenge for the entire Term of this Agreement. Such approvals shall be acceptable in form and substance to Buyer in its sole discretion, shall not include any conditions or modifications that Buyer deems, in its sole discretion, to be unacceptable and shall be final and not subject to appeal or rehearing.

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

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

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

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

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

**“Request Date”** shall have the meaning set forth in Section 6.6(a) hereof.

**“Requesting Party”** shall have the meaning set forth in Section 6.6(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 4.4 hereof for such Rejected Purchase, had it been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase, plus (b) any applicable penalties assessed by ISO-NE or any other Person against Seller as a result of Buyer’s failure to accept such Products. Seller shall provide a written statement explaining in reasonable detail the calculation of any Resale Damages.

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

**“Revised Price”** shall have the meaning set forth in Section 4.1(d) hereof.

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

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

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

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

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

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

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

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

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

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

**“Substitute Credit Support”** shall have the meaning assigned in Section 6.5(f) hereof.

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

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

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

**“Test Period”** shall have the meaning set forth in Section 4.9 hereof.

**“Test REC Price”** shall mean, with respect to each Test Period prior to a Partial Commercial Operation Date, the average of two (2) broker quotes for the average sale price of Certificates generated by a RPS Class I Renewable Generation Unit obtained by Seller from brokers that normally trade in such Certificates, having at least one (1) year of experience in trading Certificates and that are not Affiliates of either Party, in each case for the month in which the RECs at issue were delivered to Buyer.

**“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; 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.

**“Valuation Agent”** means the Requesting Party; provided, however, that 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 the Buyer.

## 2. EFFECTIVE DATE; CONDITIONS; TERM

2.1 Effective Date. Subject to Article 8, 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 any Energy and RECs Delivered during the Test Period under Section 4.9), commencing on the first Partial Commercial Operation Date and, subject to Section 2.2(c), continuing for a period of fifteen (15) years from the Commercial Operation Date, unless this Agreement is earlier terminated in accordance with the provisions hereof.

(c) Notwithstanding the other provisions of this Section 2.2 or any other provision of this Agreement to the contrary, Buyer’s obligation to purchase Products Delivered to Buyer from each Phase shall terminate fifteen (15) years after the Partial Commercial Operation Date for that Phase, unless this Agreement is earlier terminated in accordance with the provisions hereof.

(d) At the expiration of the Services Term, the Parties shall no longer be bound by the terms and provisions hereof (including, without limitation, any payment obligation hereunder), except (i) to the extent necessary to provide invoices and make payments or refunds with respect to Products delivered prior to such expiration or termination, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, (iii) as set forth in Section 2.2(e), (iv) as set forth in paragraph 4 of Appendix X to Exhibit E, and (v) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

(e) At the expiration of the Services Term, Buyer shall have the right to negotiate in good faith with Seller for no more than sixty (60) days, the terms of the sale of such Energy, Capacity and/or RECs generated by the Facility (or a portion thereof, as selected by Buyer) to Buyer or its designee on an exclusive basis. If Buyer wishes to enter into such negotiation, Buyer shall notify Seller of such decision at least one hundred eighty (180) days prior to the expiration of the Services Term, and such negotiations shall commence at least one hundred fifty (150) days prior to the expiration of the Services Term. Seller shall supply in a timely manner, information regarding the Facility which is customary to allow Buyer to perform due diligence and to negotiate in good faith for the purchase of such Energy, Capacity and RECs.

### 3. FACILITY DEVELOPMENT AND OPERATION

#### 3.1 Critical Milestones.

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

- (i) receipt of all Permits necessary to construct the Facility, as set forth in Exhibit B, in final form, by December 31, 2013;
- (ii) acquisition of all required real property and site control rights necessary for construction and operation of the Facility, interconnection of the Facility to the Interconnecting Utility and performance of Seller’s obligations under this Agreement as set forth on Exhibit B, by December 31, 2013;
- (iii) closing of Financing required in order for Seller to proceed with the construction of the Facility, including, as applicable, Seller’s financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades, by December 31, 2013;
- (iv) issuance of a full notice to proceed by Seller to its general construction contractor and commencement of construction of the Facility by December 31, 2013; and
- (v) achievement of the Commercial Operation Date by December 31, 2015.

(b) Seller shall provide Buyer with written notice of the achievement of each Critical Milestone within seven (7) days after that achievement, which notice shall include information demonstrating with reasonable specificity that such Critical Milestone has been achieved. Seller acknowledges that Buyer requires such written notice solely for monitoring purposes, and that nothing set forth in this Agreement shall create or impose upon Buyer any

responsibility or liability for the development, construction, operation or maintenance of the Facility.

(c) In addition to any extension of a date for a Critical Milestone as a result of a Force Majeure under Section 10.1, Seller may elect to extend all of the dates for the Critical Milestones not yet achieved (i) by one year without posting additional Development Period Security and (ii) by up to two additional six month periods by posting additional Development Period Security of \$1,170,000 for each such six-month period. In no event may Seller exercise the right to extend the Critical Milestone dates under this Section 3.1(c) by more than two (2) years in total, and in no event shall any extension of the Critical Milestone dates as a result of one or more Force Majeure events exceed a cumulative total of an additional twelve (12) months. Any such election shall be made in a written notice delivered to Buyer on or prior to the first date for a Critical Milestone that has not yet been achieved (as such date may have previously been extended).

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

(e) If the Facility does not achieve the Commercial Operation Date by the Commercial Operation Date milestone, as may be extended under Section 3.1(c), either Party may terminate this Agreement within sixty (60) days after such Commercial Operation Date milestone by written notice to the other Party (which termination shall be effective upon delivery of such notice), and upon such termination neither Party will have any further liability to the other hereunder except for obligations arising under Section 6.1, Article 12 and Article 13.

### 3.2 Construction.

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

(b) Site Access. Buyer and its representatives shall have the right but not the obligation, during business hours and upon reasonable notice to Seller, to inspect the Facility site and monitor the construction of the Facility.

### 3.3 Commercial Operation.

(a) Seller may achieve commercial operation of the Facility in phases (each a "**Phase**"), provided, however, that no Phase of the Facility shall be for less than 28 MW of nameplate capacity and that there shall be no more than seventeen (17) Phases in total for the Facility. Seller's obligation to Deliver the Products and Buyer's obligation to pay Seller for

such Products from any Phase commences on the Partial Commercial Operation Date for that Phase; provided that Energy, Capacity and RECs generated by a Phase prior to the Partial Commercial Operation Date for that Phase shall not be deemed Products.

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

- (i) completion of all transmission and interconnection facilities and any Network Upgrades, including final acceptance and authorization to interconnect the Facility from ISO-NE or the Interconnecting Utility in accordance with the fully executed Interconnection Agreement;
- (ii) Seller has obtained and demonstrated possession of all Permits required for the lawful construction and operation of the Facility, for the interconnection of the Facility to the Interconnecting Utility (including any Network Upgrades) and for Seller to perform its obligations under this Agreement, including but not limited to Permits related to environmental matters with respect to the Phase to which the Partial Commercial Operation Date relates, all as set forth on Exhibit B;
- (iii) Seller has obtained a Statement of Qualification from the DOER pursuant to 225 CMR 14.05 qualifying the Facility as a RPS Class I Renewable Generation Unit;
- (iv) Seller has acquired all real property rights and other site control rights needed to construct and operate the Facility, to interconnect the Facility to the Interconnecting Utility, to construct the Network Upgrades (to the extent that it is Seller's responsibility to do so) and to perform Seller's obligations under this Agreement;
- (v) Seller has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;
- (vi) Seller has 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;

- (vii) Seller has taken commercially reasonable actions to cause the Phase to which the Partial Commercial Operation Date relates to be qualified as an Existing Capacity Resource under the ISO-NE Rules with a Seasonal Capability equal to or greater than the portion of the Contract Capacity attributable to such Phase;
- (viii) Seller has successfully completed all pre-operational testing and commissioning for the Phase to which the Partial Commercial Operation Date relates in accordance with manufacturer guidelines;
- (ix) Seller has satisfied all Critical Milestones that precede the Commercial Operation Date in Section 3.1;
- (x) no Default or Event of Default by Seller shall have occurred and remain uncured;
- (xi) Seller has obtained all necessary authorizations from FERC to sell Capacity from the Facility at market-based rates and shall be in compliance with such authorization;
- (xii) the Facility, as constructed to date, is under the control of Seller; and
- (xiii) to the extent that the Phase to which the Partial Commercial Operation Date relates qualifies for the ITC or the PTC, such Phase has been “placed in service” for purposes of the ITC or the PTC, as applicable.

(c) The Commercial Operation Date shall occur on the date on which the conditions set forth in Section 3.3(b) shall have been satisfied, and continue to be satisfied, for all Phases of the Facility.

#### 3.4 Operation of the Facility.

(a) Compliance With Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; (ii) the Operational Limitations; and (iii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission Provider, 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, the sale of Capacity and the transfer of RECs), whether such requirements were

imposed prior to or after the Effective Date. Seller shall be solely responsible for registering as the “Generator Owner” and “Generator Operator” of the Facility with NERC and any applicable regional reliability entities.

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

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

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

(e) ISO-NE Status. Seller shall, at all times during the Term, either: (i) be an ISO-NE “Market Participant” pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with 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 first anticipated Partial Commercial Operation Date and continuing throughout the Services Term, Seller shall update and deliver to Buyer on a monthly basis and in a form reasonably acceptable to Buyer, twelve (12) month rolling forecasts of Energy production by the Facility, which forecasts shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, maintenance schedules, Seller’s generation projections and other relevant data and considerations. Any notable changes from prior forecasts or historical energy delivery shall be noted and an explanation provided. The provisions of this section are in addition to Seller’s requirements under ISO-NE Rules and ISO-NE Practices, including ISO-NE Operating Procedure No. 5.

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

(h) Compliance Reporting. Within fifteen days (15) days following the end of each calendar quarter, Seller shall provide Buyer information pertaining to power plant emissions, fuel types, labor information and any other information to the extent required by Buyer to comply with the uniform disclosure requirements contained in 220 CMR 11.00 and any other such disclosure regulations which may be imposed upon Buyer during the Term,

which information requirements will be provided to Seller by Buyer at least fifteen (15) days before the beginning of the calendar quarter for which the information is required. To the extent Buyer is subject to any other certification or compliance reporting requirement with respect to the Products produced by Seller and Delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) requested by Buyer to permit Buyer to comply with any such reporting requirement.

(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 the insurance coverage specified on Exhibit D. Within thirty (30) days prior to the start of each Contract Year, Seller shall provide Buyer with a certified "true and correct" copy of such insurance policies, provisions and endorsements and a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (iii) shall evidence a firm obligation of the insurer to provide Buyer within thirty (30) days prior written notice of coverage modifications, and (iv) shall be endorsed by a Person who has authority to bind the insurer. 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 environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law.

(l) FERC Status. Seller shall maintain the Facility's status as a QF or EWG at all times after the first Partial Commercial Operation Date and shall obtain and maintain any requisite authority to sell the output, including Capacity, of the Facility at market-based rates or an exemption from the requirement that it have such authority.

### 3.5 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, including the costs of the Network Upgrades,

consistent with all standards and requirements set forth by the FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

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

#### 4. DELIVERY OF PRODUCTS

##### 4.1 Obligation to Sell and Purchase Products.

(a) Beginning on the first Partial Commercial Operation Date and subject to Section 4.1(b), Seller shall sell and Deliver, and Buyer shall purchase and receive, Buyer's Percentage Entitlement of the Products produced by each Phase that has achieved its Partial Commercial Operation Date in accordance with the terms and conditions of this Agreement. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same is unit contingent and shall be subject to the operation of the Facility.

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

(c) Seller shall Deliver Buyer's Percentage Entitlement of the Products produced by 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. Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products and any Energy, RECs or Capacity purchased during any Test Period in its sole discretion.

(d) In the event that ISO-NE no longer treats Capacity as a separate product and/or has discontinued or substantially altered the Forward Capacity Market (or any successor thereto) such that Capacity no longer has value in the New England bulk power market, the Parties agree that the Price of Energy as set forth in Exhibit E hereunder shall be modified such that the mutually agreed upon price (the "**Revised Price**") shall reflect the historical economics of the combined Energy and Capacity payments and adjustments hereunder, with corresponding revisions to this Agreement to the extent required.

(e) Prior to Seller entering into a new bilateral agreement or an amendment to an existing agreement to sell any of the output of the Facility to another Person, Seller shall first take the actions set forth in this Section 4.1(e), as follows:

- (i) Where the term of such agreement is one (1) year or more, Seller shall first offer to Buyer in writing to amend this Agreement to incorporate the terms and conditions of such other agreement or amendment. Buyer shall have twenty (20) days to either: (1) accept

all of the terms and conditions of such other agreement or amendment; or (2) accept only the pricing and term provisions included in such other agreement or amendment; or (3) decline all of the terms and conditions of such other agreement or amendment. In the event Buyer chooses either option (1) or (2) above, Seller and Buyer shall amend this Agreement to reflect the accepted terms and conditions and, to the extent Buyer determines such amendment requires MDPU approval or filing, Buyer shall use commercially reasonable efforts to apply for such approval or make such filing in accordance with Section 18. No amendment of this Agreement under this Section 4.1(e)(i) shall affect the quantity of Products to be received and purchased by Buyer under this Agreement.

- (ii) Prior to Seller entering into a new agreement to sell any of the output of the Facility to another Person where the term of such agreement is less than one (1) year, Seller shall first offer to enter into such agreement for such output with Buyer on the same terms and conditions. Buyer shall have twenty (20) days to either accept or reject such agreement. In the event Buyer chooses to enter into such agreement, Seller and Buyer shall promptly execute such agreement. To the extent Buyer determines such agreement requires MDPU approval or filing, Buyer will use commercially reasonable efforts to apply for such approval or make such filing consistent with Section 18, and such agreement shall not become effective unless and until such MDPU approval is obtained or such MDPU filing is made.
- (iii) If Buyer fails to notify Seller of its choice within 20 days after Buyer's receipt of Seller's offer under clause (i) or (ii) above, Buyer shall be deemed to have elected to decline all of the terms and conditions of such other agreement or amendment.
- (iv) If Buyer declines to enter into a new agreement or an amendment to this Agreement under this Section 4.1(e), then Seller may proceed with the proposed sale of such output of the Facility to another Person under the terms and conditions offered to Buyer.
- (v) This Section 4.1(e) shall only apply to bilateral agreements, and any transactions conducted in ISO-NE's Real-Time or Day-Ahead markets shall not be subject to this Section 4.1(e).

(f) To the extent Seller or any Affiliate of Seller constructs additional wind generating projects in Massachusetts coastal waters or adjacent federal waters, prior to selling the energy, capacity or Environmental Attributes from any such project to a third party, Seller or such Affiliate shall give notice thereof to Buyer. Upon Buyer's receipt of such notice, Buyer shall have the right to negotiate in good faith with Seller or such Affiliate for no more than sixty (60) days, unless otherwise agreed to by Seller or such Affiliate, the terms of the sale of such energy, capacity and/or Environmental Attributes (or a portion thereof) to Buyer or its designee

on an exclusive basis. If Buyer wishes to enter into such negotiation, Buyer shall notify Seller or such Affiliate of such decision within fifteen (15) days of receipt of Seller's or such Affiliate's notice. Seller or such Affiliate shall supply in a timely manner, information regarding such project(s) which is customary to allow Buyer to perform due diligence and to negotiate in good faith for the purchase of such energy, capacity and Environmental Attributes.

#### 4.2 Scheduling and Delivery of Energy.

(a) During the Services Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Agreement, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer the Energy to Buyer in the Day Ahead Energy Market or Real Time Energy Market, as applicable, in such a manner that Buyer may resell such Energy in the Day Ahead Energy Market or Real Time Energy Market, as applicable, 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, as appropriate, or for which Buyer is not credited in the ISO-NE settlement system (including, without limitation, as a result of a transmission outage).

(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 noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

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

4.3 Failure of Seller to Deliver Products. In the event that Seller fails to satisfy any of its obligations to Deliver any of the Products hereunder in accordance with Section 4.1 and Section 4.2, and such failure is not excused under the express terms of this Agreement (a "**Delivery Shortfall**"), Seller shall pay Buyer an amount for such Delivery Shortfall equal to the Cover Damages. Such payment shall be due no later than the date for Buyer's payment for the applicable month as set forth in Section 5.2 hereof. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to a Delivery Shortfall would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

4.4 Failure by Buyer to Accept Delivery of Products. If Buyer fails to accept all or part of any of the Products to be purchased by Buyer hereunder and such failure to accept is not excused under the terms of this Agreement (a "**Rejected Purchase**"), then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such Rejected Purchase equal to the Resale Damages. Each Party agrees and acknowledges that (i) the damages that Seller would incur due to a Rejected

Purchase would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Resale Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

#### 4.5 Delivery Point.

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

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to and at the Delivery Point.

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

#### 4.6 Metering.

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

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

the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

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

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

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

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

#### 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 the Facility during the Term in accordance with the terms of this Section 4.7.

(b) All Energy provided by Seller to Buyer from the Facility under this Agreement shall meet the requirements for eligibility pursuant to the RPS; provided, however, that if the Facility ceases to qualify as a RPS Class I Renewable Generation Unit solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to ensure that all Energy provided by Seller to Buyer from the Facility under this Agreement meets the requirements for eligibility pursuant to the RPS after that change in Law.

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

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

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

#### 4.8 Capacity.

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

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

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

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

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

(f) Any failure of Seller to perform its obligations under this Section 4.8 shall not be a Default or Event of Default; provided that the Price paid by Buyer for the Products shall at all times be adjusted as set forth in Section 3 of Exhibit E without regard to whether Seller has performed its obligations under this Section 4.8 or whether the Facility's Capacity has qualified or cleared in the Forward Capacity Market at any time.

4.9 Deliveries During Test Period. During the period prior to the Partial Commercial Operation Date for each Phase (each a "**Test Period**"), Seller shall sell and Deliver, and Buyer shall purchase and receive, Buyer's Percentage Entitlement of any Energy and RECs produced by that Phase. Notwithstanding the provisions of Section 5.1, (i) payment for Buyer's Percentage Entitlement of all Energy produced during the Test Period for the applicable Phase shall be equal to the product of (x) Buyer's Percentage Entitlement of the MWh of Energy delivered by that Phase to the Delivery Point and (y) the Real Time Locational Marginal Price at such Delivery Point (as determined by ISO-NE) for each hour of the month when Energy is produced by the Facility, and (ii) payment for all RECs produced by such Phase during that Test Period shall be equal to the product of (A) the Test REC Price and (B) the Buyer's Percentage Entitlement of the MWh of Energy delivered by such Phase to the Delivery Point. In no event shall the Test Period for any Phase extend beyond six months, except due to Force Majeure.

#### 4.10 Reduction of Facility's Nameplate Capacity.

Notwithstanding any other provisions of this Agreement to the contrary, in the event of the termination of that separate Power Purchase Agreement dated as of May 7, 2010 between Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, and Cape Wind Associates, LLC, respecting certain output of the Facility not purchased by Buyer under this Agreement pursuant to Section 8.7 thereof, Seller may then elect not more than once, by written notice delivered to Buyer before the earlier of (x) twenty (20) days after such

termination or (y) the first Partial Commercial Operation Date to occur hereunder, to reduce the nameplate capacity of the Facility so as to be **less than the Contract Capacity**. In such event, the following adjustments shall occur under this Agreement:

- (i) the Contract Capacity hereunder shall be adjusted to mean such reduced MW amount of nameplate capacity of the Facility;
- (ii) the Contract Maximum Amount shall be adjusted to mean the lesser of (A) 234 MWh per hour or (B) eighty percent (80%) of the revised Contract Capacity under clause (i) above expressed in MWh per hour; and
- (ii) the Buyer's Percentage Entitlement shall be adjusted to mean the quotient of the revised Contract Maximum Amount under clause (ii) above divided by the revised Contract Capacity under clause (i) above, up to and including such revised Contract Maximum Amount; provided, for the avoidance of doubt, that the adjusted Buyer's Percentage Entitlement shall not in any event exceed eighty percent (80%) of the Products.

Any notice from Seller to Buyer under this Section 4.10 shall include a calculation of the revised Contract Capacity, Contract Maximum Amount and Buyer's Percentage Entitlement and any revised amount of the required Development Period Security and/or Operating Period Security under Section 6.2(f), which calculation shall be subject to approval by Buyer, such approval not to be unreasonably withheld, conditioned or delayed. In no event will any adjustment under this Section 4.10 or under Section 6.2(f) result in any adjustment of the Bundled Price per MWh under Exhibit E or any allocation of that Bundled Price per MWh under Section 2 of Exhibit E.

## **5. PRICE AND PAYMENTS FOR PRODUCTS**

### **5.1 Price for Products.**

(a) All Products Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Bundled Price specified in Exhibit E, as adjusted for the Forward Capacity Market Payments and the Wind Outperformance Adjustment Credit described therein, and in accordance with this Section 5.1. Other than the (i) payment for the Products under this Section 5.1, including escalations thereto as set forth in Sections 5.1(b), (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 any Test Period in accordance with Section 4.9, (v) payment of any Resale Damages under Section 4.4, (vi) payment of interest on late payments under Section 5.3, (vii) payments for reimbursement of Buyer's Taxes under Section 5.4(a), (viii) return of any Credit Support under Section 6.4 or Section 6.5, 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 incurred by it in connection with the performance of its obligations under this Agreement.

(b) Escalation of Price. Consistent with Exhibit E, the Price shall escalate by a factor of 3.5% on each Escalation Date. For purposes of this Agreement, the “Escalation Date” shall initially be January 1, 2014 and each January 1 thereafter; provided, however, that if Seller elects to extend the Commercial Operation Date pursuant to Section 3.1(c) or as a result of a Force Majeure under Section 10.1, then each Escalation Date occurring after Seller notifies Buyer in writing of its extension election or such Force Majeure shall be delayed by the period of that extension. All delays in the Escalation Date occurring under this Section 5.1(b) shall be cumulative (i.e., shall also take into account all prior extensions), such that the period of time between January 1 of a year and the Escalation Date corresponding to that year shall be equal to the total number of days of all extensions elected by Seller under Section 3.1(c) and Section 10.1. Notwithstanding any provision of this Agreement to the contrary, in no event shall there be (x) more than seventeen (17) Escalation Dates during the Term or (y) more than fifteen (15) Escalation Dates after the first Partial Commercial Operation Date. Upon the election of any extension of the Commercial Operation Date, Seller shall deliver a certification in the form of Exhibit F setting forth the total number of days of such extension and establishing the new annual Escalation Date. Buyer shall approve such certification in its sole discretion, and any dispute regarding such certification shall be resolved in accordance with Article 11.

## 5.2 Payment and Netting.

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

(b) Timeliness of Payment. Unless otherwise agreed to by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month, or the tenth (10th) day after receipt of the invoice, or if such day is not a Business Day, then on the next Business Day. Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

### (c) Disputes and Adjustments of Invoices.

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

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

- (ii) Unless otherwise agreed, (i) a Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered and (ii) if a Party does not challenge the accuracy within such twenty-four (24) month period, such invoice shall be binding upon that Party and shall not be subject to challenge. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment along with all available supporting documentation. 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. If an invoice is paid and thereafter the payment or the invoice on which the payment was based is disputed, upon notice of dispute, the Party receiving payment shall hold the amount in dispute in escrow for the benefit of the prevailing Party until the resolution of such dispute. If any amount in dispute is ultimately determined (under the terms herein) to be due to the other Party, it shall be paid or returned (as the case may be) to the other Party within ten (10) Business Days of such determination along with interest accrued at the Late Payment Rate from the (i) date due and owing in accordance with the Invoice until the date paid or (ii) if the amount was paid and is to be returned, from the date paid, until the date returned. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived

unless the other Party is notified in accordance with this Section 5.2 within the referenced twenty-four (24) month period.

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

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the Collateral Interest Rate plus one percent (1%), and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the "Late Payment Rate").

#### 5.4 Taxes, Fees and Levies.

(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"), unless Buyer collects such taxes, fees and levies upon resale of the Products (as, for example, with a value added tax). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer or imposed on or associated with the purchase of such Products (other than ad valorem, franchise or income taxes which are related to the sale of the Products by Seller) and are, therefore, the responsibility of Seller ("Buyer's Taxes"). In the event Seller shall be required by law or regulation to remit or pay any Buyer's Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller's Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller's Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer. Seller shall have the right to all credits, deductions and other benefits associated with taxes paid by Seller. 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) Except as set forth in Appendix X to Exhibit E, Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the Facility's eligibility to receive any federal or state tax credits or other incentive to subsidies or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes.

## 6. SECURITY FOR PERFORMANCE

6.1 Grant of Security Interest. Subject to the terms and conditions of this Agreement, Seller hereby pledges to Buyer as security for all outstanding obligations under this

Agreement and any other documents, instruments or agreements executed in connection therewith (collectively, the “**Obligations**”), and grants to Buyer a first priority continuing security interest, lien on, and right of set-off against all Posted Collateral delivered to or received by Buyer hereunder. Upon the return by Buyer to Seller of any Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without further action by either Party.

6.2 Seller’s Support.

(a) Seller shall be required to post Credit Support in the amount of \$4,680,000 to secure Seller’s Obligations until the Commercial Operation Date (“**Development Period Security**”). The Development Period Security shall be provided to Buyer on the Financial Closing Date. 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 be in the amount of \$4,680,000.

(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.

(f) In the event that the Contract Maximum Amount is reduced under Section 4.10 of this Agreement, the required amount of the Development Period Security and/or the Operating Period Security to be provided by Seller shall thereafter be reduced to an amount equal to the product of (x) \$20,000 times (y) such revised Contract Maximum Amount.

### 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 Seller’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 Administration of Posted Collateral.

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

- (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 6.5(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 6.5(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 6.5(a)(iii)(B). Except as set forth in Section 6.5(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 6.5(a)(ii), if neither Buyer nor the Custodian is eligible to hold Cash pursuant to Section 6.5(a)(i) then:

(A) the provisions of Section 6.5(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, and paragraph 2.c.ii of Appendix X to Exhibit E to 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 6.5, Buyer may draw on the entire undrawn portion of any Letter of Credit. 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 6.5.

(c) Seller's Rights and Remedies. If at any time a termination date has occurred or been designated as the result of an Event of Default with respect to Buyer and Buyer has provided Credit Support to Seller under Section 9.3(b), then unless Buyer has paid in full all of its obligations under Section 9.3(b) of this Agreement: (i) Seller may exercise all rights and remedies available to Seller under applicable Law with respect to any Posted Collateral provided by Buyer, (ii) Buyer will be obligated immediately to return all Posted Collateral provided by Seller, including any accrued interest to Seller, or (iii) to the extent that Posted Collateral provided by Seller, including any accrued interest is not returned pursuant to (ii) above, Seller may set-off any amounts payable by Seller with respect to any Obligations against any posted Credit Support or the cash equivalent thereof or to the extent that Seller does not set off such amounts, withhold payment of any remaining amounts payable by Seller with respect to any obligations of Buyer, up to the value of the remaining posted Credit Support held by Buyer, until that posted Credit Support is Transferred to Seller. For avoidance of doubt, (i) Buyer will be obligated immediately to Transfer any Letter of Credit to Seller and (ii) Seller may do any one or more of the following: (x) to the extent that the Letter of Credit is not Transferred to Seller as required pursuant to (i) above, set-off any amounts payable by the Seller with respect to any Obligations against any such Letter of Credit held by Buyer and, to the extent its rights to set-off are not exercised, withhold payment of any remaining amounts payable by Seller with respect to any Obligations, up to the value of any remaining posted Credit Support and the value of any Letter of Credit held by Buyer, until any such Posted Credit Support and such Letter of Credit is Transferred to Seller; and (y) exercise rights and remedies available to Seller under the terms of the Letter of Credit.

(d) 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 (1<sup>st</sup>) Business Day after the occurrence thereof (or the third (3<sup>rd</sup>) 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.

(e) Care of Posted Collateral. Each Party shall exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable Law, and in any event a Party 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, each Party will have no duty with respect to the Posted Collateral, including without limitation, any duty to enforce or preserve any rights thereto.

(f) Substitutions. Unless otherwise prohibited herein, upon notice to the Buyer specifying the items of Posted Collateral to be exchanged, the Seller may, on any Business Day, deliver to the Buyer other Credit Support (“**Substitute Credit Support**”). On the Business Day following the day on which the Substitute Credit Support is delivered to the Buyer, the Buyer shall return to the 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.

#### 6.6 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 security interest or lien, to enable the requesting party to exercise or enforce its rights or remedies under this Agreement, or to effect or document a release of a security interest on posted Credit Support or accrued interest.

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

## 7. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

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

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

(b) Due Authorization; No Conflicts. The execution and delivery by Buyer of this Agreement, and the performance by Buyer of its obligations hereunder, have been duly authorized by all necessary actions on the part of Buyer and do not and, under existing facts and Law, shall not: (i) contravene its certificate of incorporation or any other governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) assuming receipt of the Regulatory 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. Except to the extent relating to the Regulatory Approval, there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Buyer or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction contemplated hereby, or which Buyer reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Buyer's ability to perform its obligations under this Agreement.

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

be duly obtained, made or taken on or prior to the date required, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable as required under applicable Law.

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

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

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

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, validly existing and in good standing under the laws of Massachusetts. Subject to the receipt of the Permits listed in Exhibit B, Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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

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

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

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

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

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

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

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

## **8. REGULATORY APPROVAL**

8.1 Receipt of Regulatory Approval. The obligations of the Parties to perform this Agreement, other than the Parties' obligations under Section 6.2(a), Section 6.3, Section 6.4, Section 6.5, Section 8.2, Section 8.3 and Article 12, are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the Regulatory Approval or receipt of an order of the MDPU regarding this Agreement that is not acceptable in form and substance to Buyer in its sole discretion.

8.2 Filing for Regulatory Approval. Buyer shall (i) use commercially reasonable efforts to file an application for the Regulatory Approval with the MDPU by not later than June 4, 2010 and (ii) at Buyer's sole discretion, exercise commercially reasonable efforts to obtain the Regulatory Approval, including using commercially reasonable efforts to obtain a favorable resolution in any appeal of an order of the MDPU with respect to this Agreement; provided that Buyer shall have no obligation to appeal a MDPU order that it determines is unacceptable. Seller shall have the right to intervene in the proceeding before the MDPU and shall use commercially reasonable efforts to cooperate with Buyer (but only as requested by Buyer) in obtaining the Regulatory Approval.

8.3 Failure to Obtain Regulatory Approval. If Buyer (i) on any date notifies Seller that it has received an order of the MDPU regarding this Agreement that is not acceptable in form and substance to Buyer in its sole discretion or (ii) has not notified Seller that it has received the MDPU Order by February 7, 2011 or, (iii) has not notified Seller that it has received the Regulatory Approval by the date that is fifteen (15) months after the date on which the MDPU Order is issued, either Party may terminate this Agreement within thirty (30) days after such date by delivery of written notice to the other Party in accordance with Article 17. Upon such termination, neither Party shall have any further liability hereunder except for any obligations arising under Section 6.3 and Article 12 which accrued prior to such termination, and Buyer shall return to Seller its Posted Collateral.

## **9. BREACHES; REMEDIES**

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

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

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

(c) Other Covenants. Other than a Delivery Shortfall (the sole remedy for which shall be the payment of Cover Damages under Section 4.3), a Rejected Purchase (the sole remedy for which shall be the payment of Resale Damages under 4.4), a failure by Seller to perform its obligations under Section 4.8 (which is addressed in Section 4.8(f)), or an Event of Default described in Section 9.1(a), 9.1(b), 9.1(d), 9.1(e) or 9.2, such Party fails to perform, observe or otherwise to comply with any obligation hereunder and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended for an additional reasonable period if the Defaulting Party is unable to cure within that thirty (30) day period and provided that corrective action has been taken by the Defaulting Party within such thirty (30) day period and so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected, but in any event within one hundred fifty (150) days; or

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

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

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

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any

such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

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

(c) 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, except in the event that such failure is also a failure of Seller to perform its obligations under Section 4.8 (which is addressed in Section 4.8(f)); or

(d) 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).

### 9.3 Remedies.

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

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

(i) *Termination by Buyer*. If Buyer terminates this Agreement because of an Event of Default by Seller, the Termination Payment due to Buyer shall be equal to the amount, if positive, calculated according to the following formula:

$$\sum_N (RV - CV) + P$$

where:

“ $\sum_N$ ” is the summation over the remainder of the Services Term.

“RV” is the replacement value of Buyer’s Percentage Entitlement of the Products for the remainder of the Services Term, calculated with reference to the applicable Replacement Price and the Supply Forecast, using a discount factor of eight percent (8.0%).

“CV” is the contract value of Buyer’s Percentage Entitlement of the Products for the remainder of the Services Term calculated with reference to the applicable Price and the Supply Forecast, using a discount factor of eight percent (8.0%) (the “**Contract Value**”).

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

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

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

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

$$\sum_N (CV - MV) + P$$

where:

“ $\sum_N$ ” is the summation over the remainder of the Services Term.

“CV” is the Contract Value.

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

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

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

(iv) *Supply Forecast.* For purposes of determining the Termination Payment pursuant to Section 9.3(b)(i) and 9.3(b)(iii) above, the quantity of Products to be delivered shall be based upon the then-current Projected Annual Energy Output (the “**Supply Forecast**”).

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

(vi) *Payment of Termination Payment.* The Defaulting Party shall make the Termination Payment within ten (10) Business Days after the notice thereof is effective. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, the Defaulting Party shall first transfer Credit Support to the Non-Defaulting Party in an amount equal to the Termination Payment as calculated by the Non-Defaulting Party, which Credit Support shall be administered in accordance with Article 6. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

(vii) *Reinstatement of Agreement.* In the event that Buyer terminates this Agreement prior to the Commercial Operation Date and Seller thereafter achieves the Commercial Operation Date within one (1) year after such termination, Buyer may elect to reinstate this Agreement in accordance with its terms by providing Seller with at least six (6) months’ prior written notice of such reinstatement. Upon such reinstatement, Buyer shall return to Seller any Termination Payment made by Seller, together with interest accruing at the Late Payment Rate, on or prior to the date selected for reinstatement of this Agreement.

(c) Set-off. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to withhold and set off any amounts owed by the Non-Defaulting Party to the Defaulting Party against any payments and any other amounts owed by the Defaulting Party to

the Non-Defaulting Party, including any Termination Payment payable as a result of any early termination of this Agreement.

(d) Notice to Lenders. Buyer shall provide a copy of any notice given to Seller under this Article 9 to one representative of the Financing providing loans to or for the benefit of the Seller and one representative of the Financing providing equity to or for the benefit of Seller, of which Buyer shall have written notice, and Buyer shall afford such representatives the opportunities to cure pursuant to the terms of the consent to assignment referred to in 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 (INCLUDING WITHOUT LIMITATION UNDER SECTION 93A OF THE MASSACHUSETTS GENERAL LAWS), IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## 10. FORCE MAJEURE

### 10.1 Force Majeure.

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

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

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

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

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

## 11. DISPUTE RESOLUTION

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "**Dispute**"), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such

referral to the senior management of the Parties, then the Parties may seek to resolve such Dispute in the courts of the Commonwealth of Massachusetts. The Parties agree to the exclusive jurisdiction of the state and federal courts located in the Commonwealth of Massachusetts for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement. EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY DISPUTE.

## 12. CONFIDENTIALITY

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

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

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

(c) to the Affiliates of either Party and to the consultants, attorneys, auditors, financial advisors, lenders or potential lenders, investors or potential investors and their advisors of either Party or their Affiliates that agree to be bound by this confidentiality provision;

(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 Article 12;

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 Article 12.

### 13. INDEMNIFICATION

Except as set forth in Sections 3.4(k) and 3.5(b) and in Exhibit D, neither Party shall indemnify, defend or hold harmless the other Party or its partners, shareholders, directors, officers, employees or agents from and against any liabilities, damages, losses, penalties, claims, demands, suits or proceedings claimed by, due to or instituted by any third party as a result of either Party's execution, delivery or performance of this Agreement.

### 14. ASSIGNMENT AND CHANGE OF CONTROL

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

14.2 Permitted Assignment by Seller. Seller may pledge or assign the Facility, this Agreement or the revenues under this Agreement (i) to an Affiliate of Seller or (ii) to any Lender as security for the Financing of the Facility. Buyer agrees (a) to provide either legal opinions as to due execution, authorization, enforceability and regulatory approvals or estoppel certificates as may be reasonably requested by Seller and Lender in connection with such Financing, (b) to execute a consent to assignment that incorporates terms and conditions customary for a transaction of this type, (c) to reasonably cooperate with information requests from S&P or Moody's in developing a Facility credit rating, and (d) to reasonably cooperate with the U.S. Department of Energy and the U.S. Department of the Treasury in evaluating the Facility for a loan and a loan guarantee; provided, however, that Buyer shall not be obligated to enter into any consent, agreement or other document which shall adversely affect Buyer's rights under this Agreement. Buyer shall not unreasonably withhold, condition or delay providing its consent to an assignment to a Lender pursuant to this Section 14.2.

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.

14.4 Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement without consent of Seller (a) in connection with (i) any merger or consolidation of Buyer with or into another Person; (ii) any exchange of all of the common stock or other equity interests of Buyer or Buyer's parent for cash, securities or other property; or (iii) any acquisition, reorganization, or other similar corporate transaction involving all or substantially all of the common stock or other equity interests in, or assets of, Buyer; provided that (A) the proposed assignee agrees in writing to assume all of the Buyer's obligations under this

Agreement and (B) the proposed assignee delivers to Seller a legal opinion as to due power and authority, due authorization, enforceability and regulatory approvals, or (b) to a Person whose credit rating as established by S&P or Moody's is equal or better than BBB- from S&P or Baa3 from Moody's after giving effect to the proposed assignment of this Agreement; provided that (i) the proposed assignee agrees in writing to assume all of the Buyer's obligations under this Agreement and (ii) the proposed assignee delivers to Seller a legal opinion as to due power and authority, due authorization, enforceability and regulatory approvals.

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 shall retain risk of loss with respect to the Capacity, consistent with Section 4.8. Seller warrants that it shall deliver to Buyer the Products free and clear of all liens, claims, charges or encumbrances therein or thereto by any Person.

## **16. AUDIT**

16.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under this Agreement, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products delivered or provided hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

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

- (a) complete financial statements and notes to financial statements for such quarter;
- (b) financial schedules underlying such financial statements; and

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

## 17. NOTICES

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

If to Buyer:            Madison N. Milhous  
                                 Director  
                                 National Grid  
                                 100 E. Old Country Road  
                                 Hicksville, NY 11801-4218  
                                 Fax: (516) 545-3130  
                                 Email: madison.milhous@us.ngrid.com

With a copy to:        Ronald T. Gerwatowski, Esq.  
                                 Deputy General Counsel  
                                 National Grid  
                                 40 Sylvan Road  
                                 Waltham, MA 02451-1120  
                                 Fax: (781) 907-5701  
                                 Email: ronald.gerwatowski@us.ngrid.com

If to Seller: Christopher Smith  
Chief Financial Officer  
Cape Wind Associates, LLC  
75 Arlington Street  
Boston, MA 02116-3986  
Fax: (617) 904-3109  
Email: csmith@emienergy.com

With a copy to: Dennis J. Duffy, Esq.  
Vice President - Regulatory Affairs  
Cape Wind Associates, LLC  
75 Arlington Street,  
Boston, MA 02116-3986  
Fax: (617) 904-3109  
Email: dduffy@emienergy.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 MDPU approval or filing, and if Buyer determines that MDPU approval or filing is required for any amendment or waiver of the provisions of this Agreement, then such amendment or waiver shall not become effective unless and until such MDPU approval is obtained or such MDPU filing is made.

## **19. INTERPRETATION**

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

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

19.3 Forward Contract; Commodities Exchange Act. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a “forward contract” within the meaning of the United States Bankruptcy Code. Each Party represents and warrants,

solely as to itself, that it is (i) a “forward merchant” within the meaning of the United States Bankruptcy Code and (ii) an “eligible commercial entity” and an “eligible contract participant” within the meaning of the United States Commodities Exchange Act.

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

19.5 Change in ISO-NE Rules and Practices. This Agreement is subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of this Agreement, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Parties agree to negotiate in good faith in an attempt to amend or clarify this Agreement to embody the Parties’ original intent regarding their respective rights and obligations under this Agreement, provided that neither Party shall have any obligation to agree to any particular amendment or clarification of this Agreement. The intent of the Parties is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to this Agreement, or (ii) the Price. Notwithstanding the foregoing, in the event of a change in the ISO-NE Rules or ISO-NE Practices described in Section 4.1(d), the provisions of Section 4.1(d), and not of this Section 19.5, shall apply to such change.

19.6 Joint Preparation. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

## **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.

**23. INDEPENDENT CONTRACTOR**

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

**24. ENTIRE AGREEMENT**

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

*[Signature page follows]*

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

MASSACHUSETTS ELECTRIC COMPANY AND  
NANTUCKET ELECTRIC COMPANY, D/B/A NATIONAL GRID

By: Thomas Bliz  
Name:  
Title: President

CAPE WIND ASSOCIATES, LLC

By: James Gordon  
Name:  
Title: President

## **EXHIBIT A**

### DESCRIPTION OF FACILITY

**Facility:** The Facility will be a wind generating facility to be located in the waters off the coast of Cape Cod, Massachusetts. The nameplate capacity of the Facility will be no more than four hundred sixty eight (468) MW, subject to possible adjustment under Section 4.10. The Delivery Point for the Facility will be the Barnstable, Massachusetts substation.

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

**EXHIBIT B**

**SELLER'S CRITICAL MILESTONES  
PERMITS AND REAL ESTATE RIGHTS**

<b>Agency</b>	<b>Jurisdiction</b>	<b>Permit Description</b>	<b>ID Number</b>	<b>Date Applied</b>	<b>Date Approved</b>
<b>Federal</b>					
Department of Interior - Minerals Management Service	Outer Continental Shelf	Lease, Easement or Right-of-way Under Renewable Energy and Alternate Uses of Existing Facilities on the OCS Regulatory Framework (30 CFR Part 285)		9/14/05	4/28/10
Council on Environmental Quality, National Environmental Policy Act (NEPA)	NEPA jurisdiction is over the entire project	USACE Draft Environmental Impact Statement	(Formerly USACE NAE-2004-338-1)	November 2004	Pending (Expected Q2 2010)
		MMS Draft Environmental Impact Statement		Jan 2008	
		Final Environmental Impact Statement		Jan 2009	
		Record of Decision			
United States Army Corps of Engineers	Rivers and Harbors Act Section 10 jurisdiction is for work in navigable waters of the United States; Clean Water Act Section 404 jurisdiction is for work in waters of the United States and wetlands located within the 3-mile limit.	Individual Permit – Section 10/Section 404	USACE NAE-2004-338-1 (formerly 200102913)	11/22/01	Pending (Expected Q3 2010)
United States Environmental Protection Agency (USEPA)	USEPA jurisdiction is on the upland component of the Project under the Clean Water Act and for NEPA (Section 309) review	National Pollutant Discharge Elimination System (NPDES) General Stormwater Permit		To be filed (Expected Q2 2010)	(Expected Q4 2010)
	Outer Continental Shelf	40 CFR Part 55 Air Permit for OCS Sources		12/7/07	Pending (Expected Q2 2010)

Agency	Jurisdiction	Permit Description	ID Number	Date Applied	Date Approved
Federal Aviation Administration	Structures exceeding 200 feet into navigable airspace	Notice of Proposed Construction or Alteration Form (FAA Form 7460-1)	2009-WTE-332-OE through 461-OE	1/15/09	Pending (Expected Q2 2010)
US Coast Guard	Structures located in navigable waters of the U.S.	Permit to Establish and Operate a Private Aid-to-Navigation to a Fixed Structure		To be filed (Expected Q2 2010)	(Expected Q2/3 2010)
National Marine Fisheries Service	Mammal Protection Act (MMPA)	Incidental Harassment Authorization		To be filed (Expected Q1 2010)	(Expected Q4 2010)
<b>State</b>					
Massachusetts Environmental Policy Act (MEPA)	Jurisdiction is within three-mile state territorial seas limit	Environmental Notification Form (ENF)	12643	11/15/01	4/22/02
		Draft Environmental Impact Report (DEIR)		11/15/04	3/3/05
		Notice of Project Change (NPC)		6/30/05	8/8/05
		Final Environmental Impact Report (FEIR)		2/15/07	
		Issuance of Certificate			3/29/07
Massachusetts Energy Facilities Siting Board (EFSB)	Jurisdiction is within three-mile state territorial seas limit	Petition to Construct Jurisdictional Facilities	EFSB 02-2	9/17/02	5/11/05
		Approval under G.L. c. 164, § 69J			
		Approval under G.L. c. 164 § 72	D.T.E. 02-53	11/19/07	5/2/08
		Project Change; Request for Extension	EFSB 02-2A	11/19/07	5/2/08
Massachusetts Department of Environmental Protection (MADEP) – Wetlands and Waterways Regulation Program	Jurisdiction is within three-mile state territorial seas limit	Certificate of Environmental Impact and Public Interest (Approval under G.L. c. 164, §§ 69K-69O)	EFSB 07-08	12/28/07	5/27/09
		Chapter 91 Waterways License	W08 -2480	10/6/08	12/22/08
		MADEP Water Quality Certification	W133633	11/2/07	8/15/08

Agency	Jurisdiction	Permit Description	ID Number	Date Applied	Date Approved
Massachusetts Coastal Zone Management (MCZM)	State jurisdiction is within the three-mile limit under the Coastal Zone Management Act (CZMA). Federal Consistency Review jurisdiction is three mile limit and specific activities beyond three miles that may affect Massachusetts Coastal Zone	Concurrence with Federal Consistency Certification Statement		11/21/01 12/09/03 1/23/08	1/23/09
Rhode Island Coastal Resources Management Council (CRMC)	State jurisdiction is within the three-mile limit under the Coastal Zone Management Act (CZMA). Federal Consistency Review jurisdiction is three mile limit and specific activities beyond three miles that may affect Rhode Island Coastal Zone	Concurrence with Federal Consistency Certification Statement		7/16/08	7/30/08
Massachusetts Highway Department (MHD)	Jurisdiction is within 3-mile limit	Permit to Access State Highway and Access Agreement	5-2008-0246	11/01/07	7/22/08; extension 7/21/09
Massachusetts Executive Office of Transportation (EOT)	Jurisdiction is within 3-mile limit	License/Permit Approval for Use and Occupancy of EOT property (RR bed)		11/05/07	9/17/08
Massachusetts Historical Commission (MHC): State Archaeologist	Jurisdiction is within three-mile state territorial seas limit	Permit for Upland Reconnaissance Archaeological Survey	2246	3/12/03	3/28/03
		Permit for Upland Intensive Archaeological Survey	2595	9/18/03	9/23/03
<b>Regional</b>					
Cape Cod Commission	Jurisdiction is within three-mile state territorial seas limit	Development of Regional Impact (DRI) Review	JR#20084	11/15/01	Procedural Denial 10/18/07; EFSB Certificate of Environmental Impact and Public Interest (Approval under G.L. c. 164, §§ 69K-
		Issuance of DRI			

Agency	Jurisdiction	Permit Description	ID Number	Date Applied	Date Approved
				690) 5/27/09	
<b>Local</b>					
Yarmouth Conservation Commission	Jurisdiction is within three-mile state territorial seas limit	Notice of Intent		11/15/07	EFSB Certificate of Environmental Impact and Public Interest (Approval under G.L. c. 164, §§ 69K-69O) 5/27/09
		Issuance of Order of Conditions			
Barnstable Conservation Commission	Jurisdiction is within three-mile state territorial seas limit	Notice of Intent		11/15/07	
		Issuance of Order of Conditions			
Yarmouth Department of Public Works (DPW)	Jurisdiction is within three-mile state territorial seas limit	Request for Transmission Line Location		11/13/07	
Barnstable DPW	Jurisdiction is within three-mile state territorial seas limit	Request for Transmission Line Location		11/13/07	

## EXHIBIT C

### FORM OF PROGRESS REPORT

For the Quarter Ending: \_\_\_\_\_

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

Status of permitting and significant Permits obtained during the quarter:

Status of Financing for Facility:

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

Critical Milestones not yet achieved and projected date for achievement:

Current projection for Commercial Operation Date:

## EXHIBIT D

### INSURANCE

1. Prior to the commencement of construction of the Facility, through final expiration of the Term or longer where specified below, Seller shall provide and maintain, at its own expense, insurance policies, intended to be primary (with no right of contribution by any other coverage available to National Grid USA its direct and indirect parents, subsidiaries and affiliates (the “Insured Entities”)), covering all Operations, Work and Services to be performed by Seller under or in connection with this Agreement, issued by reputable insurance companies with an A.M. Best Rating of at least B+, which meet or exceed the requirements listed herein:

**(a) Workers’ Compensation and Employers Liability Insurance** as required by the State in which the Work activities under this Agreement will be performed. If applicable, coverage shall include the U.S. Longshoreman’s and Harbor Workers Compensation Act, and the Jones Act. The employer’s liability limit shall be \$500,000 each per accident, per person disease, and disease by policy limit.

**(b) Commercial General Liability (CGL) Insurance**, covering all operations to be performed by or on behalf of Seller under or in connection with this Agreement, with minimum combined single limits for bodily injury and property damage of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

- Coverage shall include: contractual liability (with this Agreement, and any associated verbal agreements, being included under the definition of “Insured Contract” thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U).
- If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Agreement and coverage shall be maintained continuously for the duration of this Agreement and for at least two years thereafter.
- Additional Insured as required in Section 3 below,
- The policy shall contain a separation of insureds condition.
- In the event Seller is a governmental entity such as a town, county, municipality etc., and such entity’s liability to a third party is limited by law, regulation, code, ordinance, by-laws or statute (collectively the “Law”), this liability insurance shall contain an endorsement that waives such Law for insurance purposes only and strictly prohibits the insurance company from using such Law as a defense in either the adjustment of any claim, or in the defense of any suit directly asserted by an Insured Entity.

**(c) Automobile Liability**, covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of Seller under or in

connection with this Agreement with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per accident. Additional Insured as required in Section 3 below.

**(d) Umbrella Liability or Excess Liability coverage**, with a minimum per occurrence limit of \$4,000,000. This coverage shall run concurrent to the CGL required in Section 1(b) above, shall apply excess of the required automobile, CGL and employer's liability coverage required in this Insurance Exhibit, and shall provide additional insured status as outlined in Section 3 below.

**(e) Watercraft Liability**, if used in connection with this Agreement, with the same minimum limits of liability as outlined in requirement 1(b) above, and naming the Insured Entities, including their officers and employees, as additional insured as outlined in Section 3.

**(f) Aircraft Liability**, if used in connection with this Agreement, with a limit of liability of not less than \$10,000,000 combined single limit per occurrence, and naming the Insured Entities, including their officers and employees, as additional insured's as required in Section 3 below. Such coverage shall not include a per-passenger or per seat coverage limit.

**(g) Pollution Liability (PL)**: covering any sudden and accidental pollution liability which may arise out of, under, or in connection with the performance of this Agreement, by or on behalf of Seller, or that arise out of the Seller's use of any owned, non-owned or hired vehicles, with a combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence and in the aggregate.

This requirement may be satisfied by providing either this PL policy, which would include naming the Insured Entities, including their officers and employees, as additional insured's as outlined in Section 3 below; **OR** by providing coverage for sudden and accidental pollution liability under the CGL and commercial automobile insurance policies required above - limited solely by the Insurance Services Organization (ISO) standard pollution exclusion, or its equivalent.

In the event Seller is unable to secure and/or maintain any or all of this sudden and accidental pollution liability coverage, Seller agrees to indemnify and hold the Insured Entities harmless against any and all liability resulting from any coverage deficiency that is out of compliance with this insurance requirement.

**(h) Risk of Loss**: Seller shall be responsible for all risk of loss to its equipment and materials, and any other equipment and materials owned by its employees or by other third parties that may be in their care, custody and control. If this coverage is excluded from the Commercial General Liability policy, then coverage will be acceptable under Seller's property policy. In the event that any equipment or materials (Goods) are supplied by the Insured Entities, an Insured Entities' representative will provide the insurable value of the Goods to Seller in writing, both cumulatively and on a maximum per item basis. Seller will provide replacement cost insurance for these Goods under a blanket builder's risk policy, an equipment floater, or other equivalent coverage, while such Goods are under the care, custody and control of Seller. Such insurance shall cover all Goods outlined in the Agreement or as noted on subsequent contract amendments. The coverage limit shall apply on either a per location basis or a maximum per item basis, and shall name the Insured Entities as Additional Insureds with respect to their insurable interest as required in Section 3 below.

**(i) Limits**: Any combination of Commercial General Liability, Automobile Liability and Umbrella Liability policy limits can be used to satisfy the limit requirements in items 1 b, c & d above.

**2. Self-Insurance:** Proof of qualification as a qualified self-insurer, if approved in advance in writing by an Insured Entities representative, will be acceptable in lieu of securing and maintaining one or more of the coverages required in this Exhibit D. Such acceptance shall become a part of this Exhibit D by reference herein.

For Workers' Compensation, such evidence shall consist of a copy of a current self-insured certificate for the State in which the work will be performed.

In order for self insurance to be accepted, Seller's unsecured debt must have a financial rating of at least investment grade. For purposes of this Exhibit D, "Investment Grade" means (i) if Seller has a credit rating from both S&P and Moody's then, a credit rating from S&P equal to or better than "BBB-" and a credit rating from Moody's equal to or better than "Baa3"; (ii) if Seller has a credit rating from only one of S&P and Moody's, then a Credit Rating from S&P equal to or better than "BBB-" or a credit rating from Moody's equal to or better than "Baa3; or (iii) if the Parties have mutually agreed in writing on an additional or alternative rating agency, then the equivalent credit rating assigned to an entity by such additional or alternative rating agency that is equal to or better than "BBB-" from S&P and/or "Baa3" from Moody's.

**3. Additional Insured:** The intent of the Additional Insured requirement under the CGL, Auto, PL, Umbrella/Excess, Aircraft and Watercraft policies is to include the Insured Entities, their directors, officers and employees, as Additional Insured's for liabilities associated with, or arising out of, all operations, work or services to be performed by or on behalf of Seller, including ongoing and completed operations, under this Agreement. The following language should be used when referencing the additional insured status: **National Grid USA, its subsidiaries and affiliates shall be named as additional insured.**

To the extent Seller's insurance coverage does not provide the full Additional Insured coverage as required herein, Seller agrees to indemnify and hold harmless the Insured Entities against any and all liability resulting from any deficiency in Seller's insurance coverage that may be out of compliance with this insurance requirement.

**4. Waiver of Recovery:** Seller and its insurance carrier(s) shall waive all rights of recovery against the Insured Entities and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision, or for any required coverage that may be self-insured by Seller. To the extent Seller's insurance carriers will not waive their right of subrogation against the Insured Entities, Seller agrees to indemnify the Insured Entities for any subrogation activities pursued against them by Seller's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Insured Entities or their employees, sub-contractors or agents.

**5. Contractors:** In the event Seller uses Contractors in connection with this Agreement, it is expressly agreed that Seller shall have the sole responsibility to make certain that all Contractors are in compliance with these insurance requirements and remains in compliance throughout the course of this Agreement, and thereafter as required. Seller shall remain liable for the performance of the Contractor, and such sub-contract relationship shall not relieve Seller of its obligations under this agreement.

Unless agreed to in writing the by the Risk Management Department of National Grid USA Service Company, any deductible or self insured retentions maintained by any Contractor, which shall be for the account of the Contractor, and shall not exceed \$1,000,000. If requested by National Grid, Seller shall provide National Grid with an insurance certificate from its Contractor evidencing this coverage.

In the event any Contractor is unable to maintain all of the same insurance coverage as required

in this Exhibit D, Seller shall notify National Grid and the Parties shall reasonably agree to replacement insurance given the scope and nature of the works of Contractor. Until such insurance is in place, such Contractor shall not perform any work in connection with this Agreement.

**6. Insurance Certification:** Upon execution of this Agreement, Seller shall promptly provide National Grid with (a) Certificate(s) of Insurance for all coverage's required herein at the following address: National Grid Attn: Risk Management Bldg. A-4 300 Erie Boulevard West Syracuse, NY 13202 Such certificates, and any renewals or extensions thereof, shall outline the amount of deductibles or self-insured retentions which shall be for the account of Seller. Such deductibles or self-insured retentions shall not exceed \$1,000,000 unless agreed to in writing by the Risk Management Department of National Grid USA Service Company, whose approval shall not be unreasonably withheld, delayed or conditioned.

Seller shall endeavor to provide National Grid with at least 30 days prior written (10 days for non-payment of premium) notice of any cancellation or diminution of the insurance coverage required in this Exhibit D.

**7. Insurance Obligation:** If any insurance coverage is not secured, maintained or is cancelled and Seller fails to timely procure other insurance as specified, National Grid has the right, but not the obligation, to procure such insurance and to invoice Seller for said coverage.

**8. Incident Reports:** Seller shall furnish the Risk Management Department of National Grid USA Service Company with copies of any non-privileged accident or incident report(s)(collectively, the "Documents") sent to Seller's insurance carriers covering accidents, incidents or events occurring as a result of the performance of all operations, work and services performed by or on behalf of Seller under or in connection with this Agreement, excluding any accidents or incidents occurring on Seller property. If any of the National Grid Companies are named in a lawsuit involving the operations and activities of Seller associated with this Agreement, Seller shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by National Grid. However, in the event such Documents are deemed privileged and confidential (Attorney Client Privilege), Seller shall provide the relevant facts of the accident or incident in a format that does not violate such Attorney Client Privilege.

**9. Other Coverage:** These requirements are in addition to any which may be required elsewhere in this Agreement. In addition, Seller shall comply with any governmental site specific insurance requirements even if not stated herein.

**10. Coverage Representation:** Seller represents that it has the required policy limits available, and shall notify National Grid USA Service Company's Risk Management Department in writing when the coverage's required in this Exhibit D have been reduced as a result of claims payments, expenses, or both. However, this obligation does not apply to any claims that would be handled solely with in Seller's deductible or self-insured retention.

**11. Responsibility:** The complete or partial failure of the Seller's insurance carrier to fully protect and indemnify the Insured Entities per the terms of the Agreement, including without limitation, this exhibit, or the inadequacy of the insurance shall not in any way lessen or affect the obligations of the Seller to the Insured Entities.

**12. Coverage Limitation:** Nothing contained in this Exhibit D is to be construed as limiting the extent of the Seller's responsibility for payment of damages resulting from all operations, work and services to be performed by or on behalf of Seller under or in connection with this Agreement, or limiting, diminishing, or waiving Seller's obligation to indemnify, defend, and save harmless the Insured Entities in accordance with this Agreement.

## EXHIBIT E

### PRODUCTS AND PRICING

1. Payment. Buyer shall, in accordance with the terms of the Agreement and this Exhibit E, with respect to any month, pay to Seller, in immediately available funds, for each MWh Delivered by Seller during such month, the Bundled Price per MWh set forth on Appendix X hereof with respect to the applicable calendar year in which such month occurs (as adjusted pursuant to the applicable provisions of this Exhibit E). In addition, Seller shall, if applicable, provide Buyer with the credit set forth on Appendix Y (the “Wind Outperformance Adjustment Credit”).

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

RECs = The Massachusetts Class 1 Compliance RECs futures settlement price as published by the Chicago Climate Futures Exchange for the applicable billing period (the “CCFE Index Price”). In the event that the CCFE Index Price is no longer published, the Parties shall in good faith undertake commercially reasonable efforts to agree on a substitute index that reflects the market value of RECs for RPS Class I Renewable Generation Units. Should such a substitute index not be available or if the Parties are unable to agree upon such a substitute index, the RECs will be valued at the “Alternative Compliance Payment Rate” for the RPS published by the DOER for the applicable billing period.

Energy = The \$/MWh price of Energy for the applicable month shall be equal to the Bundled Price per MWh less the RECs allocation determined under this Section 2 for the applicable billing period and the \$/MWh equivalent of the adjustment for Forward Capacity Market payments as set forth in Section 3 for that billing period.

3. Adjustment to Bundled Price for Forward Capacity Market Payments. The Bundled Price per MWh listed above, as adjusted or escalated pursuant to Section 5.1(b) and this Exhibit E, shall be reduced on a monthly basis by any payments received by or credited to Seller for Buyer’s Percentage Entitlement of Contract Capacity attributable to the Facility (or, prior to the Commercial Operation Date, Buyer’s Percentage Entitlement of the portion of the Contract Capacity attributable to the Phases that have achieved their Partial Commercial Operation Date) sold by Seller in the Forward Capacity Market in the applicable month, which reduction shall not be reduced for any Peak Energy Rents or other penalties incurred by Seller in the Forward Capacity Market. If the Facility (or prior to the Commercial Operation Date the Phases that have achieved their Partial Commercial Operation Date) has (or have) not qualified as a Capacity Resource or received a Capacity Supply Obligation for the relevant Capacity Commitment Period, Buyer shall calculate the reduction due under this Section 3 assuming that the Facility (or prior to the Commercial Operation Date such Phases) had qualified as a Capacity Resource and

received a Capacity Supply Obligation, based on information obtained from Seller and publicly available information from ISO-NE, which calculation shall be binding, absent manifest error. Seller shall use commercially reasonable efforts to cooperate with Buyer in calculating this reduction.

## Appendix X to Exhibit E

### **Bundled Price per MWh**

1. Subject to paragraph 2 below, the “**Bundled Price**” per MWh for Energy, Capacity and RECs shall be \$207 per MWh of Energy Delivered, commencing in 2013, subject to adjustment for Forward Capacity Market payments as set forth in Section 3 of Exhibit E and for the Wind Outperformance Adjustment Credit as set forth in Appendix Y to Exhibit E (collectively, the “Adjustments”). Subject to Section 5.1(b), the Bundled Price per MWh shall escalate by a factor of 3.5% on each Escalation Date.
2. The price described in paragraph 1 above applies if the Facility is placed in service on a date when the Facility qualifies for the ITC, regardless of whether Seller or any direct or indirect holder of an equity interest in Seller (an “Equityholder”) actually claims the ITC for the Facility. Subject to the adjustments in paragraphs 3 and 4 below:
  - a. if the Facility is not placed in service on a date when the Facility qualifies for the ITC, but the Facility is placed in service on a date when the Facility qualifies for the PTC, regardless of whether Seller or any Equityholder actually claims the PTC for the Facility, then the Bundled Price will be increased to \$228 per MWh, subject to the Adjustments;
  - b. if the Facility is placed in service on a date when the Facility qualifies for neither the ITC nor the PTC, the Bundled Price will be increased to \$235 per MWh, subject to the Adjustments; and
  - c. if the Facility qualifies for the ITC or the PTC after the date on which the Facility is placed in service, then the following provisions shall apply:
    - i. regardless of whether Seller or any Equityholder actually claims the ITC or the PTC, beginning with the month immediately following the month in which the Facility prospectively qualifies for the ITC or the PTC, the Bundled Price will be decreased to the price reflecting such qualification, as described above, for the remainder of the Term; and
    - ii. (x) if the Facility qualifies for the ITC or the PTC retroactively prior to, or within the first twelve (12) months after, the Commercial Operation Date, regardless of whether Seller or any Equityholder makes such a retroactive claim for the ITC or the PTC, then beginning with the month immediately following the month in which the Facility retroactively qualifies for the ITC or the PTC, Buyer will offset against amounts due to Seller, pursuant to Section 5.2(d), an amount equal to (1) the difference between (A) the Bundled Price previously paid by Buyer for the Products generated during the period to which such

retroactive qualification applies (the “Retroactive Period”) and (B) the Bundled Price reflecting such ITC or PTC qualification *times* (2) the MWh of Energy Delivered to Buyer during the Retroactive Period, which offset shall continue until all of such amount has been offset by Buyer, and if the Agreement is terminated prior to the full recovery of such amounts, Seller shall pay to Buyer the amount of any shortfall within thirty (30) days after such termination; or

(y) if the Facility qualifies for the ITC or the PTC retroactively after the first twelve (12) months after the Commercial Operation Date, and Seller or any Equityholder realizes the ITC or the PTC, then the offset and/or payment provisions of paragraph 2.c.ii(x) will be effected beginning with the month immediately following the month in which the Facility retroactively qualified for, and Seller or such Equityholder became eligible to realize, the ITC or the PTC.

3. Pursuant to Section 3.3, to the extent that the Facility is placed in service over time such that the ITC and/or the PTC applies to only certain Phases, the Bundled Price described in paragraphs 1 and 2 above will be adjusted to a blended price reflecting the Phases that qualify for the ITC and/or the PTC and the Phases that qualify for neither the ITC nor the PTC, calculated based on the number of wind turbine generators that qualify for the ITC and/or the PTC.
4. Notwithstanding the foregoing, the increases in the Bundled Price that are described in paragraph 2 shall apply only to those Phases that are placed in service, for purposes of the ITC and the PTC, within two years and six months after the closing of Financing sufficient for Seller to proceed with the construction of the Facility, which date may be extended for up to an additional twelve (12) months to account for any period between such closing and the date on which the applicable Phases are placed in service during which a Force Majeure exists, subject in all cases to Article 10 of the Agreement (the “Price Deadline”). For the avoidance of doubt, the Bundled Price for Products generated by all Phases that are placed in service after the Price Deadline shall be \$207 per MWh of Energy Delivered, subject to the Adjustments.
5. In the event that any Phase achieves its Partial Commercial Operation Date in 2012, the Bundled Price for all Products Delivered by such Phase in 2012 shall be the applicable Bundled Price under this Appendix X, reduced by 3.5%.

## Appendix Y to Exhibit E

### **Wind Outperformance Adjustment Credit**

1. The notice delivered under Section 3.1(b) notifying Buyer that Commercial Operations has occurred shall set forth the as-built nameplate generating capacity of the Facility (the "**Nameplate Capacity**").
2. Commencing after the Commercial Operation Date, Seller shall establish and maintain records of the following accounts as of the end of each Contract Year:
  - (a) The Target Production Account, which shall set forth (i) for each Contract Year, an amount (the "**Annual Production Target**"), measured in MWh, equal to the product of (w) the Nameplate Capacity; (x) 8760 hours, (y) a target net capacity factor of 37.1% and (z) Buyer's Percentage Entitlement; and (ii) as of the end of each Contract Year; the cumulative aggregate of all Annual Production Targets during the Services Term, through such date (the "**Aggregate Production Target**"); and
  - (b) The Actual Production Account, which shall set forth (i) for each Contract Year, the quantity of Product, measured in MWh, Delivered to Buyer (the "**Actual Annual Production**"); and (ii) as of the end of each Contract Year, the cumulative aggregate of all Actual Annual Production during the Services Term, through such date (the "**Aggregate Actual Production**").
3. If, as of the end of any Contract Year following the Contract Year in which the Commercial Operation Date occurs, the Aggregate Actual Production exceeds the Aggregate Production Target, as adjusted pursuant to the last sentence of this paragraph (the "**Production Surplus**"), then Seller shall calculate the quantity of Product equal to 50% of such Production Surplus and shall credit such quantity (the "**Wind Outperformance Adjustment Credit**") to Buyer in the next billing cycle, without charge (carrying over any unused credit to subsequent billing cycles if necessary). The amount of any Production Surplus as of the end of any future Contract Year shall be adjusted by deducting the cumulative aggregate Production Surplus from all prior Contract Years (the "**Aggregate Prior Surplus**").
4. Notwithstanding the foregoing, Seller shall not have any obligation to credit any quantity of Product to Buyer, or to make any payment in respect of any surplus in the Aggregate Actual Production over the Aggregate Production Target as of the last Contract Year of the Services Term.

**EXHIBIT F**  
**Form of Certification of Extension and New Escalation Date**

Cape Wind Associates, LLC (“**Seller**”) delivers this certification pursuant to Section 5.1(b) of the Power Purchase Agreement dated as of May 7, 2010 (the “**Agreement**”) between Seller and Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid (“**Buyer**”). All capitalized terms not defined herein have the meanings given to them in the Agreement.

Seller certifies as follows:

1. Seller has elected to extend the Commercial Operation Date pursuant to Section 3.1(c) or Section 10.1 of the Agreement, and the total period of such extension is [\_\_\_\_\_] days.

2. As a result of such extension and taking into account all prior extensions of the Commercial Operation Date under the Agreement, the Escalation Date from today until the earlier of the expiration of the Term or the election by Seller of another extension pursuant to Section 3.1(c) of the Agreement, shall be [\_\_\_\_\_] of each year.

3. The next such Escalation Date shall be [\_\_\_\_\_].

IN WITNESS WHEREOF, the undersigned has executed and delivered this certification this [\_\_] day of [\_\_\_\_\_].

CAPE WIND ASSOCIATES, LLC

By: \_\_\_\_\_  
Name:  
Title: