

POWER PURCHASE AGREEMENT
FOR
UNIT CONTINGENT CONTRACT PRODUCTS
BETWEEN
MANSFIELD MUNICIPAL ELECTRIC DEPARTMENT
AND

[REDACTED]

This **POWER PURCHASE AGREEMENT FOR UNIT CONTINGENT CONTRACT PRODUCTS** (“Agreement”) is made and entered into as of [REDACTED] (“Effective Date”) by Mansfield Municipal Electric Department, a Massachusetts municipal light plant operating pursuant to M.G.L. c. 164, hereinafter referred to as “Buyer”, and [REDACTED], a [REDACTED], having its principal place of business at [REDACTED] hereinafter referred to as “Seller” (Buyer and Seller are referred to herein individually as a “Party” and collectively the “Parties”).

WHEREAS, Seller will permit, construct, install, own, operate and maintain the Unit (as defined below) and wishes to sell to Buyer the Contract Products (as defined below); and

WHEREAS, Buyer serves load and wishes to purchase the Contract Products;

NOW, THEREFORE, in accordance with the foregoing and in consideration of the mutual promises and agreements set forth herein, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the Contract Products in accordance with the following provisions:

ARTICLE 1.
DEFINITIONS

Any term that is capitalized herein but not defined below or defined elsewhere in this Agreement shall be defined in accordance with the definitions contained in the ISO-New England, Inc. Transmission, Markets and Services Tariff, as it may hereafter be amended from time to time, or a successor set of market rules taking effect within the term of this Agreement (“ISO-NE Rules”).

1.01 “Applicable Law” means, with respect to either Party, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

- 1.02 “Bankrupt” means that a Party or other entity (as applicable): (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (e) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (f) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (g) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (h) causes or is subject to any event with respect to it, which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) inclusive; or (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- 1.03 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday, a holiday recognized by the Commonwealth of Massachusetts or a holiday as defined by the North American Electric Reliability Corporation. A Business Day shall open at 8:00 a.m. and close at 4:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance, shall be the Party from whom the notice, payment or delivery is being sent.
- 1.04 “Buyer Termination Payment” has the meaning set forth in Article 11.2.
- 1.05 “Capacity Cost” means an amount determined in a commercially reasonable manner that is equal to the economic loss to Buyer in the relevant month that is attributable to failure of the Unit to reduce Buyer’s load at the time ISO-NE determines Buyer’s capacity obligation in accordance with ISO-NE Rules by the same amount that Buyer’s load would have been reduced had Seller delivered the kilowatt hours of Energy set forth in Appendix B to the Delivery Point at the time when ISO-NE determined Buyer’s capacity obligation.
- 1.06 “Capacity Value” means an amount determined in a commercially reasonable manner that is equal to the economic benefit to Buyer in the relevant month that is attributable to the amount by which the Unit reduces Buyer’s load at the time ISO-NE determines Buyer’s capacity obligation in accordance with ISO-NE Rules.
- 1.07 “Commercial Operations Date” has the meaning set forth in Article 2.1.

- 1.08 “Commercially Reasonable Efforts” means a level of effort which in the exercise of prudent judgment in the light of facts or circumstances known, or which should reasonably be known, at the time a decision is made, can be expected by a reasonable person to accomplish the desired result in a manner consistent with Good Industry Practice and which takes the performing Party’s interests into consideration.
- 1.09 “Contract Price” means [\$] per kWh.
- 1.10 “Contract Products” means 100% of the Energy, Capacity Value, if any, Transmission Value, if any, and any other market product now or later produced by or attributable to the Unit, which shall be Unit Contingent. Contract Products shall not include Environmental Attributes, Renewable Energy Certificates or Tax Attributes.
- 1.11 “Contract Year” shall have the meaning ascribed to such term in Article 4.3.
- 1.12 “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Seller, whether through the ownership of voting securities, by contract or otherwise.
- 1.13 “Credit Rating” means the rating assigned to a Person by Moody’s or S&P for such Person’s long term unsecured debt not supported by third party credit enhancement (other than by repayment of its debt) or, if such Person does not issue long term debt, then the rating then assigned to such Person as a long-term issuer rating by Moody’s or S&P.
- 1.14 “Defaulting Party” has the meaning set forth in Article 11.
- 1.15 “Delivery Point” has the meaning set forth in Article 5.
- 1.16 “Due Date” has the meaning set forth in Article 7.2.
- 1.17 “Early Termination Date” has the meaning set forth in Article 11.2.
- 1.18 “Emergency” means any occurrence of events that compromises or, in the judgment of a reasonable person consistent with Good Industry Practice, may compromise the lawful and/or safe operation of the Unit or Buyer’s electric system, as applicable, or threatens the health and safety of Persons or damage to property.
- 1.19 “Energy” shall be measured in kilowatt hours and means the power that: (i) the Unit produces in the form of three phase alternating current having a nominal frequency of 60 cycles per second, a power factor of 1.0 and a voltage as specified in the Interconnection Agreement; and (ii) meets all requirements set forth in the Interconnection Agreement.
- 1.20 “Enforcement Action” has the meaning set forth in Article 14.4(b)(iii).

- 1.21 “Enforcement Conditions” shall mean the following conditions: (a) a Qualified Assignee is owner of the Unit immediately following the Enforcement Action; (b) the same Qualified Assignee identified in the foregoing subsection (a) assumes each of this Agreement, the Interconnection Agreement and the Site License; (c) all defaults continuing at the time of the Enforcement Action under this Agreement shall be cured by the Qualified Assignee identified in the foregoing subsection (a); (d) the Qualified Assignee identified in the foregoing subsection (a) agrees in writing to be bound by all of the terms and conditions of this Agreement, the Interconnection Agreement and the Site License from and after the date of such assignment; and (e) all of Buyer’s costs and expenses, including reasonable attorney’s fees, incurred by Buyer in connection with the Enforcement Action, including the negotiation and execution of any agreements or instruments requested by the Qualified Assignee in connection with such Enforcement Action shall have been paid by Seller or the Qualified Assignee.
- 1.22 “Environmental Attributes” means those attributes that are aspects, claims, characteristics or benefits associated with the generation of a quantity of Energy by the Unit, other than the electric energy produced and that are capable of being measured, including but not limited to those attributes verified or calculated and are documented or classified in the NEPOOL Generator Information System during the Term of this Agreement. An Environmental Attribute may include, but is not limited to, one or more of the following identified with a particular megawatt hour of generation: the Unit’s use of a particular renewable energy source, avoided NO_x, SO_x, CO₂, greenhouse gas emissions or avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of applicable law in order to site and develop the Unit itself). Environmental Attributes may or may not be included in the definition or valuation of Renewable Energy Certificates by various certification authorities for use in meeting requirements of renewable portfolio standards under their jurisdiction. Environmental Attributes do not include (i) any Installed Capacity of the Unit, (ii) Ancillary Services, or (iii) Tax Attributes.
- 1.23 “Effective Date” means the date of execution of this Agreement.
- 1.24 “Event of Default” has the meaning set forth in Article 11.1.
- 1.25 “Fair Market Value” has the meaning set forth in Article 19.20.
- 1.26 “Financing Party” means any Person (or its agent) who has made or will make a loan to Seller (or an affiliate of Seller) to finance the development, construction and/or operation the Unit.
- 1.27 “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 prohibits or prevents such Party from performing its obligations under this Agreement. Under no circumstances shall Force Majeure

include (a) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (b) any occurrence or event that was caused, in whole or in material part, by the Party claiming the Force Majeure, (c) Seller's ability to sell the Contract Products at a price greater than that set out in this Agreement, or (d) Buyer's ability to procure the Contract 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 take the actions necessary to obtain and maintain all necessary permits, a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

- 1.28 "Forced Outage" has the meaning set forth in Article 3.4.
- 1.29 "Good Industry Practice" means (i) with respect to Seller, the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry in the operation and maintenance of generating equipment similar in size and technology to the Unit) and (ii) with respect to Buyer, the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the operation and maintenance of transmission and distribution systems similar in size and technology to Buyer's system) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.
- 1.30 "Governmental Approval" means any approval, consent, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority with jurisdiction over a Party.
- 1.31 "Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.
- 1.32 "Guaranteed Energy Amount" has the meaning set forth in Article 4.3.
- 1.33 "Independent Appraiser" means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Unit. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Seller, any affiliate of Seller, or Buyer.

- 1.34 “Information” means all records, reports, communications, papers, maps, photographs, financial statements, statistical tabulations, warranty records, maintenance or service agreements or other documentary materials or data, regardless of physical form or characteristics, made, received or otherwise possessed by Seller pertaining to the Unit, any portion thereof, the Interconnection, Interconnection Agreement or this Agreement.
- 1.35 “Interest Rate” has the meaning set forth in Article 7.2.
- 1.36 “Interconnection” means the Unit’s inverter and system protection owned by Seller, and agreements between Seller and the Buyer, that effect the physical transfer of Contract Products, as applicable, from the Unit to the Buyer at the Delivery Point.
- 1.37 “Interconnection Agreement” means the interconnection agreement between Buyer and Seller that provides for the Unit to be interconnected with Buyer’s electricity distribution system.
- 1.38 “Investment Grade Credit Rating” means a Credit Rating of at least BBB- from S&P and/or a Credit Rating of at least Baa3 from Moody’s.
- 1.39 “Letter of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, and otherwise being in a form reasonably acceptable to the Party in whose favor the Letter of Credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit. A Letter of Credit shall be valued at zero unless it expires more than thirty (30) calendar days after the date of valuation.
- 1.40 “Letter of Credit Default” has the meaning set forth in Articles 17.1(b).
- 1.41 “Liabilities” means any and all liabilities, losses, fines, obligations, penalties, costs or other expenses of any kind or nature, including reasonable attorneys’, experts’ and accountants’ fees, court costs and other costs of any proceeding, incurred by a Party, whether arising from claims, demands, causes of action, litigation, lawsuits, proceedings, investigations, judgments, settlements or from any similar type of occurrence whether actual, threatened or filed and regardless of whether groundless, false or fraudulent.
- 1.42 “Material Contract” means any written contract, agreement, license, sublease, lease, easement, sublease, mortgage, instrument, guarantee, commitment, undertaking or other similar arrangement, whether expressed or implied, which either:
- (a) creates a right to lease, use or occupy real estate which is necessary for the operation of the Unit according to Good Industry Practice; or
 - (b) provides rights or benefits for the Seller such that the consequences of a default under or termination of such an arrangement would reasonably

be expected to have a material adverse effect upon Seller's ability to operate the Unit according to Good Industry Practice.

- 1.43 "Monthly Contract Products Charge" has the meaning set forth in Article 4.1.
- 1.44 "Moody's" means Moody's Investor Services, Inc., its successors and/or assigns.
- 1.45 "Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.
- 1.46 "Planned Maintenance" means maintenance of the Unit that is planned in advance by Seller.
- 1.47 "Planned Term of Operation" means the period commencing with the Commercial Operations Date and ending at HE 2400 EPT on the day that follows the Commercial Operations Date by [REDACTED] years.
- 1.48 "Qualified Assignee" must be (a) a business organization that (i) has experience that is comparable or superior to that of the initial named Seller in operating and maintaining photovoltaic solar systems comparable to the Unit and providing services comparable to those required by this Agreement and (ii) has financial capability that is comparable or superior to that of the initial named Seller; or (b) business entity that meets the conditions set forth in the foregoing subsections (a)(ii) and delegates the obligations of the "Seller" under this Agreement and of the "Interconnecting Party" under the Interconnection Agreement to a third-party that meets the criteria set forth in the foregoing subsection (a)(i).
- 1.49 "Qualified Institution" means a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an affiliate of either Party) with such bank having a credit rating of at least A- from S&P and A3 from Moody's, having \$10,000,000,000 in assets.
- 1.50 "Received" has the meaning set forth in Article 7.2.
- 1.51 "Replacement Power Cost" means an amount expressed in \$/kWh equal to the Day Ahead Locational Marginal Price at the Internal Hub having Location ID of 4000 and Location Name Description .H.INTERNAL HUB, as defined in ISO-NE Rules, ("Hub") averaged across all hours during the relevant Contract Year when Seller failed to deliver the Guaranteed Energy Amount and when the Day Ahead Locational Marginal Price at the Hub is greater than the Contract Price.
- 1.52 "Renewable Energy Certificates" or "RECs" (including Solar RECs or "SRECs") means the certificates, which relate to each MWh of generation delivered from the Unit to the Delivery Point, that are produced, documented or classified in the NEPOOL Generator Information System according to their ability to meet

renewable portfolio standards requirements in any New England State or under any applicable federal program.

- 1.53 “Seller Termination Payment” has the meaning set forth in Article 11.2.
- 1.54 “Settlement Amount” has the meaning set forth in Article 11.3.
- 1.55 “Shortfall Energy” equals the positive difference, if any, obtained by subtracting the total number of kilowatt hours delivered to the Delivery Point for the relevant Contract Year from the Guaranteed Energy Amount.
- 1.56 “Site” means the site located at [REDACTED] where the Unit is to be physically located.
- 1.57 “Site License” means the license granted by Buyer to Seller allowing Seller to locate the Unit on the Site and further granting to Seller the right to access the Site for the purpose of developing, constructing, maintaining and operating the Unit on the Site.
- 1.58 “Standard Insolation Conditions” means that the aggregate available solar irradiation resource at the Site for all hours in any applicable 12-month period is not more than four percent (4%) below the average amount of the aggregate solar irradiation set forth in the National Renewable Energy Laboratory’s TMY3 dataset located closest to the Site, and the Parties acknowledge and agree that if the aggregate available solar irradiation resource at the Site for all hours in any applicable 12-month period is more than four percent (4%) below the average amount of the aggregate solar irradiation set forth in the National Renewable Energy Laboratory’s TMY3 dataset, such occurrence shall constitute a Force Majeure, in which case the Seller shall be the affected party.
- 1.59 “Substantial Operations” has the meaning set forth in Article 2.1.
- 1.60 “S&P” means Standard & Poor’s Rating Group and its successors and/or assigns.
- 1.61 “Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Unit or the output generated by the Unit (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).
- 1.62 “Term of Agreement” has the meaning set forth in Article 2.3.
- 1.63 “Term of Service” has the meaning set forth in Article 2.2.
- 1.64 “Transmission Cost” shall be an amount determined in a commercially reasonable manner that is equal to the economic loss to Buyer in the relevant month that is attributable to failure of the Unit to reduce Buyer’s load at the time ISO-NE

determines Buyer's transmission cost obligation in accordance with ISO-NE Rules by the same amount that Buyer's load would have been reduced had Seller delivered the kilowatt hours of Energy set forth in Appendix B to the Delivery Point at the time when ISO-NE determined Buyer's transmission cost obligation.

- 1.65 "Transmission Value" means an amount determined in a commercially reasonable manner that is equal to the economic benefit to Buyer in the relevant month that is attributable to the amount by which the Unit reduces Buyer's load at the time Buyer's monthly peak is established for purposes of determining Buyer's Regional Network Service charges.
- 1.66 "Unit" means the Seller's solar photovoltaic generating facility(s) with total installed capacity of approximately [] MW AC, three-phase with protective relays and associated equipment as described in further detail in Appendix A.
- 1.67 "Unit Contingent" means that the Energy to be delivered by Seller to Buyer will be supplied only from the Unit and only to the extent that the Unit is in operation. Seller's failure to deliver Energy under this Agreement is excused only to the extent that, and for the period during which, the Unit is unavailable as a result of Planned Maintenance, a Forced Outage, or a Force Majeure event.

ARTICLE 2. TERM OF SERVICE

2.1. Substantial Operations. The Seller shall (a) commence commercial operation of at least []% of the Unit's total capacity on or before the date set forth in Article 3.9(a)(iv) and (b) execute an Interconnection Agreement with Buyer on or before the date set forth in Article 3.9(a)(iv) ((a) and (b) referred to as "Substantial Operations"). Within five (5) Business Days of achieving Substantial Operations, Seller shall certify to Buyer in writing the date on which Substantial Operations occur ("Commercial Operations Date").

2.2. Term of Service. Seller shall commence selling the Contract Products, and Buyer shall commence purchasing the Contract Products on hour ending ("HE") 0100 eastern prevailing time ("EPT") on the day that the Seller begins delivering Contract Products from the Unit to the Delivery Point and Seller shall continue selling the Contract Products, and Buyer shall continue purchasing the Contract Products, as provided herein, through the earlier of (a) the Planned Term of Operation, (b) the date of termination pursuant to the provisions of Article 11.2 or (c) the date on which Buyer purchases the Unit from Seller pursuant to Article 19.19 ("Term of Service").

2.3. Term of Agreement. This Agreement shall commence on the Effective Date and the applicable provisions of this Agreement shall continue in effect after termination or expiration hereof to the extent necessary to provide for accountings, final billing, billing adjustments, resolution of any billing dispute, or resolution of any court or administrative proceeding and payments ("Term of Agreement"). Notwithstanding anything in this Agreement to the contrary, expiration or termination of the Agreement for any reason shall not relieve either Party of any right or obligation accrued or accruing hereunder prior to such expiration or

termination, and no expiration or termination of this Agreement shall affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any expiration or termination.

ARTICLE 3.
TRANSACTION TYPE AND SELLER OBLIGATIONS

3.1. Transaction Type. This Agreement is for the purchase and sale of the Contract Products. The Seller shall sell the Contract Products pursuant to the terms of this Agreement, and the Buyer shall pay for the Contract Products pursuant to the terms of this Agreement. The Parties understand and agree that Buyer intends to receive capacity and transmission benefits attributable to the amount by which the Unit reduces Buyer's load during Buyer's annual peak that is coincident with ISO-NE's peak and Buyer's monthly peak and Seller agrees to not take any action that would deprive Buyer of those benefits. If any of such benefits are no longer available as a result of load reduction but become otherwise available then Seller agrees to work cooperatively with Buyer and to take reasonable actions as needed for Buyer to realize such benefits without any additional cost hereunder.

3.2. Maximize Contract Products. The Parties understand and agree that Seller shall use Commercially Reasonable Efforts consistent with Good Industry Practice to maximize the availability and operation of the Unit in order to maximize the amount of Contract Products that Buyer will receive hereunder. The Parties understand and agree that this is a Unit Contingent Agreement.

3.3. Maintenance Obligation. Seller, at its sole cost and expense, shall provide operation, repair, monitoring and maintenance services to the Unit in accordance with the schedule below as well as in accordance with equipment manufacturer requirements and Good Industry Practice:

- (a) At all times perform basic monitoring of the Unit to ensure that the Unit is fully functional and record all meter data.
- (b) At all times maintain service agreement with inverter supplier.
- (c) At all times maintain equipment warranty records.
- (d) At all times, respond to all alarms, alerts and service requests pertaining to the Unit within two (2) Business Days of such alarm, alert and/or service request.
- (e) Within three (3) Business Days of becoming defective or inoperable, replace such defective or inoperable equipment.
- (f) Reasonably prior to the expiration of their respective useful life, replace all inverters, batteries, and other equipment with an expected useful life shorter than the Planned Term of Operation.

(g) On a quarterly basis beginning three (3) calendar months after the Commercial Operations Date is achieved prepare and provide to Buyer a performance report. Such performance report shall include a summary of all Energy delivered to the Delivery Point, a summary of all Planned Maintenance and a summary of all Forced Outages and the steps that were taken to resolve such Forced Outages.

(h) On an annual basis beginning one (1) year after the Commercial Operations Date is achieved: (i) perform visual and mechanical inspection of Unit, including, but not limited to all PV arrays, electric equipment, mounting structure(s) and the data acquisition system that is part of or integrally related to the Unit; (ii) clean inverter air vents; (iii) clean and change inverter air filters in accordance with manufacturer warranty requirements; (iv) clean and remove dust from inverter heat sinks in accordance with manufacturer warranty requirements; (v) inspect PV array roof penetrations (if applicable) to ensure sealant is applied properly and not degrading. A report of such inspections and all maintenance resulting from such inspections shall be provided to Buyer within 30 calendar days of such inspections and maintenance.

3.4. Forced Outage. Seller and Buyer each shall notify the other as soon as practically possible, but in no event later than twenty-four (24) hours following their discovery, of “Forced Outage”, which is defined as: (a) any material malfunction in the operation of the Unit and/or (b) any interruption in the delivery of Energy to the Delivery Point. Seller shall use Commercially Reasonable Efforts consistent with Good Industry Practice to fully resolve any Forced Outage as quickly as possible. In all cases, however, Seller shall initiate maintenance activities needed to return the Unit to service within two (2) Business Days of such notice, and Seller shall provide Buyer with an estimate of the time necessary to return the Unit to service. The Seller will notify the Buyer as soon as practicable when the Unit returns to service, but in no event later than twenty-four (24) hours following the Unit’s return to service.

3.5. Emergency. Seller and Buyer each shall notify the other upon the discovery of an Emergency condition pertaining to the Unit. If Seller is notified of an Emergency condition by Buyer or otherwise learns of an Emergency condition then Seller shall promptly dispatch appropriate personnel to address such Emergency as quickly as possible in accordance with Good Industry Practice. Buyer maintains the right to disconnect the Unit and/or to otherwise isolate the Unit from Buyer’s system as a result of any Emergency condition pertaining to the Unit as determined by Buyer in its sole discretion.

3.6. Obligation to Provide Information. Seller shall provide to Buyer copies of all Information within a reasonable period of time, but in no event later than thirty (30) calendar days, of making or receiving Information pertaining to maintenance and/or repair pertaining to the Unit or any portion thereof or the Interconnection.

3.7. Capacity. Seller understands and agrees that it may not and shall not qualify for, participate in, be selected for, or receive any compensation under any demand response program, capacity program, Forward Capacity Market or any other program that credits Seller for capacity. Furthermore, Seller shall not register this Unit with ISO-NE so as to cause any of Buyer’s load to be reconstituted based upon load reduction achieved by peak shaving unless such registration or reconstitution is required under Applicable Law. Notwithstanding the foregoing,

or anything else to the contrary in this Agreement, if at any time the Unit may no longer be treated as a load reducer then at Buyer's sole option, the Parties shall use commercially reasonable efforts to take the actions necessary for ISO-NE to credit Buyer for capacity attributable to the Unit. Such efforts may include designating Buyer as the "Generator Asset Owner" and/or "Lead Market Participant" in accordance with ISO-NE Rules in order for Buyer to receive credit for capacity attributable to the Unit.

3.8. Title to Unit. Seller shall at all times during the Term of Service be the legal and beneficial owner of the Unit.

3.9. Critical Milestones.

(a) Subject to the provisions of Article 3.9(c), commencing on the Effective Date, Seller shall develop the Unit in order to achieve the following milestones ("Critical Milestones") on or before the date set forth in this Article 3.9(a):

(i) engineering, procurement and construction ("EPC") contractor selected by Seller and final EPC contract negotiated by [REDACTED];

(ii) full and complete applications for all Governmental Approvals necessary to construct the Unit, as set forth in Appendix D, have been filed by [REDACTED];

(iii) issuance of a full notice to proceed by Seller to its EPC contractor by [REDACTED]; and

(iv) achievement of Commercial Operations Date by [REDACTED].

(b) Seller shall provide Buyer with written notice of the achievement of each Critical Milestone within five (5) Business 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 Unit.

(c) 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 six (6) months.

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

3.10. Delay Damages and Early Termination.

(a) If the Critical Milestones set forth in Article 3.9(a)(i) through (iii) are not achieved for reasons other than Force Majeure and the dates for such milestones are not extended by Buyer in its sole discretion then Buyer may terminate this Agreement. Upon

any termination in accordance with this Article 3.10(a), neither Party shall have any further liability to the other with respect to the Unit, except as provided in Article 2.3, and provided that (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (ii) the indemnity obligations under Article 13, and the dispute resolution provisions of Article 18 hereof shall continue to apply notwithstanding the termination of this Agreement.

(b) If the Commercial Operations Date is not achieved by the date set forth in Article 3.9(a)(iv) for reasons other than Force Majeure then Seller shall pay to Buyer damages for each day from and after such date until the date on which the Commercial Operations Date is achieved at the rate of [REDACTED] per kW of the Unit's nameplate capacity, as set forth in Appendix A, per day until the earlier of the Commercial Operations Date or the date that Buyer has terminated this Agreement in accordance with this Article 3.10(b) ("Delay Damages"). If the Commercial Operations Date has not been achieved within sixty (60) calendar days following the date set forth in Article 3.9(a)(iv) above, then Buyer may terminate this Agreement. Upon any termination in accordance with this Article 3.10(b), neither Party shall have any further liability to the other with respect to the Unit, except as provided in Article 2.3, and provided that (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (ii) the indemnity obligations under Article 13, and the dispute resolution provisions of Article 19 hereof shall continue to apply notwithstanding the termination of this Agreement.

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

(d) By the tenth (10th) calendar day following the end of the calendar month in which Delay Damages first become due and continuing by the tenth (10th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable) or otherwise from time to time after the date specified in Article 3.9(a)(iv) during which Delay Damages begin to accrue and for up to 120-days following the Commercial Operations Date or the termination of this Agreement, Buyer shall deliver to Seller one or more invoices showing Buyer's computation of Delay Damages and any amount due Buyer in respect thereof. No later than ten (10) calendar days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. If Seller fails to pay such amounts when due then Buyer may exercise any other remedies available for Seller's default hereunder, which shall include the right to draw on Seller's Letter of Credit in order to pay the Delay Damages to Buyer.

3.11. Standard of Operation. Seller shall design, obtain and maintain Governmental Approvals, install, operate, and maintain the Unit in good condition and repair, in compliance

with all Applicable Laws, in accordance with the Interconnection Agreement and in accordance with Good Industry Practice. Such work shall be at Seller's sole expense.

3.12. Regulatory Status. Seller shall obtain and maintain such authorizations, certificates and approvals as may be required from the Federal Energy Regulatory Commission ("FERC") as may be required for Seller to make wholesale electricity sales to Buyer at the rates and on the terms set forth under this Agreement, which Seller acknowledges is a market based rate.

3.13. NERC Compliance. The Parties understand and agree that the Seller, and not the Buyer, shall be responsible for compliance with the North American Electric Reliability Corporation (NERC) Compliance Monitoring and Enforcement Program as such compliance relates to the Seller's obligations under this Agreement and/or ownership and/or operation of the Unit.

ARTICLE 4. PURCHASE AND SALE OF CONTRACT PRODUCTS

4.1. Price. Beginning on the Commercial Operations Date, Buyer will pay Seller each month an amount equal to the number of kilowatt-hours of Energy, expressed to three (3) decimal places, delivered to the Delivery Point multiplied by the Contract Price ("Monthly Contract Products Charge"). At no time shall Buyer be responsible for losses of Energy from the Unit to the Delivery Point.

4.2. No Sale to Others. Under no circumstances shall Seller sell the Contract Products to any customer in Buyer's service territory. This Article 4.2 shall survive expiration or earlier termination of this Agreement.

4.3. Delivery Shortfalls. Seller shall deliver a minimum of []% of the kilowatt hours of Energy set forth in Appendix B for the relevant Contract Year to the Delivery Point ("Guaranteed Energy Amount") in each Contract Year during which there exist Standard Insolation Conditions. If Seller fails to deliver the Guaranteed Energy Amount under Standard Insolation Conditions then Buyer shall deduct from amounts due to Seller an amount equal to the Shortfall Energy multiplied by the Replacement Power Cost. "Contract Year" shall mean the twelve (12) month period commencing with the Commercial Operations Date and each successive full or partial twelve (12) month period thereafter during the Term of Service.

4.4. Capacity Shortfalls. If Seller fails to deliver []% of the kWhs of Energy set forth in Appendix B to the Delivery Point at the time when ISO-NE determines Buyer's capacity obligation and such failure is not the result of Force Majeure or the negligence or intentional wrongful act of Buyer then Buyer shall deduct the Capacity Cost for each month from amounts due to Seller for such month.

4.5. Transmission Shortfalls. If Seller fails to deliver []% of the kWhs of Energy set forth in Appendix B to the Delivery Point at the time when ISO-NE determines Buyer's transmission cost obligation and such failure is not the result of Force Majeure or the negligence

or intentional wrongful act of Buyer then Buyer shall deduct the Transmission Cost for the relevant month from amounts due to Seller for such month.

ARTICLE 5.
DELIVERY POINT

The Delivery Point(s) for the Contract Products shall be located at [REDACTED] as more fully described and depicted in Appendix A. The Delivery Point(s) shall at all times and under all circumstances be and remain the same.

ARTICLE 6.
METERING

Energy provided by Seller from the Unit shall be metered as set forth in the Interconnection Agreement and such meter readings shall reflect the actual electricity delivered to the Delivery Point pursuant to Article 5 net of any losses between the metering point and the Delivery Point. Seller shall calibrate and maintain metering equipment in accordance with Good Industry Practice and the Interconnection Agreement. If at any time metering equipment associated with the Unit is found to be inaccurate by more than 1.5% then Seller shall cause it to be made accurate by repair or replacement. The meter readings for the period of inaccuracy shall be adjusted by Seller to correct such inaccuracy so far as the same can be reasonably ascertained; otherwise, the inaccuracy will be deemed to have existed for one half (1/2) of the time period which elapsed between the date such equipment last tested accurate and the date that such equipment was found inaccurate. In addition to regular routine tests, which shall be made in accordance with Good Industry Practice, Seller shall cause such equipment to be tested at least once per year and any other time upon request of and in the presence of a representative of Buyer, but in no event may Buyer request more than one test every six months. If such equipment proves accurate within 1.5%, when tested upon request of Buyer in addition to regular routine tests, the expense of such test shall be borne by Buyer. All metering shall be capable of providing real time meter information to Buyer. Seller is responsible for all charges and costs related to the provision of real time remote meter data such as telephone line charges and over the air charges.

ARTICLE 7.
BILLING AND PAYMENT

7.1. Calculation of Monthly Invoice. For each month or portion thereof during the Term of Service, and, except as otherwise expressly provided herein, Buyer shall pay to Seller the Monthly Contract Products Charge. Pending the availability of actual data, computations by Seller of charges for the purposes of billings hereunder may be based upon reasonable estimates made by Seller. Any charges that are based upon estimates shall be trued-up as soon as practicable once actual data becomes available and in no event later than five (5) Business Days subsequent to actual data becoming available. Errors in arithmetic, computation, meter readings, estimating, or otherwise that affect the accuracy of a bill shall be promptly corrected in a subsequent corrected bill.

7.2. Presentation and Payment. Unless otherwise agreed to in writing by the Parties: (a) Seller shall submit an invoice to Buyer for the Monthly Contract Products Charge as soon as practicable after the end of each calendar month during the Term of Service; (b) the invoice shall identify each input on the bill which is based upon an estimate, in whole or in part; (c) invoices shall be delivered to Buyer by facsimile or by electronic means pursuant to Article 19.2, followed up by an original invoice delivered by regular mail if so requested by Buyer; (d) all such invoices shall be due and payable in immediately available funds via check or wire transfer no later than the Due Date, defined as forty-five (45) Business Days after the date on which such invoice is Received; and (e) any amounts not paid by the Due Date shall be deemed delinquent and shall accrue interest from the Due Date to the date of payment at a per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” as the same may change from time to time (or if not published on such day on the most recent preceding day on which published), or any other periodical that may be agreed upon in writing from time to time (“Interest Rate”). For purposes of this Article 7.2, “Received” shall mean the date that the invoice is confirmed successfully delivered by telecopy, express mail or electronic communication.

7.3. Challenge of Invoices. Unless otherwise agreed, in the event of a good faith dispute relating to the amounts set forth on any invoice, and provided (a) that the challenging party is not then in default under this Agreement and (b) that the undisputed portion of the invoice at issue is paid, then: (i) either Party may challenge, in writing, the accuracy of any original or adjusted invoice, provided that no adjustment for any invoice or payment will be made unless the challenge to the accuracy thereof was made prior to the lapse of twenty four (24) months from the receipt thereof; (ii) if a Party does not challenge the accuracy of an original or adjusted invoice within such twenty four (24) month period, such invoice shall be binding upon that Party and shall not be subject to challenge.

7.4. Disputed Invoice. Within the limitation of Article 7.3, each invoice shall be subject to adjustment for true-up from estimated costs to actual costs, errors in arithmetic, computation or estimating, or adjustments related to settlement. Seller may make adjustments pursuant to the preceding sentence to any billing for a period of up to twenty four (24) months from the date of rendering of such original billing in order to reflect differences in Seller’s receipt of more current data. The Parties shall use good faith efforts to resolve any billing and payment disputes promptly. Unless otherwise agreed, in case of a dispute to any portion of any invoice, only the non-disputed amount shall be paid in accordance with Article 7.2. Unless otherwise agreed, upon final determination of the invoice amount, any necessary adjustments in such invoice and the payments thereof shall be made in the invoice submitted in the month following such determination, with interest at the Interest Rate from the original Due Date of the invoice until the date of payment; provided, that, in no event shall Buyer be required to pay interest on the amount of any underpayment of costs caused by adjustment for true-up from estimated costs to actual costs or Seller’s error in arithmetic, computation or estimating. Buyer’s payment of an invoice (whether or not under protest) shall not affect any legal or equitable rights a Party may have to challenge the invoice within the time limitations established in Article 7.3 above.

7.5. Monthly Payment Netting. Except for amounts that one Party may owe to the other under Article 11 and 17, which amounts shall not be included in any netting calculation, if

Seller and Buyer are each required to pay an amount in the same month to the other, such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. Each Party reserves all rights, setoffs, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) to which such Party has or may be entitled arising from or out of this Agreement.

ARTICLE 8.
TRANSFER OF TITLE

Title to, and risk of loss related to, the Contract Products delivered or received hereunder shall transfer from Seller to Buyer at the Delivery Point.

ARTICLE 9.
TAXES

Seller shall pay or cause to be paid all taxes on or with respect to the Unit and the sale of the Contract Products prior to the Delivery Point. Buyer shall pay or cause to be paid all taxes on or with respect to the purchase of the Contract Products at and after the Delivery Point. Payment of all other taxes which are enacted or become effective or are assessed with respect to the Contract Products after the Effective Date shall be governed by the terms of this Article 9. Nothing shall obligate or cause a Party to pay or be liable to pay any tax for which it is exempt under the law.

Each Party shall use reasonable efforts to administer this Agreement and implement its provisions in accordance with the intent of the Parties to minimize the imposition of taxes. Buyer agrees to furnish Seller with all applicable tax exemption certificates and documentation where exemption from applicable taxes is claimed.

ARTICLE 10.
FORCE MAJEURE

If Force Majeure prevents a Party from fulfilling any obligations under this Agreement, the Party affected by Force Majeure (“Affected Party”) shall promptly notify the other Party, either in writing or via the telephone, of the existence of such Force Majeure. The notification must specify in reasonable detail the circumstances of the Force Majeure, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure until such Force Majeure ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure cannot be mitigated by the use of Commercially Reasonable Efforts. The Affected Party will use Commercially Reasonable Efforts to resume its performance as soon as possible. If a Party claims it is delayed in, or prevented from performing or carrying out any of the agreements, covenants and obligations under this Agreement by reason of claiming Force Majeure for a period of (i) 120 consecutive calendar days or longer or (ii) a total of 240 calendar days in any 12-month period, then the Party not claiming Force Majeure may terminate this Agreement and

neither Party shall have any liability to the other as a result of such termination, provided, however, that Buyer shall pay Seller for Contract Products sold prior to such termination.

ARTICLE 11. EVENTS OF DEFAULT

Without limitation of its rights at law, in equity and/or hereunder, either Party shall be entitled to terminate this Agreement upon the occurrence of an Event of Default by the other Party (“Defaulting Party”), as defined in this Article 11. The Party that is entitled to terminate this Agreement pursuant to the prior sentence shall be referred to as “Non-Defaulting Party”.

11.1. Events of Default. For purposes of this Agreement, each of the following shall constitute an event of default (“Event of Default”) with respect to a Party.

(a) Failure by the Defaulting Party to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party and provided the payment is not the subject of a good faith dispute as described in Article 7.4.

(b) The Defaulting Party becomes Bankrupt.

(c) Failure by the Defaulting Party to perform any material covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Article 11.1 as a separate Event of Default) and such failure is not excused by Force Majeure or such failure continues uncured for more than thirty (30) calendar days after written notice to such Party specifying the nature of such failure; provided, however, that in the event of an Event of Default that is not reasonably capable of cure within thirty (30) calendar days, the Defaulting Party commences to cure such Event of Default within thirty (30) calendar days and uses Commercially Reasonable Efforts to cure such Event of Default; provided, however, that such cure period shall not exceed ninety (90) calendar days.

(d) Any representation or warranty made by the Defaulting Party in this Agreement is not true and complete in all material respects when made unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) calendar days after written notice to such Party specifying the nature of such misrepresentation, and (ii) such cure removes any adverse affect on the other Party of such fact, circumstance or condition being otherwise than as first represented.

(e) The Party consolidates or amalgamates with, or merges with or into, another entity and, at the time of such consolidation, amalgamation or merger, the resulting or surviving entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party and/or such resulting or surviving entity is not a Qualified Assignee.

(f) Failure to provide or maintain credit support as and when required by Article 17.

(g) Failure of Seller to maintain or cause to be maintained insurance for the Unit as set forth in Article 19.18 and such failure is not cured within five (5) Business Days after Buyer notifies Seller of such failure. In this case, Buyer shall be the Non-Defaulting Party.

(h) Seller commits a default under the Interconnection Agreement and Buyer terminates the Interconnection Agreement. In this case, Buyer shall be the Non-Defaulting Party.

(i) Seller commits a default under the Site License that results in termination of the Site License. In this case, Buyer shall be the Non-Defaulting Party.

(j) Seller fails to comply with Article 4.2. In this case, Buyer shall be the Non-Defaulting Party.

(k) Seller transfers the Unit or any part thereof to any other Person and such transfer is not in connection with an assignment of this Agreement that is permitted pursuant to Article 14. In this case, Buyer shall be the Non-Defaulting Party.

11.2. Seller Termination Payment and Buyer Termination Payment. If Buyer is the Non-Defaulting Party and establishes an Early Termination Date pursuant to Article 11.3 below, then the payment owed by Seller (the “Seller Termination Payment”) shall equal Buyer’s actual direct damages over the unexpired portion of the Planned Term of Operation calculated in a commercially reasonable manner, including, but not limited to, the excess costs of replacement Energy in comparison to the Contract Price, determined in accordance with the terms hereof, and loss of any capacity, transmission, ancillary services or energy losses benefits arising from the Seller Event of Default.

If Seller is the Non-Defaulting Party and establishes an Early Termination Date pursuant to Article 11.3 below, then the payment owed by Buyer (the “Buyer Termination Payment”) shall equal Seller’s actual direct damages over the unexpired portion of the Planned Term of Operation calculated in a commercially reasonable manner, which shall be based on the shortfall in revenues derived from replacement Energy sales in comparison to the Contract Price arising from the Buyer Event of Default; provided, however, that in no case shall the Buyer Termination Payment exceed the Fair Market Value of the Unit determined pursuant to Section 19.20.

11.3. Settlement Amount. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right to: (i) designate a day, no earlier than the day such notice is effective and no later than 20 calendar days after such notice is effective, as an early termination date (“Early Termination Date”) to liquidate and terminate this Agreement and (ii) withhold any payments due to the Defaulting Party under this Agreement. If the Non-Defaulting Party establishes an Early Termination Date and the Non-Defaulting Party is the Buyer then Seller shall owe the Seller Termination Payment to Buyer. If

the Non-Defaulting Party establishes an Early Termination Date and the Non-Defaulting Party is the Seller then Buyer shall owe the Buyer Termination Payment to Seller.

The Non-Defaulting Party shall determine a single liquidated amount (the "Settlement Amount") payable by the Defaulting Party to the Non-Defaulting Party by netting out from the Seller Termination Payment or Buyer Termination Payment, as applicable, (i) any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 17 and (ii) at the option of the Non-Defaulting Party (a) any amounts due to the Defaulting Party under this Agreement against (b) any amounts due to the Non-Defaulting Party under this Agreement. Notwithstanding the foregoing, all payments due and owing for the Contract Products prior to the Early Termination Date shall be made unless to the extent such amounts are setoff as forth in this Article.

As soon as practicable after an Event of Default, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Settlement Amount. In no event shall a Settlement Amount be due from the Non-Defaulting Party to the Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Settlement Amount shall be made by the Defaulting Party within ten (10) calendar days after such notice is effective. In connection with such payment, the Non-Defaulting Party shall have the right to draw on any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 17, or otherwise account therefor in a manner consistent with the calculation of the Settlement Amount.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount, in whole or in part, the Defaulting Party shall, nevertheless immediately pay the total Settlement Amount within ten (10) calendar days after receipt of the Non-Defaulting Party's notice of such amount plus any unpaid amounts owing to the Non-Defaulting Party, and, within seven (7) Business Days of receipt of such notice, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. The Non-Defaulting Party shall answer any questions, within two (2) Business Days of receiving such questions, from the Defaulting Party regarding the calculation of the Settlement Amount. If the dispute is resolved in favor of the Defaulting Party, the disputed amount shall be refunded within seven (7) Business Days, with interest upon such amount, calculated at the Interest Rate from the date the Settlement Amount was paid to the Non-Defaulting Party until the date upon which the refund is made.

ARTICLE 12. LIMITATION OF LIABILITY

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT

LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. 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.

ARTICLE 13. INDEMNIFICATION

13.1 Seller's Indemnity. Seller shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Buyer and its directors, officers, managers, agents, employees, and contractors ("Buyer Indemnitees") from, against and with respect to, any and all Liabilities arising out of or relating to any third party claim or action against any Buyer Indemnitees arising of the following:

- (a) any inaccuracy in any representation or breach of warranty of Seller contained in this Agreement;
- (b) any failure by Seller to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by it under this Agreement;
- (c) the design, construction, ownership, operation and maintenance of the Unit;
- (d) any actual or alleged injury or death of Persons or damage to property arising in connection with the operation of the Unit;
- (e) any liabilities arising from or relating to the Unit and the site of the Unit, including, but not limited to, liabilities under any applicable laws addressing health, safety and the protection of the environment.

Notwithstanding anything to the contrary set forth above, Seller shall not be required to indemnify any Buyer Indemnitee for any loss directly caused by the gross negligence or willful misconduct of such Buyer Indemnitee.

13.2 Buyer's Indemnity. Buyer shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Seller and its directors, officers, managers, agents, employees, and shareholders ("Seller Indemnitees") from, against and with respect to, any and all Liabilities arising out of or relating to any third party claim or action against any Seller Indemnitees arising out of the following:

- (a) any inaccuracy in any representation or breach of warranty of Buyer contained in this Agreement; and
- (b) any failure by Buyer to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by Buyer under this Agreement.

Notwithstanding anything to the contrary set forth above, Buyer shall not be required to indemnify any Seller Indemnitee for any loss directly caused by the negligence or willful misconduct of such Seller Indemnitee.

ARTICLE 14. ASSIGNMENT

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 permitted assigns) expressly consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations hereunder.

14.2. 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.

14.3. Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement without consent of Seller to any substitute purchaser of the Contract Products so long as the proposed assignee's credit worthiness is equal to or better than that of Buyer at the time of the proposed assignment.

14.4. Financing Accommodations. Buyer acknowledges that Seller may enter into financing agreements in connection with the Unit with a Financing Party the identity of whom

Seller shall specify to Buyer in writing and that Seller's obligations under such financing agreement may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and/or a grant of a security interest and/or a transfer of an ownership interest in the Unit. In order to facilitate Seller's ability to obtain financing, Buyer agrees as follows:

- (a) Consent to Collateral Assignment. Buyer consents to the collateral assignment by Seller to the Financing Party of this Agreement; provided that such assignment shall not relieve Seller of its obligations hereunder.
- (b) Financing Party's Default Rights. Notwithstanding any contrary term of this Agreement:
 - i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement.
 - ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller hereunder or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement. Unless the Financing Party has succeeded to Seller's interests under this Agreement, nothing herein requires the Financing Party to cure any default of Seller under this Agreement or to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so within the terms and time periods required by this Agreement.
 - iii. Buyer agrees that if a Financing Party notifies Buyer in writing that an event of default under Seller's financing arrangement has occurred and is continuing and that the Financing Party has elected to take an enforcement action or otherwise exercise remedies (an "Enforcement Action") with respect to the Unit and/or the replacement of the Seller under this Agreement, then, provided that the Enforcement Conditions are satisfied, (1) the Qualified Assignee that acquires the Unit through such Enforcement Action shall be substituted for the then named Seller under this Agreement and (2) Buyer will recognize such Qualified Assignee as its counterparty under this Agreement and will continue to perform its obligations under this Agreement in favor of the Qualified Assignee.
 - iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Financing Party made within thirty (30) days of such termination or rejection, Buyer shall enter into a new agreement with a Qualified Assignee having substantially the same terms and conditions as this Agreement solely on the condition that before or at the time of entering into such new agreement the Qualified

Assignee (A) cures all defaults then existing under this Agreement and (B) pays to Buyer the aggregate amount of (I) all unpaid amounts owed to Buyer under this Agreement, if any, plus (II) the total amount of all reasonable costs, fees, and expenses incurred by Buyer as a result of the rejection or other termination of the Agreement and any resulting suspension of the provision to Buyer of the Contract Products required to be provided to Buyer pursuant to this Agreement and the cost to Buyer of entering into a new agreement prior to the time of entering into such new agreement, including, without limitation, the cost to the Buyer of purchasing replacement Contract Products in excess of the prices in this Agreement and the Buyer's legal fees.

- (c) Acknowledgement and Confirmation. Buyer shall provide an acknowledgement and confirmation in a form provided by the Financing Party that does not diminish Buyer's rights hereunder and that is reasonably acceptable to the Buyer, which acknowledgement and consent shall not be unreasonably withheld, conditioned, or delayed. Such acknowledgement and confirmation shall be limited to Buyer's acknowledgement of the collateral assignment by Seller to the Financing Party of this Agreement.
- (d) Payment of Expenses. Seller shall reimburse Buyer on demand for any out-of-pocket costs (including reasonable attorneys' fees and expenses) incurred by the Buyer in connection with each actual or proposed assignment, transfer or Enforcement Action (including the costs of making investigations as to the acceptability of a proposed assignee or transferee) or other act described in this Article 14.4.

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

ARTICLE 15. CONFIDENTIALITY

The Parties consider the terms of this Agreement to be sensitive commercial information. Accordingly, the Parties shall not disclose the terms of this Agreement to any third party unless and to the extent required to make such disclosure by action of a court or other government authority or applicable law. Each Party shall only disclose the terms this Agreement and other confidential information received from the other Party to (i) those of its employees, consultants, authorized representatives, and attorneys having a "need to know" in order to carry out their functions in connection with this Agreement and (ii) to prospective lenders and investors and other prospective purchasers of energy or other products of the Unit which agree to maintain the confidentiality of the information disclosed. Seller acknowledges that the Buyer is a public entity and is required to comply with the provisions of the Massachusetts Open Meeting and Public Records Laws regarding disclosure of the pricing and other terms of this Agreement.

ARTICLE 16.
REPRESENTATIONS AND WARRANTIES

As a material inducement to entering into this Agreement, each Party (or the Party specified, as applicable), with respect to itself, represents and warrants to the other Party throughout the Term of Service:

16.1. Duly Organized and Validly Existing. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement.

16.2. No Consents or Other Authorizations. It has or will obtain when required all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and no consents of any other Party and no act of any other Governmental Authority is required in connection with the execution, delivery and performance of this Agreement other than those which it has or will obtain. In addition, Buyer warrants, with respect to this Agreement, that all acts necessary to the valid execution, delivery and performance of this Agreement have or will be taken and performed as required under all relevant federal, state and local laws, ordinances or other regulations with which Buyer is obligated to comply.

16.3. Due Authorization; No Violation. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a Party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it.

16.4. Enforceability. This Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending.

16.5. No Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other comparable proceedings pending or being contemplated by it or to its knowledge threatened against it.

16.6. Seller's Power. Seller warrants that it has the right to sell Contract Products hereunder.

16.7. Statutes of Limitation. Buyer represents and warrants that the Term of Agreement does not extend beyond any applicable limitation imposed by any relevant federal, state and local laws, ordinances or other regulations with which Buyer is obligated to comply or other relevant constitutional, organic or other governing documents and applicable law.

16.8. Due Diligence. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party hereto in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

16.9. Material Contracts. Seller represents and warrants that, as of the Commercial Operations Date, Seller has secured all necessary rights to or in any Material Contract.

16.10. Operation in Accordance with Applicable Law. Seller represents and warrants that, as of the Commercial Operations Date, it owns, operates and maintains the Unit in accordance with all Applicable Laws.

ARTICLE 17. CREDIT SUPPORT

17.1. Seller Credit Support.

(a) Within five (5) Business Days after execution of this Agreement, Seller shall provide Buyer with a Letter of Credit issued by a Qualified Institution, substantially in the form attached hereto as Appendix C. The Letter of Credit or a replacement Letter of Credit shall be maintained in at least the following amount: [REDACTED] [\$/kW] (“Seller’s Credit Support Amount”). The Seller shall be required to maintain the Seller’s Credit Support Amount until such time as the Seller obtains an Investment Grade Credit Rating at which time the Seller’s Credit Support Amount shall be cancelled and returned to the Seller. However, if at any time after the Seller obtains an Investment Grade Credit Rating, (i) the Credit Rating of Seller is lowered by S&P below BBB- and/or by Moody’s below Baa3, as applicable, or (ii) Seller fails to maintain a Credit Rating with at least one of S&P or Moody’s and such failure is continuing, then Seller shall be required to provide the Seller’s Credit Support Amount to Buyer within five (5) Business Days of a request by Buyer to be held as security for Seller’s obligations under this Agreement.

(b) For purposes hereof, it shall be a “Letter of Credit Default” with respect to the Letter of Credit issued by the Qualified Institution on behalf of Seller, upon the occurrence of any of the following events: (i) the Qualified Institution shall fail to maintain a Credit Rating of at least (“A-”) by S&P and (“A3”) by Moody’s, (ii) the Qualified Institution 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; (iii) the Qualified Institution shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of such Letter of Credit; (iv) such Letter of Credit shall fail or cease to be in full force and effect at any time during the Term of Agreement; (v) any event analogous to an event specified in Articles 11.1(b) of this Agreement shall occur with respect to the Qualified Institution; or (vi) the Seller or the Qualified Institution shall fail to cause the renewal or replacement of the Letter of Credit to the Buyer at least forty (40) calendar days prior to the expiration of such Letter of Credit; 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 canceled or returned to the Seller in accordance with the terms of this Agreement. If a Letter of Credit Default occurs, then the Seller shall have ten (10) calendar days to cure the event(s) causing the Letter of Credit Default. Notwithstanding any applicable cure period, if any, in the event that the Letter of Credit Default has not been cured at least five (5) Business Days prior to the expiration of the Letter of Credit, Buyer shall have the right to draw on the Letter of Credit and hold the cash proceeds of such Letter of Credit in its general account as

security for Seller's obligations under this Agreement. Buyer shall promptly return all such cash collateral held by Buyer in the event that Seller cures the Letter of Credit Default; provided that in no event shall Buyer be required to return such cash collateral if it is applied to a Settlement Amount owed by Seller to Buyer under Article 11 above.

17.2. Buyer Credit Support. The Buyer has an Investment Grade Credit Rating, and provided that Buyer maintains an Investment Grade Credit Rating Buyer is not required under this Agreement to provide any additional credit support. However, if at any time: (a) the Credit Rating of Buyer is lowered by S&P below BBB- and/or by Moody's below Baa3, as applicable, or (b) Buyer fails to maintain a Credit Rating with at least one of S&P or Moody's and such failure is continuing, then Buyer shall be required to provide the Buyer's Credit Support Amount in the form of cash to Seller within five (5) Business Days of a written request by Seller to be held as security for Buyer's obligations under this Agreement. Seller shall be required to hold the Buyer's Credit Support Amount in an escrow account established with a Qualified Institution. The Buyer's Credit Support Amount shall earn interest at the rate offered by the Qualified Institution on such deposit. The Buyer shall be required to maintain the Buyer's Credit Support Amount until such time as the Buyer obtains an Investment Grade Credit Rating at which time the Buyer's Credit Support Amount shall promptly be returned to the Buyer.

The Buyer's Credit Support Amount shall be: [REDACTED] [\$ /kW].

ARTICLE 18. DISPUTE RESOLUTION

For any disputes between the Parties under this Agreement the Parties shall be able to pursue all available legal remedies and/or equitable remedies.

ARTICLE 19. GENERAL PROVISIONS

19.1. Waivers. Any waiver at any time by any Party of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any other prior or subsequent default or matter.

19.2. Notices. Any notice, demand, request, consent, approval, confirmation, communication, or statement which is required or permitted under this Agreement, shall be in writing, except as otherwise provided, and shall be given or delivered by Federal Express or comparable overnight delivery service, postage prepaid, addressed to the Party at the address set forth below. Notwithstanding the foregoing, bills, invoices, credit memos, reports and other communications in the ordinary performance of the respective duties and obligations of the parties hereunder, may be sent by e-mail, telefax, first class mail or any other method, whether herein specifically provided or as the parties may hereafter adopt. Changes in such address shall be made by notice similarly given.

Notices to Buyer shall be sent to:

Joseph M. Sollecito, Director
Mansfield Municipal Electric Department

125 High Street, Unit #2
Mansfield, MA 02048
Phone: 508-261-7361
Fax: 508-261-7391

With copies to:

Christopher J. Pollart, Esq.
Rubin and Rudman, LLP
53 State Street, 15th Floor
Boston, Massachusetts 02109
Phone: 617-330-7003
Fax: 617-330-7550

Notices to Seller shall be sent to:

[REDACTED]
Tele: [REDACTED]
Fax: [REDACTED]

Notices shall be deemed to have been received, and shall be effective, upon receipt. Notices of changes of address by either Party shall be made in writing no later than ten (10) calendar days prior to the effective date of such change; provided, however, that any failure hereof shall not be deemed an event of default or other grounds for termination of the Agreement.

19.3. Governing Law and Waiver of Jury Trial. All disputes arising out of the performance or non-performance under this Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts, notwithstanding any laws requiring the application of the laws of another state. The Parties agree that sole and exclusive jurisdiction and venue for any action or litigation arising from or relating to this Agreement shall be an appropriate federal court located in the Commonwealth of Massachusetts, provided that such court has jurisdiction. Absent such federal jurisdiction, the Parties agree that sole and exclusive jurisdiction and venue for any action or litigation arising from or relating to this Agreement shall be an appropriate state court located in the Commonwealth of Massachusetts. Each Party agrees to waive all rights to a trial by jury in the event of litigation to resolve any disputes hereunder.

19.4. Headings Not to Affect Meaning. The descriptive headings used for the various Articles and sections herein have been inserted for convenience and reference only and shall in no way affect the meaning or interpretation, or modify or restrict any of the terms and provisions hereof.

19.5. No Consent to Violation of Law. Nothing contained herein shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the laws of the United States as those provisions may be amended, supplemented or superseded, or which violates any other law or regulation, or any order, judgment or decree of any court or governmental authority of competent jurisdiction.

19.6. No Dedication of Facilities. Any undertakings or commitments by one Party to the other Party under this Agreement shall not constitute the dedication of the Unit or Buyer's system or any portion thereof to the public or to the other Party.

19.7. Relationship to the Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Seller and Buyer, or between either or both of them and any other Party.

19.8. Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto, and nothing therein will be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party hereto.

19.9. Entire Agreement. This Agreement, the attached appendices and the Interconnection Agreement that has been incorporated herein by reference constitute the entire agreement between the Parties and parol or extrinsic evidence shall not be used to vary or contradict the express terms hereof.

19.10. Records. The Parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least six (6) years such records as may be needed to afford a clear history of all deliveries of Energy pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is ended. In maintaining or causing to be maintained such records, the Parties shall effect such segregation and allocation as may be needed to properly bill delivery of Contract Products pursuant to this Agreement.

19.11. Audit. Not more than once each calendar quarter, each Party or any third party representative of a Party shall have the right, at its sole expense, to examine the records of the other Party relating to this Agreement during normal business hours upon reasonable notice to the extent necessary to verify the accuracy of any charge or compliance with any obligation hereunder during normal business hours upon reasonable notice.

19.12. Amendment. This Agreement shall be amended or modified only by the mutual written agreement of both Seller and Buyer.

19.13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

19.14. Forward Contract. The Parties acknowledge and agree that this Agreement is a "forward contract" within the meaning of the Bankruptcy Code, and that the Parties are acting as "forward contract merchants" by entering into the Agreement.

19.15. Material Adverse Change. If the federal government, the Commonwealth of Massachusetts, or ISO-New England, Inc. adopts, enacts, or otherwise imposes a new law, rule or regulation which either makes a Party's performance under this Agreement unlawful, or makes this Agreement unenforceable, and such governmental action does not constitute a Force Majeure event under Article 11 of this Agreement, then the Parties shall negotiate in good faith to amend the terms of this Agreement and to determine the appropriate changes, if any, so that the Party affected by such change in law or regulation is able to lawfully perform its obligations

without materially adversely affecting the financial benefit hereunder to the other Party. If the Parties are unable to reach agreement on such appropriate changes then either Party shall have the right to terminate this Agreement, and neither Party shall have any further liability to the other Party, except for the payment of amounts owing prior to the date of termination and except as provided in Article 2.3.

19.16. Further Assurances. In furtherance of the terms and provisions hereof, the Parties agree to collaborate in good faith in order to achieve the performance by each other of their respective obligations hereunder, including by executing and delivering such documents and instruments as reasonably requested by either Party.

19.17. Bankruptcy Code References. The payment of the Settlement Amount constitutes a “margin payment”, and the Buyer Termination Payment or Seller Termination Payment, as applicable, constitutes a “settlement payment” and/or a “transfer” under the Bankruptcy Code. For purposes of determining the Settlement Amount by the Non-Defaulting Party, the netting out from the Settlement Amount of the Buyer’s or Seller’s Letter of Credit, as applicable, held by the Non-Defaulting Party under Article 17 herein shall constitute a “setoff or net out of termination values or payment amounts” under the Bankruptcy Code. “Bankruptcy Code” shall mean the U.S. Bankruptcy Code, 11 U.S.C. Sec. 101 et. Seq., as such may be amended from time to time.

19.18. Insurance. Seller shall, at its sole expense, maintain or cause to be maintained the type of insurance coverage for the Unit and in the amount specified as set forth on and in compliance with the Interconnection Agreement herein by reference as though fully set forth. Seller shall or shall cause all insurance as provided above to include Buyer, its officers, directors, employees and agents as additional insureds. Seller shall provide Buyer with a copy of the additional insured endorsement with the certificate of insurance. Seller shall either: (a) cause all policies of insurance obtained under this Article to require that the insurance carrier provide 30 calendar days’ prior written notice to Buyer before insurance provided under such policies may be reduced or cancelled or (b) within two (2) Business Days of receipt by Seller from its insurance carrier, transmit to Buyer by facsimile a copy of all changes in policy conditions. In addition, Seller’s insurance shall be primary for claims involving Seller’s acts or omissions, and any other insurance maintained by Buyer shall be excess of and not contributing insurance with Seller’s insurance.

19.19. End of Term Purchase Option. Buyer shall have the right to purchase the Unit from Seller at the expiration of the Term of Service at the then Fair Market Value of the Unit. No earlier than twelve months prior to the expiration of such Term of Service and no later than nine (9) months prior to the expiration of the Term of Service, Buyer shall notify Seller of its intent to exercise the option. Within ninety-one (91) calendar days of its receipt of such notice, Seller shall give Buyer its appraisal of the Fair Market Value of the Unit at the end of the Term, and Buyer shall then have a period of ten (10) Business Days after notification to confirm or retract its decision to exercise the purchase option or to request determination of the Fair Market Value of the Unit by appraisal as provided for in Article 19.20. In the latter case, within ten (10) Business Days of the Independent Appraiser’s determination, Buyer shall confirm or retract its decision to exercise the purchase option. In the event Buyer confirms its intent to exercise the purchase option, (i) the Parties will promptly execute all documents necessary to (A) cause title to the Unit to pass to Buyer, free and clear of any liens immediately subsequent to the purchase,

(B) assign all warranties for the Unit as well as all operation and maintenance contracts to Buyer, and (C) assign all contracts related to RECs and Environmental Attributes related to the Unit or the Energy generated by the Unit, and (ii) Buyer will pay the purchase price for the Unit to Seller.

19.20. Determination of Fair Market Value. “Fair Market Value” means the price that would be paid in an arm’s length, free market transaction, in cash, for the Unit between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer) as removed from the Site at the date of determination, de-installed, packed, crated and ready for shipment to such buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, whether the Environmental Attributes and RECs, if any and as applicable, are included in the sale and immediately available to such buyer, the age and performance of the Unit and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation. If Buyer requests determination of Fair Market Value by appraisal pursuant to Article 19.19, then the Parties shall mutually select an Independent Appraiser to determine the Fair Market Value. Such Independent Appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by such Independent Appraiser shall be binding upon the Parties in the absence of fraud or manifest error. Each Party shall be responsible for one-half of the fees and expenses of the Independent Appraiser.

REMAINDER OF PAGE LEFT BLANK. SIGNATURES FOLLOW.

Agreed to as of the date set forth above.

**BUYER:
MANSFIELD MUNICIPAL ELECTRIC DEPARTMENT**

Name: _____

Title: _____

SELLER:

[REDACTED]

Name: _____

Title: _____

**APPENDIX A
DESCRIPTION OF UNIT**

Location of Unit:

Net Plant Output:

Capacity Factor:

Photovoltaic Modules:

Inverter(s):

Mounting Type and Hardware:

Data Acquisition System:

Warranty:

Includes:

Exclusions:

Delivery Point: [Include description and diagram depiction]

APPENDIX B
MONTHLY AND ANNUAL EXPECTED OUTPUT

The Monthly Expected Output, and the Annual Expected Output, commencing on the Commercial Operations Date shall be as set forth in the following table:

[SELLER TO INSERT TABLE]

APPENDIX C
SELLER'S FORM OF LETTER OF CREDIT
IRREVOCABLE LETTER OF CREDIT NUMBER _____

Date:

Amount: _____ (USD\$_____)

Letter of Credit Expiration Date:

Beneficiary Name and Address:

Name of Applicant:

Issuer:

To the above-named Beneficiary:

We hereby issue our irrevocable Letter of Credit in your favor for the account of the above-named Applicant up to the aggregate amount stated above.

Funds under this Letter of Credit, in an amount not to exceed the amount stated above, will be made available to you in accordance with the terms and conditions herein against sight drafts presented at the above address, either in person or by courier or overnight delivery service, bearing the clause "Drawn under _____ Letter of Credit No. _____, dated _____", and accompanied by both of the following documents:

1. (A) A notarized certificate sworn to and executed by an authorized officer of the Beneficiary reading as follows: "The amount claimed under this Letter of Credit as represented by the sight draft enclosed herewith is due and payable because (a) payment is due to Mansfield Municipal Electric Department ("Beneficiary") from _____ ("Applicant") pursuant to [REASON FOR PAYMENT], (b) Applicant has not made such payment in accordance with the Power Purchase Agreement for Unit Contingent Contract Products, dated as of ____, 20__, between Applicant and Beneficiary and (c) Beneficiary has made written demand upon Applicant for payment. Wherefore, demand is hereby made under your Letter of Credit No. _____ for payment of the Draw amount. Payment should be remitted to _____."; **OR**, (B) a notarized certificate sworn to and executed by an authorized officer of the Beneficiary reading as follows: "An Event of Default (as defined in the Power Purchase Agreement for Unit Contingent Contract Products, between _____ ("Applicant") and Mansfield Municipal Electric Department has occurred and is continuing with respect to the Applicant. Wherefore, demand is hereby made under your Letter of Credit No. _____ for

payment of [\$_____][THE ENTIRE UNDRAWN AMOUNT OF THE LETTER OF CREDIT]. Payment should be remitted to _____.”; **AND,**

2. This original Letter of Credit.

We hereby agree with you that sight drafts drawn under this Letter of Credit will be honored in accordance with the terms and conditions stated herein provided the sight draft and required documents are presented to us at the above address on or before the Letter of Credit Expiration Date stated above. Payment of any draft drawn under this Letter of Credit in an amount less than the maximum amount available hereunder shall be recorded by us on the reverse side hereof and this Letter of Credit shall then be returned to you. Multiple and partial drawings are expressly permitted under this Letter of Credit.

This Letter of Credit is governed by the provisions of the Uniform Customs and Practice for Documentary Credits (2007 Version), International Chamber of Commerce Publication No. 600 (“UCP”). As to matters not governed by the UCP, this Letter of Credit is governed by the laws of the Commonwealth of Massachusetts. This Letter of Credit is not transferable.

By: _____

APPENDIX D
LIST OF PERMITS AND GOVERNMENTAL APPROVALS