

# **REQUEST FOR PROPOSALS**

## **Renewable/Solar Photovoltaic Net Metering/Power Purchase and/or Lease Agreement**

**City of Auburn, Maine**  
60 Court Street  
Auburn, Maine 04210



October 2019

### **Prepared By:**

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Attachment A – Proposal Bid Form

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## 1. SUMMARY

The City of Auburn (City) is accepting written proposals for Power Purchase Agreements/Credit Purchase Agreement (PPA) and Site Lease proposals for solar photovoltaic (PV) systems to be installed at multiple City-owned properties and/or other off-site locations. The City is interested in exploring various options for satisfying the City's electric purchases of approximately 5 million kWh per year. The City is requesting proposals for installation of ground mount solar PV at the following facilities:

- Ash Landfill, located off of Old Hotel Road
- Lakeview Park (Gracelawn Landfill), located at 296 Gracelawn Road
- Municipal Solid Waste Site, located at 159 Gracelawn Road
- Hackett Road (Parcel ID: 159-014)

As well as proposals for installation of roof mount solar PV at the following facilities:

- City of Auburn Department of Public Works Building, located at 296 Gracelawn Road
- Norway Savings Bank Arena, located at 985 Turner Street

Additionally, the City will consider other net metering or bill credit eligible projects, such as hydroelectric, wind, etc., to satisfy the City's electric needs.

The City has identified these potential locations based on practical roof or ground mounted system potential. Bidders are responsible for their own due diligence on each of these sites and will ultimately be responsible for installation and operation of the projects. For the roof top installation, bidders should assume the roofs are or will be in good condition with a useful life that exceeds 20 years. The City may elect to install any combination of the projects proposed.

The City aims to select a Bidder to develop systems that provide the best balance of environmental and economic benefits under Maine's new solar legislation. The City expects the systems to be connected directly to the grid, and that the City will contract to purchase power at a discounted rate per the proposed PPA or a land lease agreement. The term length of any PPA(s) or Site Lease(s) is expected to be 20 years.

## 2. INSTRUCTIONS TO BIDDERS

### 2.1 SCHEDULE

Event	Date and Time
RFP Released	October 8, 2019
Bidder Questions Due	October 22, 2019 @ 2:00 PM EST
Answers Posted	October 24, 2019
Proposals Due	October 31, 2019 @ 2:00 PM EST
Award Date	Est. November 14, 2019
Expected Completion Date	Est. August 2020

### 2.2 SUBMISSION PROCESS

Proposals will not receive consideration unless submitted in accordance with the following instructions to bidders. Please mark sealed envelopes plainly: **“2019 Renewable Energy Purchase RFP-Bid #2020-013”**. Bid packages will be available beginning on Tuesday, October 8, 2019. Documents can be obtained from the City of Auburn's website: [www.auburnmaine.gov/business/bid-notice](http://www.auburnmaine.gov/business/bid-notice).

Please submit your proposal to the City of Auburn by **2:00 PM EST, Thursday, October 31, 2019**. Proposals must be delivered to **Derek Boulanger, Facilities Manager/Purchasing Agent, 60 Court Street, Auburn, Maine 04210** on or before the date and time appointed. No proposals will be accepted after the time and date listed above. Proposals will be opened at 2:00 p.m. on that date in Room 206 (Community Room), Auburn City Hall.

### 2.3 QUESTIONS

Bidders may submit questions via email to Derek Boulanger at [dboulanger@auburnmaine.gov](mailto:dboulanger@auburnmaine.gov). The subject line should read: **“Questions Regarding Renewable Energy Purchase RFP-Bid #2020-013”**. Questions must be received by Friday, October 22, 2019 at 5:00 PM EST. Answers to questions will be posted on October 24, 2019.

### 2.4 ACCEPT/REJECT

The City reserves the right to accept or reject any or all proposals in whole or in part and to waive any informality the City may determine necessary. The City also reserves to itself the exclusive right to accept any proposal when it is deemed by the City to be in its best interest. The City of Auburn is governed by Title 1 M.R.S.A. § 401-410, otherwise known as the Freedom of Information Act, which considers bid specifications as public documents. In awarding any proposal, the City may consider, but not be limited to, any of the following factors: Bidder qualifications, price, experience, financial standing with the City, warranties, references, bonding, delivery date, and service of Bidder. Vendors/Contractors shall be current on all amounts due to the City of Auburn prior to the City entering into any contract agreement.

### 2.5 NET METERING/LEASE SELECTION

The City will evaluate bids in response to this solicitation and may negotiate with or award a contract to a responsible bidder whose bid is conforming to the solicitation and will be most advantageous to the City considering price, completeness, financial stability of bidder and capabilities of meeting project requirements specified in the solicitation.

The Bidder selected, if any, will be required to sign a Lease Agreement and/or Net Metering/Bill Credit Agreement with the City of Auburn consistent with this RFP, the attached Competitive Energy Services Agreements, the Contractor's bid, and all applicable laws, regulations, and administrative contractual deliverables prior to commencing work.

## **2.6 MINIMUM PRICE SCENERIOS**

Bidders must include the minimum pricing scenarios for 20-year contracts with a 1.5% escalator. Bidders must also include buy out provisions or valuation approach following year 7 to define system value if the City wishes to purchase the system outright. Bidders are encouraged to include any other sceneries that might be desirable to the City.

## **2.7 PRICING**

Bidders are asked to bid on one or more of the pricing structures outlined below in the pricing table. It is not required that bidders offer every project. Bidders should note cost effectiveness will be one of the key factors in the City's decision process so unattractive projects can be excluded from bidding. The City may choose to move forward with only one or more of the projects for either of the pricing structures described below.

For PPAS, bidders shall clearly specify the fixed price per kWh paid in exchange for power. System size, production guarantees, equipment warranties, etc. should be clearly specified. Pricing should assume no associated site lease costs. Bidders may also propose pricing through site lease payments for power to the City. Lease payments may vary based on the type and size of the system. Developers are encouraged to present the most viable solutions and can be a combination or single payments of lease payment and PPA agreements. In all scenarios, bidders should state assumed interconnection costs and \$0 in associated property taxes.

Please use the table provided in **Attachment A** to submit pricing in any of the above formats for the sites further described in Section 4.

## **2.8 BID CONTENT**

Bidders are encouraged to include any information believed to be relevant to this RFP including company information, financial backers, sample projects and resumes of key project personnel. A minimum of three representative projects and reference contact information shall be included with the bid. Bidders must include a proposed PPA and/or Site Lease Agreement in the response. Proposals must be organized with the following sections:

- A. Bidder Information
- B. PPA Pricing Table/Proposed Locations
- C. 3 Representative/Reference Projects
- D. 3 Project References with Contact Information
- E. Financial References/Strategy to ensure project completion
- F. Consent to PPA Agreement and Lease Agreements
- G. (Optional) Other Relevant Information

## 2.9 BIDDER'S COMMITMENT

The bids shall reflect the Bidder's commitment to the following requirements:

- 1) The Bidder shall provide a complete and full functional installation, including the furnishing, installation, supervision, commissioning, maintenance or repair and operation of the solar PV system.
- 2) The Bidder shall give notices, file plans, obtain permits and licenses, pay fees and back charges, and obtain necessary approvals from authorities having jurisdiction as required to perform work in accordance with all legal requirements and with Specifications, Drawings, Addenda, and Change Orders. The City shall be notified in advance of any submissions and be given reasonable opportunity to review any documents submitted to any third party on behalf of the City.
- 3) Bidder shall be responsible for any tax obligations related to the projects.
- 4) The Bidder shall complete final design of the system.
- 5) The City will make existing drawings available to bidders. Bidders shall provide all record drawings for structural, mechanical, and electrical specifications.
- 6) The Bidder shall furnish all services, including design, detailing, approval of shop drawings, and field inspections required.
- 7) At all times during performance of this contract, until the work is completed and accepted, the Bidder shall directly superintend the work.
- 8) The Bidder shall be responsible for all damages to persons or property that occurs as a result of the Bidder's fault or negligence.
- 9) For rooftop systems, the Bidder shall verify and accept existing roof conditions with the City prior to installation. The City will review all roof details associated with the PV system, and the manner in which the roofing manufacturer requires those details to be executed to ensure warranty continuity.
- 10) For ground mount systems, the Bidder shall be responsible for all work including but not limited to survey, wetlands delineation and geotechnical information. Prior to installation, the Bidder shall make the details associated with the PV system available to the City to review to ensure compliance as needed.
- 11) The Bidder shall at all times keep the work area, including storage areas, clean and orderly. Any waste, excess material or packaging shall be removed promptly and disposed or recycled properly.
- 12) The Bidder is responsible for any damages to the existing roof systems and interior/exterior building systems and finishes and is responsible for the prompt repair of any damage to these systems, resulting from the work at the project at no additional cost to the City.
- 13) The Bidder shall provide an Operations Manual with operation and maintenance procedures, and job site training sessions on the complete solar PV system.
- 14) The Bidder shall provide a schedule of insurance coverage, including general liability, auto liability, professional liability, property damage and workers compensation, that will be maintained and in effect during the term of this project.

### **3. REQUIREMENTS FOR THE CONTRACT TO BE SIGNED BY THE SUCCESSFUL BIDDER**

#### **3.1 CONSTRUCTION REQUIREMENTS**

- 1) Construction Progress Schedule – The Contractor shall submit an initial construction schedule as part of the submittal package and monthly progress schedules through the project duration. The contractor shall not commence construction until written approval has been granted by the City for the construction schedule.
- 2) Site Investigation and Conditions Affecting the Work – The Contractor acknowledges that it has investigated and satisfied itself as to the general, existing, and local conditions which can affect the work or its cost. The City assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the City.
- 3) Working Conditions – All work shall be conducted in accordance with Maine State Labor Laws and any other applicable laws/regulations.
- 4) Specifications and Drawings for Construction – As-Built Drawings means drawings submitted by the Contractor or Subcontractor showing the construction of a particular structure or work as actually completed under the contract. The Contractor shall submit As-Built Drawings after the work has been accepted as complete.
- 5) Material – All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended.
- 6) Permits, Codes, Health, Safety and Accident Prevention – The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work.
- 7) Availability and Use of Utility Services – Temporary workstation and utility requirements are to be provided by the Contractor.
- 8) Protection of Existing Site – The Contractor shall preserve, protect, and replace damaged structures, equipment, utilities and vegetation on or adjacent to the work sites.
- 9) Temporary Buildings and Transportation of Materials – Temporary buildings and utilities may be erected by the Contractor only with the approval of the Owner and/or Owner's Agent and shall be built with labor and materials furnished by the Contractor without additional expense. The Contractor shall be responsible for all material delivery, storage, and security to site.
- 10) Inspection and Acceptance of Construction – All work is subject to the City's inspection and testing at all places and at all responsible times before acceptance to ensure strict compliance with the terms of the contract. The City's inspections and tests are for the sole benefit of the Owner and do not relieve the Contractor of responsibility for providing adequate quality control measures. The Contractor shall notify the Owner and/or Owner's Agent, in writing, as to the date when in its opinion of all or a designated portion of the work will be substantially completed and ready for inspection.
- 11) Prohibition Against Liens – The Contractor is prohibited from placing a lien on the Owner's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

#### **3.2 ADMINISTRATIVE REQUIREMENTS**

- 1) Contract Period – The Contractor shall complete all work required under this contract within the time schedule established in the notice to proceed issued by the Owner and/or Owner's Agent.

- 2) Payments – The City shall pay the Contractor the price as provided in the proposed PPA or Site Lease agreement. The City shall make payments approximately every 30 days as the power/credits/value is delivered to the City.
- 3) Contract Modifications – Only the Owner and/or Owner's Agent have authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing. When a proposed modification requires the approval of Auburn prior to its issuance, such modification shall not be effective until the required approval is received.
- 4) Suspension of Work – The Owner and/or Owner's Agent may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Owner and/or Owner's Agent determines appropriate for the convenience of the City. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted, an adjustment shall be made for any increase in the cost of performance of the contract.
- 5) Default – If the Contractor refuses or fails to execute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Owner and/or Owner's Agent may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed.
- 6) Termination for Convenience – The Owner and/or Owner's Agent may terminate this contract in whole, or in part, whenever the Owner and/or Owner's Agent determines that such termination is in the best interest of the City. If the performance of the work is terminated, either in whole or in part, the City shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by Auburn of a properly presented claim setting out in detail those costs.
- 7) Assignment of Contract – The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the City under the contract may be assigned to a bank, trust company, or other financial institution.
- 8) Insurance – Before commencing work, the Contractor and each Subcontractor shall furnish the City with certificates of insurance showing that minimum insurance requirements are in force and will insure all operations under the Contract, and at no additional cost to the Owner.
- 9) Subcontracts – The Contractor shall be as fully responsible for the acts or omissions of its Subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor. Nothing contained in this contract shall create any contractual relationship between any Subcontractor and the Owner or between the Subcontractor and the City.



## 4. SITE DESCRIPTIONS AND REQUIREMENTS

### 4.1 SITE DETAILS

Sites included in the following subsections are listed in order of the City's preference. However, bidders are encouraged to include proposals for systems located at any and all of the sites listed below.

#### 4.1.1 Ash Landfill

The Ash Landfill property is located off Old Hotel Road, on a parcel of land designated as Map 79 Lot 32, located in the Rural Residence (RR) Zone. The site has topography that is favorable for landfill solar, with over 6 acres of relatively flat slopes (typically less than 4%). There is an existing gravel drive that provides access to the landfill site from Old Hotel Road; see Figure 1. However, according to tax-map parcel data, the access drive may be partially located on abutting property owned by Maine Turnpike Authority. The Bidder should assume there may be a need for an easement. For the purposes of this bid, bidder should assume full access to the site. The winning bidder will be provided easement upon selection.

**Figure 1: Aerial Location Map of the Ash Landfill**



A conceptual layout was developed for the site in 2017 for the City to determine the potential size of the solar development in consideration of topography, site access, and current installation standards of the solar industry. Ballasted racking systems are preferred for landfill solar developments because these systems do not require penetration into the landfill cap. The design utilizes an industry standard racking configuration, with an assumed panel size of 345 watts and 20-degree tilt angle. It's anticipated the site could support up to 2.3-MW (DC) of solar PV.

The former ash and dredge disposal site was opened in 1980 and closed in 1996 as required by the Maine Department of Environmental Protection (DEP) Landfill Closure and Remediation Program. Specific details for the closure of the Auburn Ash Landfill are available through the Maine DEP file room.

#### 4.1.2 Lakeview Park (Gracelawn Landfill)

Lakeview Park, located at 296 Gracelawn Road (Parcel ID: 289-004), consists of two softball fields, a playground, and a picnic area on top of a capped landfill, known as Gracelawn Landfill. The site is located in the General Business (GB) Zone. Three phase power is believed to be available along Gracelawn Road. The approximate areas available are shown in Figure 2 below.

**Figure 2: Aerial Location Map of Possible Solar Developments on Gracelawn Road**



The 12.5-acre landfill was previously a sand and gravel pit that was excavated to a maximum depth of approximately 60 feet below ground surface. Refuse, which consisted of municipal and light industrial waste, was deposited in the unlined, and excavated area. The landfill was closed in 1980 as required by the Maine DEP Landfill Closure and Remediation program. Specific details for the closure are available through Maine DEP file room.



#### 4.1.3 Department of Public Works Building

The City's Public Works building is located on the same property as Lakeview Park (Parcel ID: 289-004), as shown in Figure 2 above. The building was constructed in the mid-1970s. The roof is a flat membrane type. The available roof area is approximately 1 acre. For purposes of this RFP, please assume the roof is in suitable condition with a greater than 20-year life and the building is there is suitable electrical interconnection.

**Figure 2: Aerial Location Map of Possible Solar Developments on Gracelawn Road**



#### 4.1.4 Municipal Solid Waste Site

159 Gracelawn Road (Parcel ID: 289-003). The site is located across the street from Lakeview Park, as shown in Figure 2. The site is located within the Agricultural and Resource Protection (AG) Zone and the total parcel area is approximately 26.5 acres.

#### 4.1.5 Norway Savings Bank Arena

The Norway Savings Bank Arena, located at 985 Turner Street in the GB Zone, (Parcel ID: 290-010-001) has a roof area of approximately 1.3 acres available for development; see Figure 3 below. The skating rink roof is a metal gable style. Detailed roof specifications are available if roof area is deemed suitable for development.

**Figure 3: Aerial Location Map of the Norway Savings Bank Arena**



#### 4.1.6 Hackett Road

The parcel of land located at the corner of Broad Street and Hackett Road designated as Map 159 Lot 014, located in the Industrial (ID) Zone, has a total parcel area of approximately 6 acres. The existing site is mostly wooded with a small cleared area in the eastern portion of the site, as shown in Figure 4 below. A small stream, tributary to the Little Androscoggin River, runs from southeast to northwest through the site. The northern property line abuts a CMP transmission line corridor.



**Figure 4: Aerial Location Map of Parcel 159-014 on Hackett Road**



## **4.2 APPROVALS**

The solar development(s) will require approval of land-use permits from local and state regulatory authorities. The successful bidder shall be responsible for obtaining all permits and approvals required for development.

### **4.2.1 Local Approvals**

The developer will be responsible for local approvals. Depending upon the City's interpretation of the use category, approval from the Zoning Board of Appeals may be required or the City may choose to revise the zoning regulations to specifically address renewable energy. Additionally, the project may require Site Plan review and approval through the Planning Board.

### **4.2.2 Landfill Site Permitting**

The Ash Landfill and Gracelawn Landfill sites are regulated by the Maine DEP Solid Waste Management Laws and Rules, Chapters 400 & 401. Chapter 401(5)(B)(5)(a) prohibits the establishment of structures within 100 feet of the solid waste boundary of the landfill. However, the Maine DEP does encourage the re-use of landfills for appropriate development, including the installation of solar PV on a closed landfill. Maine DEP must grant a variance from its landfill closure rules, to allow for the installation of solar PV or other structures on a closed landfill. As these landfills operated without a license and were closed under a Maine DEP closure order, the projects must apply for a Closure Modification

for the PV installation. The following supporting information would be required as part of the application: project description, site plan, PV system design, landfill gas control, settlement and stability assessment, stormwater control, erosion control plan, inspection and maintenance, technical ability, financial ability, and schedule.

## **5. PROJECT IMPLEMENTATION**

### **5.1 REGULATORY REQUIREMENTS**

The following regulatory requirements, including but not limited to, must be met and fully adhered to throughout the duration of this project and the contract.

- Maine Building Code
- All applicable local and state regulations
- National Fire Protection Association (NFPA):
  - American Society of Civil Engineers (ASCE), 7-05 Minimum Design Loads for Buildings and Other Structures
  - National Electrical Code
  - National Roofing Association (NRCA)
  - Occupational Safety and Health Administration (OSHA)

Interconnection shall meet standards required by Central Maine Power, depending on the project location.

### **5.2 REQUIRED SUBMITTALS**

If selected, the awarded contractor, will, at a minimum, provide the following submittals:

- 1) Close Out Documents
  - a. As-built drawings.
  - b. Submit notarized warranty letter from the manufacturer of existing roof system, stating that existing warranty shall continue “in full force and effect”.
  - c. Commissioning report.
  - d. Other applicable documents to comply with standards of Auburn’s Property Information Resource:
    - Final as-builts printed on bond paper; acceptable sizes are 24”x 36” or 30”x 42”.
    - All X-refs bound and unnecessary objects purged on AutoCAD before submission. Must comply with all requirements in CAD and Image Standards.
    - TIFF scans must be produced at minimum 300dpi resolution at hard copy dimensions; file names must follow conventions in CAD Standards. (If TIFs are black and white, saving them with a bit depth of 8 will help keep the size down.)

### **5.3 SEQUENCING AND SCHEDULING**

- 1) A pre-installation meeting shall be convened to establish procedures to maintain optimum working conditions and to coordinate work with related and adjacent work.
- 2) A mutually agreed upon construction schedule shall be submitted as part of the submittal package and updated with progress schedules through the project duration.

### **5.4 CLOSE OUT**

- 1) Submit required close-out documents.
- 2) Restore landscaping elements to pre-construction condition.

## ATTACHMENT A: PROPOSAL BID FORM

				Option 1	Option 2	Option 3 (combination)		Alternatives
Site ID #	Site Name	System Capacity (kW AC)	Est. Year 1 Solar Generation (kWh)	PPA Price Only (\$/kWh)	Lease Only (\$/year)	PPA (\$/kWh)	Lease (\$/year)	
1	Ash Landfill							
2	Lakeview Park							
3	City DPW Building							
4	City Municipal Solid Waste Site							
5	Norway Savings Bank Arena							
6	1005 Broad Street							
Other Off-Site Scenarios								

Assume 1.5% Escalator for all bids.

(Include with Response)



## **ATTACHMENT B: SAMPLE REPRESENTATIVE AGREEMENTS (PROVIDED COURTESY OF COMPETITIVE ENERGY SERVICES)**

## BILL CREDIT AGREEMENT

This Bill Credits Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2019 (the “**Effective Date**”) and is by and between \_\_\_\_\_ as a seller (collectively, the “**Seller**”), and the \_\_\_\_\_, a (“**Buyer**”). In this Agreement, Sellers and Buyer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

**WHEREAS**, Seller is in the business of financing, developing, owning, operating and maintaining solar electric generation facilities;

**WHEREAS**, Seller proposes to finance, install, own, operate and maintain one or more Distributed Generation Resource(s) (such facilities, collectively, the “**Distributed Generation Resources**”);

**WHEREAS**, the Distributed Generation Resources are each expected to qualify as a Shared Distributed Generation Resource pursuant 35-A MRSA §3418 and be eligible to bid into the procurements administered by the Maine Public Utilities Commission (“MPUC”) as set forth in 35-A MRSA c. 34-C; and

**WHEREAS**, if the Distributed Generation Resources are selected pursuant to 35-A MRSA §3484 and §3485, the Distributed Generation Resources will receive Bill Credits allocated to commercial or institutional customers (“Subscribers”); and

**WHEREAS**, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Sellers, the Bill Credits generated by the Distributed Generating Resources during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, Seller and Buyer agree as follows.

### ARTICLE I DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“**Applicable Legal Requirements**” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction, including the Commercial or Institutional Distributed Generation Resources Procurement rules or regulations, of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all

licenses, permits, and other governmental consents, which may at any time be applicable to a Party's rights and obligations hereunder, including, without limitation, the construction, operation, and ownership of the Distributed Generation Resources, as well as the selling and purchasing of Bill Credits therefrom.

***"Bill Credits"*** shall have the meaning set forth in 35-A MRSA §3485 and §3487.

***"Business Day"*** means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

***"Commercial and Institutional Distributed Resources Procurement"*** shall mean that procurement described in 35-A MRSA §3484 and §3485.

***"Commercial Operations Date"*** means the date on which each Distributed Generating Resource generates electric energy on a commercial basis, and the interconnection to the local electrical distribution system has been authorized and is functioning with the LDC.

***"Confidential Information"*** means all oral and written information exchanged between the Parties which contains proprietary business or confidential information of a Party and is clearly marked, or designated, if oral, as "confidential" by such Party. The Parties agree that the provisions and specifics (but not the existence) of this Agreement constitute Confidential Information. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to such Party; (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations; (e) information disclosed pursuant to any applicable law, rule or regulation requiring such disclosure, or as compelled by legal process including, but not limited to any "public records" or "freedom of information" request or pursuant to the order or requirement of a court, administrative agency, or other Governmental Authority and (f) information that is disclosed by the receiving Party with the prior written permission of the disclosing Party.

***"Distributed Generation Resource"*** means the \_\_\_\_\_ individual solar (PV) power electrical generation facilities, to be constructed owned, operated and maintained by Seller, with specifications for an aggregate nameplate capacity of approximately \_\_\_\_\_ MW (DC), each of which qualifies for the Commercial or Institutional Distributed Generation Resources Procurement, together with all appurtenant facilities required to interconnect such Distributed Generation Resource to the local electric distribution system, all to be located in \_\_\_\_\_, Maine, as described in Exhibit \_\_, attached hereto.

***"Energy"*** means the amount of electricity either used or generated over a period of time, expressed in terms of kilowatt hour ("kWh") or megawatt hour ("MWh").

***“Force Majeure”*** means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by Buyer may not be asserted as an event of *Force Majeure* by Buyer; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

***“Generation Contingent”*** means that each Seller’s failure to deliver is excused if the Distributed Generation Resources for any reason do not generate sufficient energy necessary to deliver Bill Credits hereunder. In such an event, Sellers shall not be liable to Buyer for any damages.

***“Governmental Authority”*** means any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

***“Governmental Charges”*** means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, local electric distribution company, or other similar entity, on or with respect to the Bill Credits.

***“Interconnection Agreement”*** shall mean the Interconnection Service Agreement(s) entered into with local electric distribution company, each of which authorizes the interconnection of the respective Distributed Generation Resource with the local electric distribution system, which confirms the eligibility of each Distributed Generation Resource for Commercial or Institutional Distributed Generation Resources Procurement, and which specifies (directly or by reference to the “Schedule Z” filed by Sellers under the Tariff) the manner in which Bill Credits shall be allocated. [Schedule Z is inserted as a placeholder ...]

***“Interest Rate”*** means 200 basis points above the prime rate as published in the Wall Street Journal.

***“LDC”*** means the local electric distribution company.

***“Lender”*** means the entity or person(s) providing financing to Seller in connection with the Distributed Generation Resources.

**“Renewable Energy Certificate”** or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, any Tax Attributes and the Bill Credits.

**“Tariff”** means the LDC’s tariff for interconnection for Commercial or Institutional Distributed Generation Resources Procurement, as approved by the MPUC, together with any subsequent amendments and approvals thereto.

**“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 Distributed Generation Resources or the output generated by the Distributed Generation Resources (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

## **ARTICLE II TERM**

2.1 **Term.** The term of this Agreement (the **“Term”**) shall commence on the Effective Date and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20<sup>th</sup>) anniversary of the latest Commercial Operations Date (the **“Termination Date”**), or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

2.2 **Early Termination.** The Buyer may terminate this Agreement as to the Distributed Generation Resource owned by that Seller without penalty or any liability (a) prior to the Commercial Operations Date if such Distributed Generation Resource has not achieved commercial operation within eighteen (18) months of the Effective Date or (b) after the Commercial Operations Date if the Distributed Generation Resources create less than fifty percent (50%) of their expected Energy output over a period of six (6) consecutive months. (For avoidance of doubt, for this Section 2.2, the expected Energy shall be as set forth in Exhibit C, attached hereto.). In the case of termination pursuant to this Section 2.2, the Buyer shall give the Seller thirty (30) days prior written notice, and this Agreement shall terminate as to that Distributed Generation Resource without further liability of the Seller owning that Distributed Generation Resource to the Buyer and of the Buyer to the Seller, provided that the Buyer and Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

## **ARTICLE III FACILITY OWNERSHIP AND OPERATION**

3.1 **Title.** Title to each Distributed Generation Resource and all generation capacity credits, Environmental Attributes and Tax Attributes produced or associated with each Distributed Generation Resource shall be with the Seller.

3.2 Notice of Commercial Operations Date. Subject to the provisions of this Agreement, Seller shall promptly notify Buyer in writing when each Distributed Generation Resource has achieved the Commercial Operations Date.

3.3 Seller's Operation of Facilities. Seller shall install, operate and maintain each Distributed Generation Resource in material accordance with all Applicable Legal Requirements, all equipment manufacturers' guidelines and recommendations, and pursuant to widely accepted industry practice and shall maintain such documents and records necessary to confirm Seller's installation, operation and maintenance of the Distributed Generation Resources in material accordance with such standards.

3.4 Seller's Obligation To Maintain Facilities; Insurance. Seller shall maintain the Distributed Generation Resources and the individual components thereof in good working order at all times during the Term of this Agreement, subject to reasonable time allowed for maintenance, repair and event(s) of Force Majeure. Seller shall carry insurance coverage in an amount reasonably expected to repair or replace the Distributed Generation Resources if damaged, or in an amount as required by a Lender, at Seller's discretion.

## **ARTICLE IV PURCHASE AND SALE OF BILL CREDITS**

4.1 Sale and Purchase of Bill Credits. Commencing on the Commercial Operations Date, on a monthly basis Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept all of Seller's right, title and interest to \_\_\_\_\_ % of the Bill Credits generated by the Distributed Generation Resource, free and clear of all claims, liens, security interests and encumbrances of any kind, nature and description. Seller's obligations under this Section 4.1 are Generation Contingent.

4.2 Allocation. To facilitate delivery of the Bill Credits purchased and sold pursuant to Section 4.1, Seller shall request (through completion of the applicable "Schedule Z") that the LDC allocate the quantity of Bill Credits specified in Section 4.1 to Buyer's customer account(s), as further set forth in Exhibit A, "Buyer's Designation of Customer Accounts", attached hereto and incorporated herein. Buyer understands that the Bill Credits received by Buyer for a particular month will be reflected on Buyer's statement from the LDC as a monetary credit amount and not as an electricity quantity; and that such credit will be reflected on Buyer's monthly invoice according to the LDC's billing cycle, which may be approximately one (1) month after the Bill Credits are generated by the Distributed Generation Resources

4.3 Payment. The payment that Buyer shall make to Seller for the Bill Credits allocated by Sellers to Buyer (the "**Payment**") shall be determined by multiplying the rate per MWh set forth in Exhibit B, attached hereto and incorporated herein, by the MWhs generated and delivered to the grid by the Distributed Generation Resources that are included in the calculation of the Bill Credits allocated to Buyer's customer account(s).

4.4 Buyer's Purchase Contingent on Allocation of Credits by LDC. The Parties acknowledge and agree that Buyer's agreement to purchase Bill Credits from Seller is contingent

upon and subject to the LDC's acceptance of and allocation of such Bill Credits to Buyer's customer account with LDC as set forth in Section 4.2 herein. During the Term of this Agreement, if for any reason the LDC refuses to allocate a portion or all of the Bill Credits to Buyer's customer account, Buyer's obligation to purchase such Bill Credits shall terminate, and Seller shall promptly refund to Buyer the Payment by Buyer for any such Bill Credits which the LDC refused to credit to Buyer's customer account.

4.5 Title To Bill Credits. Title to the Bill Credits will pass from Seller to Buyer upon allocation to Buyer's customer account(s) by the LDC.

4.6 Non-Exclusive Agreement. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that Buyer's agreement to purchase Bill Credits from Seller is not exclusive, and Buyer shall have the right and ability to enter into agreements with other parties to purchase additional Bill Credits and/or RECs, subject to all Applicable Legal Requirements.

4.7 Governmental Charges.

a. Seller is responsible for any Governmental Charges currently attributable to the sale of Bill Credits to Buyer, irrespective of whether imposed before, upon or after the allocation and delivery of Bill Credits to Buyer.

b. The Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges to the extent permitted by law. In the event any of the sales of Bill Credits hereunder are to be exempted from or not subject to one or more Governmental Charges, the Party claiming such exemption shall, upon a Party's written request therefore, provide the requesting Party with all necessary documentation to evidence such exemption or exclusion in a timely manner.

## **ARTICLE V PAYMENT**

5.1 Payment. During each monthly LDC billing cycle, Seller shall provide Buyer with an invoice for the Bill Credits allocated to Buyer's designated account(s) during the prior monthly LDC billing cycle (the "***Invoice***"). The Invoice shall be based on the actual Bill Credits that appear in the Buyer's LDC bill(s) for the designated account(s). Buyer shall either promptly provide its monthly LDC bill to Seller, or, shall allow Seller to access Buyer's monthly bill directly with the LDC, at Buyer's discretion. Subject to the provisions of Section 4.4, Buyer shall pay all invoiced amounts owed to Seller by a mutually agreeable method. Any payment not made to Seller within thirty (30) days of the Buyer's receipt of a proper Invoice shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by Seller. Such interest shall accrue at a rate equal to the Interest Rate.

5.2 Records and Audits. Each Party shall keep, for a period of not less than six (6) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, Invoices, charges, computations and payments for such

transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to such transactions during the other Party's normal business hours. Seller shall, at Buyer's request, such request to not occur more than annually, provide documentation of the amount of electricity generated by the Distributed Generation Resources and/or the calculation of the Bill Credits.

5.3 **Dispute.** If a Party, in good faith, disputes an amount owed or paid as provided in this Agreement, the disputing Party shall immediately notify the other Parties of the basis for the dispute and pay the undisputed portion of such Invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution along with the interest accrued at the Interest Rate, from and including the due date through and including the date such payment is actually received by Sellers. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate at the option of the overpaying Party. The Parties shall only be entitled to dispute an amount owed or paid within twenty-four (24) calendar months from the date of issuance of such Invoice. If the Parties are unable to resolve a payment dispute under this Section 5, the Parties shall follow the procedure set forth in Section 12.5.

## **ARTICLE VI OBLIGATIONS OF THE PARTIES**

### **6.1 Commercial or Institutional Distributed Generation Resources Procurement.**

a. Each Party's obligations under this Agreement are subject to each Distributed Generation Resource to be eligible for and participate in the Commercial and Institutional Distributed Resources Procurement. If, within twelve (12) months from the Effective Date, a Distributed Generation Resource does not so qualify, this Agreement shall terminate with regards to that Distributed Generation Resource without further liability of the Seller owning that Facility to the Buyer and of the Buyer to that particular Seller, provided that the Buyer and such Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

b. Subject to the provisions of this Agreement, each Party agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the Distributed Generation Resources to be eligible for and participate in the Commercial and Institutional Distributed Resources Procurement.

c. So long as any such amendment will materially benefit a Party without material detriment to the other Parties and is otherwise permitted by law, the Parties commit to each other in good faith to make commercially reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to any rule(s) or regulation(s) regarding the Commercial and Institutional Distributed Resources Procurement and ensure that the Distributed Generation Resources are eligible for the Commercial and Institutional Distributed Resources Procurement.

d. Upon implementation by the MPUC or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding the provision of or eligibility for the Commercial and Institutional Distributed



Resources Procurement, the affected Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent possible, and shall use best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

## 6.2 Seller's Obligations.

a. Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required of Seller (and in the form required) by any Governmental Authority or the local electric distribution company.

b. Seller shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

## 6.3 Buyer's Obligations.

a. Buyer shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

b. Buyer shall reasonably cooperate with Seller so that Seller can meet its obligations under this Agreement, which cooperation shall include, but not be limited to, timely providing (or to the extent possible, reasonably facilitating that the LDC timely provides) to Seller full and complete information regarding the actual cash value of any Bill Credits that have been allocated to Buyer's customer account by the LDC.

# **ARTICLE VII REPRESENTATIONS AND WARRANTIES; ACKNOWLEDGEMENTS; BUYER'S COVENANTS**

7.1 Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Parties as follows.

a. The Party is duly organized, validly existing, and in good standing under the laws of Maine.

b. The Party has full legal capacity to enter into and perform this Agreement.

c. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.

d. The execution and delivery of this Agreement and the performance of the obligations hereunder will not violate any Applicable Legal Requirement, any order of any court or other agency of government, or any provision of any agreement or other instrument to which the Party is bound.

e. There is no litigation, arbitration, administrative proceeding, or bankruptcy proceeding pending or being contemplated by the Party, or to the Party's knowledge, threatened against the Party, that would materially and adversely affect the validity or enforceability of this Agreement or the Party's ability to carry out the Party's obligations hereunder.

7.2 Forward Contract; Bankruptcy Code. Seller asserts that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is a "forward merchant" within the meaning of the United States Bankruptcy Code. The Seller further assert that Seller is not a "utility", as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

## **ARTICLE VIII TERMINATION/DEFAULT/REMEDIES**

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

a. The Party fails to make any material payment due under this Agreement within thirty (30) days after such payment is due unless the specific amount of the payment not made is being disputed.

b. The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from another Party; provided, however, if the defaulting Party proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party's time to do so shall be extended by the time reasonably necessary to cure the same.

c. Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.

d. The Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) 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; (iii) except for assignments made pursuant to Section 10.1 (regarding financing), makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) 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; (v) 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; (vi) 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; (vii) except for exercise of

possession through assignments made pursuant to Section 10.1 (regarding financing), 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; (viii) 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 (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure* a Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure* event, gives the other Parties hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

### 8.3 Termination for Default.

a. Upon the occurrence of an Event of Default, a non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which shall be at least five (5) Business Days after the giving of such notice, and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.

b. In the event this Agreement is terminated as a result of an Event of Default, (i) Sellers shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, any Bill Credits from Seller, provided, however, that Buyer shall pay Seller for any Bill Credits generated by Seller that have or may continue to be allocated to Buyer by the LDC, and (ii) Seller shall notify the LDC immediately to stop any future Bill Credits allocation to Buyer forthwith, and shall promptly provide a copy of such notification to Buyer.

## **ARTICLE IX REMEDIES AND LIMITATION OF LIABILITY**

9.1 Remedies. Subject to the limitations set forth in this Agreement, each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party agrees that it has a duty to mitigate damages that it may incur as a result of a Party's non-performance under this Agreement.

9.2 Limitation of Liability. WITH THE EXCEPTION OF SELLER'S OBLIGATIONS SET FORTH IN THE FOLLOWING SECTION 9.3, NO PARTY SHALL BE LIABLE TO THE

OTHERS FOR ANY INDIRECT OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF ANY OF THE PARTIES RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

9.3 Indemnification. Notwithstanding anything to the contrary in Section 9.2, Buyer shall not be responsible or liable for any personal injury or property damage caused by or occurring upon the Distributed Generation Resources or any individual component thereof. Seller shall defend, indemnify and hold harmless Buyer, its officers, directors, agents, and employees from and against any and all claims, demands, liens, lawsuits, judgments or actions of any nature that may be brought on account of the construction, installation, operation, maintenance, repair or replacement of the Distributed Generation Resources or any component thereof.

9.4 Waivers.

a. No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by a Party, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced or such Party's duly authorized agent. Consent or approval of a Party to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve any other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. The failure of a Party to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of a Party herein specified or any other right or remedy that a Party may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

b. Acceptance of Payment. Neither receipt nor acceptance by a Party of any payment due herein, nor payment of same by a Party, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that a Party may be entitled to exercise hereunder.

## **ARTICLE X ASSIGNMENT**

10.1 Prior Written Consent. No Party shall assign or in any manner transfer this Agreement or any part thereof without the prior written consent of the other Parties, which consent may not be unreasonably conditioned, withheld or delayed, except that no prior written consent shall be

required in connection with any assignment by a Seller in connection with the financing of a Distributed Generation Resource.

## 10.2 Collateral Assignment; Financing Provisions.

a. Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any persons providing financing for the Distributed Generation Resource. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Distributed Generation Resources. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Buyer agrees as follows:

i. Consent to Collateral Assignment. Buyer hereby consents to both the sale of the Distributed Generation Resources to a Lender and the collateral assignment for the financing of the Seller's right, title and interest in and to this Agreement.

ii. Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Lender, as owner of the Distributed Generation Resources, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Sellers under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Distributed Generation Resources;

(B) Opportunity to Cure Default. The Lender 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 Sellers thereunder or cause to be cured any default of Sellers thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Sellers under this Agreement or (unless the Lender has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Distributed Generation Resource by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. 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 Lender made

within ninety (90) days of such termination or rejection, Buyer may, in Buyer's complete discretion, elect to enter into a new agreement with Lender or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller's default reasonably cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all material defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, and which are capable of cure by a third person or entity, then the Lender or its assignee shall no longer be in default under this Agreement, and provided that after such change in title or control Buyer shall continue to receive all the Bill Credits due to it as set forth in this Agreement, this Agreement shall continue in full force and effect.

(b) Lender a Third Party Beneficiary. Buyer agrees and acknowledges that Lender is a third party beneficiary of the provisions of this Section 10.2.

(c) Entry to Consent to Assignment. Buyer agrees to (i) execute any consents to assignment or acknowledgements and (ii) provide such opinions of counsel concerning Buyer's legal status and authority as may be reasonably requested by Seller and/or Lender in connection with the financing or sale of the Distributed Generation Resources, pursuant to this Section 10.2 and which do not change or alter any material term of this Agreement.

## **ARTICLE XI AMENDMENT FOR FINANCING**

11.1 Obligation to Modify the Agreement for Financing. If a Lender requires this Agreement to be modified, or if a Seller, in good faith, requires the Agreement to be modified in order to finance, develop or operate the Distributed Generation Resources, the Parties shall enter into negotiations to amend this Agreement to materially conform to such requirements and to the

original intent of this Agreement in a timely manner. If the Parties, negotiating in good faith, cannot agree on such amendments, or if a Seller determines in good faith that the Agreement cannot be amended to allow the Distributed Generation Resource to be financed, developed or operated in a commercially reasonable manner, then the terminating Party shall give all other Parties thirty (30) days prior written notice and this Agreement shall terminate as to that Distributed Generation Resource without further liability of the Seller owning that Distributed Generation Resource to the Buyer and of the Buyer to that particular Seller, provided that the Buyer and such Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

## **ARTICLE XII MISCELLANEOUS**

12.1 Notices. All notices and other formal communications which a Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon receipt, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested, and shall be sent to the following addresses:

If to Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

12.2 Confidentiality. Except as provided in this Section 12.2, no Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Parties' prior express written consent.

a. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, representatives, agents and employees who have a need to know related to this Agreement.

b. If required by any law, statute, ordinance, decision, or regulation or pursuant to any order issued by a court, governmental agency or authority having jurisdiction over a Party, that Party may release or disclose Confidential Information, or a portion thereof, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits.

12.3 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired, and provided further, however, that the Parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with requirements of any Applicable Legal Requirements and the intent of the Parties.

12.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Maine without regard to principles of conflicts of law.

12.5 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 12.5 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

a. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of formal negotiations between respective executive officers of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for formal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

b. In the event that the Parties cannot timely resolve a dispute, by informal negotiations, the sole venue for judicial enforcement shall be the Superior Courts of Maine. Each Party hereby consents to the jurisdiction of such courts, and to service of process in the State of Maine in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.

c. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to a form of alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

12.6 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.



12.7 Press Releases. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, or the sale or purchase of Bill Credits. Each Party shall have the right to approve (with such approval not to be unreasonably withheld, conditioned or delayed) any publicity materials, press releases, or other public statements by another Party that refer to, or that describe, any aspect of this Agreement, or the sale or purchase of Bill Credits. No such releases or other public statements (except for filings or other factual statements or releases as may be required by Applicable Legal Requirements) shall be made by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. No Party shall use the name, trade name, service mark, or trademark of the other in any promotional or advertising material without the prior written consent of the other Parties, provided that such consent by Buyer may require the Parties to execute a separate trademark licensing agreement.

12.8 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of each Party hereunder are individual and neither collective nor joint in nature.

12.9 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by all of the Parties to this Agreement or its respective successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and each of their respective successors and permitted assigns.

12.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

12.11 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

12.12 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

12.13 Survival. The provisions of Sections 4.1 (Title), 5.1 (Payment), 5.2 (Records and Audits), 5.3 (Dispute), 8.3 (Termination for Default), 9.1(Remedies), 9.2 (Limitation of Liability), and 9.4 (Waivers), and Article 12 (Miscellaneous), shall survive the expiration or earlier termination of this Agreement for a period of three (3) years.

12.14 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any

benefit for, any person not a Party to this Agreement, except that this Section 12.14 shall not limit the rights of a Lender pursuant to Section 10.2.

*[Signature page to follow.]*

SAMPLE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**BUYER**

\_\_\_\_\_

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

**SELLER**

\_\_\_\_\_

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

List of Exhibits to Agreement

Exhibit A – Buyer’s Designation of Customer Accounts

Exhibit B – Price

Exhibit C – Projected Monthly Energy

Exhibit D – Distributed Generation Resource(s) description(s)

**EXHIBIT A**

**BUYER'S DESIGNATION OF CUSTOMER ACCOUNTS**

SAMPLE

**EXHIBIT B  
PRICE**

<b>Year</b>	<b>\$/MWh</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

**EXHIBIT C**  
**PROJECTED MONTHLY ENERGY**

SAMPLE

## Exhibit D

### DISTRIBUTED GENERATION RESOURCE DESCRIPTION(S)

Project Size	[INSERT] MW DC
Service Territory	[Central Maine Power Company/Emera Maine]
Service Load Zone	Maine
Project Coordinates	[INSERT], [INSERT]
Town	[INSERT], ME
Expected Generation (Year 1)	[INSERT]

## NET ENERGY BILLING CREDITS AGREEMENT

This Net Energy Billing Credits Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2019 (the “**Effective Date**”) and is by and between \_\_\_\_\_ as a seller (collectively, the “**Seller**”), and the \_\_\_\_\_, a (“**Buyer**”). In this Agreement, Sellers and Buyer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

**WHEREAS**, Seller is in the business of financing, developing, owning, operating and maintaining solar electric generation facilities;

**WHEREAS**, Seller proposes to finance, install, own, operate and maintain one or more Distributed Generation Resource(s) (such facilities, collectively, the “**Distributed Generation Resources**”);

**WHEREAS**, the Distributed Generation Resources are each expected to qualify for Net Energy Billing pursuant 35-A MRSA 3209-A and to the Net Energy Billing Regulations to be promulgated by the Maine Public Utilities Commission (“MPUC”) [insert reference when available] and will, therefore, generate Net Energy Billing Credits for each excess kilowatt hour of electricity generated by the Distributed Generation Resources; and

**WHEREAS**, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Sellers, the Net Energy Billing Credits generated by the Distributed Generating Resources during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, Seller and Buyer agree as follows.

### ARTICLE I DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“**Applicable Legal Requirements**” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction, including the Net Energy Billing regulations, of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the construction, operation, and ownership of the Distributed Generation Resources, as well as the selling and purchasing of Net Energy Billing Credits therefrom.



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

**“Commercial Operations Date”** means the date on which each Distributed Generating Resource generates electric energy on a commercial basis, and the interconnection to the local electrical distribution system has been authorized and is functioning with the LDC.

**“Confidential Information”** means all oral and written information exchanged between the Parties which contains proprietary business or confidential information of a Party and is clearly marked, or designated, if oral, as “confidential” by such Party. The Parties agree that the provisions and specifics (but not the existence) of this Agreement constitute Confidential Information. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to such Party; (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations; (e) information disclosed pursuant to any applicable law, rule or regulation requiring such disclosure, or as compelled by legal process including, but not limited to any “public records” or “freedom of information” request or pursuant to the order or requirement of a court, administrative agency, or other Governmental Authority and (f) information that is disclosed by the receiving Party with the prior written permission of the disclosing Party.

**“Distributed Generation Resource”** means the \_\_\_\_\_ individual solar (PV) power electrical generation facilities, to be constructed owned, operated and maintained by Seller, with specifications for an aggregate nameplate capacity of approximately \_\_\_\_\_ MW (DC), each of which qualifies for Net Energy Billing, together with all appurtenant facilities required to interconnect such Distributed Generation Resource to the local electric distribution system, all to be located in \_\_\_\_\_, Maine, as described in Exhibit \_\_, attached hereto.

**“Energy”** means the amount of electricity either used or generated over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

**“Force Majeure”** means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by Buyer may not be asserted as an event of *Force Majeure* by Buyer; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any governmental act, failure to act, or order,

where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

**"Generation Contingent"** means that each Seller's failure to deliver is excused if the Distributed Generation Resources for any reason do not generate sufficient energy necessary to deliver Net Energy Billing Credits hereunder. In such an event, Sellers shall not be liable to Buyer for any damages.

**"Governmental Authority"** means any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

**"Governmental Charges"** means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, local electric distribution company, or other similar entity, on or with respect to the Net Energy Billing Credits.

**"Interconnection Agreement"** shall mean the Interconnection Service Agreement(s) entered into with local electric distribution company, each of which authorizes the interconnection of the respective Distributed Generation Resource with the local electric distribution system, which confirms the eligibility of each Distributed Generation Resource for net energy billing, and which specifies (directly or by reference to the "Schedule Z" filed by Sellers under the Tariff) the manner in which Net Energy Billing Credits shall be allocated. [Schedule Z is inserted as a placeholder ...]

**"Interest Rate"** means 200 basis points above the prime rate as published in the Wall Street Journal.

**"LDC"** means the local electric distribution company.

**"Lender"** means the entity or person(s) providing financing to Seller in connection with the Distributed Generation Resources.

**"Net Energy Billing"** shall have the meaning set forth in 35-A MRSA §3209-B (1) (D) and as set forth in MPUC rules.

**"Net Energy Billing Credits"** means those bill credits as set forth in 35-A MRSA §3209-B (5) and as set forth in MPUC rules.

**"Net Energy Billing Regulations"** are the Maine net energy billing statute, 35-A MRSA §3209-B and the Maine net energy billing regulations, as each may be amended from time to time.

**“Renewable Energy Certificate”** or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, any Tax Attributes and the Net Energy Billing Credits.

**“Tariff”** means the LDC’s tariff for interconnection for Distributed Generation Resources and Net Energy Billing services, as approved by the MPUC, together with any subsequent amendments and approvals thereto.

**“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 Distributed Generation Resources or the output generated by the Distributed Generation Resources (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

## **ARTICLE II TERM**

2.1 Term. The term of this Agreement (the **“Term”**) shall commence on the Effective Date and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20<sup>th</sup>) anniversary of the latest Commercial Operations Date (the **“Termination Date”**), or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

2.2 Early Termination. The Buyer may terminate this Agreement as to the Distributed Generation Resource owned by that Seller without penalty or any liability (a) prior to the Commercial Operations Date if such Distributed Generation Resource has not achieved commercial operation within eighteen (18) months of the Effective Date or (b) after the Commercial Operations Date if the Distributed Generation Resources create less than fifty percent (50%) of their expected Net Energy Billing Credits over a period of six (6) consecutive months. (For avoidance of doubt, for this Section 2.2, the expected Energy shall be as set forth in Exhibit C, attached hereto.). In the case of termination pursuant to this Section 2.2, the Buyer shall give the Seller thirty (30) days prior written notice, and this Agreement shall terminate as to that Distributed Generation Resource without further liability of the Seller owning that Distributed Generation Resource to the Buyer and of the Buyer to the Seller, provided that the Buyer and Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

## **ARTICLE III FACILITY OWNERSHIP AND OPERATION**

3.1 Title. Title to each Distributed Generation Resource and all generation capacity credits and Tax Attributes produced or associated with each Distributed Generation Resource shall be with the Seller. Title to all Environmental Attributes produced or associated with each

Distributed Generation Resource shall be transferred to the Buyer within thirty (30) days of Seller's receipt of each payment under Section 5.1 of this Agreement.

3.2 Notice of Commercial Operations Date. Subject to the provisions of this Agreement, Seller shall promptly notify Buyer in writing when each Distributed Generation Resource has achieved the Commercial Operations Date.

3.3 Seller's Operation of Facilities. Seller shall install, operate and maintain each Distributed Generation Resource in material accordance with all Applicable Legal Requirements, all equipment manufacturers' guidelines and recommendations, and pursuant to widely accepted industry practice and shall maintain such documents and records necessary to confirm Seller's installation, operation and maintenance of the Distributed Generation Resources in material accordance with such standards.

3.4 Seller's Obligation To Maintain Facilities; Insurance. Seller shall maintain the Distributed Generation Resources and the individual components thereof in good working order at all times during the Term of this Agreement, subject to reasonable time allowed for maintenance, repair and event(s) of Force Majeure. Seller shall carry insurance coverage in an amount reasonably expected to repair or replace the Distributed Generation Resources if damaged, or in an amount as required by a Lender, at Seller's discretion.

#### **ARTICLE IV PURCHASE AND SALE OF NET ENERGY BILLING CREDITS**

4.1 Sale and Purchase of Net Energy Billing Credits. Commencing on the Commercial Operations Date, on a monthly basis Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept all of Seller's right, title and interest to \_\_\_\_\_ % of the Net Energy Billing Credits and Environmental Attributes generated by the Distributed Generation Resource, free and clear of all claims, liens, security interests and encumbrances of any kind, nature and description. Seller's obligations under this Section 4.1 are Generation Contingent.

4.2 Allocation. To facilitate delivery of the Net Energy Billing Credits purchased and sold pursuant to Section 4.1, Seller shall request (through completion of the applicable "Schedule Z") that the LDC allocate the quantity of Net Energy Billing Credits specified in Section 4.1 to Buyer's customer account(s), as further set forth in Exhibit A, "Buyer's Designation of Customer Accounts", attached hereto and incorporated herein. Buyer understands that the Net Energy Billing Credits received by Buyer for a particular month will be reflected on Buyer's statement from the LDC as a monetary credit amount and not as an electricity quantity; and that such credit will be reflected on Buyer's monthly invoice according to the LDC's billing cycle, which may be approximately one (1) month after the Net Energy Billing Credits are generated by the Distributed Generation Resources.

4.3 Payment. The payment that Buyer shall make to Seller for the Net Energy Billing Credits allocated by Sellers to Buyer (the "**Payment**") shall be determined by multiplying the rate per MWh set forth in Exhibit B, attached hereto and incorporated herein, by the MWhs generated

and delivered to the grid by the Distributed Generation Resources that are included in the calculation of the Net Energy Billing Credits allocated to Buyer's customer account(s).

4.4 Buyer's Purchase Contingent on Allocation of Credits by LDC. The Parties acknowledge and agree that Buyer's agreement to purchase Net Energy Billing Credits from Seller is contingent upon and subject to the LDC's acceptance of and allocation of such Net Energy Billing Credits to Buyer's customer account with LDC as set forth in Section 4.2 herein. During the Term of this Agreement, if for any reason the LDC refuses to allocate a portion or all of the Net Energy Billing Credits to Buyer's customer accounts, Buyer's obligation to purchase such Net Energy Billing Credits shall terminate, and Seller shall promptly refund to Buyer the Payment by Buyer for any such Net Energy Billing Credits which the LDC refused to credit to Buyer's customer accounts.

4.5 Title To Net Energy Billing Credits. Title to the Net Energy Billing Credits will pass from Seller to Buyer upon allocation to Buyer's customer account(s) by the LDC.

4.6 Non-Exclusive Agreement. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that Buyer's agreement to purchase Net Energy Billing Credits from Seller is not exclusive, and Buyer shall have the right and ability to enter into agreements with other parties to purchase additional Net Energy Billing Credits and/or RECs, subject to all Applicable Legal Requirements.

4.7 Governmental Charges.

a. Seller is responsible for any Governmental Charges currently attributable to the sale of Net Energy Billing Credits to Buyer, irrespective of whether imposed before, upon or after the allocation and delivery of Net Energy Billing Credits to Buyer.

b. The Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges to the extent permitted by law. In the event any of the sales of Net Energy Billing Credits hereunder are to be exempted from or not subject to one or more Governmental Charges, the Party claiming such exemption shall, upon a Party's written request therefore, provide the requesting Party with all necessary documentation to evidence such exemption or exclusion in a timely manner.

## **ARTICLE V PAYMENT**

5.1 Payment. During each monthly LDC billing cycle, Seller shall provide Buyer with an invoice for the Net Energy Billing Credits allocated to Buyer's designated account(s) during the prior monthly LDC billing cycle (the "**Invoice**"). The Invoice shall be based on the actual Net Energy Billing Credits that appear in the Buyer's LDC bill(s) for the designated account(s). Buyer shall either promptly provide its monthly LDC bill to Seller, or, shall allow Seller to access Buyer's monthly bill directly with the LDC, at Buyer's discretion. Subject to the provisions of Section 4.4, Buyer shall pay all invoiced amounts owed to Seller by a mutually agreeable method. Any payment not made to Seller within thirty (30) days of the Buyer's receipt

of a proper Invoice shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by Seller. Such interest shall accrue at a rate equal to the Interest Rate.

5.2 Records and Audits. Each Party shall keep, for a period of not less than six (6) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, Invoices, charges, computations and payments for such transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to such transactions during the other Party's normal business hours. Seller shall, at Buyer's request, such request to not occur more than annually, provide documentation of the amount of electricity generated by the Distributed Generation Resources and/or the calculation of the Net Energy Billing Credits.

5.3 Dispute. If a Party, in good faith, disputes an amount owed or paid as provided in this Agreement, the disputing Party shall immediately notify the other Parties of the basis for the dispute and pay the undisputed portion of such Invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution along with the interest accrued at the Interest Rate, from and including the due date through and including the date such payment is actually received by Sellers. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate at the option of the overpaying Party. The Parties shall only be entitled to dispute an amount owed or paid within twenty-four (24) calendar months from the date of issuance of such Invoice. If the Parties are unable to resolve a payment dispute under this Section 5, the Parties shall follow the procedure set forth in Section 12.5.

## **ARTICLE VI OBLIGATIONS OF THE PARTIES**

### **6.1 Net Energy Billing.**

a. Each Party's obligations under this Agreement are subject to each Distributed Generation Resource qualifying for Net Energy Billing, subject to the provisions of 35-A MRSA §3209-B and the MPUC's Net Energy Billing Regulations. If, within twelve (12) months from the Effective Date, a Distributed Generation Resource does not so qualify, this Agreement shall terminate with regards to that Distributed Generation Resource without further liability of the Seller owning that Facility to the Buyer and of the Buyer to that particular Seller, provided that the Buyer and such Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

b. Subject to the provisions of this Agreement, each Party agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the Distributed Generation Resource to be eligible for and participate in Net Energy Billing.

c. So long as any such amendment will materially benefit a Party without material detriment to the other Parties and is otherwise permitted by law, the Parties commit to each other

in good faith to make commercially reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to any rule(s) or regulation(s) regarding Net Energy Billing and ensure that the Distributed Generation Resources are eligible for Net Energy Billing.

d. Upon implementation by the MPUC or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding the provision of or eligibility for Net Energy Billing, the affected Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent possible, and shall use best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

## 6.2 Seller's Obligations.

a. Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required of Seller (and in the form required) by any Governmental Authority or the local electric distribution company.

b. Seller shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

## 6.3 Buyer's Obligations.

a. Buyer shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

b. Buyer shall reasonably cooperate with Seller so that Seller can meet its obligations under this Agreement, which cooperation shall include, but not be limited to, timely providing (or to the extent possible, reasonably facilitating that the LDC timely provides) to Seller full and complete information regarding the actual cash value of any Net Energy Billing Credits that have been allocated to Buyer's customer account by the LDC.

# **ARTICLE VII REPRESENTATIONS AND WARRANTIES; ACKNOWLEDGEMENTS; BUYER'S COVENANTS**

7.1 Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Parties as follows.

a. The Party is duly organized, validly existing, and in good standing under the laws of Maine.

b. The Party has full legal capacity to enter into and perform this Agreement.

c. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.

d. The execution and delivery of this Agreement and the performance of the obligations hereunder will not violate any Applicable Legal Requirement, any order of any court or other agency of government, or any provision of any agreement or other instrument to which the Party is bound.

e. There is no litigation, arbitration, administrative proceeding, or bankruptcy proceeding pending or being contemplated by the Party, or to the Party's knowledge, threatened against the Party, that would materially and adversely affect the validity or enforceability of this Agreement or the Party's ability to carry out the Party's obligations hereunder.

7.2 Forward Contract; Bankruptcy Code. Seller asserts that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is a "forward merchant" within the meaning of the United States Bankruptcy Code. The Seller further assert that Seller is not a "utility", as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

## **ARTICLE VIII TERMINATION/DEFAULT/REMEDIES**

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

a. The Party fails to make any material payment due under this Agreement within thirty (30) days after such payment is due unless the specific amount of the payment not made is being disputed.

b. The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from another Party; provided, however, if the defaulting Party proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party's time to do so shall be extended by the time reasonably necessary to cure the same.

c. Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.

d. The Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) 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; (iii) except for assignments made pursuant to Section 10.1 (regarding financing), makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) 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; (v) 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; (vi) 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; (vii) except for exercise of possession through assignments made pursuant to Section 10.1 (regarding financing), 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; (viii) 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 (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure* a Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure* event, gives the other Parties hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

8.3 Termination for Default.

a. Upon the occurrence of an Event of Default, a non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which shall be at least five (5) Business Days after the giving of such notice, and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.

b. In the event this Agreement is terminated as a result of an Event of Default, (i) Sellers shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, any Net Energy Billing Credits from Seller, provided, however, that Buyer shall pay Seller for any Net Energy Billing Credits generated by Seller that have or may continue to be allocated to Buyer by the LDC, and (ii) Seller shall notify the LDC immediately to stop any future Net Energy Billing Credits allocation to Buyer forthwith, and shall promptly provide a copy of such notification to Buyer.

## **ARTICLE IX REMEDIES AND LIMITATION OF LIABILITY**

9.1 Remedies. Subject to the limitations set forth in this Agreement, each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to the

performance or non-performance of the other Party hereto under this Agreement. Each Party agrees that it has a duty to mitigate damages that it may incur as a result of a Party's non-performance under this Agreement.

9.2 Limitation of Liability. WITH THE EXCEPTION OF SELLER'S OBLIGATIONS SET FORTH IN THE FOLLOWING SECTION 9.3, NO PARTY SHALL BE LIABLE TO THE OTHERS FOR ANY INDIRECT OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF ANY OF THE PARTIES RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

9.3 Indemnification. Notwithstanding anything to the contrary in Section 9.2, Buyer shall not be responsible or liable for any personal injury or property damage caused by or occurring upon the Distributed Generation Resources or any individual component thereof. Seller shall defend, indemnify and hold harmless Buyer, its officers, directors, agents, and employees from and against any and all claims, demands, liens, lawsuits, judgments or actions of any nature that may be brought on account of the construction, installation, operation, maintenance, repair or replacement of the Distributed Generation Resources or any component thereof.

9.4 Waivers.

a. No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by a Party, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced or such Party's duly authorized agent. Consent or approval of a Party to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve any other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. The failure of a Party to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of a Party herein specified or any other right or remedy that a Party may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

b. Acceptance of Payment. Neither receipt nor acceptance by a Party of any payment due herein, nor payment of same by a Party, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that a Party may be entitled to exercise hereunder.

## ARTICLE X ASSIGNMENT

10.1 Prior Written Consent. No Party shall assign or in any manner transfer this Agreement or any part thereof without the prior written consent of the other Parties, which consent may not be unreasonably conditioned, withheld or delayed, except that no prior written consent shall be required in connection with any assignment by a Seller in connection with the financing of a Distributed Generation Resource.

10.2 Collateral Assignment; Financing Provisions.

a. Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any persons providing financing for the Distributed Generation Resource. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Distributed Generation Resources. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Buyer agrees as follows:

i. Consent to Collateral Assignment. Buyer hereby consents to both the sale of the Distributed Generation Resources to a Lender and the collateral assignment for the financing of the Seller's right, title and interest in and to this Agreement.

ii. Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Lender, as owner of the Distributed Generation Resources, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Sellers under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Distributed Generation Resources;

(B) Opportunity to Cure Default. The Lender 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 Sellers thereunder or cause to be cured any default of Sellers thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Sellers under this Agreement or (unless the Lender has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Distributed Generation Resource by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined

below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. 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 Lender made within ninety (90) days of such termination or rejection, Buyer may, in Buyer's complete discretion, elect to enter into a new agreement with Lender or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller's default reasonably cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all material defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, and which are capable of cure by a third person or entity, then the Lender or its assignee shall no longer be in default under this Agreement, and provided that after such change in title or control Buyer shall continue to receive all the Net Energy Billing Credits due to it as set forth in this Agreement, this Agreement shall continue in full force and effect.

(b) Lender a Third Party Beneficiary. Buyer agrees and acknowledges that Lender is a third party beneficiary of the provisions of this Section 10.2.

(c) Entry to Consent to Assignment. Buyer agrees to (i) execute any consents to assignment or acknowledgements and (ii) provide such opinions of counsel concerning Buyer's legal status and authority as may be reasonably requested by Seller and/or Lender in connection with the financing or sale of the Distributed Generation Resources, pursuant to this Section 10.2 and which do not change or alter any material term of this Agreement.

**ARTICLE XI  
AMENDMENT FOR FINANCING**

11.1 Obligation to Modify the Agreement for Financing. If a Lender requires this Agreement to be modified, or if a Seller, in good faith, requires the Agreement to be modified in order to finance, develop or operate the Distributed Generation Resources, the Parties shall enter into negotiations to amend this Agreement to materially conform to such requirements and to the original intent of this Agreement in a timely manner. If the Parties, negotiating in good faith, cannot agree on such amendments, or if a Seller determines in good faith that the Agreement cannot be amended to allow the Distributed Generation Resource to be financed, developed or operated in a commercially reasonable manner, then the terminating Party shall give all other Parties thirty (30) days prior written notice and this Agreement shall terminate as to that Distributed Generation Resource without further liability of the Seller owning that Distributed Generation Resource to the Buyer and of the Buyer to that particular Seller, provided that the Buyer and such Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

**ARTICLE XII  
MISCELLANEOUS**

12.1 Notices. All notices and other formal communications which a Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon receipt, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested, and shall be sent to the following addresses:

If to Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

12.2 Confidentiality. Except as provided in this Section 12.2, no Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Parties' prior express written consent.

a. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, representatives, agents and employees who have a need to know related to this Agreement.

b. If required by any law, statute, ordinance, decision, or regulation or pursuant to any order issued by a court, governmental agency or authority having jurisdiction over a Party, that Party may release or disclose Confidential Information, or a portion thereof, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits.

12.3 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired, and provided further, however, that the Parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with requirements of any Applicable Legal Requirements and the intent of the Parties.

12.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Maine without regard to principles of conflicts of law.

12.5 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 12.5 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

a. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of formal negotiations between respective executive officers of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for formal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

b. In the event that the Parties cannot timely resolve a dispute, by informal negotiations, the sole venue for judicial enforcement shall be the Superior Courts of Maine. Each Party hereby consents to the jurisdiction of such courts, and to service of process in the State of Maine in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.

c. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to a form of alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

12.6 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

12.7 Press Releases. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, or the sale or purchase of Net Energy Billing Credits. Each Party shall have the right to approve (with such approval not to be unreasonably withheld, conditioned or delayed) any publicity materials, press releases, or other public statements by another Party that refer to, or that describe, any aspect of this Agreement, or the sale or purchase of Net Energy Billing Credits. No such releases or other public statements (except for filings or other factual statements or releases as may be required by Applicable Legal Requirements) shall be made by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. No Party shall use the name, trade name, service mark, or trademark of the other in any promotional or advertising material without the prior written consent of the other Parties, provided that such consent by Buyer may require the Parties to execute a separate trademark licensing agreement.

12.8 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of each Party hereunder are individual and neither collective nor joint in nature.

12.9 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by all of the Parties to this Agreement or its respective successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and each of their respective successors and permitted assigns.

12.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

12.11 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

12.12 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

12.13 Survival. The provisions of Sections 4.1 (Title), 5.1 (Payment), 5.2 (Records and Audits), 5.3 (Dispute), 8.3 (Termination for Default), 9.1(Remedies), 9.2 (Limitation of Liability), and 9.4 (Waivers), and Article 12 (Miscellaneous), shall survive the expiration or earlier termination of this Agreement for a period of three (3) years.

12.14 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement, except that this Section 12.14 shall not limit the rights of a Lender pursuant to Section 10.2.

*[Signature page to follow.]*



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**BUYER**

\_\_\_\_\_

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

**SELLER**

\_\_\_\_\_

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

List of Exhibits to Agreement

Exhibit A – Buyer’s Designation of Customer Accounts

Exhibit B – Price

Exhibit C – Projected Monthly Energy

Exhibit D – Distributed Generation Resource(s) description(s)

**EXHIBIT A**

**BUYER'S DESIGNATION OF CUSTOMER ACCOUNTS**

SAMPLE

**EXHIBIT B  
PRICE**

<b>Year</b>	<b>\$/MWh</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

**EXHIBIT C**  
**PROJECTED MONTHLY ENERGY**

SAMPLE

## Exhibit D

### DISTRIBUTED GENERATION RESOURCE DESCRIPTION(S)

Project Size	[INSERT] MW DC
Service Territory	[Central Maine Power Company/Emera Maine]
Service Load Zone	Maine
Project Coordinates	[INSERT], [INSERT]
Town	[INSERT], ME
Expected Generation (Year 1)	[INSERT]