I. Introduction

Pursuant to Connecticut General Statutes ("CGS") §4-176 and section 22a-3a-4 of the Regulations of Connecticut State Agencies ("RCSA"), Plainfield Renewable Energy, LLC c/o Greenleaf Power, LLC ("PRE" or the "Company") hereby petitions the Commissioner of the Connecticut Department of Energy and Environmental Protection ("DEEP") for a declaratory ruling regarding the applicability of CGS §16-245a(g), specifically: Does PRE’s biomass facility located in Plainfield, Connecticut (the “Plainfield Facility”) meet the statutory exemption from any reduction in the value of Renewable Energy Certificates ("RECs") generated by the facility as provided in CGS §16-245a(g)?

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1 On October 7, 2021, DEEP issued a Notice of Proceeding to Determine Facility Exemption under CGS §16-245a(g). On November 1, 2021, PRE responded to DEEP with a letter requesting confirmation that the Plainfield Facility meets the CGS §16-245a(g) statutory exemption. On December 17, 2021, DEEP issued a response to PRE in DEEP’s Response to Requests for Confirmation of Facility Exemption. DEEP has taken the position that its Response “is not a final decision” of DEEP and therefore PRE must petition the Commissioner for a declaratory ruling on this issue.
As explained in greater length below, it is PRE’s position that the Plainfield Facility is exempt from the gradual phasedown of Class I RECs produced by biomass resources pursuant to CGS §16-245a(g) because PRE entered into a power purchase agreement (“PPA”) with an electric distribution company in the state of Connecticut on or before June 5, 2013.

II. Background

A. Relevant Facts

The Company owns and operates the Plainfield Facility, a 37.5-megawatt (“MW”) biomass electric generating facility with NEPOOL GIS Unit ID MSS15509. The Plainfield Facility is a certified renewable energy source that has been operating since the end of 2013, supplying energy and capacity to New England wholesale and capacity markets. PRE’s facility creates clean energy by burning on an annual basis approximately 350,000 tons of clean wood recovered from construction and demolition activities, including sustainable wood from forestry and land-clearing activities. On April 9, 2014, the Public Utilities Regulatory Authority (“PURPA”) determined that pursuant to CGS §16-1(a), the Plainfield Facility qualifies as a Class I renewable energy source and assigned the facility Connecticut Renewable Portfolio Standard Registration No. CT00666-13. See Docket No. 13-12-22, Application of Plainfield Renewable Energy, LLC For Qualification of Plainfield Renewable Energy as a Class I Renewable Energy Source, April 9, 2014 Final Decision at 2.
B. REC Value Phase-Down

Pursuant to CGS §16-245a(g), DEEP is to “establish a schedule to commence on January 1, 2015, for assigning a gradually reduced renewable energy credit value to all biomass and landfill methane gas facilities that qualify as a Class I renewable energy source.” By statute, however, “any reduced renewable energy credit value … shall not apply to any biomass … facility that has entered into a power purchase agreement (1) with an electric supplier or electric distribution company in the state of Connecticut on or before June 5, 2013...”. CGS §16-245a(g).

In the 2020 Integrated Resources Plan, issued on October 7, 2021 (“2020 IRP”), DEEP sets forth its plan to implement the biomass RECs phasedown, specifically, DEEP explains that “eligible generation for Class I biomass RECs will be reduced after 20 years for new facilities and 15 years for existing facilities from the time they were approved as

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2 CGS Section 16-245a(g) provides in whole:

On or before January 1, 2014, the Commissioner of Energy and Environmental Protection shall, in developing or modifying an Integrated Resources Plan in accordance with sections 16a-3a and 16a-3e, establish a schedule to commence on January 1, 2015, for assigning a gradually reduced renewable energy credit value to all biomass or landfill methane gas facilities that qualify as a Class I renewable energy source pursuant to section 16-1, provided this subsection shall not apply to anaerobic digestion or other biogas facilities, and further provided any reduced renewable energy credit value established pursuant to this section shall not apply to any biomass or landfill methane gas facility that has entered into a power purchase agreement (1) with an electric supplier or electric distribution company in the state of Connecticut on or before June 5, 2013, or (2) executed in accordance with section 16a-3f or 16a-3h. The Commissioner of Energy and Environmental Protection may review the schedule established pursuant to this subsection in preparation of each subsequent Integrated Resources Plan developed pursuant to section 16a-3a and make any necessary changes thereto to ensure that the rate of reductions in renewable energy credit value for biomass or landfill methane gas facilities is appropriate given the availability of other Class I renewable energy sources.
a Class I renewable energy source in Connecticut.” 2020 IRP at 191. For RECs generated at biomass facilities after January 1, 2022, the 2020 IRP states that:

“Class I RECs will still be generated as they have been, but the amount of generation eligible as a Class I resource in Connecticut will decline to 50 percent of the actual generation output from the facility each year. One MWh would still be required to be produced to receive a REC in Connecticut. A REC for a Class I biomass facility would not be treated any differently from CT Class I RECs from other eligible resources for the purpose of supplier compliance. The other 50 percent of the annual generation output, which is not eligible in Connecticut, will still be eligible to be sold to meet RPS requirements in other states, to the extent the resource is eligible to participate in those other state RPS programs.” Id.

III. Discussion

In accordance with PURA’s April 9, 2014 decision and the statutory requirements of CGS §16-1(a)(20), the Plainfield Facility qualifies as a Class I renewable energy source because the facility consumes sustainable biomass fuel as defined in CGS §16-1(a)(20). On May 8, 2008, The Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”) and PRE entered into a PPA relating to the sale and purchase of electricity produced by the Plainfield Facility, specifically eighty percent (80%) of PRE’s output or thirty (30) MW. See Confidential Attachment 1. On April 12, 2019, Eversource and PRE entered into a second PPA relating to the sale and purchase of the remaining twenty percent (20%) of PRE’s output or 7.5 MW. See Confidential Attachment 2. Thus, the Plainfield Facility is a biomass facility that qualifies as a Class I renewable energy source pursuant to CGS §16-1(a) and the facility entered into a PPA with an electric distribution company in the state of Connecticut prior to June 5, 2013.

Section 5 of Public Act 13-303, codified at CGS §16-245a(g), provides that DEEP must set a schedule for the gradual phasedown in the value of Class I RECs produced
by biomass resources. However, as noted in the 2020 IRP, some biomass facilities may be exempt from this phasedown if they meet the criteria of CGS §16-245a(g), as determined by DEEP. For this reason, this petition seeks a declaratory ruling that the Plainfield Facility meets the statutory exemption from any reduction in the value of RECs.

The plain language in CGS §16-245a(g) provides that there are no conditions or limitations based on the volume purchased by the electric distribution company or the term of the agreement for a facility to meet the eligibility criteria for an exemption from the biomass phasedown. Specifically, CGS §16-245a(g) provides the following exemptions:

any reduced renewable energy credit value established pursuant to this section shall not apply to any biomass or landfill methane gas facility that has entered into a power purchase agreement (1) with an electric supplier or electric distribution company in the state of Connecticut on or before June 5, 2013, or (2) executed in accordance with section 16a-3f or 16a-3h.

The 2020 IRP identifies one facility that meets these criteria and is exempt from any phasedown: “[T]his phasedown will not apply to the Plainfield Renewable Energy facility because it has an existing contract.” 2020 IRP at footnote 380, page 191. The 2020 IRP does not limit or condition the duration of the statutory exemption for the Plainfield Facility in any way.

Consequently, given that the Plainfield Facility meets the criteria under CGS §16-245a(g), the facility should receive a full and unconditional exemption from any biomass REC phasedown. In accordance with CGS §16-245a(g), the RECs generated by the Plainfield Facility are statutorily excluded from any requirement that the eligibility of the RECs be reduced as set forth in CGS §16-245a(g) and the 2020 IRP.
IV. Conclusion

For the foregoing reasons, PRE respectfully requests that DEEP issue a declaratory ruling that the Plainfield Facility is permanently exempt from any phase-down of the REC value implemented pursuant to CGS §16-245a(g), and that 100% of the RECs to be generated by the facility will qualify as Class I RECs under CGS §16-245a.

Respectfully submitted,

PLAINFIELD RENEWABLE ENERGY, LLC

By: _____________________________
Bruce L. McDermott, Esq.
Murtha Cullina LLP
265 Church Street
New Haven, CT 06510
203.772.7787
bmcdermott@murthalaw.com
Attorney for Plainfield Renewable Energy, LLC
STANDARD ELECTRICITY PURCHASE AGREEMENT

This STANDARD ELECTRICITY PURCHASE AGREEMENT (the "EPA" or the "Agreement", which terms are used interchangeably) is made as of May 8, 2008 (the "Effective Date") by and between THE CONNECTICUT LIGHT AND POWER COMPANY ("Utility"), and Plainfield Renewable Energy, LLC ("Seller"). Utility and Seller together are the Parties and each individually is a Party to this EPA.

WHEREAS, Seller, shall operate an electrical generation facility located in the area commonly known as Mill Brook Road at CT Route 12 in Plainfield, Connecticut, as more fully described in Appendix B (the "Facility"); and

WHEREAS, Seller wishes to sell to Utility and Utility wishes to purchase from Seller electric Products produced solely by the Facility on and after the Effective Date on the terms specified herein; and

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties hereto agree as follows:

1  AVAILABILITY

1.1 This EPA is available to Class I renewable energy source projects located in Connecticut that receive funding from the Renewable Energy Investment Fund (also known as the Connecticut Clean Energy Fund) and are projects that began operation on or after July 1, 2003, as defined in Connecticut General Statutes ("CGS") Section 16-244c(j)(2).

2  DEFINITIONS

2.1 As used throughout this EPA, capitalized terms shall have the definitions set forth in this Article 2, or in Article 1 of Appendix A to this EPA; provided that any capitalized terms used but not defined in this EPA have the meanings set forth in the ISO-NE Documents, as applicable.

2.2 "Interconnecting Utility" shall mean The Connecticut Light and Power Company (or its successor in interest) in its capacity as a party to the Interconnection Agreement.

3  PURCHASE AND SALE OF POWER

3.1 Subject to the terms and conditions of this EPA, Seller shall sell and deliver and Utility shall purchase and accept delivery of Products from the Facility. Seller shall ensure that the Facility shall use biomass as its primary energy source.

3.2 The original Scheduled Operation Date of the Facility is November 1, 2010. Seller agrees to give written notice to the Utility at the end of each calendar quarter of any change in this date and of progress in obtaining permits and constructing the Facility.

3.3 Seller shall deliver the Products to Utility at the Delivery Point. Seller and the Utility shall specify the Delivery Point in Appendix B consistent with the definition in A-1.11. Seller may not change the Delivery Point during the Term without prior Utility approval.

3.4 Prior to the In-Service Date and satisfaction of the Prerequisites for Purchase listed in Section A-15, but subsequent to the execution of an Interconnection Agreement, Seller shall conduct testing of the Facility and Utility shall purchase any Products generated pursuant to such testing. Utility will pay Seller for such Products at the same rate that Utility is paid for the Energy component of such Products by ISO-NE.
3.5 Subject to the satisfaction of the Prerequisites for Purchase listed in Section A-15 and throughout the Term, Seller shall deliver to Utility eighty percent (80%) of the Products ("Delivered Products"). All Delivered Products up to 30,000 kWh per hour of Energy and a corresponding portion of all other Products shall be "Contract Rate Products". It is expressly recognized by Seller that the Delivered Products must include, but are not limited to, Capacity in the same proportion that Delivered Products is to Products. Any amount of Delivered Products that are in excess of the Contract Rate Products in any hour shall be "Additional Products".

4 PRICE

4.1 The price to be paid by Utility to Seller for the Contract Rate Products shall be the Contract Payment Rate as described in Appendix C of this EPA. Utility will pay Seller for any Additional Products at the same rate that Utility is paid for the Energy component of such Additional Products by ISO-NE. The Parties expressly commit to the prices provided in the EPA for the Term.

4.2 Intentionally omitted.

4.3 Intentionally omitted.

5 TERM OF EPA

5.1 The EPA shall be binding upon execution and remain in effect thereafter for fifteen (15) years from the In-Service Date ("Term"); provided, however, that this EPA shall terminate if the In-Service Date is not reached by the date specified in Section A-1.24 unless otherwise ordered by the CDPUC or unless the Parties agree in writing to change this date.

5.2 Seller shall provide a minimum of thirty (30) days advance notice to Utility of all dates upon which Seller tests the Facility in order to establish the In-Service Date. Utility shall have the right to be present at the Site, to receive documentary evidence of the Facility's operation.

5.3 Following the end of the Term, the Parties hereto shall have no further obligations hereunder, except as otherwise expressly provided herein or to the extent necessary to enforce the rights and obligations of the Parties arising under this EPA before the end of the Term.

6 NOTICES

6.1 Except as otherwise specified in this EPA, any notice, demand or request required or authorized by this EPA to be given shall be either personally delivered or mailed by registered or certified mail (return receipt requested), postage paid, to the Party at the following address:

To Utilities:

[for U.S. Mail deliveries]
Director - Wholesale Power Contracts
Northeast Utilities Service Company
P.O. Box 270
Hartford, CT 06141-0270

[for hand deliveries]
Director - Wholesale Power Contracts
Northeast Utilities Service Company
107 Selden Street
Berlin, CT 06037

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With a copy to:

[for U.S. Mail deliveries]
General Counsel
Northeast Utilities Service Company
P.O. Box 270
Hartford, CT 06141-0270

[for hand deliveries]
General Counsel
Northeast Utilities Service Company
107 Selden Street
Berlin, CT 06037

and

The United Illuminating Company
157 Church Street,
P.O. Box 1564
New Haven, CT 06506-0901
Attn: Alan A. Trotta
Fax: (203) 499-3271

and

The United Illuminating Company
157 Church Street
P.O. Box 1564
New Haven, CT 06506-0901
Attn: Linda L. Randell, Esq., Senior Vice President,
General Counsel and Corporate Secretary
Fax: (203) 499-3664

To Seller:
Mr. Jon T. Pomerleau, Vice President
Plainfield Renewable Energy, LLC
20 Marshall Street, Suite 300
Norwalk, CT 06854

The designation of such persons and/or address may be changed at any time by either Party upon written notice given pursuant to the requirements of this Section. A notice served by mail shall be effective upon receipt.

7 PERFORMANCE ASSURANCE

7.1 The Parties agree that a cessation or suspension of Seller’s operation of the Facility as the result of economic factors (such as a change in market price of Delivered Products or in Seller’s cost of operating and/or maintaining the Facility) or financial factors (such as an impairment of Seller’s financial condition, including its insolvency, voluntary or involuntary petition for bankruptcy, appointment of a receiver or trustee for its assets) would constitute a breach of Seller’s obligation to operate the Facility in accordance with this EPA and Good Industry Practices. Such breach by Seller would entitle Utility to draw on or otherwise call on any and all performance assurance in accordance with Appendix D.
7.2 No less than ten (10) days prior to the commencement of Utility's purchases of Contract Rate Products at the prices specified in Appendix C, Seller shall provide, at Seller's sole cost and expense, performance assurance in favor of Utility, in an amount that is no less than the Assurance Amount defined in Appendix D and in form and substance and from an issuer in accordance with the requirements of Appendix D.

8 FUEL LIMITATIONS

8.1 The Facility's primary energy source, as referenced in Section 3.1, for Delivered Products is restricted to no more than twenty percent (20%) "Sustainable Biomass" which, solely for purposes of this EPA, shall mean "Sustainable biomass" as defined under Connecticut General Statutes § 16-1(a)(45) as of the Effective Date, but not including the material described under the exception for a biomass gasification plant that received funding prior to May 1, 2006, from the Renewable Energy Investment Fund (such excluded material defined herein as "Other Biomass"). Because Seller is required to deliver 80% of the total Products associated with the Facility for purchase under the EPA, the maximum Sustainable Biomass to be burned in the Facility shall be thirty-six percent (36%) of the annual tons of biomass (measured on a calendar-year basis) burned by the Facility for generation of electricity ("Maximum Sustainable Biomass Percentage").

8.2 Seller must not exceed the Maximum Sustainable Biomass Percentage in any calendar year. If the Maximum Sustainable Biomass Percentage requirement is breached by Seller exceeding such Percentage in any calendar year, then Seller shall have the immediately following six month period (i.e., January 1, through June 30 of the following year) to cure such breach. If such breach is not cured in that six month period, then in addition to the remedies specified in Section A-9.1, the Buyer may on sixty (60) days prior written notice terminate this EPA, but only upon an order of the CDPUC approving such termination. The criteria for determining whether the requirement for the Maximum Sustainable Biomass Percentage has been breached and/or cured are set out in Exhibit B-2 to Appendix B.

8.3 This Section 8 is not intended to, nor shall it be construed to, create any right, duty, liability or standard of care to which any person not a party to this EPA may seek enforcement or recovery of damages.

8.4 The limitations on Seller's use of Sustainable Biomass set forth in this Article 8 ("Fuel Limitations") shall commence immediately upon the Facility's completion of start-up and testing to achieve its In-Service Date and shall continue in full force and effect until (but not after) the EPA termination date; provided, however, that Seller may petition the CDPUC to amend or terminate the Fuel Limitations based on changed circumstances. The Parties recognize that pursuant to its Decision dated January 30, 2008 in Docket No. 07-04-27 ("1/30/08 Decision"), the CDPUC stated that it must review a request by Seller to amend or terminate the Fuel Limitations if: (i) the EPA for either Watertown Renewable Power, LLC project to be located in Watertown, CT or the Clearview Renewable Energy, LLC project to be located in Bozrah, CT is terminated or otherwise expires and such project does not submit a bid for consideration for a long-term contract in Round 3 of procurement under the Connecticut General Statutes Section 16-244c(j)(2) program; or (ii) the definition of Sustainable biomass in Connecticut General Statutes §16-1(a)(45) is amended to restrict Seller's use of Other Biomass or allows other power plants to use Other Biomass and be certified as a Connecticut Class I renewable energy source. Pursuant to the 1/30/08 Decision, the CDPUC has held that it shall not deny a request to amend or terminate the Fuel Limitations provisions unless the CDPUC determines that Seller should be able to operate the Facility reliably and have an opportunity to earn a reasonable return on investment without such amendment or termination. In lieu of approving a request to terminate the Fuel Limitations provisions in
this Article 8, the CDPUC may order that the said provisions be modified to address Seller's request.

8.5 The Parties recognize that in the 1/30/08 Decision, the CDPUC determined that neither it nor any entity other than Seller could request an amendment or modification to the Fuel Limitations. Any request by Seller to amend or terminate the fuel limitations must be in writing, sent by certified mail (return receipt requested), postage paid, to the CDPUC, CL&P, The United Illuminating Company ("UI"), Watertown Renewable Power, LLC, and Clearview Renewable Energy, LLC at the following address:

To CDPUC:
Ms. Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control
10 Franklin Square
New Britain, CT 06051

To CL&P:
Director - Wholesale Power Contracts
Northeast Utilities Service Company
P.O. Box 270
Hartford, CT 06141-0270

To UI:
Director – Strategic Policy
The United Illuminating Company
157 Church Street
P. O. Box 1564
New Haven, CT 06506

To Watertown Renewable Power, LLC:
Mr. William Carter, Vice President
Watertown Renewable Power, LLC
c/o Tamarack Energy, Inc.
36 Plains Road, Suite 101
Essex, CT 06426

To Clearview Renewable Energy, LLC:
Mr. James Potter, President
Clearview Power, LLC
163 North Shore Road
Hampton, NH 03826
TERMS AND CONDITIONS
This EPA includes the following appendices which are attached and incorporated by reference:

Appendix A - GENERAL TERMS AND CONDITIONS
Appendix B - DESCRIPTION OF FACILITY
Appendix C - PRICING
Appendix D – PERFORMANCE ASSURANCE
Appendix E – CAPACITY BIDDING REQUIREMENTS

IN WITNESS WHEREOF, Utility and Seller have caused this EPA to be executed by their respective duly authorized officers as of the date first above written.

THE CONNECTICUT LIGHT AND POWER COMPANY
By: ____________________________
Name: James R. Shuckro, Jr.
Title: Director, Wholesale Power Contracts
as agent for The Connecticut Light and Power Company

PLAINFIELD RENEWABLE ENERGY, LLC [Seller]
By: ____________________________
Name: Daniel J. Donovan
Title: Vice President
APPENDIX A
GENERAL TERMS AND CONDITIONS

A-1 DEFINITIONS
For the purposes of this EPA the following terms shall have the following meanings:

A-1.1 "Additional Products" shall mean any amount of Delivered Products that are in excess of the Contract Rate Products in any hour.

A-1.2 "Affiliate" of a person shall mean any other person controlling, controlled by or under common control with such first person. For purposes hereof, "person" shall mean a natural person, a corporation, partnership, limited liability company, trust or any other organization or entity however organized.

A-1.3 Intentionally omitted.

A-1.4 "Business Day" shall mean any Monday through Friday, inclusive, that is not a legal holiday in the State of Connecticut.

A-1.5 "Capacity" shall mean all the capacity from the Facility, whether operable or inoperable, as determined by ISO-NE's Seasonal Claimed Capability rating (or successor or replacement rating used to measure capability) as defined in the ISO-NE Tariff. The Capacity could be in the form of ICAP, UCAP, LICAP, or any other capacity product as determined or recognized by ISO-NE.

A-1.6 "CDPUC" shall mean the Connecticut Department of Public Utility Control or its successor.

A-1.7 "Class I Renewable" shall have the meaning provided in CGS Section 16-1(a)(26), provided that once a project is qualified by the CDPUC as a Class I renewable project, and said project continues to be a Class I renewable project, as defined, when this EPA is signed and approved by the CDPUC, if any change in governing legislation concerning the meaning of Class I Renewable is enacted subsequent to CDPUC approval of this EPA ("Post Approval Change"), such Post Approval Change in the meaning of Class I Renewable shall not affect the status of the project under the EPA.

A-1.8 "Contract Payment Rate" shall mean the price to be paid by Utility to Seller for the Contract Rate Products as described in Appendix C.

A-1.9 "Contract Rate Products" shall mean all Delivered Products up to the maximum expressed in kWh per hour of Energy and a corresponding portion of all other Products as specified in Section 3.5.

A-1.10 “Delivered Products” shall mean all Products determined by the percentage specified in Section 3.5.

A-1.11 "Delivery Point" shall mean the point where Products transmitted by the Seller will be delivered to the Utility. The Delivery Point shall be a specific point on the ISO-NE PTF where Seller shall transmit its Products to the Utility, except for small Connecticut projects with a capacity value such that they are recognized by ISO-NE rules, as currently in effect and as amended from time to time, as a "load reducer." The Delivery Point for these small Connecticut projects shall be the point of interconnection to the purchasing Utility's distribution system.

A-1.12 "Effective Date" has the meaning set forth in the preamble.

A-1.13 "Emissions Credits" shall mean any positive value associated with the environmental emissions (or lack thereof) associated with the production of Energy at the Facility, along with any associated instrument or certificate tradable on the New England GiS system,
whether paper, electronic, or in any other form. Emissions Credits shall not include: (i) any costs associated with decommissioning and/or environmental clean-up of the Site or (ii) any emission rights that are required and used for the Facility's operation, whether produced by, assigned to, or purchased for the Facility.

A-1.14 "Energy" shall mean electric "energy," as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in kWh in EPT, less such Facility's station service use, generator lead losses and transformer losses, which quantity for purposes of this EPA will never be less than zero.

A-1.15 "EPT" shall mean Eastern Prevailing Time.

A-1.16 "Facility" shall mean Seller's plant for generating electricity as described in Appendix B.

A-1.17 "FERC" shall mean the Federal Energy Regulatory Commission.

A-1.18 "Force Majeure" has the meaning set forth in Section A-11.

A-1.19 "Forward Capacity Market" and "FCM" shall mean the forward market for capacity that is proposed in the LICAP Settlement and as may be implemented pursuant to ISO-NE Documents.

A-1.20 Intentionally omitted.

A-1.21 "GIS" means the New England Power Pool Generation Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that identifies generation attributes of MWhs of energy accounted for in such system, and any successor to such System.

A-1.22 "GIS Forward Certificate Transfer System" means the mechanism specified in the operating rules of the GIS system to effect transfers of GIS certificates in advance of their creation.

A-1.23 "Good Industry Practices" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric generation industry with respect to producing electricity from the Facility. Good Industry Practices shall also include any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been reasonably expected to accomplish the desired result at a reasonable cost. Such practices, methods and acts must comply fully with applicable laws and regulations, good business practices, economy, reliability, safety, environmental protection, and expedition, having due regard for current editions of the National Electrical Safety Code and other applicable electrical safety and maintenance codes and standards, and manufacturer's warranties and recommendations. Good Industry Practices are not intended to be the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in the electrical generation industry in the United States.

A-1.24 "In-Service Date" means the date as specified in Appendix B; provided, however, that the In-Service Date shall be no later than two (2) years from the original Scheduled Operation Date provided in Section 3.2.

A-1.25 Intentionally omitted.

A-1.26 "Interconnecting Utility" shall mean as specified in Section 2.2.

A-1.27 "Interconnection Agreement" shall mean the Interconnection Agreement by and between Seller and the Interconnecting Utility as the same may be amended from time to time.

A-1.28 "Interconnection Point" shall mean the interconnection point(s) as specified in the Interconnection Agreement.
A-1.29 "ISO-NE" shall mean ISO New England Inc., its successor, or any other independent system operator or regional transmission organization for New England.

A-1.30 "ISO-NE Documents" collectively includes the ISO-NE System Rules, the ISO-NE Tariff, the Market Rules, ISO-NE Manuals, the Participant's Agreement and the Second Restated NEPOOL Agreement and other documents formally approved and issued by ISO-NE.

A-1.31 "ISO-NE Tariff" shall mean the ISO-NE Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, or successor or replacement tariffs or agreements on file at the FERC, and as may be amended and in effect from time to time.

A-1.32 "kWh" shall mean a kilowatt hour.


A-1.34 "NEPOOL" shall mean the New England Power Pool or any successor or replacement organization(s).

A-1.35 "Products" shall mean all electricity products, whether presently known or designated or created in the future, produced by or associated with the Facility during the Term, including but not limited to Energy, Operating Reserves, Forward Reserves, Capacity, Emission Credits, tradable carbon credits, and any so-called "green" power credits commonly known as "GIS certificates" or "Renewable Energy Certificates."

A-1.36 "Renewable Energy Certificates" ("RECs") shall mean any certificate, either paper, electronic, or any other form that can be used to demonstrate that the Energy generated from the Facility was Class I Renewable.

A-1.37 "Scheduled Operation Date" shall mean the date set forth in Section 3.2.

A-1.38 "Site" shall mean the location of the Facility as described in Appendix B.

A-1.39 "Term" shall mean the period set forth in Section 5.1.

A-2 CONSTRUCTION, OPERATION AND MAINTENANCE OF THE FACILITY: THE OPERATOR

A-2.1 Seller shall construct, operate and maintain the Facility using Good Industry Practices, and in compliance with the Interconnection Agreement.

A-2.2 Seller shall construct, operate and maintain the Facility so that it obtains and retains its status as a Class I Renewable energy source project, as defined in A-1.7.

A-2.3 Seller recognizes that Utility may sell or otherwise utilize the Delivered Products, including Capacity, in the ISO-NE market. Seller will cooperate with Utility to comply with ISO-NE requirements and procedures, as such requirements and procedures may change from time to time, which may include, but is not limited to, participation by Seller, or authorization of Utility to participate with respect to the Products, in the ISO-NE markets (or their successor markets), including the FCM.

Seller must take all necessary and appropriate actions to qualify, participate, be selected and compensated in any capacity market, including the FCM and any successor capacity market. For purposes of this Section A-2.3, Section A-9.3, and Appendix E, notwithstanding any other provisions of this Agreement, unless the Facility can participate earlier in which case it must, the Facility must begin participating in the Forward Capacity Market by clearing as capacity for the Commitment Period beginning June 2012. Seller can consult with the Utility regarding the appropriate price to bid into the FCM. Seller's failure to qualify, participate, be selected and/or compensated for
capacity will render it liable to pay liquidated damages to Utility as provided in Section A-9.3. For the FCM, Seller is required to comply with the requirements set forth in Appendix E. In the event that the FCM is replaced with another capacity market, Seller must follow the rules of that new market to assure that it can participate and earn capacity payments in any subsequent successor markets. To the extent Seller is not able, through the use of commercially reasonable efforts, to participate and earn capacity payments in any subsequent successor market, the parties will enter into good faith negotiations to amend this EPA, so as to accomplish the purposes of this EPA and to place the parties to the extent reasonably feasible in the same positions as they were at the time of the execution of this EPA. Such amendment will be effective upon, and subject to, approval of the CDPUC as set forth in Section A-15.1.6. To the extent that it is not possible to accomplish the purposes of this EPA and reasonably to place the parties in the same positions as they were at the time of the execution of this EPA, the Utility shall have the right to terminate the EPA, upon CDPUC approval, if doing so would be beneficial to Utility's consumers.

If for any reason Seller receives any capacity payments, credits, or other compensation (collectively, "compensation") for the provision or sale of Capacity and/or other Product(s) that constitute Delivered Product(s) pursuant to Section 3.5, Seller acknowledges and agrees that it shall not hold or claim to hold equitable title to (i) any such Capacity and/or other Product(s) or (ii) any compensation associated therewith; and Seller shall pay to Utility all compensation in respect of such Capacity and/or other Product(s) within thirty (30) days.

Seller acknowledges and agrees that it shall be responsible for all costs, charges or adjustments related to or associated with the provision or sale of Capacity imposed on or paid by Utility. These costs, charges or adjustments shall include, but are not limited to, the availability penalty discussed in Section 11.V.C. of the LICAP Settlement, or in any ISO-NE Document, and the Peak Energy Rent as discussed in Section 11.V.B. of the LICAP Settlement, or in any ISO-NE Document. Such costs, charges or adjustments shall not include Utility's own administrative costs. Seller shall reimburse Utility for any costs, charges or adjustments paid by Utility in respect of such Capacity.

A-2.4 Utility, in order to benefit from the Capacity provided by the Facility, may periodically need to obtain recognition of and credit for the Seasonal Claimed Capability ratings (or other capability ratings) of the Facility from ISO-NE, or other associations or entities to which Utility has contractual responsibilities for providing electrical capacity. If, in order to obtain such recognition, Utility must obtain Seasonal Claimed Capability ratings (or other capability ratings) for the Facility under rules set out by such association or entity, Seller shall assist Utility in performing any tests and audits of the Facility's output capability as Utility may from time to time reasonably request upon at least ten (10) days prior written notice. In addition, Seller shall undertake any administrative actions or steps that are necessary or appropriate, which may include, but are not necessarily limited to, responding to questions, completing applications, certifications or other forms, for the Facility to qualify for and obtain the maximum possible Capacity for delivery to Utility. The immediately preceding sentence is intended to be limited to administrative actions and steps.

A-2.5 Every day (including weekends and holidays) by 10:00 a.m. EPT, Seller must provide to Utility an estimated hourly schedule of deliverables for the following day, except that (i) Seller may provide such schedule for weekends and holidays on the preceding Business Day, and (ii) Seller with a Facility capacity less than 5 MWs is not required to provide such hourly schedules unless the schedules are requested by Utility to meet the ISO-NE bidding requirements for Seller's Facility. For intermittent, non-dispatchable Facilities such as but not limited to wind or solar, estimated hourly schedules will be
provided by Seller on a best effort basis and Seller of such Facilities and Utility will cooperate to maximize the value of the Facility.

A-2.6 Prior to October 1 of each year, Seller shall submit to Utility for review and comment by Utility an initial schedule of expected electricity delivery levels for the twelve (12) month period beginning with January of the following year. The schedule shall state the estimated times of operation, amounts of electricity production, number of anticipated shutdowns and reductions of output and the reasons therefor, and the dates and durations of scheduled maintenance, including a specification of maintenance requiring shutdown or reduction in output of the Facility. Subject to the requirements of Good Industry Practices, Seller shall not schedule routine maintenance of the Facility during the months of June, July or August, and shall consult with Utility at least thirty (30) days prior to removing the Facility from service for routine maintenance. Seller shall:

A-2.6.1 Revise the timing and duration of shutdowns and reductions in the initial schedule to accommodate any reasonable requests made by Utility within sixty (60) days from Utility's receipt of the initial schedule, unless such revisions would not be consistent with Good Industry Practices; and

A-2.6.2 Make all reasonable efforts, consistent with Good Industry Practices, to accommodate any additional changes in the initial schedule requested by Utility; provided, however, that any such changes shall not be expected to reduce the total deliveries from the Facility.

A-2.7 Seller shall provide to any relevant party any information that may be required from time to time by NEPOOL, ISO-NE, FERC, or North American Electric Reliability Council or their successors.

A-2.8 Subject only to Good Industry Practices, during any period in which Interconnecting Utility (in accordance with the Interconnection Agreement) or ISO-NE notifies or causes Seller to be notified that Interconnecting Utility (in accordance with the Interconnection Agreement) or ISO-NE is experiencing or expecting to experience a surplus or shortage of supply of Energy or capacity or both, or that the Facility should operate to mitigate other operational or electrical problems (such as maintenance, voltage deficiency, or transmission or distribution line loading problems) on ISO-NE's or the Interconnecting Utility's electrical system, Seller shall use all reasonable efforts (including, but not limited to, delaying routine maintenance) to comply with Interconnecting Utility or ISO-NE requests to mitigate such surplus, shortage, operational or electrical problem. Utility shall have no obligation to pay for any Products delivered or that would have been delivered by Seller during such periods for which Seller has been notified to suspend deliveries. Utility shall have no obligation to pay for any Products associated with energy deliveries in excess of the level to which Seller was requested to curtail its deliveries. During periods when deliveries or increases in deliveries have been requested in accordance with this Subsection A-2.8, Utility shall pay Seller for any Products delivered in accordance with Section 4.1 and Appendix C of this EPA.

A-3 INTERCONNECTION AND DELIVERY

A-3.1 Commencing on the Effective Date, Seller shall deliver the Products that are contracted for purchase and sale pursuant to this EPA to Utility at the Delivery Point as listed in Appendix B and pursuant to the Interconnection Agreement.

A-3.2 Seller shall be responsible for all applicable FERC-approved charges associated with transmission and distribution interconnection, service and delivery charges, including all related ISO-NE administrative fees except for small Connecticut projects with a capacity value such that they are recognized by ISO-NE rules, as currently in effect and as amended from time to time, as a “load reducer”. These small Connecticut projects are
not delivering power to the PTF and shall pay energy delivery costs only to their Delivery Point.

A-4 ELECTRIC CHARACTERISTICS

A-4.1 The electrical characteristics of the Energy delivered pursuant hereto shall fully comply with the requirements of the Interconnection Agreement.

A-5 METERING

A-5.1 All electricity delivered hereunder shall be metered by the Interconnecting Utility in accordance with the terms of the Interconnection Agreement. Any meter must be capable of recording hourly Energy delivered and be capable of remote access by the Interconnecting Utility. Seller shall make such recorded data available monthly to the purchasing Utility at no cost. Utility and Seller each agree to be bound by the determinations of the Utility with respect to the metering of Product deliveries hereunder. Seller does not forego any right under law or regulation it may have or acquire to challenge accuracy of Utility metering determinations.

A-5.2 If any of the metering equipment is found to be inaccurate by more than two percent (2%), the meter readings for the period of inaccuracy shall be adjusted as far back as can be reasonably ascertained, but in no event shall such period exceed six (6) months from the date that the meter was found to be inaccurate.

A-6 SUSPENSION AND REDUCTION OF DELIVERIES

A-6.1 If deliveries under this EPA are suspended or curtailed pursuant to the Interconnection Agreement, Utility shall have no obligation to accept or pay for Products delivered under this EPA during the period of suspension or in the case of a period of curtailment, Products delivered in excess of the level to which Seller was requested to curtail its deliveries.

A-7 BILLING AND PAYMENT

A-7.1 Utility or Interconnecting Utility, as applicable, shall read Seller's meters. Within thirty (30) days following either Utility's reading of the meters or Utility's receipt of Interconnecting Utility's meter readings, Utility shall pay for Products delivered under this EPA at the applicable rates set forth in this EPA, subject to deductions for Seller's failure to provide Renewable Energy Certificates or Utility requested Renewable Energy Certificate information or Capacity. Initially, Products, under this EPA, except for Capacity, will be considered delivered based on the receipt of Energy. Capacity will be based on the quantity available to be bid into the FCM, or its successor. If Seller fails to comply with the requirements of this EPA regarding Capacity, then the amount of Capacity for which Seller will be liable pursuant to Section A-9.3 shall equal the amount of Capacity that Seller would have made available to be bid into the FCM if Seller had complied fully with the requirements of this EPA.

Upon notice to Seller, Utility will deduct for Seller's failure to provide Renewable Energy Certificates or Utility requested Renewable Energy Certificate information as follows: (i) In the case where Seller directly applies for the Facility's Renewable Energy Certificates, Seller shall promptly deliver such certificates to Utility upon receipt or (ii) in the case where Utility applies for the Facility's Renewable Energy Certificates, Seller shall provide a timely response to Utility's written request for the necessary information required by the Utility to apply for such certificates. With respect to (ii) above, Utility must provide Seller with a written request in a timely manner that specifies the information needed from Seller for Utility to obtain the Facility's Renewable Energy Certificates. If, after the timely receipt of a written request with respect to (ii) above, Seller fails to supply the necessary information for the Utility's Renewable Energy Certificate application on a timely basis or if the Seller fails to promptly deliver the Facility's Renewable Energy.
Certificates in accordance with (i) above, and either such failure is a substantial cause of Utility's inability to realize the value of such Certificates, then Utility will, upon written notice to Seller, deduct the reasonable market value or the Fixed Renewable Adder value set forth in Appendix C, whichever is greater, of any such Renewable Energy Certificates from any future payment made to Seller in accordance with the provisions of this Section. However, the above-described deduction from payments to Seller shall not apply for Utility's failure to realize the value of project-generated RECs if that failure was caused by parties other than the Seller or those under its control (i.e. Seller's employees, representatives and/or agents), or by situations beyond Seller's control, and provided that Seller has taken all steps necessary to ensure that Utility has the requisite basis to realize the value of all RECs (including Seller's providing to the Utility all requested information and documents in a timely fashion). Seller shall use the GIS Forward Certificate Transfer System to transfer to Utility, on a non-rescindable basis, the portion of all GIS certificates created in respect of Energy produced during the Term that equals the percentage of the Products delivered to Utility (as provided in Section 3.5); provided, however, that the use of the GIS Forward Certificate Transfer System does not ensure that the GIS certificates so transferred will be RECs and does not relieve Seller of its obligation to deliver a sufficient number of RECs to Utility to demonstrate that the entire amount of Energy delivered under this EPA was from Class I Renewable.

A-7.2 In the event adjustments are required to correct inaccurate measurements of Products delivered to Utility, the Party requesting adjustment shall describe the method used to determine the correct measurements and shall recompute the amounts due during the period of the inaccuracy. The difference between the amount paid and that recomputed shall be paid or repaid, without interest, or objected to by the party responsible for such payment or repayment within thirty (30) days following its receipt of such request. All claims for adjustments shall be waived as to any Product deliveries made more than six (6) months preceding the date of any such request or, in the case of Renewable Energy Certificates, more than twelve (12) months preceding the date of such request.

A-7.3 Any undisputed amounts due from either Party under this EPA shall be paid within thirty (30) days following receipt by either Party of an itemized invoice from the other Party setting forth, in reasonable detail, the basis for such payment. Utility shall have the option in any invoice it provides to Seller, including, but not limited to, invoices relating to interconnection costs, construction power and backup/standby electrical service, to require payment of undisputed amounts from Seller or to require Seller to treat past due and undisputed amounts due from Seller as a credit against any amounts Utility may then or subsequently owe Seller under the terms of this EPA.

A-7.4 Any invoiced amounts remaining unpaid and unobjected to after the expiration of the thirty (30) day periods described above, except for adjustments due to metering inaccuracies, shall thereafter bear interest at the rate set forth in Section A-8.1.

A-7.5 If either Party disputes the amount of any bill, it shall so notify the other Party in writing. The disputed amount may, at the discretion of the paying Party, be held by that Party until the dispute has been resolved; provided that the paying Party shall be responsible to pay interest on any withheld amounts that are determined to have been properly billed, which shall be calculated in the same manner as interest on late payments under Section A-8.1. Neither Party shall have the right to challenge any monthly bill nor to bring any court or administrative action of any kind questioning the propriety of any bill after a period of twenty four (24) months from the date the bill was due.

A-8 INTEREST PAYMENTS

A-8.1 Any invoiced amounts that are not paid when due hereunder shall bear interest from the due date until paid (an "Interest Period") at an annual rate equal to the lesser of (a) two percent (2%) above the Prime Rate for large commercial loans published in The Wall
Street Journal under "Money Rates", or, if such rate is not so published, then the prime lending rate for large commercial loans quoted by Citibank, N.A., or its successor, as such rate may be in effect from time to time during an Interest Period, or (b) the maximum interest rate allowed by law from time to time during an Interest Period.

A-9 REMEDIES AND DAMAGES

A-9.1 Upon Utility's or Seller's failure to perform any obligation of this EPA, the other Party, in addition to the rights described in specific sections of this EPA, and except to the extent specifically limited by this EPA, may exercise, at its election, any rights or remedies it may have at law or in equity including but not limited to monetary compensation for damages, injunctive relief and specific performance.

A-9.2 If Utility or Seller fails to perform any obligation of this EPA, then, in addition to the remedies specified in Section A-9.1, the other Party may on sixty (60) days prior written notice terminate this EPA; provided, however, if the non-performing Party cures such failure to perform during such sixty (60) day period or submits evidence that it is taking all reasonable steps necessary to cure such event and such event is in fact cured within 180 days of such notice from the performing Party, such termination shall not occur; and further provided that during any period in which the Project does not retain Class I status pursuant to the requirements of Section A-2.2, Utility will reimburse Seller for Products delivered by Seller to Utility at the same rate that Utility is paid for the Energy component of such Products by ISO-NE.

A-9.3 Seller and Utility acknowledge and agree that if Seller, in breach of Section A-2.3, fails to qualify, participate, be selected and/or earn compensation in an ISO-NE capacity market: (i) the actual damages to Utility expected as a result of Seller's breach would be substantial, but such damages would or may be uncertain in amount or difficult to ascertain, (ii) both Seller and Utility intend that Seller shall pay the amount specified below as liquidated damages for such breach, (iii) this amount of damages is not a penalty, and (iv) this amount of damages is reasonable because it is not disproportionate to the damages that Seller and Utility expect Utility would sustain as the result of such a breach. Accordingly, if Seller fails to qualify, participate, be selected or compensated in an ISO-NE capacity market in any given year when the Facility could have qualified but did not qualify or participate in or was not selected or compensated for capacity in such market due to an act or omission by Seller or its agents, Seller shall pay liquidated damages to Utility in the following amounts: For Seller's first such failure – a 1 cent reduction per kWh for Energy purchases during the Commitment Period to which such failure applies. For Seller's second such failure – a 2 cent reduction per kWh for Energy purchases during the Commitment Period to which such failure applies; and For Seller's third and any subsequent such failure - a 3 cent reduction per kWh for Energy purchases during the Commitment Period to which such failure applies. After a third or any subsequent such failure, Utility shall have the right, in its discretion, to terminate this EPA if Utility determines in its discretion that doing so would be beneficial to Utility’s consumers by providing written notice to Seller within sixty (60) days following the date Utility receives notice or otherwise learns of such failure. Liquidated damages owed by Seller shall be collected by Utility via a reduction of Utility’s payments to the Seller under this EPA.

A-10 TITLE; INDEMNIFICATION

A-10.1 Title to and risk of loss related to the Products delivered hereunder shall transfer from Seller to Utility at the Delivery Point. On and after Effective Date, Seller and Utility shall each, to the extent permitted by law, indemnify, defend and hold the other, its members, officers, employees and agents (including but not limited to affiliates and contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever for personal injury.
(including death) or property damage or otherwise asserted by a third party (a "Claim") that arise from or out of any event or circumstance first occurring or existing during the period when control and title to the Products is vested in such Party or which is in any manner connected with the performance of this EPA by such Party, except to the extent that such Claim may be attributable to the gross negligence or willful misconduct of the Party seeking to be indemnified. This Article 10 shall survive termination of this EPA.

A-10.2 Either Party may be involved in an action and intend to seek indemnity under Section A-10.1 from the other Party. If so, the Party seeking indemnity must give prompt notice of the pendency of the action to the other Party. Whether or not notice is given, any Party from whom indemnity might be sought may, but need not, participate in the action for which the indemnity is requested with separate counsel and may assert all defenses available to it.

A-11 FORCE MAJEURE

A-11.1 Each Party shall exercise due diligence and reasonable care and foresight to perform its obligations hereunder. Neither Party shall be considered to be in default with respect to any obligation hereunder if prevented or delayed in a material respect from fulfilling such obligation by fire, strikes or other labor difficulties, casualties, civil or military authority, civil disturbance or riot, war, acts of God, acts of public enemy, drought, earthquake, flood, explosion, hurricane, lightning, landslide, or similar cataclysmic occurrence, ISO-NE experiences unplanned-for emergency system conditions, including but not limited to a shortage of available electric generating capacity or an insufficiency of transmission or distribution facilities required for the delivery of Products, such that ISO-NE either must suspend the supply of one or more of the Products or must curtail or interrupt all or a portion of the Products, or other event beyond the reasonable control of the Party affected ("Force Majeure"); provided, however, that the price or pricing structure of any applicable fuel or energy source shall not be considered a Force Majeure event.

A-11.2 If either Party is rendered wholly or partly unable to perform its obligations under this EPA because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected; provided, that payments due hereunder from either Party to the other when due shall not be excused by Force Majeure (unless the inability to pay arises from a Force Majeure event); and provided, further, that:

A-11.2.1 The non-performing Party promptly, but in no case later than five (5) Business Days after the occurrence of the Force Majeure, gives the other Party written notice describing the particulars of the occurrence describing, in detail, the nature, extent and expected duration of the Force Majeure;

A-11.2.2 The suspension of performance shall be of no greater scope, and of no longer duration, than is reasonably required by the Force Majeure; and

A-11.2.3 The non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

A-11.2.4 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, is contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having such difficulty.
A-12 LIMITATION OF LIABILITIES

A-12.1 Neither Party shall be liable to the other Party in connection with the performance of the EPA for any special, indirect, incidental, consequential, punitive or exemplary damages of any kind, including but not limited to loss of use, out of pocket expenses and lost profits (past or future), by statute, in tort or contract, under any indemnity provision, or otherwise.

A-13 NO DUTY TO THIRD PARTIES

A-13.1 Nothing in this EPA nor any action taken hereunder is intended to or shall be construed to create any duty, liability or standard of care to or from any person not a party to this EPA. However, lenders to the Facility may have the option to perform certain Seller obligations as defined more fully under the terms of the Facility’s financing documents.

A-14 REPRESENTATIONS

A-14.1 Seller hereby represents and warrants to Utility as follows:

A-14.1.1 Seller acknowledges that, as of the date hereof, Utility has entered into this EPA in reliance on Seller’s written representations made herein, or in documentation otherwise submitted to Utility by Seller or its agents prior to execution hereof as set forth or otherwise referenced in Appendix B. Seller acknowledges and agrees that any changes or nonconformity to these representations without the approval of Utility may, and changes that materially increase the ratepayer risks beyond those reflected in this EPA will, result in the inability of the Facility to satisfy the prerequisites for purchases set forth in Article 15. Prerequisite for Purchases and any material nonconformity to these representations without the approval of Utility that occurs, or is discovered, after the date that Seller has satisfied the prerequisites for purchases in Article 15, will constitute a breach of the EPA.

A-14.1.2 Seller has full power and authority to execute and deliver this EPA, and Seller shall continue to have full power and authority to perform its obligations hereunder, and to consummate the transactions contemplated hereby during the Term of the EPA. The execution and delivery of this EPA by Seller and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action required on its part and this EPA has been duly and validly executed and delivered by Seller. For the Term of this EPA Seller agrees that this EPA shall constitute Seller’s legal, valid and binding agreement, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors’ rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

A-14.1.3 Neither the execution and delivery of this EPA by Seller nor the consummation by Seller of the transactions contemplated hereby during the Term of the EPA will (A) conflict with or result in any breach or violation of any provision of the enabling legislation, bylaws, certificate of formation, LLC agreement, and any other applicable governing or formation documents of Seller, (B) result in a default (or give rise to any right of termination, consent, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which
Seller is a party or by which it may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (C) constitute violations of any law, regulation, order, judgment or decree applicable to Seller.

A-14.1.4 Except for the Seller Required Approvals as referenced in Appendix B, which Approvals Seller agrees to obtain in order to satisfy the prerequisites for purchases in Article 15, no consent or approval of, filing with, or notice to, any governmental authority by or for Seller is necessary for the execution and delivery of this EPA by it, or the consummation by it of the transactions contemplated hereby.

A-14.1.5 Seller agrees that during the Term of the EPA, Seller shall comply with any and all filing and notice requirements, conditions or orders made part of, included with or subsequently added to Seller Required Approvals as defined in Appendix B. Seller further agrees, during the Term of the EPA, to fully comply with its organizational and governing documents and determinations of any governmental instrumentality applicable to Seller.

A-14.1.6 If the Facility is located outside of Utility's service territory, Seller agrees, during the Term of the EPA, to satisfy the metering and any other applicable requirements for the Energy and other Products of the Facility to be included in the "ISO-NE Settlement System" (or subsequent system) and in any separate system used to track Products other than Energy so that Utility receives the full benefit of all such Products in accordance with the EPA.

A-14.2 Utility hereby represents and warrants to Seller as follows:

A-14.2.1 Utility is a corporation organized and validly existing under the laws of the State of Connecticut.

A-14.2.2 Utility has full corporate power and authority to execute and deliver this EPA, and Utility shall continue to have full power and authority, to perform its obligations hereunder and to consummate the transactions contemplated hereby during the Term of the EPA. The execution and delivery of this EPA by Utility and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action required on its part and this EPA has been duly and validly executed and delivered by Utility. For the Term of this EPA Utility agrees that this EPA shall constitute Utility's legal, valid and binding agreement of Utility, enforceable against Utility in accordance with its respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

A-14.2.3 Subject to any required FERC acceptance and approval of the Interconnection Agreement under the Federal Power Act and FERC's Rules of Practice and Procedure, neither the execution and delivery of this EPA by Utility, nor the consummation by Utility of the transactions contemplated hereby during the Term of the EPA will (A) conflict with or result in any breach or violation of any provision of the certificate of incorporation or bylaws of Utility, (B) result in a default (or give rise to any right of termination, consent, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which
Utility is a party or by which it may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (C) constitute violations of any law, regulation, order, judgment or decree applicable to Utility.

A-14.2.4 Except for any required FERC acceptance and approval of the Interconnection Agreement under the Federal Power Act and FERC’s Rules of Practice and Procedure, no consent or approval of, filing with, or notice to, any governmental authority by or for Utility is necessary for the execution and delivery of this EPA by it, or the consummation by it of the transactions contemplated hereby except for the CDPUC final decision referenced in Section A-15.1.6.

A-15 PREREQUISITES FOR PURCHASES

A-15.1 Utility's obligation to begin the purchase of Products from Seller at the rates of payment specified in Appendix C is contingent upon the satisfaction of all the following conditions:

A-15.1.1 Execution of an Interconnection Agreement by the applicable parties and, if required, FERC acceptance and approval of the Interconnection Agreement under Section 205 of the Federal Power Act;

A-15.1.2 Completion of pre-operational testing as set forth in Appendix B;

A-15.1.3 Both the original Scheduled Operation Date and the In-Service Date shall have occurred;

A-15.1.4 Seller has received funding from the Renewable Energy Investment Fund, as required pursuant to C.G.S. §16-244c(j)(2);

A-15.1.5 Utility has received evidence to its reasonable satisfaction that Seller has obtained all permits, licenses, approvals and other governmental authorizations needed to construct and operate the Facility and sell Products to Utility in accordance with this EPA as a Class I Renewable energy source project;

A-15.1.6 Utility has received a final contract approval decision from the CDPUC provided (i) the time for appeals from the CDPUC decision shall have elapsed without an appeal being taken, or (ii) a reviewing court has affirmed the CDPUC final contract approval decision subject to no further appeal;

A-15.1.7 Seller has provided performance assurance that satisfies the requirements of Appendix D and in an amount that is no less than the Assurance Amount, as defined in Appendix D;

A-15.1.8 Execution of an Allocation Agreement ("Allocation Agreement") between Utility and The United Illuminating Company applicable to this EPA and receipt from the CDPUC of a final decision approving the Allocation Agreement, provided that (i) the time for appeals from the CDPUC approval decision shall have elapsed without an appeal being taken, or (ii) a reviewing court has affirmed the approval decision, subject to no further appeal; and

A-15.1.9 Intentionally omitted.

A-15.2 Prior to Seller’s compliance with the requirements of this Article, and prior to the later of the Scheduled Operation Date or the In-Service Date, and under other circumstances specified in this EPA, Utility shall purchase any electric output of the Facility pursuant to Section 3.4.
A-16 ASSIGNMENT

A-16.1 Except as specified below, the rights and obligations of the Parties to this EPA may not be assigned by either Party, and such assignment shall be void, except upon the express written consent of the other Party, which consent shall not unreasonably be withheld, conditioned, delayed or denied. As a condition of its consent, any person to whom an assignment is made shall be required to demonstrate, to the reasonable satisfaction of the non-assigning Party, that it is capable of fulfilling the assigning Party's obligations hereunder.

A-16.2 Notwithstanding Section A-16.1, Utility shall have the right to assign, without the consent of Seller and without recourse to Utility, all or any part of Utility's interest and obligations hereunder to any regulated affiliated Connecticut electricity distribution company of equivalent or better creditworthiness.

A-16.3 Notwithstanding Section A-16.1, Seller shall have the right to assign, without the consent of Utility, its rights to any payments received under this EPA to any bank, insurance company or similar financial institution providing financing to Seller, provided that no such assignment shall relieve Seller of responsibility or liability for the due performance of this EPA by its assignee. Utility agrees, upon receipt of a written request from Seller, to make all payments otherwise payable to Seller under this EPA to such secured party until Seller or such secured party shall have delivered to Utility a written release and termination of such assignment and Utility may conclusively rely on such notifications.

A-16.4 Notwithstanding Section A-16.1, Utility agrees that (i) Seller may assign, mortgage, hypothecate, pledge or otherwise encumber, by way of security or collateral, all or any portion of the Seller's interest in and to this EPA in favor of any Financing Party, as defined in Section A-16.5, and its successors and assigns and (ii) any such Financing Party may assign such interest in and to this EPA to any subsequent assignee that is also a Financing Party in connection with the sale, transfer, or exchange of its rights under this EPA. Any such Financing Party may operate the Facility pursuant to such assignment upon and after the exercise of such Financing Party's rights and enforcement of its remedies against the Seller or the Facility under any deed of trust or other security instrument, creating a lien in its favor, in each case with notice to, but without the consent of, Utility, provided that such Financing Party (or the security agent acting on behalf of all the Financing Parties, where there are more than one) has entered into an agreement with the Utility under which each Financing Party agrees to be fully bound by all the terms and conditions of this EPA as if the Financing Party had been substituted for by the Seller. In order for a collateral assignment to occur as contemplated in this Section A-16.4, there must be a single entity designated as trustee on behalf of all Financing Parties and the trustee or agent, on behalf of all Financing Parties, must agree to comply with all provisions in this Section A-16.4.

A-16.5 Notwithstanding Section A-16.1, Seller shall provide to Utility a notice identifying the lending institutions (including any trustee or agent on behalf of such institutions) providing financing or refinancing, any other credit enhancement or interest rate hedging products to the Seller for the acquisition, construction, ownership, operation, maintenance, or leasing of the Facility ("Financing Parties") and providing appropriate contact information for the Financing Parties at the Effective Date of this EPA, and from time to time during the Term, as such information may change. Following the effective date of such notice the Utility shall provide prompt notice of any default, non-performance or breach event described in Article A-9 and Article 8 hereof to the Financing Parties, and the Utility will accept a cure performed by the Financing Parties, so long as the cure is accomplished within the applicable cure period set forth in Article A-9 and Article 8 hereof. Within ten (10) calendar days following effective date of written notice from the Financing Parties to Seller of default, or Financing Parties' intent to exercise any remedies, Seller shall deliver a copy of such notice to Utility.
A-17 TRANSFER OF OWNERSHIP

A-17.1 Except as specifically permitted pursuant to Section A-16.4, Seller shall not transfer controlling equity ownership interest of its legal ownership structure(s) or the Facility without prior written approval of Utility, which approval shall not be unreasonably withheld or delayed.

A-18 ELECTRIC SERVICE SUPPLIED BY UTILITY

A-18.1 This EPA does not provide for any electric service by Utility to Seller. If Seller requires any electric services from Utility and is legally entitled to such service from Utility, Seller shall receive such service in accordance with Utility’s applicable electric tariffs or, if no currently existing tariff is applicable, by special contract subject to the approval of the CDPUC.

A-19 AUDIT RIGHTS

A-19.1 Utility and Seller shall each have the right throughout the Term and for a period of three (3) years following the end of the Term, upon reasonable prior notice, to audit copies of relevant portions of the books and records of the other Party to the limited extent necessary to verify the basis for any claim by a Party for payment from the other Party or to determine a Party’s compliance with the terms of this EPA. The Party requesting the audit shall pay the other Party’s reasonable costs allocable to such audit.

A-20 GOVERNMENT ACTIONS

A-20.1 Seller and Utility shall at all times comply with all valid and applicable federal, state and local laws, rules, regulations and orders.

A-20.2 Seller shall obtain and retain any permits, licenses, approvals or other governmental authorizations required for the construction and operation of the Facility and Seller’s performance pursuant to this EPA for the Term. Utility shall cooperate with Seller to obtain and retain such permits, licenses, approvals and authorizations to the extent reasonably requested by Seller, but only to the extent the Utility does not incur any unreasonable costs in connection with that cooperation. Either Party (for the purpose of this sentence, “the first Party”) shall reimburse the other Party for any losses, damages, claims, penalties or liability incurred as a result of the failure of the first Party to obtain or maintain any governmental authorizations or permits as limited by Section A-12, provided however, that Seller shall reimburse Utility for any losses and damages corresponding to the difference between (i) the pertinent market values of Contract Rate Products for any such Products that Seller would have delivered to Utility (if Seller had obtained or maintained the appropriate governmental authorizations and/or permits) and (ii) the EPA rates set out in Appendix C that would have applied to such Products if delivered to Utility.

A-21 GOVERNING LAW

A-21.1 Interpretation and performance of this EPA shall be in accordance with, and shall be controlled by, (i) the laws of the State of Connecticut other than any conflicts of law provision, the effect of which would be to apply the substantive law of a state other than the State of Connecticut to the governance and construction of this EPA, and (ii) Part II of the Federal Power Act, 16 U.S.C. §§824d et seq.; (iii) Part 35 of Title 18 of the Code of Federal Regulations, 18 C.F.R. §§ 35 et seq.; and (iv) present and future laws and present and future regulations or orders properly issued by local, state, or federal bodies having jurisdiction over the matters set forth herein.

A-21.2 It is the intent of the parties that neither Seller nor Utility shall have the unilateral right to make a filing with FERC under any section of the Federal Power Act, or with the CDPUC, seeking to change the charges or any other terms or conditions set forth in this Agreement for any reason. The preceding sentence shall not prevent either party from
participating in or initiating any proceeding at FERC concerning a change to the ISO-NE Tariff that impacts the EPA.

A-21.3 It is the intention of the Parties that any authority of the FERC or the CDPUC to change the Agreement be strictly limited to that which applies when the contracting parties have irrevocably waived their right to seek to have the FERC or the CDPUC change any term of this Agreement.

A-21.4 FERC Standard of Review; Certain Covenants and Waivers.
A-21.4.1 The standard of review for changes to any section of this Agreement specifying the pricing or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)(the "Mobile-Sierra" doctrine).

A-21.4.2 The Parties, for themselves and their successors and assigns, (i) agree that the "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, including any credit, security, margin, guaranty or other similar arrangement, and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

A-21.4.3 Notwithstanding the foregoing Subsections 21.4.1 and 21.4.2, to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of this Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the Parties. It is the express intent of the Parties that, to the fullest extent permitted by applicable law, the "sanctity of contract" principles acknowledged by FERC in its Notice of Proposed Policy Statement (Issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail, notwithstanding any changes in applicable law or markets that may occur. In the event it were to be finally determined that applicable law precludes one or both Parties from waiving its rights to seek changes from FERC to its market-based power sales contracts (including entering into covenants not to do so) then this Section 21.4.3 shall not apply, provided that, consistent with Section 21.4.1, neither Party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in Section 21.4.1.

A-21.4.4 The Parties agree that in the event that any portion of this Section 21.4 is determined to be invalid, illegal or unenforceable for any reason, the remaining provisions of Section 21.4 shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law.
A-22 DISPUTE RESOLUTION

A-22.1 In the event of any dispute between the Parties hereto as to a matter governed by this EPA or as to the interpretation of any part of this EPA, the Parties shall refer the matter to their duly authorized representatives for resolution. Should such representatives of the respective Parties fail to resolve the dispute within ten (10) Business Days from such referral, the Parties agree that any such dispute, except for those disputes which the CDPUC and/or FERC has authority to resolve under applicable law, will not be referred to any court but will be resolved pursuant to the other provisions of this Article. It is the intent of the Parties that, to the extent that the CDPUC and/or FERC has authority to resolve any dispute between the Parties that is related to this EPA, such dispute will be resolved by the CDPUC and/or FERC. If the Parties do not agree as to whether the CDPUC and/or FERC has authority to resolve a particular dispute, either Party may petition the CDPUC and/or FERC to make a determination as to whether it has such authority. Mediation and arbitration proceedings regarding any such dispute shall be stayed pending the CDPUC's and/or FERC's determination as to whether it has authority to resolve the dispute in question. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

A-22.2 Mediation. Except in cases where the CDPUC and/or FERC is involved in dispute resolution, if the dispute has not been resolved by negotiation within ten (10) Business Days of referral, the Parties shall endeavor to settle the dispute by mediation under the then current CPR Mediation Procedure. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

A-22.3 Arbitration. Except in cases where the CDPUC and/or FERC is involved in dispute resolution, any dispute arising out of or relating to this EPA, including the breach, termination or validity thereof, which has not been resolved as provided in Sections A-22.1 and A-22.2 within fifty (50) Business Days of referral, shall be finally resolved by arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars ($3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars ($3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4; provided, however, that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Hartford, Connecticut. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and foregoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

A-22.4 The fees and expenses associated with mediation and arbitration, including reasonable attorneys' fees, shall be divided equally between the Parties, unless otherwise agreed or unless the award shall specify a different division of the costs. Each Party shall be responsible for its own costs associated with CDPUC resolution. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this EPA. To the fullest extent permitted by law, any CDPUC resolution, mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.
A-22.5 **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.

A-23 **SEVERABILITY**

A-23.1 The provisions of this EPA are severable. To the extent that any provision hereof is determined to be invalid pursuant to any applicable statute or rule of law, such invalidity shall not affect any other provision hereof, and this EPA shall be interpreted as if such invalid provision were not a part hereof.

A-24 **CONTRACT INTERPRETATION**

A-24.1 In the event of any dispute concerning the construction or interpretation of this EPA or any ambiguity hereof, there shall be no presumption that this EPA or any provision hereof shall be construed against either Seller or the Utility. In this EPA, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa; the terms "any" and "all" mean "any and all"; the term "includes" or "including" shall mean "including, with limitation,"; reference to a Section, Article or Appendix shall mean a Section, Article or Appendix of this EPA; and the terms "hereof," "herein," "hereto," and "hereunder" refer to this EPA as a whole. Reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented and restated through the date as of which such reference is made. In this EPA, any reference to "dollars" or use of a "$" symbol shall mean "U.S. dollars." The words "will," "shall" and "must" are used interchangeably throughout this EPA; the use of any of these terms connotes a mandatory requirement; and the use of one of them will not mean a different degree of right or obligation for either Party. The captions for the Articles and Sections contained in this EPA have been inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the covenants, agreements, conditions or terms of this EPA.

A-25 **WAIVER**

A-25.1 No waiver by either Party of the performance of any obligation under this EPA or with respect to any default or any other matter arising in connection with this EPA shall be deemed a waiver with respect to any subsequent performance, default or matter.

A-26 **AMENDMENT**

A-26.1 No amendment of all or any part of this EPA shall be valid unless it is reduced to writing and signed by both Parties and, in the case of a material amendment, approved by the CDPUC.

A-27 **COMPLETE AND FULL AGREEMENT**

A-27.1 This EPA and the Interconnection Agreement set forth the entire agreement of the Parties with respect to the subject matter herein, and take precedence over all prior understandings between the Parties, and bind and inure to the benefit of the Parties, their successors and assigns.

A-28 **COUNTERPARTS**

A-28.1 Any number of counterparts of this EPA may be executed and each shall have the same force and effect as the original.
APPENDIX B
DESCRIPTION OF FACILITY

"Seller Required Approvals" shall mean:

1. FERC market-based rate authorization for Seller to sell Products in accordance with the EPA.

2. All other approvals of governmental authorities necessary for Seller to site, construct and operate the Facility and deliver Products to Utility in accordance with the EPA.

Description of the Facility, including Delivery Point:

See Exhibit B-1 to this Appendix B for the Description of the Facility. The Delivery Point: ISO-NE may establish a new Network Node specifically for the PRE facility (the PRE node). The interconnection is expected to be adjacent to the ISO-NE Network Node that is currently identified as #4847 (LD. FRYBROOK23).

The In-Service Date will occur when the Facility has satisfied each of the following conditions:

1) Received final acceptance and authorization to interconnect from ISO-NE or the Interconnecting Utility in accordance with a fully executed Interconnection Agreement,
2) Trial operation (commissioning) and testing have been completed,
3) Seller and, if applicable, lender’s engineer have formally accepted the Construction contractor’s or Engineering, Procurement and Construction contractor’s (“Construction contractor”) declaration of the industry equivalent of “Substantial Completion” and care, custody and control of the Facility have passed from the Construction contractor to the Seller, and
4) Unit has completed and received ISO acceptance of a final asset registration form and a NX-12 Generator Technical Data form indicating the Facility as an ICAP resource.

Seller’s written representations or documentation otherwise submitted to Utility by Seller or its agents prior to execution hereof in accordance with regulatory requirements upon which Utility has relied to enter into EPA, per Section A-14.1.1.
Exhibit B-1 to Appendix B

Description of Facility

The Plainfield Renewable Energy project (the “Project”) is a 37.5 MW (net) Class I biomass gasification power plant that will be located in Plainfield, Connecticut on an approximately 27 acre industrial zoned parcel of land. The Project site is located in the Town of Plainfield, Windham County, Connecticut. The Site is approximately one mile west of Interstate 395 at exit 88, on the south edge of the Town near Mill Brook Road and State Highway 12.

Technology

The staged gasification system is close-coupled with a boiler that generates steam to drive a conventional steam turbine generator. The staged gasification system is designed to operate at low temperature and low excess air in order to minimize formation of nitrogen oxides (NOx) emissions. The fluidized bed design also ensures efficient mixing, gasification and ultimately combustion of fuel particles, resulting in minimized formation of carbon monoxide (CO) and unburned hydrocarbons or volatile organic compounds (VOC). The addition of alkaline materials, such as limestone, lime or dolomite into the fluidized bed also provides control of sulfur and other acid gas constituents within the fluidized bed.

The project will use state-of-the-art air pollution controls to further reduce emissions. For NOx control, selective non-catalytic reduction (SNCR) will be used, resulting in a NOx emission rate below 0.075 lb/MMBtu. The proposed controlled NOx emission limit below 0.075 lb/MMBtu meets the rate considered low emission, advanced combustion technology for biomass energy facilities qualifying as Class I renewable energy sources. In addition to SNCR, the facility will employ a spray dryer absorber in the flue gas control system designed for high efficiency control of SO₂ and other acid gases, such as hydrogen chloride (HCl). The spray dryer consists of a quench/cooling tower for evaporative cooling of the gas stream and a dry venturi section where reagent is added to react with the SO₂ and HCl gases to form solid calcium sulfate and chloride salts that are subsequently removed in the baghouse. In addition, the evaporative cooling of the flue gas in the spray dryer will serve to condense volatile metals and other condensable particulate matter, which will contribute to the overall control of trace metals and particulate emissions. The fabric filter (baghouse) system will be used as the final particulate and acid gas control system. The fabric filter provides the reaction surface to complete acid gas absorption and remove particulate from the gas stream prior to discharge.

Other equipment components in the balance of plant include fuel handling, cooling tower, water treatment, electrical switchgear and an approximately 43 MW gross, condensing steam turbine generator set.

Cooling water will be obtained from the nearby Quinebaug River and pumped to the Facility. Property along the river has been secured for intake, outfall, piping and pumping facilities. The path between the river property and the plant site will be within the existing right-of-way, alongside or under local public roads in the towns of Canterbury and Plainfield.
Exhibit B-2 to Appendix B

Fuel Limitations Compliance Calculation

In accordance with CDPUC Decision dated January 30, 2008, the Maximum Sustainable Biomass Percentage for the Facility shall be thirty-six percent (36%) of the annual tons of biomass burned for generation ("Fuel Limitations").

Each January Seller shall determine if it has breached the Fuel Limitations in Article 8 of the EPA. If a breach of the Fuel Limitations occurred in the prior calendar year Seller shall calculate the Cure Amount that is required to cure such breach for the prior calendar year. By no later than March 1 of each calendar year that the EPA remains in effect, Seller shall submit a report to the CDPUC, Utility and The United Illuminating Company ("UI") indicating whether or not the Fuel Limitations have been breached and if so, the report shall indicate the Cure Amount. Seller’s report shall be accompanied by an affidavit of an authorized officer of Seller that attests to the accuracy of the report. The “Cure Amount” is defined as the difference between (i) the tons of Sustainable Biomass burned for generation by the Facility in a given calendar year and (ii) thirty-six percent (36%) of the total tons of biomass burned for generation by the Facility in that same calendar year reduced by any prior year Cure Amount. The Cure Amount represents an excess of Sustainable Biomass burned by the Facility in the given calendar year.

To cure this breach, during January 1 through June 30 of the immediately subsequent calendar year, the use of Sustainable Biomass must be limited to (i) thirty-six percent (36%) of the total tons of biomass burned by the Facility during such period, less (ii) the Cure Amount.

Each July of any calendar year that follows a year in which the Fuel Limitations were breached, Seller shall calculate if the Cure Amount from the preceding calendar year has been cured in the manner provided above. No later than August 15 of each such calendar year, Seller shall file with the CDPUC, Utility and The United Illuminating Company this calculation, along with an affidavit of an authorized officer of Seller that attests to the accuracy of such report.

These calculations shall be performed in the format provided as Exhibit A to this Appendix B-2.
**Exhibit B-2 to Appendix B**

**Exhibit A**

**Fuel Limitations Compliance Calculation**

**Sample Calculation**

<table>
<thead>
<tr>
<th>Year</th>
<th>Actual Sustainable Biomass Burned (Tons)</th>
<th>Actual Other Biomass Burned (Tons)</th>
<th>Total Biomass Burned (Tons)</th>
<th>Fuel Limitations (Tons)</th>
<th>Previous Year Cure Amount (Tons)</th>
<th>Cure Adjusted Fuel Limitations (Tons)</th>
<th>Cure Amount Needed (Tons)</th>
<th>Cure Needed (Y/N)</th>
<th>Cure Satisfied (Y/N)</th>
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<td>400</td>
<td>200</td>
<td>800</td>
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<td>360</td>
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</tr>
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<tr>
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</tr>
<tr>
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<td>300</td>
<td>400</td>
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</table>

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Exhibit B-2 to Appendix B

Fuel Limitations Compliance Calculation

Steps to Compliance Calculation

During January of each contract year, calculate the following:

- The tons of Actual Sustainable Biomass Burned for generation in the preceding calendar year.
- The tons of Actual Other Biomass Burned for generation in the preceding calendar year.
- The tons of Total Biomass Burned for generation in the preceding calendar year, which is the sum of the tons of Actual Sustainable Biomass Burned for generation in the preceding calendar year and the tons of Actual Other Biomass Burned for generation in the preceding calendar year.
- The Fuel Limitations (expressed in tons) for generation in the preceding calendar year, which is equal to thirty-six percent (36%) of the tons of Total Biomass Burned for generation in the preceding calendar year.
- The Cure Adjusted Fuel Limitations for generation in the preceding calendar year (expressed in tons), which is equal to the Fuel Limitations for generation in the preceding calendar year reduced by the Cure Amount for the year prior to the preceding calendar year.
- Compare the Actual Sustainable Biomass Burned for generation in the preceding calendar year to Cure Adjusted Fuel Limitations for generation in the preceding calendar year.
  - If the Cure Adjusted Fuel Limitations for generation in the preceding calendar year is greater than the Actual Sustainable Biomass Burned for generation in the preceding calendar year, there is no Cure Amount.
  - If the Cure Adjusted Fuel Limitations for generation in the preceding calendar year is less than the Actual Sustainable Biomass Burned for generation in the preceding calendar year, calculate the Cure Amount as the difference between the Actual Sustainable Biomass Burned for generation in the preceding calendar year and the Cure Adjusted Fuel Limitations for generation in the preceding calendar year.

During July of each contract year, if there is a Cure Amount from the prior year, calculate the following:

- The tons of Actual Sustainable Biomass Burned for generation in the period January 1 through June 30 of the current year.
- The tons of Actual Other Biomass Burned for generation in the period January 1 through June 30 of the current year.
- The tons of Total Biomass Burned for generation in the period January 1 through June 30 of the current year, which is the sum of the tons of Actual Sustainable Biomass Burned for generation in the period January 1 through June 30 of the current year and the tons of Actual Other Biomass Burned for generation in the period January 1 through June 30 of the current year.
- The Fuel Limitations (expressed in tons) for generation in the period January 1 through June 30 of the current year, which is equal to thirty-six percent (36%) of the tons of Total Biomass Burned for generation in the period January 1 through June 30 of the current year.
• The Cure Adjusted Fuel Limitations for generation in the period January 1 through June 30 of the current year (expressed in tons), which is the Fuel Limitations for generation in the period January 1 through June 30 of the current year reduced by the Cure Amount from the prior year.

• Compare the Actual Sustainable Biomass Burned for generation in the period January 1 through June 30 of the current year to Cure Adjusted Fuel Limitations for generation in the period January 1 through June 30 of the current year
  o If the Cure Adjusted Fuel Limitations for generation in the period January 1 through June 30 of the current year is greater than the Actual Sustainable Biomass Burned for generation in the period January 1 through June 30 of the current year, then the requirements of Article 8 of the EPA have been met.
  o If the Cure Adjusted Fuel Limitations for generation in the period January 1 through June 30 of the current year is less than the Actual Sustainable Biomass Burned for generation in the period January 1 through June 30 of the current year, then the requirements of Article 8 of the EPA have not been met.
APPENDIX C
PRICING

Minimum Pricing with an Index Adjustment\(^1\)

Except as otherwise provided in this EPA, commencing upon the satisfaction of the requirements of Section A-15, Utility will pay Seller for Contract Rate Products in an amount equal to the product of (1) kWhs of Energy accepted at Delivery Point (up to the hourly maximum stated in Section 3.5), and (2) the Contract Payment Rate as indicated below. Such amount shall be full payment for all Contract Rate Products.

In accordance with CDPUC Decision dated October 20, 2004, this pricing mechanism is subject to adjustment under the following circumstances: (1) There will be no adjustment as long as the total price paid to the project remains below the 24-month average LMP at the time of project approval plus 5.5 cents/kWh ("Trigger Point"); (2) If the Unadjusted Calculated Price exceeds the Trigger Point in any 12-month period, the indexed portion of the rate will be adjusted on a going forward basis if the actual average wholesale market price is 40% above or 40% below the average price determined by the index for any 12 month period. These circumstances are captured in the formula below.

- Fixed Contract Rate Component
  
  Fixed Contract Rate (A) = 6.545 cents/kWh
  
  o Fixed Component Weighting\(^3\) (B) = 30%

- Variable Component - Annual adjustable fuel price index
  
  o Initial Value of Variable Component (E) = 6.545 cents/kWh
  
  o Fuel Price Index to be utilized: Consumer Price Index - All Urban Consumers U.S. All Items, 1982-84=100 (Series Id: CUUR0000SA0) ("CPI-U") from the United States Department of Labor, Bureau of Labor Statistics website at http://data.bls.gov

  If the CPI-U ceases to exist or becomes unavailable, the Parties shall agree to enter into good faith negotiations to adopt a substitute index that reasonably places the Parties in the same positions as they were at the time the CPI-U ceased to exist or became unavailable. (Any indices used to index pricing must be published regularly, either publicly published or readily available, with a reasonable historic basis.)

  - Initial Value of Fuel Price Index (D) = CPI-U consistent with Initial Value of Variable Component at time of contract approval = 211.080 (January 2008)

  o Variable Component Weighting\(^3\) (Maximum of 70%) (F) = 70%

- Fixed Renewable Adder (G) = 5.50 cents/kWh
FORMULA:

\[(A \times B) + \left(\frac{C}{D \times E} \times F\right) + G = \frac{\text{Unadjusted Calculated Price}}{\text{Adjustment Amount}} = \frac{\text{Contract Payment Rate}}{\text{Fixed Contract Rate}}\]

where
- A = Fixed Contract Rate
- B = Fixed Component Weighting\(^3\)
- C = Current Value of Fuel Price Index\(^2\)
- D = Initial Value of Fuel Price Index
- E = Initial Variable Component Value
- F = Variable Component Weighting\(^3\)
- G = Fixed Renewable Adder

\(^1\) Indexed pricing options will contain a monthly adjustment provision for instances when the Unadjusted Calculated Price at any time during the previous 12 months exceeds the 24-month average of LMP at the time of project approval plus 5.5 cents/kWh.

- A positive adjustment will be made when the 12-month average wholesale price ("Wholesale Price") exceeds the indexed portion of the contract rate averaged over the preceding 12 months ("Indexed Rate") by more than 40%. The indexed portion of the contract rate shall be calculated as the Unadjusted Calculated Price less the Fixed Renewable Adder.

FORMULA FOR POSITIVE ADJUSTMENT: Wholesale Price - (Indexed Rate \(* [1.0 - 0.4])\)

- A negative adjustment will be made when the Wholesale Price is more than 40% below the Indexed Rate.

FORMULA FOR NEGATIVE ADJUSTMENT: Wholesale Price - (Indexed Rate \(* [1.0 - 0.4])\)

No adjustment will occur for periods when the Wholesale Price is not more than 40% above or below the Indexed Rate.

\(^2\) Current Value of Fuel Price Index - This monthly value will be calculated as the time weighted average of the applicable fuel price index value(s) for the billing month.

\(^3\) Where Fixed Component Weighting + Variable Component Weighting = 100\%.
APPENDIX C
PRICING

Minimum Pricing with an Index Adjustment
Sample Adjustment Calculations

If Indexed Rate equals 8 cents/kWh, the Contract Payment Rate will include an Adjustment Amount of zero (0) as long as the Wholesale Price is between 4.8 cents/kWh and 11.2 cents/kWh.

\[
\text{Formula for Determination of Bandwidth} = (\text{Indexed Rate} \times [1.0 + 0.4]) > \text{Wholesale Price} > (\text{Indexed Rate} \times [1.0 - 0.4])
\]
\[
= (8.0 \text{ cents/kWh} \times 1.4) > \text{Wholesale Price} > (8.0 \text{ cents/kWh} \times 0.6)
\]
\[
= 11.2 \text{ cents/kWh} > \text{Wholesale Price} > 4.8 \text{ cents/kWh}
\]

Presuming the Indexed Rate remains at 8 cents/kWh, if the Wholesale Price increased to 14 cents/kWh, the Contract Payment Rate would increase by 2.8 cents/kWh, provided the Unadjusted Calculated Price at any time during the previous 12 months has exceeded the Trigger Point. The calculation of this sample rate is provided below:

\[
\text{Formula for Positive Adjustment} = \text{Wholesale Price} - (\text{Indexed Rate} \times [1.0 + 0.4])
\]
\[
= 14.0 \text{ cents/kWh} - (8.0 \text{ cents/kWh} \times 1.4)
\]
\[
= 14.0 \text{ cents/kWh} - 11.2 \text{ cents/kWh}
\]
\[
= 2.8 \text{ cents/kWh}
\]

The Contract Payment Rate is then the Unadjusted Calculated Price plus the positive adjustment as calculated by the above formula.

Presuming the Indexed Rate remains at 8 cents/kWh, if the Wholesale Price drops to 4 cents/kWh, the Contract Payment Rate would be reduced by 0.8 cents/kWh, provided the Unadjusted Calculated Price at any time during the previous 12 months has exceeded the Trigger Point. The calculation of this sample rate is provided below:

\[
\text{Formula for Negative Adjustment} = \text{Wholesale Price} - (\text{Indexed Rate} \times [1.0 - 0.4])
\]
\[
= 4.0 \text{ cents/kWh} - (8.0 \text{ cents/kWh} \times 0.6)
\]
\[
= 4.0 \text{ cents/kWh} - 4.8 \text{ cents/kWh}
\]
\[
= -0.8 \text{ cents/kWh}
\]

The Contract Payment Rate is then the Unadjusted Calculated Price plus the negative adjustment calculated by the above formula.
APPENDIX C
PRICING

Minimum Pricing with an Index Adjustment*
Steps to Calculation of Contract Payment Rate

- Calculate the Trigger Point (the 24-month average LMP at the time of project approval plus 5.5 cents/kWh)
- Calculate the Unadjusted Calculated Price (A through G in formula above)
- Compare the Unadjusted Calculated Price to the Trigger Point
  - If Unadjusted Calculated Price in the current month or any of the preceding eleven months is greater than the Trigger Point, continue to next step
  - If the Unadjusted Calculated Price in the current month or any of the preceding eleven months has not exceeded the Trigger Point, the Adjustment Amount equals zero and the Contract Payment Rate is equal to the Unadjusted Calculated Price
- Calculate the most recent 12-month simple average LMP (“Wholesale Price”)
- Calculate the most recent 12-month simple average of the net of Unadjusted Calculated Price less the Fixed Renewable Adder (“Indexed Rate”)
- Compare the Wholesale Price to the Indexed Rate
  - If the Wholesale Price does not deviate by more than 40% above or below the Indexed Rate, the Adjustment Amount equals zero and the Contract Payment Rate is equal to the Unadjusted Calculated Price
  - If the Wholesale Price does deviate by more than 40% above or below the Indexed Rate, proceed to next step
- Calculate Adjustment Amount
  - Use the Formula for Positive Adjustment when the Wholesale Price is greater than the Indexed Rate times 1.4. Formula for Positive Adjustment = Wholesale Price − (Indexed Rate * [1.0 + 0.4])
  - Use the Formula for Negative Adjustment when the Wholesale Price is less than the Indexed Rate times 0.6. Formula for Negative Adjustment = Wholesale Price − (Indexed Rate * [1.0 - 0.4])
- The Contract Payment Rate is the Unadjusted Calculated Price plus Adjustment Amount
APPENDIX D
PERFORMANCE ASSURANCE

D-1.1 Purpose of Performance Assurance. In order to help ensure that Utility and its customers will continue to enjoy any economic benefits that may accrue under this EPA over its term, including any benefits that may result from future market fluctuations whereby the cost of the Products delivered under this EPA is less than the then-current market value of such Delivered Products, Utility requires that Seller provide performance assurance in the amount and the form described below as security for Seller's continuing performance of its contractual obligations pursuant to the terms and conditions of this EPA. The Parties acknowledge that this EPA requires Seller to construct, operate and maintain the Facility in accordance with Good Industry Practices and in compliance with the Interconnection Agreement. The Parties further acknowledge that Seller shall operate the Facility whenever possible, in accordance with the terms of this EPA including Good Industry Practices and subject to the provisions of the Interconnection Agreement. Therefore, the Parties agree that a cessation or suspension of Seller's operation of the Facility as the result of economic factors (such as a change in market price of Delivered Products or in Seller's cost of operating and/or maintaining the Facility) or financial factors (such as an impairment of Seller's financial condition, including its insolvency, voluntary or involuntary petition for bankruptcy, appointment of a receiver or trustee for its assets) would constitute a breach of Seller's obligation to operate the Facility in accordance with this EPA and Good Industry Practices. Such breach by Seller would entitle Utility to draw on or otherwise call on any and all performance assurance, as provided under Section 1.4 below.

D-1.2. Amount of Performance Assurance. Seller's required dollar amount of performance assurance shall represent two and one-half percent (2.5%) of the installed cost of the Facility (the "Assurance Amount"). No later than 30 (thirty) days prior to the commencement of Utility's purchases under this EPA, Seller shall provide to Utility satisfactory documentary evidence demonstrating the total installed cost of the Facility. Installed cost of the Facility shall include all costs of: (1) Obtaining rights to locate and operate the Facility on the Site (including cost of acquiring property rights for the Site, environmental and local permitting costs, zoning variance costs and associated legal and real estate costs), (2) Site development costs, (3) Engineering, architectural and any other design and planning costs associated with design or construction of the Facility, (4) Equipment, materials and supplies that were installed in or consumed in the development or construction of the Facility, (5) Cost to construct and or install Facility or any components thereof, and (6) Any and all other costs that are included in Seller's undepreciated "original" cost value of the Site and/or Facility on its balance sheet. Any dispute between the Parties as to Assurance Amount or the calculation thereof under this Section D-1.2 shall be resolved pursuant to Section A-22.

D-1.3. Form of Performance Assurance. No less than ten (10) days prior to commencement of Utility's purchases of Contract Rate Products from Seller at the rates of payment specified in Appendix C of this EPA, Seller shall deliver to Utility, at Seller's sole cost and expense one of the following forms of performance assurance, the choice of which form is at the Seller's sole discretion:

(a) a surety bond (the "Bond") in form and substance acceptable to Utility in its sole discretion, issued by a surety (the "Bond Issuer") that is acceptable to Utility in its sole discretion, having a stated amount no less than the Assurance Amount. The Bond shall bind the Bond Issuer to performance of this EPA, in accordance with its terms, should Seller breach any of its obligations thereunder. The Bond shall remain in full force and effect until the ninety first (91st) day after the expiration of the term of this EPA, subject
in all cases to any claims with respect thereto asserted by Utility (or its designated agent) before such ninety first day; or

(b) a letter of credit (the "Letter of Credit") in the form of Attachment D-1 attached hereto and otherwise acceptable to Utility in its sole discretion, issued to Utility by a financial institution acceptable to Utility in its sole discretion with offices in the U.S., and with offices (for drawing purposes) in New York, New York, in an amount that is no less than the Assurance Amount for the period commencing on the date that Utility's purchases of Contract Rate Products at the EPA-specified payment rates commence and ending on the ninety first (91st) day after the expiration date of the term of this EPA, provided that if Seller cannot procure the Letter of Credit for such full term on commercially reasonable terms, then Seller may provide such a Letter of Credit having:

(i) a term of not less than one (1) year, and

(ii) an evergreen clause acceptable to Utility in its sole discretion,

in which case Utility shall be entitled to draw on the Letter of Credit (or any replacement or other successor thereto) if Seller or the issuing financial institution, as the case may be, fails to extend the effectiveness of the Letter of Credit (or replace the Letter of Credit with another Letter of Credit that complies with this paragraph (a)) within sixty (60) days before its then stated expiration date; or

(c) another form of security acceptable to Utility in its sole discretion, executed and delivered by, on behalf of, or for the benefit of Seller in an amount that is no less than the Assurance Amount. Such security shall remain in full force and effect until the ninety first (91st) day after the expiration of the term of this EPA, subject in all cases to any claims with respect thereto asserted by Utility (or its designated agent) before such ninety first day.

D-1.4. Application of Performance Assurance. If Seller defaults on or breaches its obligations under this EPA, then Utility may draw on any Letter of Credit or demand that the Bond Issuer perform its obligations under the Bond or otherwise call on any performance assurance provided under this Appendix D, to protect itself against damages or losses that may result from such default or breach. The Parties specifically recognize that use of performance assurance pursuant to this Agreement shall not limit any legal or equitable right, action or remedy that would otherwise have been available to Utility. Any dispute between the Parties concerning the requirements of this Appendix D, except as otherwise specifically provided herein, shall be subject to resolution by the CDPUC.

D-1.5. Grant of Security Interest. If the form of performance assurance provided hereunder includes cash collateral to be held in a Collateral Reserve Account, to secure its obligations under this EPA and to the extent Seller provides performance assurance hereunder in the form of cash collateral, Seller hereby grants to Utility a present and continuing security interest in, and lien on, and assignment of, all performance assurance, including the Collateral Reserve Account, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Utility. Utility shall have all rights of a secured party under Connecticut's Uniform Commercial Code, Connecticut General Statutes §42a-1-101 et seq., ("UCC"). Seller shall make, or allow Utility to make on Seller's behalf, all necessary UCC filings relating to Utility's rights as a secured party.
Attachment D-1
Form of Letter of Credit

[DATE]

TO: The Connecticut Light and Power Company
107 Selden Street
Berlin, Connecticut 06037 U.S.A.

RE: OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.____
IN THE AMOUNT OF ___________UNITED STATES DOLLARS.

GENTLEMEN:

WE HEREBY OPEN OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER
____ IN FAVOR OF THE CONNECTICUT LIGHT AND POWER COMPANY, BY ORDER
AND FOR ACCOUNT OF [____________] ("PLEDGOR"), HAVING AN OFFICE AT
[____________], [____________], AVAILABLE AT SIGHT, FOR AN AMOUNT OF US
____________ [AMOUNT SPELLED OUT AND XX/100 U.S. DOLLARS] AGAINST
PRESENTATION OF THE FOLLOWING DOCUMENT:

STATEMENT SIGNED BY A PERSON PURPORTED TO BE AN AUTHORIZED
REPRESENTATIVE OF THE CONNECTICUT LIGHT AND POWER COMPANY
STATING THAT: "[____________] ("PLEDGOR") IS IN DEFAULT UNDER THE
ELECTRICITY PURCHASE AGREEMENT BETWEEN THE CONNECTICUT LIGHT
AND POWER COMPANY AND PLEDGOR DATED [____________], 2006 OR UNDER
ANY TRANSACTION CONTEMPLATED THEREBY (WHETHER BY OCCURRENCE
OF A "DEFAULT", "EVENT OF DEFAULT" OR SIMILAR TERM AS DEFINED IN
SUCH AGREEMENT BETWEEN THE CONNECTICUT LIGHT AND POWER
COMPANY AND PLEDGOR OR OTHERWISE) AND DAMAGES HAVE BEEN
INCURRED. THE AMOUNT DUE TO THE CONNECTICUT LIGHT AND POWER
COMPANY IS U.S.$______________ ."

SPECIAL CONDITIONS:

- ALL COSTS AND BANKING CHARGES PERTAINING TO THIS LETTER OF
  CREDIT ARE FOR THE ACCOUNT OF PLEDGOR.

- PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED.

- FACSIMILE, TELEX OR TELEFAX OF THE STATEMENT IS ACCEPTABLE.

THIS LETTER OF CREDIT EXPIRES ON [____________], AT OUR COUNTERS.

WE HEREBY ENGAGE WITH THE CONNECTICUT LIGHT AND POWER COMPANY
THAT UPON PRESENTATION OF A STATEMENT AS SPECIFIED UNDER AND IN
COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT, THIS LETTER OF
CREDIT WILL BE DULY HONORED IN THE AMOUNT STATED IN SUCH STATEMENT.
IF A STATEMENT IS SO PRESENTED BY 11:00 AM PREVAILING TIME, WE WILL HONOR THE SAME IN FULL IN IMMEDIATELY AVAILABLE FUNDS ON THAT DAY AND, IF SO PRESENTED AFTER 11:00 AM PREVAILING TIME, WE WILL HONOR THE SAME IN FULL IN IMMEDIATELY AVAILABLE FUNDS BY NOON ON THE FOLLOWING BANKING DAY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE (1) YEAR FROM THE EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU BY REGISTERED MAIL RETURN RECEIPT REQUESTED OR COURIER (WITH DELIVERY CONFIRMED IN WRITING) THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

WE AGREE THAT IF THIS LETTER OF CREDIT WOULD OTHERWISE EXPIRE DURING, OR WITHIN THIRTY (30) DAYS AFTER, AN INTERRUPTION OF OUR BUSINESS CAUSED BY AN ACT OF GOD, RIOT, CIVIL COMMOTION, INSURRECTION, WAR OR ANY OTHER CAUSE BEYOND OUR CONTROL OR BY ANY STRIKE OR LOCKOUT, THEN THIS LETTER OF CREDIT SHALL EXPIRE ON THE 30TH DAY FOLLOWING THE DAY ON WHICH WE RESUME OUR BUSINESS AFTER THE CAUSE OF SUCH INTERRUPTION HAS BEEN REMOVED OR ELIMINATED AND ANY DRAWING ON THIS LETTER OF CREDIT THAT COULD PROPERLY HAVE BEEN MADE BUT FOR SUCH INTERRUPTION SHALL BE PERMITTED DURING SUCH EXTENDED PERIOD.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 500 (THE "UCP"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE UCP, INCLUDING BUT NOT LIMITED TO ARTICLES 13(B) AND 17 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN.

[NAME OF BANK]

AUTHORIZED SIGNATURE(S)
APPENDIX E
CAPACITY BIDDING REQUIREMENTS

This Appendix provides the bidding requirements that are applicable for bidding the Facility's Capacity into the ISO-NE market, provided that: (i) Seller is responsible for bidding the Facility's Capacity into the ISO-NE market, and (ii) the Forward Capacity Market ("FCM") that is implemented and in effect at the time of such bidding is substantively equivalent to that proposed in the March 6, 2006 Forward Capacity Market Settlement Agreement filing with the Federal Energy Regulatory Commission in Devon Power LLC, et al., Docket Nos. ER03-563-000, -030, and -055 ("LICAP Settlement"). Capitalized terms used in this Appendix E are either as defined elsewhere in this EPA or as defined in the LICAP Settlement or in (i) any successor agreements thereto approved by FERC, and (ii) any terms, provisions and conditions in the ISO-NE Tariff or other applicable ISO-NE Document that interpret, implement, clarify, settle, amend or expand upon the terms of said Settlement.

E-1 Seller will file on a timely basis any materials required by ISO-NE to have the entire Capacity of the Facility qualify for the first Forward Capacity Auction ("FCA") as Existing Capacity as defined in Section 11.II.D.1 of the LICAP Settlement. Seller shall bear its costs of qualifying with ISO-NE. Seller shall not offer De-List or Permanent De-List bids or Export Bids based on the Facility's Capacity in the first FCA. If the Facility is not eligible for the first FCA, Seller must qualify Facility as New Capacity per FCM rules and offer the Capacity in the first subsequent FCA for which the Facility is eligible for a term of five years.

E-2 Seller cannot offer De-List or Permanent De-List bids or Export Bids based on the Facility's Capacity in any subsequent FCAs during the Term. As such, the entire Facility must be listed as a qualified capacity resource and is required to participate in all subsequent FCAs over the entire Term.

E-3 If for any reason Seller receives any capacity payments, credits, or other compensation (collectively, "compensation") for the provision or sale of Capacity and/or other Product(s) that constitute Delivered Product(s) pursuant to Section 3.5, Seller acknowledges and agrees that it shall not hold or claim to hold equitable title to (i) any such Capacity and/or other Product(s) or (ii) any compensation associated therewith; and Seller shall pay to Utility all compensation in respect of such Capacity and/or other Product(s) within thirty (30) days.

E-4 Seller acknowledges and agrees that it shall be responsible for all costs, charges or adjustments related to or associated with the provision or sale of Capacity imposed on or paid by Utility. These costs, charges or adjustments shall include, but are not limited to, the availability penalty discussed in Section 11.V.C of the LICAP Settlement, or in any ISO-NE Document, and the Peak Energy Rent as discussed in Section 11.V.B. of the LICAP Settlement, or in any ISO-NE Document. Such costs, charges or adjustments shall not include Utility's own administrative costs. Seller shall reimburse Utility for any costs, charges or adjustments paid by Utility in respect of such Capacity.

E-5 If Utility determines that the FCM as implemented and in effect for any FCA is substantively different from the FCM proposed to FERC on March 6, 2006 in the LICAP Settlement, Utility may either cancel this Appendix E or propose modifications to it, subject to approval of the CDPUC.
EXECUTION VERSION

RPS CLASS I RENEWABLE GENERATION UNIT

POWER PURCHASE AGREEMENT

BETWEEN

THE CONNECTICUT LIGHT AND POWER COMPANY
d/b/a EVERSOURCE ENERGY
[Buyer]

AND

PLAINFIELD RENEWABLE ENERGY, LLC
[Seller]

As of April 12, 2019
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## Exhibits
- **Exhibit A**  Description of Facility
- **Exhibit B**  Products and Pricing
POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended from time to time in accordance with the terms hereof, this “Agreement”) is entered into as of April 12, 2019 (the “Effective Date”), by and between The Connecticut Light and Power Company d/b/a Eversource Energy, a Connecticut corporation (“Buyer”), and Plainfield Renewable Energy, LLC, a Delaware limited liability company (“Seller”). Buyer and Seller are individually referred to herein as a “Party” and are collectively referred to herein as the “Parties”.

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

WHEREAS, as of the Effective Date the Facility qualifies as a RPS Class I Renewable Generation Unit in the state of Connecticut; and

WHEREAS, pursuant to Conn. Public Act 18-50, Buyer is required to file a long-term contract for the purchase of energy and renewable energy certificates from a biomass facility that is a Class I renewable energy source that began operation after December 1, 2013 meeting the requirements of Conn. Public Act 18-50; and

WHEREAS, Buyer and Seller desire to enter into this Agreement pursuant to Conn. Public Act 18-50 whereby Buyer shall purchase from Seller certain Energy and RECs (each as defined herein) generated by or associated with the Facility;

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

1. DEFINITIONS

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

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

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

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

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

“Bankruptcy Default” shall have the meaning set forth in Section 9.1(d) hereof.
“Business Day” means a day on which Federal Reserve member banks in New York, New York are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time.

“Buyer’s Percentage Entitlement” shall mean Buyer’s rights to twenty percent (20%) of the Products.

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

“Certificate” shall mean an electronic certificate created pursuant to the GIS Operating Rules or any successor thereto to represent certain Environmental Attributes of each MWh of energy generated within the ISO-NE control area and the generation attributes of certain energy imported into the ISO-NE control area.

“Contract Maximum Amount” shall mean seven and one-half (7.500) MWh per hour of Energy and a corresponding portion of all other Products.

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

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

“Cover Damages” shall mean, with respect to any Delivery Failure, an amount equal to (a) the positive net amount, if, any, by which the Replacement Price exceeds the applicable Price that would have been paid for the Products pursuant to Section 5.1 hereof, multiplied by the quantity of that Delivery Failure, plus (b) any other costs incurred by Buyer in purchasing Replacement Energy and/or Replacement RECs due to that Delivery Failure, plus (c) any applicable penalties and other costs assessed by ISO-NE or any other Person against Buyer as a result of that Delivery Failure, plus (d) any other costs and losses incurred by Buyer as a result of that Delivery Failure. Buyer shall provide a statement for the applicable period explaining in reasonable detail the calculation of any Cover Damages.

“Credit Support” shall mean collateral in the form of (a) cash or (b) a letter of credit issued by a Qualified Bank in a form reasonably acceptable to the Buyer.

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

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

“Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has occurred.
“Deliver” or “Delivery” shall mean with respect to (i) Energy, to supply Energy into Buyer’s ISO-NE account at the Delivery Point in accordance with the terms of this Agreement and the ISO-NE Rules, and (ii) RECs, to supply RECs in accordance with Section 4.7(e).

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

“Delivery Point” shall mean the specific location on the Pool Transmission Facilities where Seller shall Deliver its Energy to Buyer, as set forth in Section 4.2(d).

“Delivery Term Start Date” shall mean the date on which the conditions set forth in Section 3.1(b) have been satisfied, as set out in a written notice from Seller to Buyer.

“Department” shall mean the Connecticut Department of Energy and Environmental Protection and its successors.

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

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

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

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

“Environmental Attributes” shall mean any and all generation attributes under the RPS laws and regulations of the state of Connecticut, and under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future to the favorable generation or environmental attributes of a Generation Unit or the products produced by a Generation Unit during the Services Term including, but not limited to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Generation Unit’s generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the GIS in connection with energy generated by the Generation Unit; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of energy by the Generation Unit; provided, however, that Environmental Attributes shall not include: (i) any state or federal production tax credits; (ii) any state or federal investment tax credits or other tax credits associated with the construction or ownership of the Facility; or (iii) any state, federal or private grants, financing, guarantees or other credit support relating to the construction or ownership, operation or maintenance of the Facility or the output thereof.
“Event of Default” shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 and Section 9.2 hereof.

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

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

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

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

“Financing” shall mean indebtedness, whether secured or unsecured, loans, guarantees, notes, convertible debt, bond issuances adequate for the construction of the Facility.

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

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

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

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

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

“Governmental Entity” shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility.
“Interconnecting Utility” shall mean the utility (which may or may not be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the distribution system or Transmission System, as applicable, of that utility.

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

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

“ISO” or “ISO-NE” shall mean ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

“ISO-NE Practices” shall mean the ISO-NE practices and procedures for delivery and transmission of energy in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Agreement, and any applicable successor practices and procedures.

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

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

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

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

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

“Lender” shall mean a party providing Financing and receiving a security interest in the Facility, and shall include any assignee or transferee of such a party and any trustee, collateral agent or similar entity acting on behalf of such a party.

“Locational Marginal Price” or “LMP” shall have the meaning set forth in the ISO-NE Rules.
“Market Price” shall mean the price received by Buyer by selling the Energy into either the ISO-NE-administered Day-Ahead or Real-Time Markets, as applicable.

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

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

“MW” shall mean a megawatt AC.

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

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

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

“Network Upgrades” shall mean upgrades to the Pool Transmission Facilities and the Transmission Provider’s transmission and distribution systems, as determined and identified in the interconnection study approved in connection with construction of the Facility, necessary for Delivery of the Energy to the Delivery Point

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

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

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

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

“Payment Default” shall have the meaning set forth in Section 9.1(b) hereof.

“Performance Assurance” shall have the meaning set forth in Section 6.1 hereof.

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

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

“Pool Transmission Facilities” has the meaning given that term in the ISO-NE Rules.
“Price” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on Exhibit B.

“Products” shall mean Energy and RECs; provided, however, that Energy and RECs generated by or associated with the Facility in excess of the Contract Maximum Amount and RECs not purchased by Buyer under Section 4.1(b) shall not be deemed Products.

“PURA” shall mean the Connecticut Public Utilities Regulatory Authority and shall include its successors.

“QF” shall mean a cogeneration or small power production facility which meets the criteria as defined by FERC in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207, as amended from time to time.

“Qualified Bank” shall mean a U.S. commercial bank or the U.S. branch office of a foreign bank, in either case, having (x) assets on its most recent audited balance sheet of at least $10,000,000,000 and (y) a rating for its senior long-term unsecured debt obligations of at least (A) “A-” by S&P and “A3” by Moody’s, if such entity is rated by both S&P and Moody’s or (B) “A-” by S&P or “A3” by Moody’s, if such entity is rated by either S&P or Moody’s but not both.

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

“Regulatory Approval” shall mean PURA’s issuance of a final decision approving this Agreement (including any amendment of this Agreement as provided for herein), including the continuing authorization for recovery by Buyer of all net costs incurred under this Agreement and the reasonable costs incurred in connection with this Agreement for the entire Term of this Agreement, which approval is acceptable in form and substance to Buyer, does not include any conditions or modifications that Buyer deems to be unacceptable, and is final and not subject to appeal or rehearing. Without limiting the foregoing, the Regulatory Approval will provide that all costs incurred under this Agreement and reasonable costs incurred in connection with this Agreement shall be recovered by Buyer through a fully reconciling component of electric rates, such that Buyer is made whole for such costs, and that PURA and any successor agency will not refuse full and complete recovery to make Buyer whole for such costs.

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

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

“Renewable Energy Certificates” or “RECs” shall mean all of the Certificates and any and all other Environmental Attributes associated with the Energy or otherwise produced by the Facility which satisfy the RPS for a RPS Class I Renewable Generation Unit, and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such RPS Class I Renewable Generation Unit.
“Replacement Energy” shall mean energy purchased by Buyer as replacement for any Delivery Failure relating to the Energy to be provided hereunder.

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

“Replacement RECs” shall mean any generation or Environmental Attributes, including any Certificates or other certificates or credits related thereto reflecting generation by a RPS Class I Renewable Generation Unit that are purchased by Buyer as replacement for any RECs not Delivered as required hereunder.

“Resale Damages” shall mean, with respect to any Rejected Purchase, an amount equal to (a) the positive net amount, if any, by which the applicable Price that would have been paid pursuant to Section 5.1 hereof for such Rejected Purchase, had it been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase (in MWh and/or RECs, as applicable), plus (b) any applicable penalties assessed by ISO-NE or any other Person against Seller as a result of Buyer’s failure to accept such Products in accordance with the terms of this Agreement. Seller shall provide a written statement for the applicable period explaining in reasonable detail the calculation of any Resale Damages.

“Resale Price” shall mean the price at which Seller, acting in a commercially reasonable manner, sells or is paid for a Rejected Purchase, plus transaction and other administrative costs reasonably incurred by Seller in re-selling such Rejected Purchase that Seller would not have incurred but for the Rejected Purchase; provided, however, that in no event shall Seller be required to utilize or change its utilization of the Facility or its other assets, contracts or market positions in order to minimize Buyer’s liability for such Rejected Purchase.

“RPS” shall mean the requirements established pursuant to Conn. Gen. Stat. Section 16-245a and the regulations promulgated thereunder that require all retail electricity suppliers in Connecticut to provide a minimum percentage of electricity from RPS Class I Renewable Generation Units, and such successor laws and regulations as may be in effect from time to time.
“RPS Class I Renewable Generation Unit” shall mean a “Class I renewable energy source” as defined in Conn. Gen. Stat. Section 16-1 that produces RECs that qualify for the RPS.

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

“S&P” shall mean Standard & Poor’s Financial Services LLC and any successor thereto.

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

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

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

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

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

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

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

2. EFFECTIVE DATE; TERM

2.1 Effective Date. Subject in all respects to Article 8, this Agreement is effective as of the Effective Date.

2.2 Term.

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

(b) The “Services Term” is the period during which Buyer is obligated to purchase Products Delivered to Buyer by Seller commencing on the Delivery Term Start Date...
and continuing for a period of ten (10) years from the Delivery Term Start Date, unless this Agreement is earlier terminated in accordance with the provisions hereof.

(c) At the expiration of the Term or earlier termination of this Agreement pursuant to the terms hereof, the Parties shall no longer be bound by the terms and provisions hereof, except (i) to the extent necessary to make payments of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of a breach of, this Agreement, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, and (iii) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

3. FACILITY OPERATION

3.1 Delivery Term Start Date.

(a) Seller’s obligation to Deliver the Products and Buyer’s obligation to pay Seller for such Products commences on the Delivery Term Start Date.

(b) The Delivery Term Start Date shall be the first day of the first calendar month following the receipt of Regulatory Approval, provided that Seller has satisfied all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to the Buyer, and further provided Seller has satisfied the following conditions precedent as of such date:

(i) Seller has obtained and demonstrated possession of all Permits required for the lawful operation of the Facility, for the interconnection of the Facility to the Interconnecting Utility (including any Network Upgrades) and for Seller to perform its obligations under this Agreement, including but not limited to Permits related to environmental matters;

(ii) Seller (or the party with whom Seller contracts pursuant to Section 3.2(e)) has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements required for the performance of Seller’s obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;

(iii) no Default or Event of Default by Seller shall have occurred and remain uncured;

(iv) the Facility is owned or leased by, and under the care, custody and control of, Seller;

(v) Seller has delivered to Buyer:
3.2 Operation of the Facility.

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

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

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

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement and shall be responsible for obtaining interconnection of the Facility at the Interconnection Point at a level that is capable of satisfying the Capacity Capability Interconnection Standard under the ISO-NE Rules.

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

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

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

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

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

(j) **Contacts.** Each Party shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Agreement.

(k) **Compliance with Law.** Without limiting the generality of any other provision of this Agreement, Seller shall be responsible for complying with all applicable
requirements of Law, including all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by FERC and any other Governmental Entity, whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of operational and environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller’s violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the operation of the Facility in compliance with applicable requirements of Law.

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

(m) **Emissions.** Seller shall be responsible for all costs associated with the Facility’s emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility’s emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility’s emissions shall not constitute a Force Majeure.

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

3.3 **Interconnection and Delivery Services.**

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point at a level that is capable of satisfying the Capacity Capability Interconnection Standard under the ISO-NE Rules and with Delivery of the Energy at
the Delivery Point, including the costs of the Network Upgrades, consistent with all standards and requirements set forth by the FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility. Seller shall be responsible for procuring delivery service and all costs associated with it.

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

4. DELIVERY OF PRODUCTS

4.1 Obligation to Sell and Purchase Products.

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

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

(c) Seller shall Deliver Buyer’s Percentage Entitlement of the Products produced by or associated with the Facility, up to and including the Contract Maximum Amount, exclusively to Buyer, and Seller shall not sell, divert, grant, transfer or assign such Products or any right, claim, certificate or other attribute associated with such Products to any Person other than Buyer during the Term. Seller shall not enter into any agreement or arrangement under which such Buyer’s Percentage Entitlement of the Products can be claimed by any Person other
than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery.

(a) During the Services Term and in accordance with Section 4.1, Seller shall Schedule and Deliver Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Agreement and all ISO-NE Practices and ISO-NE Rules. Seller shall transfer the Energy to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market, as reasonably agreed from time to time by Buyer and Seller and consistent with ISO-NE Rules and ISO-NE Practices at the time and Buyer shall have no obligation to pay for any Energy not transferred to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market or for which Buyer is not credited in the ISO-NE Settlement Market System (including, without limitation, as a result of an outage on any electric transmission system). Notwithstanding any other provision of this Agreement, if during the Term of this Agreement the LMP at the Delivery Point is negative, or, in the reasonable opinion of Seller, is likely to become negative, then Seller may deliver to Buyer a written notice stating that such condition has occurred or is likely to occur and the period during which such condition has occurred or is likely to occur. Buyer and Seller hereby agree that in such event Seller shall be under no obligation to schedule or Deliver Products to the Delivery Point during such period. Seller shall provide Buyer with detailed information, including but not limited to, the start and stop times of such periods of curtailment under this Section 4.2(a) as well as the quantity curtailed, for all such periods of non-delivery during the preceding calendar month which information shall be provided prior to Seller’s delivery of the invoice to Buyer.

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

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.2(e) shall at all times during the Services Term be designated with ISO-NE as the “Lead Market Participant” (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities imposed by NERC, the Interconnecting Utility, ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with distribution and transmission. To the extent Buyer incurs such costs, charges, penalties or losses which are the responsibility of Seller, (including amounts not credited to Buyer as described in Section 4.2(a)), Seller shall reimburse Buyer for the same.

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

4.3 Failure of Seller to Deliver Products. In the event that Seller fails to satisfy any of its obligations to Deliver any of the Products or any portion of the Products hereunder in accordance with Section 4.1, Section 4.2 and Section 4.7, and such failure is not excused under the express terms of this Agreement (a “Delivery Failure”), Seller shall pay Buyer an amount for such Delivery Failure (measured in MWh and/or RECs, as applicable) equal to the Cover Damages for such Delivery Failure. Such payment shall be due no later than the date for Buyer’s payment for the applicable month as set forth in Section 5.2 hereof. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to a Delivery Failure would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

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

4.5 Delivery Point.

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

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

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

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, in accordance with the filed tariff of such Interconnecting Utility or the ISO-NE Tariff, whichever is applicable, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

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

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

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

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

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

(b) Regarding the RPS:

(i) Except as provided in subsection (ii) of this Section 4.7(b), all Energy provided by Seller to Buyer from the Facility under this Agreement shall meet the requirements for eligibility pursuant to the RPS, and Seller’s failure to satisfy such requirements shall constitute an Event of Default pursuant to Section 9.2 (h) of this Agreement except as provided in Section 4.7(b)(ii), below; and

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

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

(d) Seller shall comply with all GIS Operating Rules, including without limitation such Rules relating to the creation, tracking, recording and transfer of all RECs to be
purchased by Buyer under this Agreement. In addition, at Buyer’s request, Seller shall register with and comply with the rules and requirements of any other tracking system or program that tracks, monetizes or otherwise creates or enhances value for Environmental Attributes, which compliance shall be at Seller’s sole cost if such registration and compliance is requested in connection with Section 4.7(c) above and shall be at Buyer’s sole cost in other instances.

(e) Prior to the delivery of any Energy hereunder, either (i) Seller shall cause Buyer to be registered in the GIS as the initial owner of all Certificates to be Delivered hereunder to Buyer or (ii) Seller and Buyer shall effect an irrevocable Forward Certificate Transfer (as defined in the GIS Operating Rules) of the Certificates to be Delivered hereunder to Buyer in the GIS for the Services Term; provided, however, that no payment shall be due to Seller for any RECs until the Certificates are actually deposited in Buyer’s GIS account or a GIS account designated by Buyer to Seller in writing.

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

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Price for Products. All Products Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Price specified in Exhibit B; provided, however, that if the RECs fail to satisfy the RPS as an Environmental Attribute associated with the specified MWh of generation from a RPS Class I Renewable Generation Unit and Buyer does not purchase the RECs pursuant to Section 4.1(b), then all Energy Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Price for Energy only, as specified in Exhibit B. Other than the (i) payment for the Products under this Section 5.1, (ii) payments related to Meter testing under Section 4.6(b), (iii) payments related to Meter malfunctions under Section 4.6(e), (iv) payment of any Resale Damages under Section 4.4, (v) payment of interest on late payments under Section 5.3, (vi) payments for reimbursement of Buyer’s Taxes under Section 5.4(a), and (vii) return of any Credit Support under Section 6.3, Buyer shall not be required to make any other payments to Seller under this Agreement, and Seller shall be solely responsible for all costs and losses incurred by it in connection with the performance of its obligations under this Agreement. In the event that the LMP for the Energy at the Delivery Point is less than $0.00 per MWh in any hour, Seller shall credit to Buyer, on the appropriate monthly invoice, an amount equal to the product of (i) such Energy delivered in such hour and (ii) the absolute value of the hourly LMP at the Delivery Point.

5.2 Payment and Netting.

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

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

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

(i) All invoices rendered under this Agreement shall be subject to
adjustment after the end of each month in order to true-up charges
based on changes resulting from ISO-NE billing statements or
revisions, if any, to previous ISO-NE billing statements. If ISO-
NE resettles any invoice which relates to the Products sold under
this Agreement and (a) any charges thereunder are the
responsibility of the other Party under this Agreement or (b) any
credits issued thereunder would be due to the other Party under this
Agreement, then the Party receiving the invoice from ISO-NE shall
in the case of (a) above invoice the other Party or in the case of (b)
above pay the amount due to the other Party. Any invoices issued
or amounts due pursuant to this Section shall be invoiced or paid as
provided in this Section 5.2.

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

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

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

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or Delivery or sale of the Products (“Seller’s Taxes”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer, or imposed on or associated with the purchase of such Products by Buyer (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“Buyer’s Taxes”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may also elect to deduct any of the amount of any such Seller’s Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

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

6.1 Seller’s Support. Seller shall be required to post Credit Support in the amount of one hundred fifty thousand dollars ($150,000) to secure Seller’s obligations under this Agreement in the period beginning on the Effective Date and continuing through and including the date that all of Seller’s obligations under this Agreement are satisfied ("Performance Assurance"). Performance Assurance shall be provided to Buyer within fifteen (15) Business Days after receipt of the Regulatory Approval. If the amount of Performance Assurance is reduced as a result of Buyer’s draw upon such Performance Assurance to less than the amount of Performance Assurance required to be provided by Seller, within five (5) Business Days of that draw Seller shall replenish such Performance Assurance to the total amount required under this Section 6.1.

6.2 Cash Deposits. Any cash provided by Seller as Credit Support under this Agreement shall be held in an account selected by Buyer in its reasonable discretion. Interest shall accrue on that cash deposit at the daily Federal Funds Rate and shall be remitted to Seller upon written request to Buyer, with such request not more often than on a quarterly basis and Buyer shall remit such accrued interest to the Seller within a reasonable time following receipt of such request. Seller agrees to comply with the commercially reasonable requirements of Buyer in connection with the receipt and retention of any cash provided as Credit Support under this Agreement.

6.3 Return of Credit Support. Any unused Credit Support provided under this Agreement shall be returned to Seller only after any such Credit Support has been used to satisfy any outstanding obligations of Seller in existence at the time of the expiration or termination of this Agreement.

6.4 Buyer’s Rights and Remedies. If at any time an Event of Default with respect to Seller has occurred and is continuing, then, unless Seller has paid in full all of its obligations hereunder that are then due, without limiting any other rights and remedies Buyer may have under this Agreement or otherwise at law or in equity, Buyer may exercise one or more of the following rights and remedies: (i) all rights and remedies available to a secured party under applicable Law with respect to Credit Support held by Buyer, and (ii) the right to liquidate any Credit Support held by Buyer and to apply the proceeds of such liquidation to any amounts payable to Buyer with respect to Seller’s obligations hereunder in such order as Buyer may elect. For the purpose of this Section 6.4, Buyer may draw on the undrawn portion of any letter of credit provided as Credit Support up to the amount of Seller’s outstanding obligations hereunder. Seller shall remain liable for amounts due and owed to Buyer that remain unpaid after the application of Credit Support pursuant to this Section 6.4.

7. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

7.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:
(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Connecticut. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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

(d) No Proceedings. As of the Effective Date, except to the extent relating to the Regulatory Approval, and except for proceedings before PURA in Docket Nos. 16-03-08RE01 and 16-09-26 and any appeals thereof there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Buyer or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction contemplated hereby, or which Buyer reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Buyer’s ability to perform its obligations under this Agreement.

(e) Consents and Approvals. Except to the extent associated with the Regulatory Approval, the execution, delivery and performance by Buyer of its obligations under this Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken or that shall be duly obtained, made or taken on or prior to the date required, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable as required under applicable Law.

(f) Negotiations. The terms and provisions of this Agreement are the result of arm’s length and good faith negotiations on the part of Buyer and equal bargaining power of the Parties. No principle of law or equity regarding construing ambiguities in this Agreement against the drafting Party shall apply.
(g) **Bankruptcy.** There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Buyer, or, to Buyer’s knowledge, threatened against it.

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

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

(a) **Organization and Good Standing; Power and Authority.** Seller is a limited liability company, duly formed, validly existing and in good standing under the laws of the state of Delaware. Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

(c) **Due Authorization; No Conflicts.** The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and, assuming the due execution hereof and performance hereunder by Buyer, constitute a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

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

(e) **No Proceedings.** There are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Seller or any of its properties.
(including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction contemplated hereby, or which Seller reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Seller’s ability to perform its obligations under this Agreement.

(f) **Consents and Approvals.** The execution, delivery and performance by Seller of its obligations under this Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable.

(g) **RPS Class I Renewable Generation Unit.** The Facility is, or shall be, a RPS Class I Renewable Generation Unit, qualified by the PURA as eligible to participate in the RPS program, under Conn. Gen. Stat. Section 16-245a (subject to Section 4.7(b) in the event of a change in Law affecting such qualification as a RPS Class I Renewable Generation Unit).

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

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

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

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

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

(m) **Site Control.** As of the Effective Date, Seller has either (i) acquired all real property rights to operate the Facility, or (ii) an unconditional right to acquire such rights.

(n) **Existing Biomass Facility.** The Facility is a biomass facility within the service territory of the Buyer that began operation after December 1, 2013 and meets the requirements of Conn. Public Act 18-50.

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

8. REGULATORY APPROVAL

8.1 Receipt of Regulatory Approval. The obligations of the Parties to perform this Agreement, other than the Parties’ obligations under Article 12, are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the Regulatory Approval or receipt of an order of the PURA regarding this Agreement. This Agreement may be terminated by either Buyer or Seller in the event that Regulatory Approval is not received within 180 days after filing, without liability as a result of such termination, subject to the return of Credit Support as provided in Section 6.3.

9. BREACHES; REMEDIES

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

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

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

(c) Other Covenants. Other than:

(i) a Delivery Failure of ten (10) continuous days or more, which is addressed in Section 9.2(g),

(ii) failure of the Facility to achieve the Delivery Term Start Date,

(iii) a failure to maintain the RPS eligibility requirements set forth in Section 4.7(b) due to a change in Law,

(iv) a Rejected Purchase, or
(v) an Event of Default described in Section 9.1(a), 9.1(b), 9.1(d) or 9.2,
such Party fails to perform, observe or otherwise to comply with any obligation hereunder and
such failure continues for more than thirty (30) days after notice thereof is given by the Non-
Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended
for an additional period of up to thirty (30) days if, despite using commercially reasonable
efforts, the Defaulting Party is unable to cure within the initial thirty (30) day period so long as
such cure is diligently pursued by the Defaulting Party until such Default has been corrected, but
in any event shall be cured within sixty (60) days of the notice from the Non-Defaulting Party; or

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

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

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

(b) Failure to Maintain Credit Support. The failure of Seller to provide,
maintain and/or replenish the Performance Assurance as required pursuant to Article 6 of this
Agreement, and such failure continues for more than five (5) Business Days after Buyer has
provided written notice thereof to Seller. For the avoidance of doubt, it shall be deemed an
Event of Default if Seller provides Credit Support in the form of a letter of credit and, with
respect to an outstanding letter of credit, one of the following events occurs with respect to the
issuer of such letter of credit: (i) such issuer shall fail to be a Qualified Bank; (ii) such issuer
shall fail to comply with or perform its obligations under such letter of credit; or (iii) such issuer
shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such
letter of credit, and such failure disaffirmation, disclamation, repudiation or rejection continues
for more than five (5) Business Days after Buyer has provided written notice thereof to Seller; or

(c) Energy Output. The failure of the Facility to produce Energy for twelve
(12) consecutive months during the Services Term for any reason, other than due to a Force
Majeure; or
(d) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other obligation with respect to ISO-NE and such failure has an adverse effect on the Facility or Seller’s ability to perform its obligations under this Agreement or on Buyer or Buyer’s rights or ability to receive the benefits under this Agreement; provided, that Seller shall have the opportunity to cure such failure within five (5) days of its occurrence; provided, however, if Seller’s failure to satisfy any obligation under the ISO-NE Rules or ISO-NE Practices does not have an adverse effect on Buyer or Buyer’s ability to receive the benefits under this Agreement, Seller shall have the opportunity to cure such failure within thirty (30) days of its occurrence; or

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

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

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

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

(i) Permit Compliance. Such Party fails to obtain and maintain or cause to be obtained and maintained in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under this Agreement where such failure is not fully cured and corrected within thirty (30) days after such Party has knowledge of such failure; provided, however, that such period shall be extended for an additional period of up to forty-five (45) days if such Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by such Party until such Default has been corrected, but in any event shall be cured within seventy-five (75) days of such Party’s knowledge of such Default.

9.3 Remedies.

(a) Upon either Party’s failure to perform any obligation of this Agreement, the other Party, in addition to the rights described in specific sections of this Agreement, and except to the extent specifically limited by this Agreement, may exercise, at its election, any rights or remedies it may have at law or in equity including but not limited to monetary compensation for damages, injunctive relief and specific performance.

(b) If either Party fails to perform any obligation of this Agreement, then, in addition to the remedies specified in Section 9.3(a), the other Party may on sixty (60) days prior written notice terminate this Agreement; provided, however, if the non-performing Party cures such failure to perform during such sixty (60) days period or submits evidence that it is taking all reasonable steps necessary to cure such event and such event is in fact cured within 180 days of such notice from the performing Party, such termination shall not occur; and further provided
that during any period in which the Project does not retain Class 1 status pursuant to the
requirements of 4.7(b), Buyer will reimburse Seller for Products delivered by Seller to Buyer at
the same rate that Buyer is paid for the Energy component of such Products by ISO-NE

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

(d) Notice to Lenders. Seller may provide Buyer with a notice identifying no
more than a single Lender (if any) to whom notices of Default are to be issued. Buyer shall
provide a copy of any notice of Default provided by Buyer to Seller under this Article 9 to such
Lender.

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

10. FORCE MAJEURE

10.1 Force Majeure.

(a) The term “Force Majeure” means an unusual, unexpected and significant
event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not
have been prevented or avoided by such Party through the exercise of reasonable diligence; and
(iii) that directly prohibits or prevents such Party from performing its obligations under this
Agreement. Under no circumstances shall Force Majeure include (v) any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap is caused by one of the following: acts of God such as floods, hurricanes or tornados; sabotage; terrorism; or war, (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller’s ability to sell the Products at a price greater than that set out in this Agreement, or (z) Buyer’s ability to procure the Products at a price lower than that set out in this Agreement. In addition, a delay or inability to perform attributable to a Party’s lack of preparation, a Party’s failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval) or qualifications, a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure or be the basis for a claim of Force Majeure. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Products to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined herein has occurred.

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

(c) Notwithstanding the foregoing, if the Force Majeure prevents full or partial performance under this Agreement for a period of twelve (12) months or more, the Party whose performance is not prevented by Force Majeure shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.
11. DISPUTE RESOLUTION

11.1 Dispute Resolution. In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement or as to the interpretation of any part of this Agreement (collectively, a “Dispute”), in addition to any other remedies provided hereunder, the Parties shall attempt to resolve such Dispute through referral of the matter to duly authorized representatives of the Parties for resolution. If the Dispute has not been resolved within ten (10) Business Days after such referral, then the Parties agree that any such dispute, except for those which PURA and/or FERC has authority to resolve under applicable law, will not be referred to any court but will be resolved pursuant to the provisions of this Article 11. It is the intent of the Parties that, to the extent that the PURA and/or FERC has authority to resolve any dispute between the Parties that is related to this Agreement, such dispute will be resolved by the PURA and/or FERC. If the Parties do not agree as to whether the PURA and/or FERC has authority to resolve a particular dispute, either Party may petition the PURA and/or FERC to make a determination as to whether it has such authority. Mediation and arbitration proceedings regarding any such dispute shall be stayed pending the PURA’s and/or FERC’s determination as to whether it has authority to resolve the dispute in question. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

11.2 Mediation. Except in cases where PURA and/or FERC is involved in dispute resolution, if the dispute has not been resolved by negotiation within ten (10) Business Days of referral the Parties shall endeavor to settle the dispute by mediation under the then current CPR Mediation Procedure. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

11.3 Arbitration. Except in cases where the Authority and/or FERC is involved in dispute resolution, any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which is not resolved as provided in Sections 11.1 and 11.2 within fifty (50) Business Days of referral, shall be finally resolved by arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars ($3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars ($3,000,000), of whom each Party shall designate one in accordance with the “screened” appointment procedure provided in rule 5.4: provided, however, that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C Sections 1 – 16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Hartford, Connecticut. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and foregoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

11.4 Allocation of Dispute Costs. The fees and expenses associated with mediation and arbitration including reasonable attorneys’ fees, shall be divided equally between the Parties, unless otherwise agreed or unless the award shall specify a different division of the costs. Each Party shall be responsible for its own costs associated with the PURA resolution. The
Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this Agreement. To the fullest extent permitted by law, any PURA resolution, mediation or arbitration proceeding and the settlement or arbitrator’s award shall be maintained in confidence by the Parties.

11.5 Waiver of Jury Trial and Inconvenient Forum Claim. EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT. BOTH PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE AS SET FORTH IN THIS ARTICLE 11 AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN ANY INCONVENIENT FORUM.

12. CONFIDENTIALITY

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

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

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

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

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

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

(f) to the extent that the information was previously made publicly available other than as a result of a breach of this Section 12.1;
provided, however, in each case, that the Party seeking such disclosure shall, to the extent practicable, use commercially reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this Section 12.1.

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

13. INDEMNIFICATION

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

13.2 Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, Buyer may at the expense of Seller contest, settle or pay such claim, and Seller shall promptly reimburse Buyer for all costs incurred by Buyer associated therewith.

14. ASSIGNMENT AND CHANGE OF CONTROL

14.1 Prohibition on Assignments. Except as permitted under this Article 14, this Agreement (and any portion thereof) may not be assigned by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. The Party requesting the other Party’s consent to an assignment of this Agreement will reimburse such other Party for all “out of pocket” costs and expenses such other Party incurs in connection with that consent, without regard to whether such consent is provided. When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment, pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement (and shall not impair any Credit Support given by Seller hereunder) unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations thereunder.

14.2 Permitted Assignment by Seller. Buyer’s consent shall not be required for Seller to pledge or assign the Facility, this Agreement or the revenues under this Agreement to any Lender as security for any Financing of the Facility; provided, however, if Seller requests Buyer’s consent to such an assignment, (i) Buyer shall provide that consent subject to Buyer’s execution of a consent to assignment in a form acceptable to Buyer and Seller, and (ii) Seller will reimburse Buyer for all “out of pocket” costs and expenses Buyer incurs in connection with that consent, without regarding to whether such consent is provided.
14.3 **Change in Control over Seller.** Buyer’s consent shall be required for any change in Control over Seller, which consent shall not be unreasonably withheld, conditioned or delayed and shall be provided if Buyer reasonably determines that such change in Control does not have a material adverse effect on Seller’s creditworthiness or Seller’s ability to perform its obligations under this Agreement; provided, however, following the Delivery Term Start Date, (a) a change of Control of the ultimate parent entity of Seller (defined under Section 7A of the Clayton Act, 15 U.S.C. § 18a, aka the Hart-Scott-Rodino Antitrust Improvements Act of 1976) shall not require the consent of Buyer; and (b) transactions among Affiliates of Seller, any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller and its Affiliates shall not constitute a change in Control for purposes of this Section 14.3; provided further that, in each case, Seller provides written notice of such change to Buyer within thirty (30) days after such change.

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

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

15. **TITLE; RISK OF LOSS**

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

16. **AUDIT**

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

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

17. **NOTICES**

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

**If to Buyer:**

**For U.S. Mail Deliveries:**
Director - Energy Supply  
Eversource Energy Service Company  
P.O. Box 270  
Hartford, CT  06141-0270

**For Hand Deliveries:**
Director- Energy Supply  
Eversource Energy Service Company  
107 Selden Street  
Berlin, CT  06037

**With a copy to:**
For U.S. Mail Deliveries:  
General Counsel  
Eversource Energy Service Company  
P.O. Box 270  
Hartford, CT  06141-0270

**For Hand Deliveries:**
General Counsel  
Eversource Energy Service Company  
107 Selden Street  
Berlin, CT  06037
If to Seller:

President
Plainfield Renewable Energy LLC
2600 Capitol Avenue
Suite 430
Sacramento, CA 95816

With a copy to:

President
Greenleaf Power Consolidated
2600 Capitol Avenue
Suite 430
Sacramento, CA 95816

18. WAIVER AND MODIFICATION

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

19. INTERPRETATION

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

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

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

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

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

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

(b) It is not registered or required to be registered under the CFTC rules as a swap dealer or a major swap participant;
(c) It has entered into this Agreement in connection with the conduct of its regular business and it has the capacity or ability to regularly make or take delivery of the commodity to be purchased and sold hereunder;

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

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

(f) With respect to any embedded commodity option in this Agreement, such option is intended to be physically settled so that, if exercised, the option would result in the sale of the commodity to be purchased or sold hereunder for immediate or deferred shipment or delivery;

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

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

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

(a) If, during the Term of this Agreement, there is a change in Law or accounting standards or rules or a change in the interpretation or applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with this Agreement or the amounts paid for Products purchased hereunder the Buyer shall prepare an amendment to this Agreement to avoid or mitigate such impacts. Buyer shall prepare such amendment in a manner that is designed to be limited to changes required to avoid or mitigate the adverse balance sheet or creditworthiness impact on Buyer. Buyer shall use commercially reasonable efforts to prepare such amendment in a manner that mitigates any material adverse effect(s) on Seller (as identified by Seller, acting reasonably) that could reasonably be expected to result from such amendment, but only to the extent that such mitigation can be accomplished in a manner that is consistent with the purpose of such amendment. Seller agrees to execute such amendment; provided that such amendment does not (unless Seller otherwise agrees) alter: (i) the purchase and sale obligations of the Parties pursuant to this Agreement, or (ii) the Price.
(b) Upon a determination by a court or regulatory body having jurisdiction (i) over this Agreement or any of the Parties hereto, or (ii) over the establishment and enforcement of any of the statutes or regulations or orders or actions of regulatory agencies (including the Department or PURA) supporting this Agreement or (iii) over the rights or obligations of the Parties hereunder that any of the statutes or regulations supporting this Agreement or the rights or obligations of the Parties hereunder, or orders of or actions of regulatory agencies (including the Department or PURA) implementing such statutes or regulations, or this Agreement on its face or as applied, in the reasonable determination by a Party, violates any Law (including the State or Federal Constitution) (an “Adverse Determination”), each Party shall have the right to suspend performance under this Agreement without liability. Seller may deliver and sell Products to a third party during any period of time for which Buyer suspends payments or purchases under this Section.

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

20. COUNTERPARTS; FACSIMILE SIGNATURES

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

21. NO DUTY TO THIRD PARTIES

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

If any term or provision of this Agreement or the interpretation or application of any term or provision to any prior circumstance is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, the remainder of this Agreement and the interpretation or application of all other terms or provisions to Persons or circumstances other than those which are unenforceable, illegal or invalid shall not be affected thereby, and each term and provision shall be valid and be enforced to the fullest extent permitted by law so long as all essential terms and conditions of this Agreement for both Parties remain valid, binding and enforceable and have not been declared to be unenforceable, illegal or invalid by a Governmental Entity of competent jurisdiction. The Parties acknowledge and agree that essential terms and conditions of this Agreement for each Party include, without limitation, all pricing and payment terms and conditions of this Agreement, and that the essential terms and conditions of this Agreement for Buyer also include, without limitation, the terms and conditions of Section 19.6 of this Agreement.

23. **INDEPENDENT CONTRACTOR**

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

24. **ENTIRE AGREEMENT**

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

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

The Connecticut Light and Power Company dba Eversource Energy

By: [Signature]
Name: James G. Duly
Title: VP, Energy Supply

Plainfield Renewable Energy, LLC

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

The Connecticut Light and Power Company dba Eversource Energy

By: __________________________

Name:
Title:

Plainfield Renewable Energy, LLC

By: __________________________

Name: Charles L. Abbott
Title: President, CEO
EXHIBIT A

DESCRIPTION OF FACILITY

Facility:

The Plainfield Renewable Energy project is an existing 37.5 MW (net) AC Class I biomass gasification power plant that is located in Plainfield, Connecticut on an approximately 27 acre industrial zoned parcel of land. The Project site is located in the Town of Plainfield, Windham County, Connecticut. The Site is approximately one mile west of Interstate 395 at exit 88, on the south edge of the Town near Mill Brook Road and State Highway 12.

Facility Size: Thirty-seven and one-half (37.500) MWs (AC)
EXHIBIT B

PRODUCTS AND PRICING

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

(a) Commencing on the Delivery Term Start Date, the Price per MWh or REC for the Products shall be as follows:

- Fixed Contract Price

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Energy Price ($/MWh)</th>
<th>REC Price ($/REC)</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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<td>10.00</td>
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<tr>
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<tr>
<td>10</td>
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<td>10.00</td>
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</tbody>
</table>

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

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

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

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

(b) **Price for Buyer’s Percentage Entitlement of Energy and RECs Delivered in excess of Contract Maximum Amount.** The Energy and RECs Delivered in excess of the Contract Maximum Amount shall be purchased by Buyer at a Price equal to the product of (x) the Buyer’s Percentage Entitlement of the MWhs of Energy in excess of the Contract Maximum Amount Delivered to the Delivery Point and (y) the lesser of (i) ninety percent (90%) of the Real-Time LMP at such Delivery Point, or (ii) the Price determined in accordance with Section 1(a) of this Exhibit B for each hour of the month during which such Energy in excess of the Contract Maximum Amount is Delivered to Buyer.

(c) **Negative LMP.** For those hours when the Real-Time LMP at the Delivery Point (as determined by ISO-NE) is negative, the payment from Buyer to Seller shall be reduced for Products Delivered in excess of the Contract Maximum Amount by an amount equal to the product of (x) the Buyer’s Percentage Entitlement of the MWhs of Energy in excess of the Contract Maximum Amount Delivered to the Delivery Point and (y) one hundred percent (100%) of the absolute value of the Real-Time LMP at such Delivery Point for each hour of the month during which such Energy in excess of the Contract Maximum Amount is Delivered to Buyer.

(d) **All rights and title to RECs associated with Energy Delivered in excess of the Contract Maximum Amount shall remain with Buyer whether the Real-Time LMP is positive or negative.** In the event that Seller received RECs associated with Energy Delivered in excess of the Contract Maximum Amount, Seller shall not hold or claim to hold equitable title to such RECs and shall promptly transfer such RECs to Buyer’s GIS account.