

ENERGY PURCHASE AGREEMENT

This ENERGY PURCHASE AGREEMENT ("Agreement"), is entered into as of May 23, 2013 (the "Effective Date"), between NextEra Energy Power Marketing, LLC ("NEPM"), NextEra Energy Services Connecticut, LLC ("NextEra Retail"; NEPM and NextEra Retail are collectively referred to as "Buyer") and ReEnergy Livermore Falls LLC ("Seller"). Buyer, Seller and NextEra Retail are sometimes each referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Seller owns and operates a biomass energy electrical generation facility on a site located in Livermore Falls, Maine, with an expected total net nameplate capacity of approximately 35 MW (the "Facility"); and

WHEREAS, Seller desires to sell to Buyer, in accordance with the terms set forth in this Agreement, Energy generated by the Facility on a Unit Firm basis and Firm basis, as described herein; and

WHEREAS, NextEra Retail is an "electric supplier" as that term is defined in Section 16-1(a)(30) of the Connecticut General Statutes and has been granted a license in accordance with Section 16-245 of the Connecticut General Statutes authorizing it to sell electricity to end users in the State of Connecticut; and

WHEREAS, Buyer desires to purchase from Seller, in accordance with the terms set forth in this Agreement, Energy generated by the Facility on a Unit Firm basis and Firm basis, as described herein.

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

1. DEFINITIONS.

Capitalized terms that are used but not defined in the body of this Agreement shall have the meanings set forth below.

"Affiliate" means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" or "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership, by contract, or otherwise.

"Applicable Law" means all laws, ordinances, rules, regulations, guides, judgments, decrees, injunctions, writs and orders of any Governmental Authority having jurisdiction over the Facility, the ISO-NE region or the Parties and any activity conducted under or in relation to this Agreement, as all of the foregoing may be applicable and in effect from time to time.

"Applicable Market Rules" means the ISO New England Operating Documents, ISO New England System Rules, ISO New England Market Rule 1, ISO New England Manuals, the ISO-NE Participants' Agreement, the ISO-NE Transmission Operating Agreement, other FERC-approved ISO-NE transmission operating agreements, the Second Restated NEPOOL Agreement, or any such successor FERC-approved transmission tariff or agreement applicable to NEPOOL or ISO-NE, in each case as accepted for filing by the FERC and as amended or supplemented from time to time; and all rules and regulations used or adopted by NEPOOL and/or ISO-NE, including without limitation all operating procedures (OP), planning procedures and market rules and procedures issued or adopted by NEPOOL and/or ISO-NE and

its satellite agencies or affiliates, or their successors, in each case as amended or supplemented from time to time.

"Bankrupt" means with respect to any Person, such Person (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not dismissed or withdrawn within ninety (90) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and closes at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, is the Party from whom the notice, payment or delivery is sent and by whom the notice or payment or delivery is received.

"Calendar Year" means the period January 1 through December 31.

"Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"Commercially Reasonable" or **"Commercially Reasonable Efforts"** means, with respect to any action required to be made, attempted or taken by a Party, the level of effort in light of the facts known to such Party at the time a decision is made that: (i) would reasonably be expected to accomplish the desired result at a reasonable cost; (ii) is consistent with Good Industry Practice and the terms of this Agreement; and (iii) takes into consideration the amount of notice reasonably needed to take such action, the duration and type of action and the competitive environment in which such action occurs.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations under this Agreement or in entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement. Without limiting the foregoing, **"Costs"** may also include the aggregate of all amounts in respect of this Agreement that are owed or otherwise accrued and payable by the Defaulting Party to the Non-Defaulting Party (regardless of whether such amounts have been or could be invoiced to the Defaulting Party) that remain unpaid as of the calculation date.

"Credit Rating" means, with respect to any entity on any date of determination, the respective rating then assigned to its unsecured senior long-term debt or deposit obligations (not supported by third party credit enhancement), by S&P, Moody's or such other rating agency or agencies as are specified; and if no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligations by such rating agency, the general corporate credit rating or long-term issuer rating, as applicable, assigned by such rating agency to such entity.

"Delivery Point" means the Connecticut Load Zone in the ISO-NE Market System, designated by ISO-NE as of the Effective Date as ID No. 4004 (.Z.CONNNECTICUT).

"Emergency" means an abnormal condition on the bulk power system(s) of the ISO-NE region and/or neighboring control areas that, if not immediately corrected, could reduce or otherwise adversely affect the amount of Energy Product delivered to the Delivery Point, and are beyond the reasonable control and ability to avoid of the system operator of the region(s) experiencing such conditions. Such conditions could result from emergency outages of generating units, transmission lines or other equipment.

"Energy" means power produced in the form of electricity, measured in kilowatt hours or in megawatt hours.

"Equipment Failure" means any failure or derating of Facility equipment which is *not* caused by failure to operate the Facility in accordance with Good Industry Practice or by the negligent acts or omissions of Seller or its contractors or agents.

"Facility" has the meaning as set forth in the recitals.

"FERC" means the Federal Energy Regulatory Commission or any successor thereto.

"Force Majeure Event" means any act, event or condition that causes delay in or failure of performance of obligations under this Agreement, if such act, event or condition (a) is beyond the reasonable control of the Party claiming that a Force Majeure Event has occurred, (b) is not the result of any act, omission or delay of such Party (or any third Person over whom such Party has control including, without limitation, any subcontractor), (c) is not an act, event or condition, the risks or consequences of which such Party has expressly agreed to assume hereunder and (d) then only to the extent the same cannot be cured, remedied, avoided, offset, negotiated or otherwise overcome by such Party (or any other Person over whom such Party has control including, without limitation, any subcontractor). Notwithstanding the foregoing, and for the avoidance of doubt, the following shall *not* constitute Force Majeure Events: (i) financial or economic distress of either Party, (ii) the removal of the Facility from service for economic reasons, and, with respect to Seller (iii) fuel supply shortages, unless Seller demonstrates that a force majeure event, howsoever defined, has been claimed under Seller's fuel supply contract(s).

"Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any, resulting from the termination of this Agreement, determined in a Commercially Reasonable manner.

"Good Industry Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry 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 was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the Seller. Good Industry Practice shall include compliance with Applicable Market Rules.

"Governmental Approval" means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, declarations of, or regulation by, any Governmental Authority relating to the acquisition, development, ownership, leasing, occupation, construction, start-up, testing, operation or maintenance or decommissioning of the Facility or to the execution, delivery or performance of this Agreement.

"Governmental Authority" means any federal, state, county, city, regional, local or municipal government, authority, department, commission, board, bureau, agency, instrumentality, court or other

judicial, legislative, regulatory, taxing or administrative body or authority, or any political subdivision of the foregoing, or any independent system operator (including without limitation ISO-NE, NEPOOL, FERC, NERC, or any governing regional electric reliability council), in each case having jurisdiction to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority over one or both of the Parties.

"Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

"ISO-NE" means ISO New England, Inc., or any successor to its functions.

"ISO-NE Market System" means the software program administered by ISO-NE through which Energy schedules may be submitted.

"Letter of Credit" means an irrevocable, non-transferable standby letter of credit, issued by a commercial bank chartered in the U.S. or a U.S. branch of a foreign bank, having U.S.-based assets of at least \$10 billion and a Credit Rating of at least "A-" from S&P or "A3" from Moody's, utilizing a form substantially the same as that forth in Exhibit A attached hereto.

"Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a Commercially Reasonable manner.

"Mass Hub" means the ISO-NE Massachusetts Hub in the ISO-NE Market System, designated by ISO-NE as of the Effective Date as ID No. 4000.

"MW" means megawatt.

"MWh" means megawatt hour.

"NEPOOL" means the New England Power Pool, its affiliates or its successor, and includes all functions ISO-NE performs for NEPOOL and to all authority ISO-NE has been granted by NEPOOL and vice versa or to any successor.

"NERC" means the North American Electric Reliability Corporation, and any of its regional reliability councils, or any successor(s) thereto.

"Net Maximum Capacity" means the name plate capacity rating for the Facility which shall not be less than 35 MW.

"Performance Assurance" means collateral in the form of Letter(s) of Credit or other security acceptable to the requesting Party.

"Person" means any individual, partnership, corporation, association, business, trust, Governmental Authority or other entity.

"Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default, as defined in Article 7.

“Project Companies” means ReEnergy Stratton, LLC, ReEnergy Fort Fairfield, LLC, and ReEnergy Sterling CT Limited Partnership, or any successors thereto.

“Project Company PPA” means (i) that certain Energy Purchase Agreement among and between NextEra Energy Power Marketing, LLC, NextEra Energy Services Connecticut, LLC, and ReEnergy Stratton, LLC, dated as of the date hereof; (ii) that certain Energy Purchase Agreement among and between NextEra Energy Power Marketing, LLC, NextEra Energy Services Connecticut, LLC, and ReEnergy Fort Fairfield, LLC, dated as of the date hereof; and (iii) that certain Energy Purchase Agreement among and between NextEra Energy Power Marketing, LLC, NextEra Energy Services Connecticut, LLC, and ReEnergy Sterling CT Limited Partnership, dated as of the date hereof.

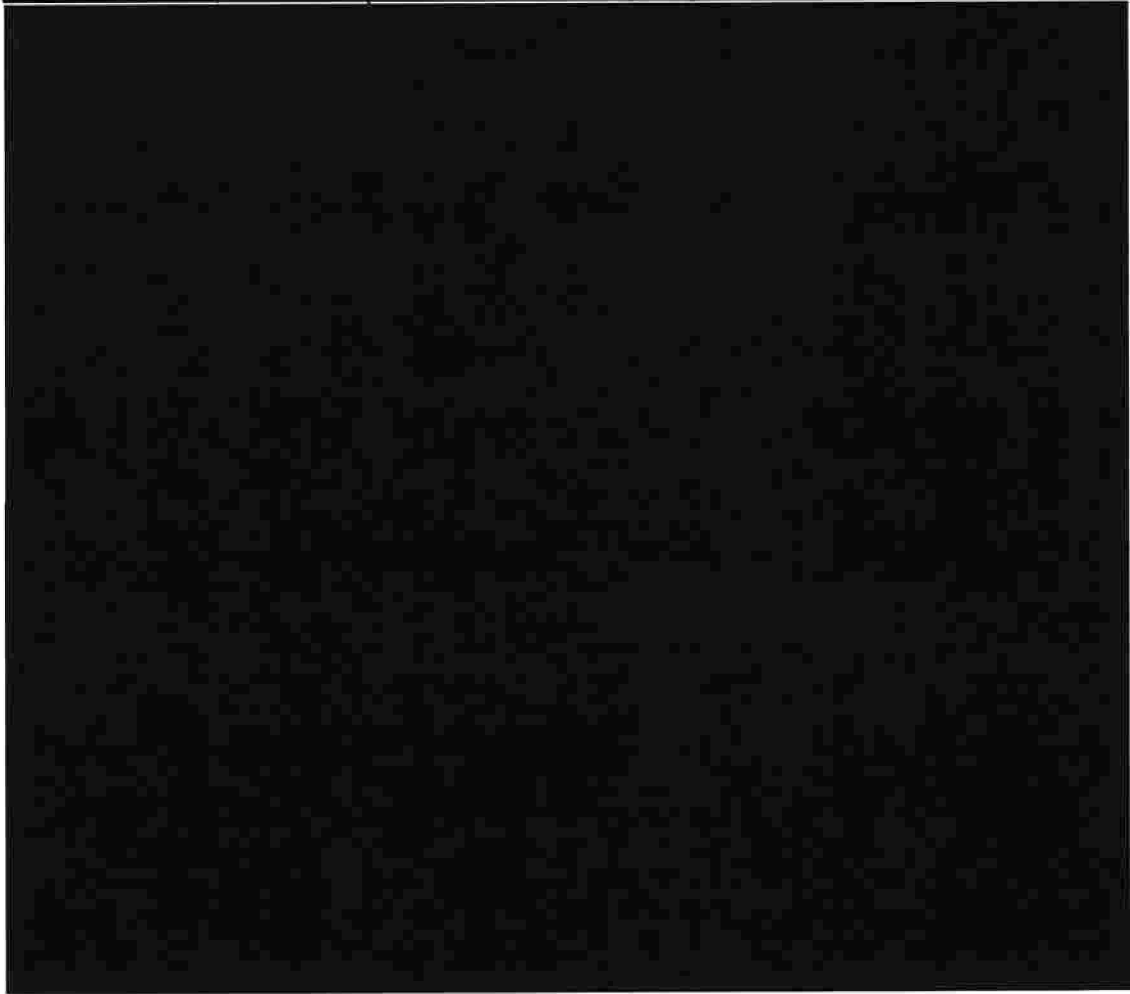
“Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives of notifying, requesting and confirming to the other Party the quantity of Contract Product to be delivered on any given day or days during the Delivery Period.

“Termination Payment” means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of this Agreement pursuant to Article 7.

“Transmission Provider” means Central Maine Power Company.

2. **ENERGY PURCHASES.**







3. **ENERGY SCHEDULES.**

- 3.1 Day-Ahead Schedules. Seller shall Schedule Energy at the Delivery Point on a day-ahead basis in accordance with Applicable Market Rules ("Supply Offer Schedule").
- 3.2 Internal Bilateral Transactions. Seller shall enter Hourly Firm Energy into the ISO-NE Market System as Internal Bilateral Transactions (each an "IBT"), settled at day-ahead Locational Marginal Prices at the Delivery Point, in accordance with Applicable Market Rules. Hourly Firm Energy shall not be included in the calculation of the Marginal Loss Revenue Load Obligation pursuant to Section III.3.2.1(b)(v) of ISO-NE Market Rule 1 (or any successor thereto) and the box indicating "Impacts Marginal Loss Revenue Allocation" will not be checked when such IBT is submitted to ISO-NE. Buyer shall timely confirm each IBT submitted by Seller in accordance

with Applicable Market Rules. "Hourly Firm Energy" shall equal the MWhs set forth in Seller's Supply Offer Schedule.

3.3 Use of the Contract Product. The Parties intend the Contract Product will be utilized by NextEra Retail for its Connecticut operations to the greatest extent practical. To this end, NextEra Retail shall purchase the Contract Product in an amount equal to (but not greater than) 27 percent of NextEra Retail's actual retail load obligation in Connecticut in any hour. NEPM shall purchase any Contract Product in excess of the Contract Product purchased by NextEra Retail.

4. **TERM AND TERMINATION.** Unless this Agreement is otherwise terminated in accordance with Section 2.3 or Section 7.2:

4.1 Term. The term of this Agreement ("Term") shall commence on the Effective Date and shall end at hour ending 2400 EPT on April 30, 2023.

4.2 Delivery Period No. 1. Delivery Period No. 1 shall commence at hour ending 0100 EPT on May 25, 2013 and shall end at hour ending 2400 EPT on December 31, 2013.

4.3 Delivery Period No. 2. Delivery Period No. 2 shall commence on January 1, 2014 and shall end at hour ending 2400 EPT on December 31, 2015.

4.4 Delivery Period No. 3. Delivery Period No. 3 shall commence at hour ending 0100 EPT the day after Delivery Period No. 2, and shall end at hour ending 2400 EPT on April 30, 2023.

5. [INTENTIONALLY RESERVED]

6. **FACILITY OPERATIONS**

6.1 Operation and Maintenance of Facility. Seller shall operate the Facility in accordance with Applicable Law, Good Industry Practice and Applicable Market Rules. Seller will, at its cost and expense, acquire and maintain in effect throughout the Delivery Period all permits, licenses, approvals and other authorizations of any Governing Authority required for the lawful operation and maintenance of the Facility.

6.2 Facility Costs. Seller shall be solely responsible for any and all costs, liabilities (including without limitation any environmental liability), Claims and expenses related to the Facility, including with respect to the construction, maintenance, operation and decommissioning of the Facility and all Facility interconnections.

6.3 Fuel Procurement. Seller shall be solely responsible for procuring fuel for the Facility.

6.4 Interconnection. Seller shall, at its own expense, enter into an interconnection agreement with ISO-NE and/or the Transmission Provider providing for the design, construction, operation, maintenance and control of interconnection facilities capable of effecting the delivery of the Energy Product during the entirety of the Delivery Period ("Interconnection Agreement").

7. **EVENTS OF DEFAULT; REMEDIES**

7.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein that is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (and except where such failure constitutes a separate Event of Default), if such failure is not remedied within ten (10) Business Days after written notice;
- (d) the failure to maintain Seller Performance Assurance or Buyer Performance Assurance, as applicable, in accordance with Article 10 if such failure is not remedied within five (5) Business Days after written notice;
- (e) such Party becomes Bankrupt;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) the Defaulting Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of any Transaction or this Agreement;
- (h) Solely with respect to Seller: Seller fails to maintain any environmental permits required by Applicable Law to operate the Facility and supply the Contract Product, and such failure causes economic harm to Buyer, if such failure is not cured within sixty (60) days of receiving notice of any deficiency; and
- (i) With respect to Seller, an event of default (howsoever defined) occurs with respect to any of Seller's Affiliates under any Project Company PPA; and with respect to Buyer, an event of default (howsoever defined) occurs with respect to Buyer under any Project Company PPA.

7.2 Declaration of an Early Termination Date and Calculation of Termination Payment. If an Event of Default with respect to a Defaulting Party occurs, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is received by the Defaulting Party and no later than 20 days after such notice is so received, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a Commercially Reasonable manner and without duplication, a single liquidated settlement amount ("Termination Payment") as of the Early Termination Date, which Termination Payment shall consist of all of the Non-Defaulting Party's Costs and Losses (not of Gains) for the portion of the Delivery Period remaining as of the Early Termination Date. The Contract Product quantities to be used in calculating the Termination Payment for Delivery Period No. 1 shall be the actual Unit Firm Contract Product over the comparable prior year period, adjusted using the historical capacity factor to remove the effect of any Scheduled Maintenance Outage(s) and any outages or curtailments resulting from Equipment Failure(s), Force Majeure Event(s),

Emergencies or any other cause(s) during such prior year period. The Contract Product quantities to be used in calculating the Termination Payment for Delivery Period No. 2 shall be the Firm Contract Product and the actual Supplemental Unit Firm Contract Product over the comparable prior year period, such Supplemental Unit Firm Contract Product adjusted using the historical capacity factor to remove the effect of any Scheduled Maintenance Outage(s) and any outages or curtailments resulting from Equipment Failure(s), Force Majeure Event(s), Emergencies or any other cause(s) during such prior year period. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied jointly by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information.

- 7.3 Setoff. In calculating the Termination Payment, the Non-Defaulting Party may set off (a) any amounts due and payable by the Non-Defaulting Party or any of the Non-Defaulting Party's Affiliates to the Defaulting Party or any of the Defaulting Party's Affiliates (except Florida Power & Light Company) under any agreement against (b) any amounts due and payable by the Defaulting Party or any of the Defaulting Party Affiliates (except Florida Power & Light Company) to the Non-Defaulting Party or any of the Non-Defaulting Party's Affiliates under any agreement.
- 7.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within five (5) Business Days after such notice is received.
- 7.5 Disputes With Respect to Termination Payment. --If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; *provided, however*, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.
- 7.6 Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default occurs, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; *provided, however*, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof pursuant to Section 4.3 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

8. PAYMENT AND NETTING

8.1 Invoices. On or prior to the tenth (10th) Business Day of each Month, Buyer shall provide to Seller a settlement statement ("Statement") setting forth (i) Monthly Payment due to (or from) Seller for the prior Month, (ii) any true-up adjustments to estimated amounts included in the prior Month's Statement, and (iii) any credit related to the Early Termination Payment, if applicable. Concurrently with the provision of each Statement, Buyer shall tender to Seller an invoice ("Invoice") for the total amount due from (or to) Buyer, as set forth on the Statement. Buyer or Seller, as applicable, shall remit payment of the amount due on the twentieth (20th) day of the calendar month in which the Invoice is rendered, *provided, however*, that if such day is not a Business Day then such amount due shall be paid on the next day that is a Business Day ("Settlement Date"). All payments shall be made by wire transfer, according to the payment instructions below, and any amounts not remitted by the Settlement Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

Statements and Invoices shall be sent to:

NextEra Energy Power Marketing, LLC
700 Universe Blvd.
Juno Beach, FL 33408
Attn: Manager, NEPM Accounting
Phone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

Payments to Seller shall be made by wire transfer to the following account:

Company: ReEnergy Biomass Operations LLC
Bank: Comerica Bank
PO Box 75000
Detroit, MI 48275-8148
Account: [REDACTED]
ABA#: [REDACTED]

Payments to Buyer shall be made by wire transfer to the following account:

Wire Transfer Only

Account Name: NextEra Energy Power Marketing, LLC
Account No.: [REDACTED]
Bank: Bank of America
ABA No.: [REDACTED]

ACH Transfer Only

Account Name: NextEra Energy Power Marketing, LLC
Account No.: [REDACTED]
Bank: Bank of America
ABA No.: [REDACTED]

8.2 Netting of Payments. To the extent that each Party owes an amount to the other Party pursuant to this Agreement or any other agreement on the same due date, including any related amounts as

specified herein including, interest, and payments or credits, the Parties shall satisfy their respective obligations to each other by netting the aggregate amounts due to one Party against the aggregate amounts due to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed.

- 8.3 Billing Disputes. A Party may, in good faith, dispute the correctness of any Invoice rendered under this Agreement within six (6) months of the date the Invoice was rendered. In the event an Invoice or portion thereof is disputed, payment of the undisputed portion of the Invoice shall be required to be made when due, with notice of the objection given to the other Party in accordance with the Notice provisions of Section 16.17. Any dispute shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from (and including) 20 days after the due date to (but excluding) the date paid. Any dispute with respect to an Invoice is waived unless the other Party is notified in accordance with this Section 8.3 and Section 16.17 within six (6) months after the Invoice is rendered.

9. LIMITATIONS

Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. 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. NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

IN ADDITION, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEPM'S AND NEXTERA RETAIL'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO THE UNIT FIRM CONTRACT PRODUCT OR THE SUPPLEMENTAL UNIT FIRM CONTRACT PRODUCT SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE SUM OF ALL INCREMENTAL DISCOUNTS PROVIDED BY SELLER UNDER THE TERMS OF THIS AGREEMENT.

10. CREDIT AND COLLATERAL REQUIREMENTS

- 10.1 Adequate Assurances. If, after the Effective Date, either Party ("X") has reasonable grounds to believe that the other Party's ("Y") creditworthiness or performance under this Agreement has become unsatisfactory, X will provide Y with written notice requesting Performance Assurance in an amount determined by X in a Commercially Reasonable manner. Upon receipt of such notice, Y shall have five (5) Business Days to remedy the situation by providing such Performance Assurance to X. In the event that Y fails to provide such Performance Assurance within five (5) Business Days of receipt of notice, then an Event of Default under Article 7 will be deemed to have occurred and X will be entitled to the remedies set forth in Article 7.
- 10.2 Seller Guaranty. Within five (5) Business Days after the Effective Date, Seller shall provide to Buyer a parental guaranty, issued by ReEnergy Holdings, LLC, in the initial amount of [\$X] ("Guaranty Amount") and in a form reasonably acceptable to Buyer, which guaranty shall remain in effect during the Term of this Agreement.
- 10.3 Financial Information. Upon request by either Party ("X"), the other Party ("Y") shall provide to X the most recent audited and unaudited annual and quarterly financial statements of Y (or, if Y is Buyer, Buyer's corporate parent), prepared in accordance with generally accepted accounting principles.

11. GOVERNMENTAL CHARGES

- 11.1. Cooperation. Each Party shall use Commercially Reasonable Efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.
- 11.2. Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Contract Product arising prior to or at the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Contract Product from the Delivery Point (other than ad valorem, gross receipts, franchise or income taxes which are related to the sale of the Contract Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges, which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. Each Party will reasonably cooperate with the other to provide tax exemption certificates if requested.
- 11.3 New Taxes. For purposes of this Section 11.3, New Taxes shall mean (i) any Governmental Charges enacted and effective after the Effective Date, or (ii) any law, order, rule or regulation, or interpretation thereof, enacted and effective after the Effective Date resulting in application of any Governmental Charges to a new or different class of persons ("New Tax(es)"). If any New Tax is imposed for which Buyer or Seller is responsible, the Party affected by the New Tax ("New Tax Affected Party") may require the other Party to enter into good faith negotiations to apportion liability for the New Tax equitably between the Parties.

12. FORCE MAJEURE

- 12.1. Force Majeure. To the extent either Party is prevented by a Force Majeure Event from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure Event to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations hereunder (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party will give notice to the other Party setting forth the nature of the Force Majeure Event in reasonable detail sufficient to establish that the occurrence constitutes a Force Majeure Event as soon as possible after it has knowledge of the Force Majeure Event. The Claiming Party shall remedy the Force Majeure Event with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by the Force Majeure Event. This section shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt written notice to that effect.
- 12.2. Extended Force Majeure. Notwithstanding anything to the contrary herein, if the Force Majeure Event continues for a period in excess of one hundred eighty (180) days, then the non-Claiming Party will have the right to terminate this Agreement by providing the Claiming Party with not less than five (5) Business Days' prior written notice. Upon the effective date of such termination neither Party shall have any further rights or obligations hereunder, except for those rights and obligations arising prior to the effective date of such termination.

13. REPRESENTATIONS AND WARRANTIES

- 13.1. Both Parties' Representations and Warranties. On the Effective Date each Party represents and warrants to the other Party that:
- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
 - (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it
 - (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses;
 - (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
 - (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

- (g) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
- (i) it is a 'forward contract merchant' within the meaning of the United States Bankruptcy Code, an 'eligible contract participant' as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1(a)(12)), and an 'eligible commercial entity' as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1(a)(11));
- (j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Contract Product; and
- (k) the material economic terms of this Agreement were subject to individual negotiation by the Parties.

13.2. Seller's Representations and Warranties. Seller further represents and warrants to Buyer as of the Effective Date (or commencement of each Delivery Period if so expressly stated) and on a continuing basis throughout the Term (or each Delivery Period, if so expressly stated) that:

- (a) as of the Effective Date, the Facility is in good working order and Seller has no reason to believe that the Facility will not remain in good working order during each Delivery Period;
- (b) Seller shall deliver to Buyer the Contract Product as, and to the extent, provided in this Agreement free and clear of all liens, security interests, Claims, encumbrances or adverse interests;
- (c) there are no plans to modify the Facility that would negatively affect the Seller's ability to deliver the Contract Product in accordance with this Agreement;
- (d) Seller is not aware of any changes to the operating characteristics of the Facility that would be expected to change in such a way that would negatively affect the Seller's ability to deliver the Contract Product in accordance with this Agreement, and Seller has no reason to believe that changes would occur during the Term;
- (e) all required environmental permits have been obtained for the Facility and Seller is not aware of any environmental matters or proceedings that would negatively affect Seller's ability to deliver the Contract Product in accordance with this Agreement;
- (f) Seller maintains all authority to make sales under this Agreement to perform its obligations hereunder;
- (g) Seller shall comply with all applicable FERC, ISO-NE, and NERC requirements, the failure of which would materially impact Seller's ability to perform its obligations hereunder;

- (h) The execution, delivery and performance of this Agreement will not violate any Connecticut state law or regulation;
- (i) the execution, delivery and performance of this Agreement will not (i) result in a breach of or constitute a default under any agreement relating to the management or affairs or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement, or (ii) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as contemplated by this Agreement) upon or with respect to any of its assets or properties now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (j) Seller shall use Commercially Reasonable Efforts to maintain and remain in compliance with all Governmental Approvals applicable to the performance of its obligations under this Agreement.

13.3. NextEra Retail Representations and Warranties. NextEra Retail represents and warrants that, as of the Effective Date, (a) it is an "electric supplier" as that term is defined in Section 16-1(a)(30) of the Connecticut General Statutes and has been granted a license in accordance with Section 16-245 of the Connecticut General Statutes authorizing it to sell electricity to end users in the State of Connecticut, and (b) it has no present plans to exit from the Connecticut retail market or to fail to maintain its Connecticut retail electric supplier license during the Term. In the event NextEra Retail ceases to be a licensed Connecticut electric supplier, if requested by Seller, NEPM and NextEra Retail shall use Commercially Reasonable efforts to cooperate with Seller to effect an assignment of this Agreement to an entity designated by Seller that is a licensed Connecticut electric supplier on terms and conditions acceptable to the Parties.

14. INDEMNITY

14.1 Indemnity by Seller. Seller releases and will, on an after-tax basis, defend, indemnify, and hold harmless Buyer, its Affiliates and each of their respective officers, directors, agents and employees (collectively, including Buyer, the "Buyer Indemnified Parties") from and against any and all losses, costs, damages, injuries, liabilities, Claims, demands, fines and penalties, including reasonable and necessary attorneys' and experts' fees and expenses, costs of investigation, court costs and other dispute resolution costs, and interest on any of these items (collectively, "Damages") sustained or incurred by any of the Buyer Indemnified Parties to the extent caused by: (i) any Event of Default with respect to Seller; (ii) any material violation of Applicable Law by a Seller Indemnified Party (as defined below); (iii) the gross negligence or willful misconduct of a Seller Indemnified Party; (iv) Seller's ownership, operation, maintenance or decommissioning of the Facility; or (v) any Governmental Charges or other amount(s) for which Seller is responsible as provided in this Agreement. In no way limiting the foregoing, and for the avoidance of doubt, Seller releases and will, on an after-tax basis, defend, indemnify, and hold harmless Buyer Indemnified Parties from and against any Damages sustained or incurred by any of the Buyer Indemnified Parties (i) resulting from Buyer's execution of this Agreement, or otherwise (ii) related to action taken by any third party in connection with legislation enacted or proposed in the State of Connecticut regarding clean energy, including without limitation State Senate Bill No, 1138, as such may be amended or revised, or any successor thereto, unless such

action arises out of any action taken by a Buyer Indemnified Party that is not related to Buyer's execution of this Agreement or its performance hereunder.

- 14.2 Indemnity by Buyer. Buyer releases and will, on an after-tax basis, defend, indemnify, and hold harmless Seller, its Affiliates and each of their respective officers, directors, agents and employees (collectively including Seller, the "Seller Indemnified Parties") from and against any and all Damages sustained or incurred by any of the Seller Indemnified Parties to the extent caused by: (i) any Event of Default with respect to Buyer; (ii) any material violation of Applicable Law by a Buyer Indemnified Party; (iii) the gross negligence or willful misconduct of a Buyer Indemnified Party; or (iv) any Governmental Charges or other amount(s) for which Buyer is responsible as provided in this Agreement.
- 14.3 Indemnity Procedure. The Person entitled to indemnification under this Article 14 (the "Indemnified Person") will promptly notify the indemnifying Party of any Claim, and the indemnifying Party will have the right to assume the investigation and defense of the Claim, including employing legal counsel to which the Indemnified Person has consented (such consent not to be unreasonably withheld, conditioned or delayed). If the indemnifying Party does not within ten (10) Business Days after written notice assume the investigation and defense of the Claim, the Indemnified Person may do so, including employing legal counsel of its choice, at the indemnifying Party's expense. In either case, the indemnifying Party will pay or reimburse the Indemnified Person for all court costs, reasonable attorneys' fees and experts' fees relating to the Claim and post any appeals bonds. If the indemnifying Party assumes the defense of a Claim, the Indemnified Person has the right to employ at its expense separate legal counsel and participate in the defense of the Claim. The indemnifying Party and its counsel will cooperate with the Indemnified Person and, if applicable, the Indemnified Person's counsel, and provide reasonable access to information regarding the Claim. The indemnifying Party will not be liable for any settlement of a Claim without its written consent to the settlement, provided that such consent shall not be unreasonably withheld, conditioned or delayed. To prevent double recovery for a Claim, the Indemnified Person will reimburse the indemnifying Party for payments or costs incurred in an indemnity Claim with the net proceeds of any judgment, insurance, bond, surety, or other recovery by the Indemnified Person for the indemnified Claim.

15. ARBITRATION.

- (a) A Party may seek a preliminary injunction or other preliminary judicial relief if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Excepting the right of a Party to seek such relief, for all claims, disputes or controversies arising under, out of or relating to this Agreement or the relationship between the Parties created by this Agreement or any breach or purported breach thereof (the "Dispute") the Parties shall follow the dispute resolution process as set forth herein.
- (b) At the request of either Party to a Dispute, the Dispute shall be referred to and finally settled by binding arbitration governed by the Federal Arbitration Act, and conducted in accordance with the Commercial Arbitration Rules and the Expedited Procedures (irrespective of the monetary value of any claim or counterclaim) of the American Arbitration Association's ("AAA") Commercial Arbitration Rules and Mediation Procedures before a panel of three (3) arbitrators.
- (c) Any arbitration pursuant to this Section 15 shall be conducted in accordance with the Expedited Procedures of the AAA Rules before a three (3) member panel, with each Party selecting one

arbitrator and the third arbitrator, who shall be the chairman of the panel, being selected by the two Party-appointed arbitrators. The claimant shall name its arbitrator in the demand for arbitration and the responding Party shall name its arbitrator within ten (10) days after receipt of the demand for arbitration. No nominee can be a representative or agent of such Party. The third arbitrator shall be named within ten (10) days after the appointment of the second arbitrator. If the two (2) Party-appointed arbitrators are unable to agree upon the third arbitrator within fifteen (15) days after the Party arbitrators have been appointed, the third arbitrator shall be selected by the AAA. Each arbitrator will be qualified by at least ten (10) years' experience in the relevant physical power industry, and the chairman of the arbitration panel shall be a licensed attorney whose primary area of practice for the preceding ten (10) years in the relevant power industry.

- (d) No interrogatories or requests for admission shall be permitted. No metadata shall be produced. Any Disputes concerning discovery obligations or protection of discovery materials shall be determined by the chairman of the arbitration panel.
- (e) The Parties shall conduct a hearing no later than sixty (60) days following selection of the third arbitrator, or thirty (30) days after all prehearing discovery has been completed, whichever is later, at which the Parties shall present such evidence and witnesses as they may choose. Hearings for all arbitrations under this Agreement shall be conducted in New York City, New York.
- (f) The arbitrators shall consider the terms and conditions of this Agreement, and any relevant evidence and testimony, and shall render their decision within thirty (30) calendar days following conclusion of the hearing. The award rendered by the arbitration panel shall be (i) in writing, signed by the arbitrators, stating the reasons upon which the award is based, (ii) rendered as soon as practicable after conclusion of the arbitration and (c) final and binding upon the Parties without the right of appeal to the courts. Judgment on the award may be entered by any court having jurisdiction thereof, as set forth in this Agreement. The Arbitrators shall, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs shall be borne by such Party), including the fees of the Arbitrators and any costs incurred by a Party in seeking judicial enforcement of any decision rendered in writing by the arbitrators (or a majority of the arbitrators), against the Party who did not prevail. Until such award is made, however, the Parties shall share equally in paying the costs of the arbitration.
- (g) Only damages allowed pursuant to this Agreement may be awarded and, without limitation of the forgoing, the arbitrators shall have no jurisdiction to consider (a) any punitive, exemplary, special, indirect, incidental, economic, consequential or similar damages arising under, arising out of or related to this Agreement or damages beyond the limitations of liability contained in this Agreement, regardless of the legal theory under which such damages may be sought and even if the Parties have been advised of the possibility of such damages or loss or (b) any challenge to the validity of the limitation of liability provisions contained in this Agreement. The requirements of this Section 15 shall not be deemed a waiver of any right of termination relating to the Dispute.

16. MISCELLANEOUS

- 16.1 Joint and Several Liability. The Parties agree that NEPM and NextEra Retail shall be jointly and severally liable for Buyer's obligations hereunder.
- 16.2 Change in Applicable Law or Applicable Market Rules. If, during the Term, there occurs a change in Applicable Law or any Applicable Market Rule(s), and such change results in the

elimination of, or otherwise has a material adverse effect on, a material right or obligation of a Party, then, unless such change is expressly and specifically addressed herein, the Parties shall negotiate in good faith in an attempt to amend this Agreement to accommodate such change in Applicable Law or Applicable Market Rule(s). Any such amendment shall reflect, as closely as possible, the intent and substance of the economic bargain reached by the Parties prior to such change in Applicable Law or Applicable Market Rule(s). If the Parties are unable to reach agreement on such amendment, the Parties shall resolve the matter pursuant to the terms of Section 15.

- 16.3 Information Maintenance and Sharing. Each Party will maintain complete and accurate records required for the purpose of proper administration of this Agreement, including metering records, billing records, and such records regarding ownership, management, control, operation and maintenance of the Facility as may be required under this Agreement, Applicable Law, Good Industry Practice or Applicable Market Rules. Each Party will, upon reasonable request of the other Party, provide the other Party with prompt reasonable access to records and data that relate to this Agreement or either Party's performance of its obligations hereunder.
- 16.4 Title and Risk of Loss. Title to and risk of loss related to the Contract Product will transfer from Seller to Buyer at the Delivery Point. Seller warrants, on a continuing basis throughout the each Delivery Period, that it will deliver to Buyer the Contract Product free and clear of all liens, security interests, Claims, encumbrances or adverse interests whatsoever, arising prior to delivery.
- 16.5 Assignment. Neither Party may assign this Agreement to any entity that is not an Affiliate of such Party (prior to such assignment) without the prior written consent of the other Party, which will not be unreasonably withheld, conditioned or delayed, *provided that* the proposed assignee (i) delivers evidence reasonably satisfactory to the other Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations under this Agreement, (ii) expressly assumes the transferring Party's payment and performance obligations under this Agreement, and (iii) agrees to be bound by the terms and conditions of this Agreement, including providing any applicable Performance Assurance.
- 16.6 Governing Law; Venue; Waiver of Jury Trial
- (a) This Agreement and the rights and obligations of the Parties hereunder will be governed pursuant to, and enforced, construed and interpreted in accordance with, the laws of the State of New York without regard to principles of conflicts of laws (other than Section 5-1401 of the General Obligations Law of the State of New York).
- (b) The Parties hereto agree that venue in any and all actions and proceedings related to the subject matter of this agreement shall be in the United States District Court for Southern District of New York; in the event that jurisdiction for any matter cannot be established in such court, then jurisdiction for such matter shall be in the New York Supreme Court for the New York County. The foregoing courts shall have exclusive jurisdiction for such purposes, and the parties hereto irrevocably submit to the exclusive jurisdiction of such courts and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Service of process may be made in any manner recognized by such courts.

(c) EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

- 16.7 Rates and Terms Binding. Notwithstanding any provision in this Agreement, neither Party shall seek, nor shall support any third party in seeking, to prospectively or retroactively revise the Contract Prices, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of Sections 205, 206 or 306 of the Federal Power Act, as amended, or any other provisions of the Federal Power Act, as amended. Further, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the 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), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *Federal Power Commission v. Sierra Pacific 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. 1164 (2008).
- 16.8 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and supersedes and terminates any letters of intent and all prior and contemporaneous agreements, understandings, negotiations and discussions with the Parties, whether oral or written, regarding said subject matter. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by both Parties.
- 16.9 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the employees, lenders, counsel, accountants or advisors of a Party or its Affiliates to whom disclosure is reasonably required (with respect to a Party, its "Representatives")) except in order to comply with any Applicable Law, any Applicable Market Rule, any exchange or control area rule, or in connection with any court or regulatory proceeding or request by a regulatory authority; *provided, however*, each Party shall, to the extent practicable, use Commercially Reasonable Efforts to limit such disclosure.
- 16.10 No Implied Waiver. The failure or delay of any Party hereto to enforce at any time any of the provisions of this Agreement, or to require at any time performance of the other Party hereto of any of the provisions hereof, shall neither be construed to be a waiver of such provisions nor affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision.
- 16.11 Expenses. Each Party shall pay the fees and expenses of its respective counsel, accountants, brokers, consultants, investment bankers and other experts incident to the negotiation and preparation of this Agreement.
- 16.12 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 16.13 Survival. The applicable provisions of this Agreement shall continue in effect after the termination of this Agreement, to the extent necessary to provide for final billing and payment. The termination of this Agreement shall not terminate the rights or duties of either Party hereunder with respect to any obligations arising prior to the effective date of termination or, with

respect to Article 14, with respect to any obligations arising prior to or after the effective date of termination.

- 16.14 No Partnership. The Parties do not by this Agreement effect a joint undertaking and do not intend to create any joint or several obligations to third parties. Neither this Agreement nor any transaction hereunder, shall be construed to create a new entity, such as a partnership or a joint venture, or constitute an agency or employment relationship. Neither Party shall be under the control of or be deemed to control the other Party, and no Party shall have the right or power to bind any other Party.
- 16.15 Third Party Beneficiary. Nothing expressed or referenced to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and the provisions and conditions hereof are for the sole and exclusive benefit of the Parties, and their permitted successors and permitted assigns.
- 16.16 Forward Contract. The Parties intend that (i) this Agreement, the transactions contemplated hereby, shall each, and together, constitute one and the same "forward contract" within the meaning of the United States Bankruptcy Code or a "swap agreement" within the meaning of United States Bankruptcy Code, and that the Seller and Buyer shall each constitute a "forward contract merchant" under the United States Bankruptcy Code; (ii) all payments made or to be made by one Party to another Party pursuant to this Agreement constitute "settlement payments" within the meaning of the United States Bankruptcy Code; and (iii) this Agreement constitutes a "master netting agreement" within the meaning of the United States Bankruptcy Code. Each Party hereby waives its rights to argue in any proceeding that any of the statements in clauses (i) through (iii) above are not true or enforceable.
- 16.17 Notices. Except as otherwise specified in this Agreement, all notices or other communications regarding this Agreement shall be as specified below. Notices shall be in writing and may be delivered by hand delivery, overnight mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith. All notices hereunder shall be sent to the applicable Parties and their representatives at the addresses set forth below:

Seller:

General:

ReEnergy Holdings LLC
30 Century Hill Dr. Suite 101
Latham, NY 12110
Attn: William Ralston



Scheduling:

ReEnergy Holdings LLC
30 Century Hill Dr. Suite 101
Latham, NY 12110

Attn: Jonathan Newton
[REDACTED]

Buyer:

General:

NextEra Energy Power Marketing, LLC
700 Universe Blvd. CIR-JB
Juno Beach, FL 33408
Attn: Legal Department
Facsimile: [REDACTED]

Scheduling:

NextEra Energy Power Marketing, LLC
700 Universe Blvd. EPM-JB
Juno Beach, FL 33408
Attn: Scheduling Desk
Phone: [REDACTED]
Facsimile: [REDACTED]

[the remainder of this page is intentionally blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

NEXTERA ENERGY POWER MARKETING, LLC

BY: [REDACTED]
Name: Laura E. Silverstein
Senior Vice President and
Managing Director
Nextera Energy
Power Marketing, LLC
Title: _____



NEXTERA ENERGY SERVICES CONNECTICUT, LLC

BY: [REDACTED]
Name: Brian Landrum
Title: President

REENERGY LIVERMORE FALLS LLC

BY: [REDACTED]
Name: William H. Ralston
Title: Chief Risk Officer

REENERGY HOLDINGS LLC

(Signatory only for purposes of Section 10.2)

BY: [REDACTED]
Name: William H. Ralston
Title: Chief Risk Officer

Exhibit A

Form of Letter of Credit

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We (the "Issuing Bank") hereby establish our Irrevocable Non-Transferable Standby Letter of Credit in your favor for the account of _____ ("Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$ _____) (the "Initial Available Amount"), available to you ("Beneficiary") at sight upon demand at our counters at [*specify location*] on or before the expiration hereof against presentation to us of the Beneficiary's signed and dated statement referencing our Letter of Credit No. _____, stating the amount of the demand and reading as follows:

"An Event of Default (as defined in the Energy Purchase Agreement dated as of _____ between Beneficiary and Account Party, as the same may have been amended (the "Agreement")) has occurred and is continuing with respect to Account Party under the Agreement and Account Party has failed to make all payments due and owing to Beneficiary in accordance with the terms of the Agreement."

[OR]

"An Early Termination Date (as defined in the Energy Purchase Agreement dated as of _____ between Beneficiary and Account Party, as the same may have been amended (the "Agreement")) has occurred as a result of a Termination Event (as defined in the Agreement) and Account Party has failed to make all payments due and owing to Beneficiary in accordance with the terms of the Agreement."

The Initial Available Amount shall automatically be reduced by the amount of any and all drawings paid from time-to-time through the Issuing Bank referencing this Letter of Credit No. _____ (as so reduced, the "Available Amount"). Partial and multiple drawings are permitted from time-to-time hereunder up to the then-outstanding Available Amount.

This Letter of Credit shall expire _____ (_____) days from the date of issuance, but shall automatically extend without amendment for additional _____ (_____) -day periods from such original or any subsequent expiration dates, if Beneficiary and Account Party have not received, at least ninety (90) days prior to any such expiration date, notice of our intention not to renew.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

The Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from Beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary thereof accordingly.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices, I.C.C. Publication No. 590, or the revision currently in effect ("ISP98"). As to matters not covered by ISP98, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]

Schedule 1 to Exhibit A

LETTER OF CREDIT PROVISIONS

Credit Support provided by one party ("X") for the benefit of the other ("Y") in the form of a Letter of Credit shall be subject to the following provisions.

- (a) Any Letter of Credit shall be delivered to Y to such address as Y shall specify and shall be maintained for the benefit of Y or its designee. X or the issuer of the Letter of Credit shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a bank issuing a Letter of Credit shall fail to honor Y's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of Y either a substitute Letter of Credit that is issued by a bank acceptable to Y within two (2) Local Business Days after such refusal.

- (b) Upon the occurrence of a Letter of Credit Default, as defined below, X agrees to deliver to Y a substitute Letter of Credit on or before the second Business Day after the occurrence thereof.

"Letter of Credit Default" shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the provisions in (a) above are not satisfied; (ii) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's; (iii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iv) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (v) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Term of this Agreement; or (vi) the issuer of such Letter of Credit becomes Bankrupt; *provided, however*, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to X in accordance with the terms of this Agreement.

- (c) Upon or at any time after the occurrence of an Event of Default with respect to X, Y may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more demands in accordance with the specific requirements of the Letter of Credit. Cash proceeds received from drawing upon the Letter of Credit may be applied against all amounts that are due and owing from X but have not been paid to Y within the time allowed for such payments under this Agreement.

- (d) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and external attorneys' fees to Y) of establishing, renewing, substituting, canceling, increasing, and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by X.